

January 2024

## Environmental Appeals Board Mandate and Roles Document

This Mandate and Roles Document for the Environmental Appeals Board, an adjudicative, quasi-judicial administrative tribunal, (the “Agency”) has been developed collaboratively between the Minister of Environment and Protected Areas (the “Minister”) and the Agency to reflect a common understanding of their respective roles and responsibilities. The Agency has clearly defined roles and responsibilities outlined in the applicable legislation. The Agency is comprised of the Chair of the Agency (the “Chair”) and appointed Members, and staff.

The Minister recognizes the authority and obligation of the Chair to administer and direct the Agency in the discharge of these roles and responsibilities. The Chair is accountable to the Minister for the effective management and operation of the Agency and for ensuring that the Minister is informed respecting these matters.

The Agency and Alberta Environment and Protected Areas (the “Department”) operate in the same regulatory system but have different roles and responsibilities. Although the Agency is part of the Ministry and Agency staff are Government of Alberta employees, it is recognized that adjudicative decisions must be made and be seen to be made impartially and independently. Accordingly, nothing in this Mandate and Roles Document is intended to or shall interfere with the Agency’s proper exercise of its statutory jurisdiction, powers of decision, or obligations to comply with rules of natural justice and procedural fairness to ensure fair hearings.

The Department is responsible for a comprehensive and effective regulatory system that enables development while ensuring environmental standards are maintained. Many of the regulatory decisions made by statutory decision-makers in the Department are appealable to the Agency. The Department remains responsible for the legislative, regulatory, and policy framework.

### 1. Agency Mandate

The Agency is an adjudicative body established by the *Environmental Protection and Enhancement Act*. The Agency derives its authority from that Act, as well as the Environmental Appeal Board Regulation and the Environmental Protection and Enhancement (Miscellaneous) Regulation.

The Agency has authority to hear appeals<sup>1</sup> of specific decisions made by statutory decision-makers in the Department under the following legislation:

- *Environmental Protection and Enhancement Act* (see section 91(1));
- *Emissions Management and Climate Resilience Act* (see section 42(1));
- *Government Organization Act* (see Schedule 5, section 6(1)); and
- *Water Act* (see section 115(1)).

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<sup>1</sup> Matters that may not be appealed are noted in sections 91(2) and 91(3) of the *Environmental Protection and Enhancement Act* and section 115(2) of the *Water Act*.

The Agency hears appeals to ensure the decisions were made in accordance with the relevant legislation and Department policies. The Agency will provide an impartial and efficient resolution of all matters before it.

For most appeals, once the hearing is complete, the Agency provides a report and recommendations to the Minister. The Minister will make a final decision to confirm, reverse or vary the Department's decision after reviewing the Agency's report and recommendations.

In limited circumstances that are set out in the relevant legislation, the Agency will make a final decision (i.e., the Minister does not make a decision).

### **Applicable Legislation**

In addition to the legislation listed above that sets out the Agency's jurisdiction, the Agency has responsibilities under, and is subject to, the following:

- *Administrative Procedures and Jurisdiction Act*;
- *Alberta Evidence Act*;
- *Alberta Land Stewardship Act*;
- *Alberta Public Agencies Governance Act*;
- *Conflicts of Interest Act*;
- *Financial Administration Act*;
- *Freedom of Information and Protection of Privacy Act*;
- *Government Accountability Act*;
- *Interpretation Act*;
- *Public Interest Disclosure (Whistleblower Protection) Act*;
- *Public Inquiries Act*;
- *Public Sector Compensation Transparency Act*;
- *Public Service Act*;
- *Public Service Employee Relations Act*; and
- *Red Tape Reduction Implementation Act*.

The list may change during the term of this document as a result of changes to legislation.

## **2. Duties and Responsibilities**

The Government of Alberta is responsible for the legislative, regulatory, and Government policy framework within which the Agency operates.

The parties described below will continue to act in a manner that recognizes that the Agency's adjudicative function is to make independent quasi-judicial decisions and provide advice to the Minister after hearings on most appeals through a report, including its recommendations.

## **The Minister**

The Minister of Environment and Protected Areas is accountable to the Legislature for the Agency. The Minister reports to the Legislature on the affairs of the Agency and answers questions about the Agency.

