
Background

To ensure decisions made by those given authority under the *Safety Codes Act*, are accurate, fair and reasonable, an appeals mechanism has been established.

Policy

1. In accordance with the *Safety Codes Act* and Safety Codes Council Bylaws, the following matters may be appealed:
 - a. Written decisions regarding:
 - Certificate of Competency;
 - Designation of Powers;
 - Order of Accreditation;
 - Permits; and
 - Design Registration.
 - b. Orders issued by a Safety Codes Officer.
2. All appeals shall be filed with the Safety Codes Council with the exception of appeals regarding the accreditation of municipalities and regional service commissions which are to be filed with the Minister.
3. For an appeal to proceed, the Council must receive a written notice of appeal within thirty (30) days of a written decision referred to in 1 (a), or within thirty-five (35) days of service of an Order issued by a Safety Codes Officer referred to in 1 (b).
4. There is a fee for each appeal filed (see policy 8.20).
5. The Safety Codes Council shall appoint an Appeal Panel to hear an appeal.
6. A Technical Council shall not make decisions on matters that fall under another Technical Council's jurisdiction.
7. A decision of an Appeal Panel is a decision of the Safety Codes Council and binding upon the Council.

General

1. Upon receipt of an appeal, the Chair of the Safety Codes Council or the Chair of the appropriate Technical Council shall be notified.
2. An Appeal Panel shall be appointed considering the following criteria:
 - a. technical expertise;
 - b. geographic area; and
 - c. rotation of Council members.
3. If a member of an Appeal Panel has a personal, financial or business interest in a matter under discussion at a hearing, the member shall advise the Council and not participate in deciding the matter unless the other members of the Panel agree to allow the member to do so.
4. A member of an Appeal Panel who is contacted by a member of the public regarding an appeal shall not discuss the merits of the appeal but may outline the appeal process.
5. The appellant and respondent may have representation, including legal counsel, at the appeal hearing.
6. The appellant and respondent may bring witnesses to the appeal hearing. The Appeal Panel will determine if any person present has the right to be heard at the hearing.
7. The Safety Codes Council may retain evidence provided during an appeal.
8. Appeal Panel members are not to discuss the appeal before the appeal hearing.
9. Appeal Panel members may discuss the appeal during the hearing and the deliberations leading to the decision.
10. Appeal Panel members are not to discuss the appeal or the decision with any one else until:
 - a. thirty (30) days after the service of the Order containing the decision; and
 - b. the conclusion of any appeal to the Court of Queen's Bench lodged within that thirty days and any subsequent appeals thereof.

The Appeal Process

INITIATION OF AN APPEAL

1. A notice of an appeal shall:
 - a. be in writing and submitted to:

**Safety Codes Council
500-10405 Jasper Avenue NW
Edmonton, AB
T5J 3N4**
 - b. be signed by the appellant or his agent and contain the appellant's name, address and phone number;
 - c. contain a copy of the order or written decision being appealed;
 - d. contain a concise statement of the matter being appealed setting out the grounds for the appeal; and
 - e. be accompanied by the appropriate fee (see policy 8.20).
2. The Council shall acknowledge receipt of the appeal in writing.
3. Prior to a hearing the Council may require that the appellant furnish additional information or particulars of the appeal.
4. The Council may request any person with an interest in the appeal to provide written information or particulars concerning the matter being appealed.
5. Upon determining that the notice of appeal is complete, the Council shall send copies of the appeal to:
 - a. the Safety Codes Officer who issued the original Order,
 - b. to the appropriate Technical Administrator, and
 - c. to an accredited regional services commission or municipality if they administer the subject matter of the Order being appealed.
6. The Council shall appoint an Appeal Panel of at least three (3) members, one of who shall be appointed chair. *

- * a. *The Chair of an appeal before a Technical Council shall be the Chair of the Technical Council or a Member of the Technical Council designated by the Chair of the Technical Council to chair the hearing.*
- b. *The Chair of an appeal before the Council as a whole shall be the Chair of the Council or a Member of the Council designated by the Chair of the Council to chair the hearing.*

NOTIFICATION OF AN APPEAL HEARING

7. The Council shall:
 - a. set the date, time and place to hear the appeal, and notify all parties;
 - b. give all parties at least five (5) working days notice of the appeal hearing; and
 - c. request written confirmation of receipt of notification.

ABANDONMENT OF AN APPEAL

8. If a written reply from the appellant is not received by Council within ten (10) working days from the date of written Notification of an Appeal Hearing, the Council may decide the appeal has been abandoned and shall notify the appellant that it considers the Appeal abandoned.
9. On abandonment of an appeal the fee is surrendered to the Council.

