Environmental Appeal Board

Expedited Hearings

Rules and Procedures

Version 1.0

June 11, 2025

Rule X1: Scope of Ruleset

1. The Expedited Hearing Rules (the "Ruleset") apply to appeals designated for expedited processing by the Board upon application by a party to those appeals.

2. Only appeals filed pursuant to the *Wildlife Act* are eligible for designation under the Ruleset. Over time, a larger extent of appeals will become eligible for designation under the Ruleset.

3. To the extent that the Ruleset conflicts with any other rules of the Environmental Appeal Board (the "Board"), the Ruleset takes precedence. For any issue not explicitly addressed by the Ruleset, the Board's *Rules* apply.

4. Any examples which are presented in the Ruleset are there for the assistance of the reader and are not part of the Ruleset itself. If an example conflicts with the Ruleset, the words of the Ruleset take precedence.

Rule X2: Appeals to be Expedited

1. Appeals which are designated by the Board for an expedited hearing constitute a class of applications (the "Class") as defined in section 11(5) of the *Administrative Tribunals Act*, SBC 2004, c. 45 (the "*ATA*"). The purpose of doing so is to further access to justice within the province, such that the Board can provide substantive decisions on the appeals before they become moot.

2. For the purposes of this Ruleset, the following definitions apply:

    - **Designation:** the Board's assignment of an appeal to the Class.
    - **Designate (and other conjugations of the verb):** the act of Designation.
    - **Designated Appeal:** an appeal that has been Designated.

3. Designated Appeals will proceed by way of a written hearing.

4. The Board may Designate any appeal before it upon application by a party to that appeal. When the Board receives such an application, it will consider whether the grounds of appeal and remedy are appropriate for the expedited process. Indications of this unsuitability include where:

a. significant time, resources, or both are required to adjudicate preliminary matters such as stay applications, contentious document production requests, or summons for witness attendance at hearings;

b. there are numerous, legally complicated, or factually complicated grounds for appeal, including, for example, where extensive cross-examination or extensive expert evidence is necessary to adjudicate the appeal;

c. appeals are sought to be grouped; or

d. the number or nature of potential parties involved is incompatible with an expedited process in the particular circumstances of that case.

5. An Appellant may apply for their appeal to be Designated by selecting the appropriate box on their Notice of Appeal, provided that the appeal must be decided within six months to provide that Appellant with any practical remedy. If satisfied that those criteria are met for a given appeal, the Board will inform the Respondent as soon as possible about the possibility of an expedited appeal and assign the appeal to a Case Manager for further handling.

6. Any party may otherwise apply for an appeal to be Designated using the process set out under Section 8.0 of the Board's *Practice and Procedure Manual* (the "*Manual*").

7. Upon receiving a request from an appellant which the Board considers satisfies the requirements of Rule X2.5 or X2.6, the Board may meet with the party applying for Designation without any other parties present, to discuss whether the grounds of appeal, requested remedy, or both, need to be narrowed or particularized for the Appeal to be Designated.

8. Upon being satisfied that the grounds of appeal and requested remedy are sufficiently narrow and particularized for an appeal to be Designated, the Board will allow all parties to the appeal to make submissions as to whether the appeal should be Designated. These submissions will be required on an expedited basis and are limited to three pages in length, exclusive of evidence and authorities, unless the Board rules otherwise. Should the parties to the appeal all agree that Designation is appropriate, the Board may Designate the appeal without submissions.

Rule X3: Potentially Affected Indigenous Communities

1. The Respondent must identify for the Board all Indigenous communities from which they received information, or with which they consulted, on the issues under appeal, prior to issuing the decision under appeal. These communities, and the names of individuals that provided information or who consulted with the decision-maker, must be provided to the Board by the end of the first phase.

Rule X4: Opting Out and Removing an Appeal from the Expedited Process

1. Any party to a Designated Appeal may request the Board to de-Designate that appeal. They may do so as a right if added to the appeal after it was Designated, but if they had the opportunity to make submissions as to whether the appeal should have been Designated, they may only file such an application with respect to any changed circumstances associated with the appeal that warrant the Board re-assessing its Designation of the appeal at issue.

2. An application for de-Designation must be made on behalf of the party applying. A party cannot apply for de-Designation because of perceived or anticipated unfairness or impact to a different party.

3. A request for de-Designation must be, at most, three pages in length (exclusive of any evidence or authorities filed in support) unless the Board rules otherwise. The submission process related to a de-Designation application will be completed as soon as possible but generally will not halt the expedited appeal process.

4. If all parties to the appeal agree that de-Designation is appropriate, the Board may de-Designate the appeal without submissions.

5. The Board may consider de-Designation of a Designated Appeal where there is a change in the relevant circumstances (for example, where an Appellant files an application for a preliminary decision or where a new party is to be added to the appeal) but must first provide the parties an opportunity to make submissions as to whether it should do so. The applicable test the Board will consider is described in Rule X4.7.