The Minister is also responsible for:

- Making the final decisions, in accordance with legislation, in response to reports and recommendations received from the Agency.
- Consulting with other Members of Cabinet as necessary about issues affecting the legislative, regulatory, and policy frameworks within which the Ministry operates.
- Recommending the Agency's annual budget to the Government.
- Approving recruitment to the Chair and Member positions.
- Recommending to Cabinet the appointment of the Chair and Members based on the Minister's assessment that the appointees have the appropriate knowledge, skills, and experience, and demonstrate the Alberta Public Service values to ensure the Agency achieves its mandate and fulfills its responsibilities.
- Monitoring the operations and performance of the Agency to ensure that it is fulfilling its mandate in compliance with applicable legislation and Government policies while respecting that the Agency makes decisions in performing its adjudicative function, and for most appeal matters, provides a report and recommendations to the Minister.
- Reviewing the business plan and annual report provided by the Chair, to achieve the purposes of the *Fiscal Planning and Transparency Act*.
- In accordance with the *Alberta Public Agencies Governance Act*, conducting regular (at least every seven years) reviews of the Agency's mandate and operations to determine if the work of the Agency is still relevant to the needs of Albertans, if it is aligned with Government priorities and if the operations and responsibilities are being carried out in a manner that can achieve Government objectives; and reporting the results of the review to the Executive Council.
- Working through the office of the Deputy Minister to provide the Agency with information, recommendations in relation to the business plan and annual report, administration matters, and reviews of the mandate, as established by legislation.
- Reviewing the activities of the Agency on an annual basis with the Chair.
- Conducting annual evaluations and review of the performance of the Chair. Evaluation of the Chair's performance will be undertaken in the context of measuring EAB management efficiency and will not seek to measure or evaluate the merits of decisions or recommendations made by the Agency in any appeal.

## **The Deputy Minister**

The role of the Deputy Minister is to:

- Support and act under the direction of the Minister, including fulfilling the Minister's duties when appropriate.

- Coordinate and work with the Chair, as appropriate, respecting the development and implementation of business plans, resources, budget, legislative and policy frameworks, and other similar matters of mutual interest.

### **The Department**

To meet the responsibilities of the Agency, the Department<sup>2</sup> is responsible for supporting the Agency in the following areas:

- Supporting the Agency's annual operating budget.
- Audit of the Agency's financial information when received for consolidation into departmental reports and financial statements.
- Providing human resource support, including hiring services, related to Agency staff.
- Providing administration support, including facilities and computer services.
- Providing governance orientation for Members that have been appointed by Government.
- Assisting the Agency in complying with Government's governance policies and directives, including those on compensation disclosure.
- Other support services that are necessary to carry out the roles and responsibilities of the Agency.

### **The Chair**

The Chair represents the Agency and its interests in dealing with the Minister, the Department, stakeholders, and the community. The Chair is responsible for providing leadership to the Agency and for the overall performance of the Agency in delivering its mandate.

The Chair is responsible for:

- Overseeing compliance with all relevant policies, procedures, and standards the Agency operates under and ensuring that the Agency always operates in compliance with all applicable laws and regulations and to the highest ethical standards.
- Ensuring continuity in Agency operations by appointing, in writing, someone to act as Chair during absences.
- Providing the Minister with regular updates on the Agency's operations and information regarding any material developments or significant emergent issues on a timely basis.
- Acting in a fashion to support the adjudicative functions of the Agency.
- Ensuring the establishment of policies and procedures for conducting hearings and mediations, and for the administration of the Agency, in accordance with its legislation and underlying regulations, as well as the principles of natural justice and procedural fairness.
- Identifying appropriate business processes to assist in fulfilling its mandate.

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<sup>2</sup> See Section 4 with respect to the role of the Department's Strategy and Governance Division, as it relates to the responsibilities listed here.



- Establishing committees to develop or revise policies, procedures and business processes where necessary and ensuring that a written mandate of each committee is reviewed and approved annually.
- Attend regular (e.g., quarterly) meetings with Deputy Minister to discuss the Agency's administrative requirements, effectiveness, efficiency, and emerging issues (including the legislative and policy frameworks within which the Agency operates).
- Ensuring that the Agency, through a process led by the Chair (or delegated committee), conducts an annual evaluation and review of the performance of the Agency and its committees (if any). The Agency reviews the results of the evaluations and discusses opportunities to improve effectiveness.
- Delivering an annual business plan and an annual report to the Minister. See Appendix 1 for timelines and required content.
- Developing a yearly budget request, monitoring and effectively managing the Agency's financial performance within its approved budget, subject to the number and complexity of appeals and judicial reviews, and ensuring the financial results and related information are provided to the Department on a timely basis.
- Communicating with the Department regarding the Agency's human resource administration, including retaining an appropriate number of staff to meet its workload.
- Reviewing the activities of the Agency at annual sessions with the Minister.
- Planning and managing Agency meetings.
- Supervising, mentoring, and coaching the Members and staff, and managing their performance.
- Conducting an annual evaluation of Members, to identify opportunities to improve their competency and to inform the re-appointment process, where appropriate.
- Assisting with the development of competencies for the Chair and Member positions for approval by the Minister.
- Providing all new Members with an orientation that includes a manual of all legislation applicable to the Agency, governance practices and policies, and resources related to mediation and tribunals, and providing, as appropriate, ongoing training in mediation and administrative law.
- Adhering to, and administering, the Agency's Code of Conduct<sup>3</sup> and ensuring that conflict of interest matters are addressed.
- Working with Members, will determine how the Agency interacts with the media and public.

