

2007 Bill 19

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Third Session, 26th Legislature, 56 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 19**

## **APPEAL PROCEDURES STATUTES AMENDMENT ACT, 2007**

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DR. BROWN

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 19*  
*Dr. Brown*

## **BILL 19**

2007

### **APPEAL PROCEDURES STATUTES AMENDMENT ACT, 2007**

*(Assented to , 2007)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Agricultural Operation Practices Act**

##### **Amends RSA 2000 cA-7**

**1(1) The *Agricultural Operation Practices Act* is amended by  
this section.**

**(2) Section 27 is amended**

**(a) in subsection (1) by striking out “(3)” and substituting  
“(2)”;**

**(b) by repealing subsections (2) and (3) and substituting the  
following:**

**(2) An application for leave to appeal must be filed and  
served within 30 days after the making of the decision sought  
to be appealed from, or within a further period of time granted  
by the judge where, in the opinion of the judge, the  
circumstances warrant it.**

## Explanatory Notes

### Agricultural Operation Practices Act

1(1) Amends chapter A-7 of the Revised Statutes of Alberta 2000.

(2) Section 27 presently reads:

*27(1) Subject to subsection (3), an appeal lies from a decision of the Board under section 25 to the Court of Appeal only on a question of jurisdiction or on a question of law.*

*(2) An application for leave to appeal pursuant to subsection (1) must be filed and served within 30 days after the decision of the Board is made.*

*(3) Leave to appeal must be obtained from a judge of the Court of Appeal within one month after the application for leave being filed and served under subsection (2).*

*(4) Notice of an appeal must be given to the directly affected parties and to the Board.*

**(c) in subsection (4) by striking out “Notice of an appeal” and substituting “Notice of an application for leave to appeal”;**

**(d) by adding the following after subsection (4):**

**(4.1)** If an applicant makes a written request for materials to the Board for the purpose of the application for leave to appeal under subsection (2), the Board must provide the materials requested within 14 days from the date on which the written request is served on the Board.

**(4.2)** An applicant shall not request under subsection (4.1) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for leave to appeal, direct that the Board provide the transcript within the time provided by the Court.

**(e) in subsection (6) by striking out “25 working days” and substituting “30 days”;**

**(f) by repealing subsection (7) and substituting the following:**

**(7)** On leave to appeal being granted by a judge of the Court of Appeal, the appeal must proceed in accordance with the practice and procedure of the Court of Appeal.

**(7.1)** The notice of appeal must be given to the parties affected by the appeal and to the Board.

**(7.2)** Within 30 days after receiving the notice of appeal referred to in subsection (7.1), the Board must forward to the Registrar of the Court the transcript and record of the hearing and its findings and reasons for the decision.

## **Alberta Energy and Utilities Board Act**

**Amends RSA 2000 cA-17**

**2(1) The *Alberta Energy and Utilities Board Act* is amended by this section.**

*(5) A decision of the Board takes effect at the time prescribed by the decision, and its operation is not suspended by any appeal to the Court of Appeal, or by any further appeal, but the Board may, if it thinks fit, suspend the operation of a decision that is appealed from, until the decision of the Court of Appeal is rendered or the time for appeal to the Supreme Court of Canada has expired or any appeal is abandoned.*

*(6) Within 25 working days after leave to appeal has been obtained, the Board must forward to the Registrar of the Court the record of the review, its findings and reasons for the decision.*

*(7) On receipt of the record, findings and reasons from the Board, the Registrar of the Court must set the appeal down for hearing at the next sittings that will commence at least 2 weeks after the appeal is set down, and after the appeal has been set down, the appellant must give to the directly affected parties and to the Board notice in writing that the appeal has been set down for hearing, and the appeal is to be heard by the Court of Appeal as speedily as practicable.*

*(8) On the hearing of an appeal, no evidence other than the evidence that was submitted to the Board on the making of the decision appealed from may be admitted, and the Court may proceed either to confirm, vary or quash the decision appealed from, and if the decision is quashed the Court must refer the matter back to the Board for further consideration and redetermination.*