6. Submissions with respect to whether the Board should de-Designate an appeal cannot exceed three pages, exclusive of evidence and authorities, unless the Board rules otherwise.

7. In deciding whether to de-Designate an appeal, the Board will consider "the balance of convenience"—the prejudice suffered by the various parties to the appeal if the appeal is de-Designated, versus the prejudice suffered by the various parties to the appeal if the appeal continues to be Designated.

Rule X5: Appeals on Discretionary Grounds

1. This Rule pertains to appeals of annual quota issued under section 60 of the *Wildlife Act* ("Quota Appeals").

2. In a Quota Appeal that is Designated, the Appellant may raise as their sole ground of appeal that the Respondent did not appropriately consider the business impacts associated with the quota decision in setting the quota. Such an appeal is referred to in this rule as an "Appeal on Discretionary Grounds."

3. An Appellant in an Appeal on Discretionary Grounds must identify the quota that they argue is appropriate.

4. In setting the schedule for the expedited hearing under Rule X6 for an Appeal on Discretionary Grounds, the Board may limit timeframes and submissions lengths more drastically than in the standard, expedited process, where doing so is necessary to ensure that the quota sought may be practically used if the appeal is allowed.

Rule X6: Schedule for Expedited Hearing

1. When the Board receives a Notice of Appeal indicating that the Appellant wishes the appeal to be a Designated Appeal, the Board will complete its assessment of suitability as described in Rule X2, including any discussion with the Appellant in that case as to narrowing of the grounds of appeal or remedy sought. While this process is underway or as soon as possible after it completes, the Board will advise the Respondent about a possible expedited appeal. Once the Board is satisfied that the grounds of appeal and remedy requested by the Appellant are suitable for an expedited process, the Board will seek submissions from the Respondent on an

expedited basis, on this issue of whether to designate the appeal as a Designated Appeal.

2. Subject to Rule X5, the pre-hearing process for Designated Appeals follows a four-phase schedule. The phases are, in order: expedited production (first phase), appellant's written submissions (second phase), written submissions of other parties (third phase), and additional evidence (fourth phase). The first phase of the expedited hearing starts when the Board designates the appeal as a Designated Appeal and the Board will define the duration of subsequent phases in the circumstances of each appeal. The fourth phase will only occur in unusual circumstances, where additional evidence is necessary to decide a Designated Appeal, but where the obtaining of that evidence remains practicable within the expedited process.

3. The Board will inform the parties via email that the appeal is a Designated Appeal as of a specific date. Whenever possible, this communication will include a schedule setting out when each phase of the process begins and ends.

4. The Board will only join Designated Appeals with other Designated Appeals, and only where they can be heard more efficiently as a result. If a Designated Appeal is to be joined with a non-Designated Appeal the Designated Appeal will cease to be a Designated Appeal.

Rule X7: Expedited Production

1. When notified by the Board of an appeal under this Class, the Respondent must provide to the Appellant any and all documents the Board orders produced using its authority under section 34(3)(b) of the *ATA*. These documents must be:

   - relevant to the appeal,
   - admissible before the Board (for example, not privileged documents),
   - within the care or control of the Respondent, and
   - not previously provided to the Appellant.

   The Respondent must provide these documents by the end of the first phase, unless the Respondent requests exemption from this requirement, as described in Rule X7.3, for any particular documents in advance of the end of the first phase.

2. Anyone receiving production under Rule X7.1 must use produced documents for the purposes of the appeal only. They must not share, disclose or otherwise make available to any non-party (other than the Board and any witnesses as required) any of the documents listed above. If these documents are shared with a witness, it must be on the condition that the witness must not communicate, share, or otherwise disclose or make available that information to anyone else, other than the Board and the parties to the appeal.

3. To file a request for an exemption under this Rule, the Respondent must identify the specific documents or classes of documents for which an exemption is sought and the reason(s) why an exemption is sought. Where possible, documents must be described in classes. Such a request must be, at most, one page per document or class of documents for which an exemption is sought and filed before the deadline for production of documents under Rule X7.1. Reasons for requests for exemption may include (but are not limited to) disagreement on relevance, arguments about privilege or other confidentiality concerns.

Rule X8: Written Submissions

1. The Appellant is required to provide submissions by the end of the second phase. These submissions must give the argument and evidence which support the specific reason(s) why the Appellant disagrees with the decision under appeal and what remedy they seek from the Board (for example, the appealed decision being rescinded or varied).

2. The Respondent and any other parties or participants in the appeal are required to provide submissions by the end of the third phase. The submissions must give the argument and evidence that support the specific outcome sought by that party; typically, this means providing reason(s) why the Board should not provide the remedy requested by the Appellant.