## **The Members**

All Agency Members are appointed by Lieutenant Governor-in-Council by Order in Council and report to and are accountable to the Chair. Agency Members will, in carrying out their adjudicative functions, make decisions independently in accordance with all applicable legislation to resolve disputes. All Agency Members will act in accordance

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<sup>3</sup> Code of Conduct and Ethics for the Environmental Appeals Board.

with the *Conflicts of Interest Act*, the Agency's Code of Conduct, and its guiding principles and core values (see Appendix 2).

As it relates to substantive appeals, all Members, including the Chair, are responsible for:

- Conducting mediations consistent with the applicable regulatory scheme. This includes:
  - Preparing for mediations by reviewing and analyzing records; and
  - Understanding the role of an independent mediator and conducting mediations in an impartial manner.
- Participating as a member of a hearing panel when assigned to specific appeals, which includes:
  - Listening to, analyzing and weighing relevant evidence;
  - Making appropriate findings of fact based on the relevant evidence;
  - Considering the submissions of the parties; and
  - Interpreting and applying legislation and policy.
- Providing recommendations to the Minister in accordance with the relevant legislation.
- Providing reasons for decisions in a timely manner.
- Complying with the principles of natural justice and procedural fairness for all parties.
- Ensuring they are not in a conflict of interest and if they are, or appear to be, removing themselves from the mediation or hearing.

In all instances, all Members, including the Chair, are responsible for:

- Acting in accordance with the *Conflicts of Interest Act*, the Agency's Code of Conduct and its guiding principles and core values (see Appendix 2).
- Upholding the accountability of the Agency to the Minister.
- Upholding the transparency and credibility of the Agency.
- Implementing the policies of the Government of Alberta and the Department.
- Mentoring of new and less experienced Members whenever possible.

## **Staff**

Agency staff are employees of the Government of Alberta who support the Agency in the execution of its responsibilities and support the Chair.

As Government of Alberta employees, Agency staff are responsible for:

- Assisting Agency Members with carrying out their responsibilities.
- Upholding the accountability of the Agency to the Minister.
- Upholding the transparency and credibility of the Agency.
- Implementing the policies of the Government of Alberta and the Department.
- Maintaining and operating an efficient office.

- Responding to inquiries from the Department, the parties to an appeal, and the public in a timely manner.

### **3. Recruitment and Appointment of the Chair and Members**

The Chair and Members are appointed by the Lieutenant Governor-in-Council. The recruitment process follows the requirements of the *Alberta Public Agencies Governance Act* and related policies developed by the Public Service Commission. The recruitment processes for public agencies are centrally led and coordinated by the Public Agency Secretariat (PAS) of the Public Service Commission (Centralized Recruitment), pursuant to Centralized Recruitment policies.

Candidates will be assessed based on the applicable competencies and values identified by the Agency and approved by the Minister.

The list of appointees will be posted publicly on the Government of Alberta website.

### **4. Interaction Between the Agency, the Department, and the Minister**

The Minister and the Department will continue to act in a manner to recognize the adjudicative role of the Agency.

To support the implementation of this Mandate and Roles Document, the Agency's main point of contact within the Department is the Strategy and Governance Division.

The Department is accountable for the regulatory system. This includes developing the legislation and policy framework of the regulatory system and making decisions. Some decisions result in an appeal before the Agency.

The Department appears as a party before the Agency, in the same way as other parties to an appeal appear before the Agency.

Though there will be regular communication between the Agency and the Department, Deputy Minister and Minister, as set out above, this interaction will not be about specific active appeals. They can only relate to general matters of governance, legislation and policies, and in the case of the Minister, status reports on adjudicative matters as set out above.

### **5. Agency's Code of Conduct**

The Agency's Code of Conduct is administered by the Chair, as defined in the Agency's Code of Conduct.

The Chair receives all complaints involving a breach of the Agency's Code of Conduct. Upon receipt of a complaint, the Chair will initiate an investigation, reach a decision regarding the complaint, complete a written report in a timely manner, and provide the written report to the parties involved.