POSTPONEMENT OF AN APPEAL

10. The Chair of an appeal hearing may postpone the hearing of an appeal, at the sole discretion of the Chair, upon request by the appellant or by the respondent

THE HEARING

11. At the hearing of an appeal the person acting as recorder shall:
 - a. record the names, addresses and interests of all persons present; and
 - b. insure all persons present are introduced by whatever method the Chair decides.
12. The Chair shall:
 - a. ask the appellant and the respondent if there is any objection to any Panel member who is participating in the hearing*; and
 - b. confirm with the panel members, their jurisdiction to hear the appeal.

* *Grounds for objection shall be:*

- *apprehension of bias; or*
- *apprehension of conflict of interest*

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13. The Appeal Panel shall determine if any member objected to in 12 shall continue to hear the appeal or be excluded.
 14. The Chair shall:
 - a. provide all parties with a copy of the material before the Panel;
 - b. confirm that there are no objections to those documents and material being before the Panel for the purposes of hearing the appeal; and
 - c. decide on the admissibility of evidence if an objection is raised under “b”.
 15. The order in which evidence and arguments shall be presented at the hearing and the form in which it may be presented, shall be determined at the discretion of the Chair.
 16. The Panel may request additional information be provided by either party.
 17. The Chair shall ensure the Panel:
 - a. allows each party reasonable opportunity to furnish evidence, and to submit oral or written arguments; and
 - b. affords the opportunity of cross-examination.
 18. The Panel shall proceed with an appeal in the absence of either party or a witness.
 19. The Panel shall determine if any person at the hearing has the right to be heard or to submit written arguments.
 20. The Panel shall determine whether any evidence or written arguments submitted, prior to or at a hearing, is admissible.
 21. The Council is not required to keep any written or mechanical record of the oral evidence or arguments given at a hearing.

ADJOURNMENTS

22. The Panel may adjourn a hearing for any reason and for a period of time deemed appropriate by the Panel.
23. If during a hearing, a Panel member, the appellant or the respondent becomes incapacitated the Chair may:
 - a. adjourn the hearing;
 - b. adjourn the hearing if there is not a quorum; or
 - c. order a new hearing.
24. The Panel shall reconvene any adjourned hearing at a time and place the Panel considers appropriate and upon reasonable notice to all parties.
25. Only those Panel Members who attended and participated in an adjourned hearing have the right to attend and participate in the reconvened hearing.

DECISIONS OF THE APPEAL PANEL

26. At the conclusion of a hearing, the Panel may make its decision or reserve its decision.
27. Only those Panel members who were present and heard all of the evidence shall participate in making the decision.
28. A Panel member shall not discuss the merits of the appeal with any person who is not a member of the Panel or the secretariat present at the hearing, prior to the Panel reaching a decision.
29. The Panel may confirm, revoke or vary the matter that is the subject of the appeal.
30. The Panel may issue a written variance, as part of its decision with respect to any thing, process or activity related to the subject-matter of the appeal if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as provided for in the Act.

FORM OF DECISIONS

31. The Chair shall advise all parties that the Panel's decision will be an Order and in writing with reasons.
32. The Panel's decision shall be made in the form of a Council Order within sixty (60) days of the completion of the hearing setting out:
 - a. the findings of fact upon which the Panel based its decision; and
 - b. the reasons for that decision.
33. The Order shall be signed by the Chair or, in the absence of the Chair, by a member of the Panel who heard the appeal and who participated in the decision.
34. In accordance with the Act and Regulations, a copy of the decision shall be served upon the appellant, the Safety Codes Officer, the Technical Administrator, and on the accredited municipality if they were sent a copy of the notice of appeal.

Descriptive Information

An Appeal Panel has the authority to consider and by order, do the following:

1. Certificate of Competency or Designation of Powers
 - a. confirm a refusal, suspension or cancellation of a Certificate of Competency or Designation of Powers; or
 - b. direct that a Certificate of Competency or Designation of Powers be issued which may include terms and conditions.
2. Order of Accreditation
 - a. confirm a refusal, suspension or cancellation of an Order of Accreditation; or
 - b. revoke or vary any decision made.
3. Permit
 - a. confirm refusal, suspension or cancellation of a permit; or
 - b. direct that a permit be issued which may include terms and conditions.
4. Design Registration
 - a. confirm deregistration of a design;
 - b. confirm refusal to register a design;
 - c. direct that a design be submitted for review; or
 - d. direct that a design be registered and that changes be made to the design before this occurs.
5. Order issued by a Safety Codes Officer
 - a. confirm, revoke, or vary an order appealed to it; and
 - b. issue a written variance which may include terms and conditions.