

POLICY FOR THE CONDUCT OF IN-PERSON PROCEEDINGS

BACKGROUND

On March 16, 2020, the Board closed its offices to the public and moved staff to working from home in order to eliminate the risk of transmission of COVID-19.

At all times, the Board maintained service delivery with three key modifications:

- Hearings, mediations, settlement conferences, informal dispute resolution processes, case management, drop-ins, and meetings (“In-Person Proceedings”) have been conducted using virtual platforms;
- Staff are working from home. A limited number of staff attend at the Board’s Vancouver premises to perform functions that cannot be done remotely; and
- Votes under the Code are being conducted by mail.

The Board’s return to In-Person Proceedings will be measured, thoughtful, and gradual. This Policy is informed by the orders and recommendations of the Provincial Health Officer, the BC Centre for Disease Control, and WorkSafe BC (collectively Safe Operating Requirements or “SORs”).

This Policy is subject to revision, including in order to respond to changes in SORs or the Board’s own experience in administering it.

This Policy does not include in-person votes, which are addressed in a separate policy.

POLICY OBJECTIVES

It is in the public interest that the Board build In-Person Proceedings into its Restart Plan. BC’s Restart Plan anticipates that current, and future, SORs will be in place for some time and, specifically, until at least one of the following conditions occurs: wide vaccination, community immunity, and/or broad successful treatments.

It is in the public interest that the Board protect the health of its staff and members of the public with whom they interact. In-Person Proceedings will only be conducted where they can be done safely and in accordance with SORs.

NATURE OF THE RISK

COVID-19 is a highly contagious virus that can lead to severe illness and death. It has the following characteristics that inform the protocols in this Policy:

- A person may be asymptomatic but may be infectious;
- The virus spreads in several ways, such as droplets when a person coughs or sneezes. It can also spread if you touch a contaminated surface and then touch your face;
- The risk of person-to-person transmission increases the closer you come to other people, the more time you spend near them, and the more people you come near; and
- The risk of surface transmission increases when many people contact the same surface and when those contacts happen over short periods of time.

The risk of transmission from a full re-opening of the Board's public hearing room space and reception (the "Hearing Rooms") is high given the characteristics of the physical premises and the services provided.

The characteristics of the physical space include:

- Other than the two larger hearing rooms, the rooms are small to medium;
- Common areas and reception are small;
- Hallways are narrow and inhibit directional flow controls;
- Current hearing room tables are large and heavy and cannot be easily moved for reconfiguring the space on an as-needed basis;
- Surfaces, such as tables, chairs, door handles, bathrooms, copiers, public computer, and kitchenette are high frequency touchpoints;
- Reception booth is currently enclosed, but has two openings – one at face level;
- Oxford Properties manages the office tower building environment and have improved fresh air flow, but the Hearing Rooms are a closed environment with no ability to increase ventilation.

The characteristics of the services provided include:

- Number of persons attending is based on the nature of the dispute and is highly variable;
- Number of proceedings per day is highly variable (from 1 to 6 different proceedings in a single day);
- Proceedings requiring an unforeseen, expedited hearing may arise;
- Bookings by other Government entities for meetings;
- Participants move around the space for a range of reasons, including witness exclusion orders pending testimony, break-out rooms for mediation, settlement conferences, and/or breaks during hearings so counsel can consult with clients, with each other, or with the Vice-Chair, Mediator, or Officer conducting the proceeding;
- Public drop-in by individuals seeking information or in-person filing of applications/complaints or to use the public computer station;
- Potentially interested parties, members of the public, or media who may attend to sit in on a hearing or make an application for standing;
- Contact duration is often for a full day or more;
- There is often animated, verbal expression;
- Documents regularly change hands.

RISK MODIFICATION

Risk modification, but not elimination, will be achieved in four ways.

1. Physical distancing and occupancy limits to reduce the density of people by:
 - a. Directional flow signage, including floor decals and posters;
 - b. Seating markers that establish safe distances between participants;
 - c. Reinforcing b., above, by posting room occupancy limits and maximum Hearing Rooms occupancy limits. Those occupancy limits are currently as follows:
 - i. Total Maximum Occupancy of Limit of 10 people;