An individual affected by a decision made by the Chair may apply, in writing, to the Ethics Commissioner, who is appointed under the *Conflicts of Interest Act*, for a review of that decision. If the Ethics Commissioner is unwilling or unable to act, the individual may apply to the Minister to determine an alternate review mechanism.

The Agency shall review the Agency's Code of Conduct every three years, and following the review, provide an updated version of it to the Minister and Ethics Commissioner.

## 6. Administration

### Review of the Mandate and Roles Document

The Mandate and Roles document shall be in effect for not more than three years. It must be renewed or revised by the Chair and responsible Minister within three years of the date of signing this Mandate and Roles Document or upon the appointment of a new Chair or new Minister, whichever comes first.

The Mandate and Roles document may be amended at any time; any amendment must be signed by the Chair and by the Minister.

### Transparency

Copies of the Mandate and Roles Document will be filed with the Minister, the Agency, and the Public Service Commission. In support of the principle of transparency, this document will also be available to the public on the Public Agency Secretariat's website – <https://www.alberta.ca/public-agency-list.cfm> and the Agency's website – [www.eab.gov.ab.ca](http://www.eab.gov.ab.ca).

### Periodic Agency Review

The responsible Minister must at least every seven years, review the mandate and operations of every public agency. The next review for the Agency is scheduled for 2030.

### Signatures

The Environmental Appeals Board's Mandate and Roles Document is accepted and agreed to by:

Environment and Protected Areas

Original Signed by



Honourable Rebecca Schulz

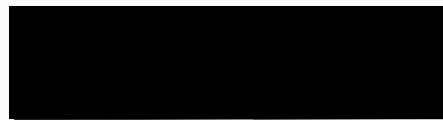
Minister

March 12, 2024

Date

Environmental Appeals Board

Original Signed by



Barbara Johnston, LLB, CPA, CA

Chair

MARCH 3, 2024

Date



## **APPENDIX 1 – Business Plan and Annual Report Requirements**

The Environmental Appeals Board shall provide to the Minister, on or before March 31 of each year, a Business Plan that will include:

- a. The Agency's vision statement;
- b. The Agency's mission statement;
- c. A summary of the Agency's structure and organization;
- d. A summary of the Agency's core business, identifying the Agency's goals, strategies, and performance measures; and
- e. A summary of the Agency's finances.

The Environmental Appeals Board shall provide to the Minister, on or before June 30 of each year, an Annual Report that will include:

- a. The Agency's vision statement;
- b. The Agency's mission statement;
- c. A summary of the Agency's structure and organization;
- d. A summary of the Agency's core values;
- e. A summary of the Agency's core business;
- f. A summary of the results of the Agency's business plan, including performance measures achieved;
- g. A summary of the Agency's finances;
- h. A summary of the Agency's accomplishments;
- i. A summary of the appeals before the Agency, including information on the types of appeals; and
- j. A summary of the Agency's mediation program.

## **APPENDIX 2 – Core Values and Guiding Principles**

The Agency's core values include:

- a. the Agency applies the highest possible standards when addressing conflict of interest issues;
- b. the Agency's purpose is to provide fair, impartial, and efficient resolution of all matters that come before it;
- c. the Agency is governed by the principles of natural justice and procedural fairness;
- d. all persons who appear before the Agency or have dealings with the Agency shall be treated equally and with respect and courtesy;
- e. the Agency's processes are governed by the right of a person involved in an appeal to know the case that must be met and the right of that person to provide input into any decision that is made regarding the appeal; and
- f. consensus-based decision-making (mediation) is the preferred way of dealing with matters that come before the Agency.

The Agency's guiding principles include:

- **Ecosystem Sustainability:** Consistent with the legislation, the Agency believes that a healthy environment is essential to the integrity of ecosystems and human health and the well-being of Albertans.
- **Public Involvement:** The Agency ensures information on its mandate and rules and legislation is freely accessible. The Agency provides Albertans with the opportunity to become participants in appeals through mediations and hearings. Mediations are held between the participants only and are confidential.
- **Mediation is the Preferred Means to Resolve Matters:** Mediations promote open and collaborative discussions between participants and encourages individuals to come up with their own solutions. Mediations can help increase communication, develop a better understanding of the participants' concerns, and offer win-win solutions.
- **Informed Findings:** The Agency hears and processes appeals based on relevant scientific, technological, socioeconomic, and environmental information to make fully informed findings.
- **Public Service:** The Agency is dedicated to providing excellent service to Albertans.
- **Healthy and Supportive Work Environment:** The Agency values its employees and members and strives to provide a working environment where open, honest, and respectful communication is encouraged. The Agency also supports its staff in maintaining a healthy, active lifestyle.