*(9) On hearing an appeal, the Court may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law and must certify its opinion to the Board.*

*(10) The Board is entitled to be heard by counsel or otherwise on the argument of an appeal.*

*(11) Neither the Board nor any member of the Board is in any case liable for costs by reason or in respect of an appeal or application.*

*(12) If a decision is quashed or a variation is directed, the matter must be reconsidered and redetermined by the Board, and the Board must vary or rescind its decision in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.*

## **Alberta Energy and Utilities Board Act**

**2(1)** Amends chapter A-17 of the Revised Statutes of Alberta 2000.

**(2) Section 26 is amended**

**(a) by repealing subsection (2) and substituting the following:**

**(2)** An application for leave to appeal must be filed and served within 30 days from the day that the order, decision or direction sought to be appealed from was made, or within a further period of time granted by the judge where, in the opinion of the judge, the circumstances warrant it.

**(b) in subsection (3) by striking out “Notice of the appeal” and substituting “Notice of an application for leave to appeal”;**

**(c) by adding the following after subsection (3):**

**(3.1)** If an applicant makes a written request for materials to the Board for the purpose of the application for leave to appeal under subsection (2), the Board shall provide the materials requested within 14 days from the date on which the written request is served on the Board.

**(3.2)** An applicant shall not request under subsection (3.1) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for leave to appeal, direct that the Board provide the transcript within the time provided by the Court.

**(d) by adding the following after subsection (5):**

**(5.1)** On leave to appeal being granted by a judge of the Court of Appeal, the appeal must proceed in accordance with the practice and procedure of the Court of Appeal.

**(5.2)** The notice of appeal must be given to the parties affected by the appeal and to the Board.

**(e) by repealing subsections (7), (8) and (9).**

(2) Section 26 presently reads:

*26(1) Subject to subsection (2), an appeal lies from the Board to the Court of Appeal on a question of jurisdiction or on a question of law.*

*(2) Leave to appeal may be obtained from a judge of the Court of Appeal only on an application made*

*(a) within 30 days from the day that the order, decision or direction sought to be appealed from was made, or*

*(b) within a further period of time as granted by the judge where the judge is of the opinion that the circumstances warrant the granting of that further period of time.*

*(3) Notice of the appeal must be given to the parties affected by the appeal and to the Board.*

*(4) An order or direction of the Board takes effect at the time prescribed by the order or direction, and the operation of the order or direction is not suspended by the commencement or conduct of any appeal to the Court of Appeal or of any further appeal.*

*(5) Notwithstanding subsection (4), where the Board thinks fit, the Board may, with respect to an order or direction of the Board, the ERCB or the PUB that is being appealed, suspend the operation of the order or direction until*

*(a) the decision of the Court hearing the appeal is rendered or the time for appeal to the Supreme Court of Canada has expired, or*

*(b) the appeal has been abandoned.*

*(6) Within 30 days from the day that the leave to appeal is obtained, the Board must forward to the Registrar of the Court of Appeal the transcript and record of the hearing, its findings and reasons for the order or direction.*

*(7) On receipt of the transcript, record, findings and reasons from the Board, the Registrar of the Court of Appeal must set the appeal down for hearing at the next sittings of the Court, but the hearing must not commence until at least 2 weeks has elapsed from the day that the appeal is so set down.*

## **Electric Utilities Act**

**Amends SA 2003 cE-5.1**

**3(1) The *Electric Utilities Act* is amended by this section.**

**(2) Section 70 is amended**

**(a) by repealing subsection (2) and substituting the following:**

**(2) An application for leave to appeal must be filed and served within 30 days after the making of the decision sought to be appealed from, or within a further period of time granted by the**



*(8) After the appeal has been set down by the Registrar of the Court of Appeal, the party appealing must give to the parties affected by the appeal, or to the solicitors by whom those persons were represented before the Board, and to the Board, notice in writing that the appeal has been so set down for hearing.*

*(9) The Court of Appeal must hear an appeal made under this section as speedily as practicable.*