- ii. Room Maximum Occupancy Limits of:
 1. Large hearing room (list #s) – Maximum of 7 people;
 2. Large caucus room (list #s) – Maximum of 7 people;
 3. Medium conference room (list #s) – Maximum of 5 people;
 4. Medium caucus room (609, 610, 611) – Maximum of 5 people;
 5. Small caucus room (list #s) – Maximum of 2 people;
 6. Small caucus room (list #s) – Maximum of 1 person.
 - d. Establishing an internal hearing schedule calendar to monitor occupancy levels;
 - e. No outside, third-party bookings for Hearing Rooms;
 - f. Hearing Rooms to remain closed to public drop-ins / attendance by appointment only.
2. Engineering controls, including:
- a. Sealing face-height opening in reception booth;
 - b. Removing public computer terminal;
 - c. Reconfiguring furniture in rooms (removing excess seating and tables) to establish occupancy limit and social distancing for each room or common area;
 - d. Signage for authorized seating areas;
 - e. Adding technology, such as screens, to facilitate combined in-person and virtual participation;
 - f. Blocking access to the kitchenette;
 - g. Hand sanitizer stations;
 - h. Sanitizing wipes.
3. Administrative controls such as the rules and guidelines set out in this Policy and the Illness Policy.
4. Personal protective equipment (PPE) such as non-medical masks or gloves are the responsibility of each Party as set out in the Illness Policy.

POLICY RULES AND GUIDELINES

(1) Virtual Proceedings Remain the Default

Virtual proceedings will continue to be the Board's default way to conduct a proceeding as it is the only available means of eliminating the risk of transmission of COVID-19.

(2) Requesting an In-Person Proceeding

On its own motion, or at the written request of a party, the Board may consider conducting an In-Person Proceeding where it can be done safely and in accordance with this Policy.

A party requesting an In-Person Proceeding must provide:

1. their position and particulars as to why an in-person proceeding is warranted in the circumstances; and
2. a written plan identifying the measures it will put in place to ensure the process is safe for all participants ("Plan").

(3) Plan Requirements

A party representative or a single litigant (the "Party") must provide a Plan that includes the following:

1. An acknowledgement that the Party, and all participants attending with that Party, have read, understood, and will comply with this Policy and the Illness Policy;
2. Acknowledges that, as a result of changing or unforeseen circumstances, the In-Person Proceeding may be cancelled or adjourned at any time;
3. Acknowledges and accepts that a breach of this Policy or the Illness Policy will result in the immediate suspension of the process, to be resumed at a mutually convenient date using a virtual process;
4. A list of the names and contact information for the participants the Party proposes will attend in-person;

5. Confirmation that any documents on which the party intends to rely or refer will be circulated electronically in advance of the hearing or on a date to be determined by the Board representative;
6. Confirmation that each participant will have, or be supplied with, a laptop or similar device to review and/or send electronic documents, including for witnesses and, where that device is to be shared, that appropriate disinfecting can be done prior to providing it to another person.

(4) During the Proceeding

Each participant must:

1. Confirm that they have read and understand the Illness Policy and confirm that they are not experiencing any symptoms, even if mild, that would prohibit their participation as set out in the Illness Policy;
2. Wash their hands using appropriate cleaning practices in the washrooms located in the elevator lobby area prior to entering the Board's Hearing Rooms;
3. Cough or sneeze into their arm, and immediate wash or sanitize their hands;
4. Refrain from touching their face;
5. Always maintain a minimum two metre distance between all people;
6. Refrain from exchanging any documents or sharing materials such as pens; and
7. Exchange documents electronically.

(5) Additional Requirements

Each participant must:

1. Not wait in the common areas of reception but must remain in a designated room;
2. Understand that permission to enter or exit a room and the premises will be staggered;

3. Follow directional signage and, in areas where persons may be moving in two directions, participants must step aside and let another person pass before proceeding down a narrow hallway;
4. Comply with all Board and building signage, including a maximum occupancy for elevators;
5. Bring their own water, food, utensils, and crockery as use of the kitchenette is strictly prohibited;
6. Bring a supply of sanitizing gels and sanitizing wipes to wipe down all surfaces that they touch, including but not limited to copiers, doorknobs, desks, chair handles, etc.;
7. Place all waste and garbage in the receptacles provided;
8. When the proceeding is concluded for the day, do a final wipe down of the table, chair handles, and other furniture they have touched; and
9. Comply with any other requirements the Board may identify.

(6) Off-Site In-Person Proceedings

This Policy applies to any request by a Party that the Board conduct an In-Person Proceeding at a location other than at the Board's premises in Vancouver.

The Plan submitted in support of such a request must comply with this Policy, as well as include the following additional information:

1. A measured floor plan of the off-site location; and
2. A copy of the existing SORs in place at the off-site location, including but not limited to:
 - Illness policies for individuals in that location;
 - Maximum occupancy limits for the rooms proposed for the In-Person Proceeding;
 - Availability of first aid attendants;
 - Location and availability of sanitizing gel stations, disinfecting wipes, washrooms, and building cleaning schedules;
 - Existence of signage, including directional flow and social distancing;
 - Any other information requested by the Board representative.