3. Where a party wishes to rely on expert evidence, they must explain in which subject areas the witness is being put forward as an expert (for example, tinhorn sheep biology, hydraulic engineering, statistics) and identify the education, training, or experience which the party says qualifies the witness as an expert.

4. Submissions that reference any authorities (legislation, case law, and other decisions) must include an electronic link to publicly and freely available authorities, or an electronic copy of an authority that is not free for public access.

5. Submissions, exclusive of any evidence and authorities attached, are not to exceed ten pages, unless the Board orders otherwise.

Rule X9: Evidence in Expedited Hearings

1. Witness testimony must be provided by a signed statement. A witness is not required to swear an affidavit if they provide written acknowledgment of their duty to relate the truth, the whole truth, and nothing but the truth, either in those words or words of similar effect. Where a witness does not do so, the weight of their evidence (not its admissibility) may be affected.

2. An expert witness must recognize, in writing, that they have an ethical responsibility to be impartial in providing their opinion and that their role is to assist the Board and not any party to the appeal. If they fail to do so, the weight of their evidence (not its admissibility) may be affected.

3. Witnesses seeking to provide expert opinions to the Board must include an up-to-date copy of their *curriculum vitae*.

4. All witnesses must include in their witness testimony their availability to answer questions from the panel, at the panel's discretion, during phase four. Witness statements must not exceed five pages, excluding the *curriculum vitae* of any proposed expert witnesses, unless the Board orders otherwise.

5. While evidence is generally due along with written submissions as described in Rule X8.1 and X8.2, parties to a Designated Appeal may be required to produce expert evidence to the other parties as early as it is available and before that party's submissions are due.

6. In determining if a person's evidence will be accepted as expert evidence, the Board will apply the current legal test to establish if the evidence is properly that of an expert such that it may be relied upon by the Board.

Rule X9 Example

As set out in the Board's *Manual*, an expert witness is a person who, through experience, training and/or education, is qualified to give an opinion on certain aspects of the subject matter of the appeal. To be an expert the person must be qualified by the Board to have

knowledge that goes beyond common knowledge and their opinion must be admissible, relevant, and of assistance to the Board (see, for example, paragraph 84 of *Thomas H. Coape-Arnold v. Delegate of the Director, Environmental Management Act*, 2019 BCEAB 5 (CanLII)).

The following statement on the obligations of an expert witness, found at paragraph 83 of *Daniel Norton v. Director of Fish and Wildlife*, 2023 BCEAB 39 (CanLII), is instructive:

> There is no requirement in the Manual that an expert witness must be at arms-length from the party calling the expert as a witness. The most important consideration, as described by the Supreme Court of Canada in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 (CanLII), is whether an expert can give an independent opinion, based on their own judgment and an objective assessment of the relevant facts, without preference to one party or another. Experts may be employed or retained by a party, so long as they fulfill their obligations as described above.

Rule X10: Cross-Examination

1. There is no right to cross-examination within the expedited appeal process. If any party wishes to cross-examine the witness of any other party or participant, they must request an opportunity to do so from the Board. The deadline for the Respondent to make this request is the end of the third phase. The deadline for the Appellant to make this request is four days after the end of the third phase.

2. Any request to cross-examine a witness must include the specific questions or areas of questioning that are to be the subject of the cross-examination and explain why the requesting party should be allowed to ask the questions, or address the areas of questioning, in their application. The Board will generally only grant a request to cross-examine where cross-examination is necessary for a party to respond to evidence presented by another party or to for the applying party to advance their argument. The request must also include any limitations on the availability of the party to cross-examine the witness in phase four.

3. A request to cross-examine a witness must not exceed three pages, unless the Board rules otherwise. If the Board considers that the requesting party is not reasonably available during phase four, it may deny the request to cross-examine the witness or may allow the witness to respond in writing to any questions framed by the party seeking to cross-examine them that the Board considers appropriate for the expedited process.

4. If the Board considers the witness to be not reasonably available over phase four, the Board may decline to consider some or all of the evidence from that witness, or may allow the witness to respond to questions from the parties and/or the Board in writing. Otherwise, the Board will convene a videoconference or telephone hearing for the purposes of the cross-examination and may limit the time available depending on the issues to be addressed in cross-examination and the time constraints on the Board, any party, and the witness(es).

5. Where cross-examination occurs by writing, the party who originally presented the witness will have an opportunity to object to any questions before they are posed to the witness. The cross-examining party will have a final reply with respect to the objections. These submissions on the suitability of questions will be required on an expedited timeframe and shall not exceed three pages, if in writing, unless the Board rules otherwise.