*(10) On the hearing of the appeal,*

*(a) no evidence may be admitted other than the evidence that was submitted to the Board on the making of the order or direction that is being appealed from;*

*(b) the Court of Appeal may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law, as the case may be, and must certify its opinion to the Board;*

*(c) the Court of Appeal must proceed to confirm, vacate or give directions to vary the order or direction that is being appealed, and where the Court vacates or gives directions to vary the order or direction, the Court must refer the matter back to the Board for further consideration and redetermination.*

*(11) The Board is entitled to be represented, by counsel or otherwise, on the argument of an appeal.*

*(12) Neither the Board nor any member of the Board is in any case liable for costs by reason or in respect of an appeal or application.*

*(13) If an order or direction is vacated or a variation is directed, the matter must be reconsidered and redetermined by the Board, and the Board shall vary or rescind its order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.*

## **Electric Utilities Act**

**3(1)** Amends chapter E-5.1 of the Statutes of Alberta, 2003.

**(2)** Section 70 presently reads:

*70(1) Subject to subsection (2), an appeal lies from a tribunal order to the Court of Appeal on a question of jurisdiction or on a question of law.*

*(2) Leave to appeal may be obtained from a judge of the Court of Appeal only on an application made*

judge where, in the opinion of the judge, the circumstances warrant it.

**(b) in subsection (3) by striking out “Notice of the appeal” and substituting “Notice of an application for leave to appeal”;**

**(c) by adding the following after subsection (3):**

**(3.1)** If an applicant makes a written request for materials to the tribunal for the purpose of the application for leave to appeal under subsection (2), the tribunal must provide the materials requested within 14 days from the date on which the written request is served on the tribunal.

**(3.2)** An applicant shall not request under subsection (3.1) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for leave to appeal, direct that the tribunal provide the transcript within the time provided by the Court.

**(d) by adding the following after subsection (5):**

**(5.1)** On leave to appeal being granted by a judge of the Court of Appeal, the appeal must proceed in accordance with the practice and procedure of the Court of Appeal.

**(5.2)** The notice of appeal must be given to the parties affected by the appeal and to the tribunal chair.

**(e) by repealing subsections (7), (8) and (9).**

- (a) *within 30 days from the day that the tribunal order sought to be appealed from was made, or*
  - (b) *within a further period of time as granted by the judge if the judge is of the opinion that the circumstances warrant the granting of that further period of time.*
- (3) *Notice of the appeal must be given to the parties affected by the appeal and to the tribunal chair.*
- (4) *An order of the tribunal takes effect at the time prescribed by the tribunal order, and the operation of the order is not suspended by the commencement or conduct of any appeal to the Court of Appeal or of any further appeal.*
- (5) *Despite subsection (4), when the tribunal thinks fit, the tribunal may, on application to it, suspend the operation of the order being appealed until*
  - (a) *the decision of the Court hearing the appeal is rendered or the time for appeal to the Supreme Court of Canada has expired, or*
  - (b) *the appeal has been abandoned.*
- (6) *Within 30 days from the day that the leave to appeal is obtained, the tribunal chair must forward to the Registrar of the Court of Appeal the transcript and record of the hearing and the tribunal order.*
- (7) *On receipt of the transcript, record and tribunal order from the tribunal chair, the Registrar of the Court of Appeal must set the appeal down for hearing at the next sittings of the Court, but the hearing shall not commence until at least 2 weeks has elapsed from the day that the appeal is so set down.*
- (8) *After the appeal has been set down by the Registrar, the party appealing must give to the parties affected by the appeal, or to the solicitors by whom those persons were represented before the tribunal, and to the tribunal chair, notice in writing that the appeal has been so set down for hearing.*
- (9) *The Court of Appeal must hear an appeal made under this section as speedily as practicable.*
- (10) *On the hearing of the appeal,*
  - (a) *no evidence may be admitted other than the evidence that was submitted to the tribunal on the making of the order that is being appealed from;*
  - (b) *the Court of Appeal may draw all inferences that are not inconsistent with the facts expressly found by the tribunal and that are necessary for determining the question of jurisdiction*

**Energy Resources  
Conservation Act**

**Amends RSA 2000 cE-10**

**4(1) The *Energy Resources Conservation Act* is amended by this section.**

**(2) Section 41 is amended**

**(a) by repealing subsection (2) and substituting the following:**

**(2)** An application for leave to appeal must be filed and served within 30 days from the day that the order or direction sought to be appealed from was made, or within a further period of time granted by the judge where, in the opinion of the judge, the circumstances warrant it.

**(2.1)** Notice of an application for leave to appeal must be given to the parties affected by the appeal and to the Board.

**(2.2)** If an applicant makes a written request for materials to the Board for the purpose of the application for leave to appeal under subsection (2), the Board shall provide the materials requested within 14 days from the date on which the written request is served on the Board.

**(2.3)** An applicant shall not request under subsection (2.2) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for

*or of law, as the case may be, and must certify its opinion to the tribunal;*

*(c) the Court of Appeal must proceed to confirm, vacate or give directions to vary the order that is being appealed, and if the Court vacates or gives directions to vary the order, the Court must refer the matter back to the tribunal for further consideration and redetermination.*

*(11) The tribunal is entitled to be represented, by counsel or otherwise, on the argument of an appeal.*

*(12) Neither the tribunal nor any member of the tribunal is in any case liable for costs by reason or in respect of an appeal or application.*

*(13) If an order or direction is vacated or a variation is directed, the matter must be reconsidered and redetermined by the tribunal, and the tribunal must vary or rescind its order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.*

## **Energy Resources Conservation Act**

**4(1)** Amends chapter E-10 of the Revised Statutes of Alberta 2000.

(2) Section 41 presently reads:

*41(1) Subject to subsection (2), on a question of jurisdiction or on a question of law, an appeal lies from the Board to the Court of Appeal.*

*(2) Leave to appeal shall be obtained from a judge of the Court of Appeal on application made within one month after the making of the order, decision or direction sought to be appealed from, or within a further time that the judge under special circumstances allows, and on notice to the parties affected by the appeal or the respective solicitors by whom the parties were represented before the Board, and to the Board, and on hearing those of them that appear and desire to be heard, and the costs of the application are in the discretion of the judge.*

*(3) An order or direction of the Board takes effect at the time prescribed by the order or direction, and its operation is not suspended by any appeal to the Court of Appeal, or by any further appeal, but the Board itself may if it thinks fit suspend the operation of its order, when appealed from, until the decision of the Court of Appeal is rendered, or the time for appeal to the Supreme Court of Canada has expired, or any appeal is abandoned.*

leave to appeal, direct that the Board provide the transcript within the time provided by the Court.

**(b) by adding the following after subsection (3):**

**(3.1)** The notice of appeal must be given to the parties affected by the appeal and to the Board.

**(3.2)** On leave to appeal being granted by a judge of the Court of Appeal, the appeal shall proceed in accordance with the practice and procedure of the Court of Appeal.

**(c) by repealing subsection (5).**

## **Municipal Government Act**

### **Amends RSA 2000 cM-26**

**5(1)** The *Municipal Government Act* is amended by this section.

**(2) Section 688 is amended**

**(a) by repealing subsection (2) and substituting the following:**

**(2)** An application for leave to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for leave to appeal must be given to

*(4) Within 30 days after leave has been obtained, the Board shall forward to the Registrar of the Court the transcript and record of the hearing and its findings and reasons for the order or direction.*

*(5) On receipt of the transcript, record, findings and reasons from the Board, the Registrar shall set the appeal down for hearing at the next sittings that will commence at least 2 weeks after the appeal is so set down, and the party appealing, after the appeal has been set down, shall give to the parties affected by the appeal or the respective solicitors by whom those persons were represented before the Board, and to the Board, notice in writing that the appeal has been so set down for hearing, and the appeal is to be heard by the Court of Appeal as speedily as practicable.*