Rule X11: Supplemental Submissions

1. When granted the right to cross-examine a witness, a party will have the opportunity to make further submissions after doing so. This may be time-limited (typically to 10 minutes) if done in person or limited to three pages (or three additional pages, if included with the remainder of submissions) if done in writing or if the Board authorizes written submissions to follow the cross-examination. The Board may order different limits in the circumstances of any given appeal. These supplemental submissions may only relate to the evidence presented during the cross-examination.

2. Where supplemental submissions following cross-examination are in writing, they are due three business days after the responses are provided by the witness.

3. The opposing party or parties may also make further submissions. If the Appellant's witness was cross-examined, the Appellant will be allowed to make their submissions as part of the final reply. If the Respondent's or a Third Party's witness was cross-examined, the Respondent or Third Party (as the case may be) will have an opportunity to provide supplemental submissions. In any case, these submissions must not exceed three pages (if written) or ten minutes (orally), unless the Board rules otherwise.

Rule X12: Reply

1. The Appellant has an opportunity to reply to the submissions from the Respondent and Third Party. Reply submissions must only address matters that relate to:

   - some issue or defense that the Respondent or a Third Party raised, and which the Appellant could not have reasonably anticipated when preparing their initial submissions; or

   - testimony that one of the Appellant's witnesses provided under cross-examination.

   A reply under each of the categories above is to be a maximum of three pages in length, unless the Board rules otherwise. Accordingly, the maximum length of reply submissions, if it meets both criteria above, is generally six pages. The Board will generally provide one week for reply submissions.

2. The Board may refuse to consider the reply in whole or in part if it does not meet the requirements of this Rule. Any reply submissions that could have reasonably been anticipated by the Appellant when preparing their initial submissions will not be considered by the Board.

Rule X13: Formatting of Documents

1. Where documents are limited by length within this Ruleset, they may only have an average number of words per page of 400 or less.

2. If a party provides documents that do not conform with the requirements of Rule X13.1 or with length requirements set by the Board (either in the Ruleset or in the circumstances of any case), the Board may refuse to consider those documents in whole or in part, as it considers appropriate in the circumstances.

3. All documents must be provided in electronic format if possible. If party is unable to provide electronic documents, they may send physical ones, but they must be delivered to the Board's office at or before the deadline. The Board will scan any physical documents received into electronic form.

Rule X14: Extensions of Time and Effect of Missed Deadlines

1. Any party that seeks an extension of time to meet any deadline within the Ruleset must do so at least one day before the deadline in question and must do so by way of written application. This application must contain the reason why the deadline cannot be met, as well as the length of the extension sought. The application must not exceed three pages in length, unless the Board orders otherwise, and must be provided to all parties as well as to the Board.

2. Due to the expedited nature of this expedited process, extensions of time will only be granted in exceptional circumstances, where a party will be unable to fairly participate in the process under existing timelines. The Board will not generally accept any late evidence or submissions without authorizing an extension of time in advance.

3. In the event that the appellant in a Designated Appeal fails to comply with any deadline within the expedited process, the Board will immediately begin the process of summarily dismissing the appeal under section 31(1)(e) of the *Administrative Tribunals Act* for failure to comply with an order of the Board or failing to diligently pursue the appeal. The appellant in that case will have the opportunity to make submissions on this issue, as required by section 31(2) of the *Administrative Tribunals Act*.

4. If a party other than the appellant in a Designated Appeal misses a deadline under the expedited process, the appeal may continue without the evidence, submission, or both, that should have been provided but was not. That party will have an opportunity to explain why they missed the deadline and argue that they should be allowed to provide evidence and submissions in the process, however.

5. Where a party is to be provided with an opportunity to explain any missed deadline as described in X14.3 or X13.4, the Board will advise that party as soon as possible and provide a deadline for that explanation. The deadline will generally be three days after the missed deadline, although parties will be provided with an opportunity to request additional time. The length of these explanations cannot exceed three pages, unless the Board orders otherwise. The Board will only extend deadlines in such circumstances where the party satisfies the “exceptional circumstances” criterion from Rule X14.2 and where the relevant circumstances meant the party was unable to communicate their inability to meet the relevant timeline before the associated deadline.

Rule X15: Outcome and Decision

1. If a decision on the appeal is needed on such short timeframe that the Board determines that the outcome of the appeal would only be effective if delivered before its underlying analysis, the Board may communicate the appeal outcome separate from the decision.

   The outcome defines whether the appeal is confirmed, reversed or varied. If the decision is varied, the Board will indicate in what way the decision under appeal is varied. The Board will generally not issue an outcome separate from the decision where the outcome would be to return the matter to the original decision-maker or to make a new decision the decision-maker could have made and which the Board considers appropriate in the circumstances.

2. The decision contains the Board's reasoning and analysis. It constitutes a "final decision" under section 51 of the *ATA*. Where the Board separates the outcome and decision, it will endeavour to complete the decision as soon as is reasonably practicable.