*(6) On the hearing of the appeal, no evidence other than the evidence that was submitted to the Board on the making of the order appealed from shall be admitted, and the Court of Appeal shall proceed either to confirm, vary or vacate the order appealed from and in the latter event shall refer the matter back to the Board for further consideration and redetermination.*

*(7) On the hearing of the appeal, the Court may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law, as the case may be, and shall certify its opinion to the Board.*

*(8) The Board is entitled to be heard by counsel or otherwise on the argument of an appeal.*

*(9) Neither the Board nor any member of the Board is in any case liable to costs by reason or in respect of an appeal or application.*

*(10) If the order or direction is set aside or a variation is directed, the matter shall be reconsidered and redetermined by the Board, and the Board shall vary or rescind its order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.*

## **Municipal Government Act**

**5(1)** Amends chapter M-26 of the Revised Statutes of Alberta 2000.

(2) Section 688 presently reads:

*688(1) Despite section 506, an appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to*

*(a) a decision of the subdivision and development appeal board,  
and*

- (a) the Municipal Government Board or the subdivision and development appeal board, as the case may be, and
- (b) any other persons that the judge directs.

**(2.1)** If an applicant makes a written request for materials to the Municipal Government Board or the subdivision and development appeal board, as the case may be, for the purposes of the application for leave to appeal under subsection (2), the Municipal Government Board or the subdivision and development appeal board, as the case may be, must provide the materials requested within 14 days from the date on which the written request is served.

**(2.2)** An applicant shall not request under subsection (2.1) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for leave to appeal, direct that the Municipal Government Board or the subdivision and development appeal board, as the case may be, provide the transcript within the time provided by the Court.

**(b) by adding the following after subsection (4):**

**(4.1)** On leave to appeal being granted by a judge of the Court of Appeal, the appeal must proceed in accordance with the practice and procedure of the Court of Appeal.

**(4.2)** The notice of appeal must be given to the parties affected by the appeal and to the Municipal Government Board or the subdivision and development appeal board, as the case may be.

**(4.3)** Within 30 days from the date that the leave to appeal is obtained, the Municipal Government Board or the subdivision and development appeal board, as the case may be, must forward to the Registrar of the Court of Appeal the transcript and record of the hearing, its findings and reasons for the decision.



- (b) *the Municipal Government Board on a decision on an appeal under section 619, an intermunicipal dispute under Division 11 or a subdivision appeal under this Division.*
- (2) *An application for leave to appeal pursuant to subsection (1) must be made to a judge of the Court of Appeal within 30 days after the issue of the decision sought to be appealed, and notice of the application must be given to*

  - (a) *the Municipal Government Board or the subdivision and development appeal board, and*
  - (b) *any other persons that the judge directs.*
- (3) *On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant leave to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.*
- (4) *If a judge grants leave to appeal, the judge may*

  - (a) *direct which persons or other bodies must be named as respondents to the appeal,*
  - (b) *specify the questions of law or the questions of jurisdiction to be appealed, and*
  - (c) *make any order as to the costs of the application that the judge considers appropriate.*
- (5) *If an appeal is from a decision of a subdivision and development appeal board, the municipality must be given notice of the application for leave to appeal and the board and the municipality*

  - (a) *are respondents in the application and, if leave is granted, in the appeal, and*
  - (b) *are entitled to be represented by counsel at the application and, if leave is granted, at the appeal.*
- (6) *If a decision of the Municipal Government Board is appealed, the Board*

  - (a) *is a respondent in the application and, if leave is granted, in the appeal, and*
  - (b) *is entitled to be represented by counsel at the application and, if leave is granted, at the appeal.*

**Natural Resources Conservation  
Board Act**

**Amends RSA 2000 cN-3**

**6(1) The *Natural Resources Conservation Board Act* is amended by this section.**

**(2) Section 31 is amended**

**(a) by repealing subsection (2) and substituting the following:**

(2) An application for leave to appeal shall be filed and served within 30 days from the day that the order or direction sought to be appealed from was made, or within a further period of time granted by the judge where, in the opinion of the judge, the circumstances warrant it.

**(b) in subsection (3) by striking out “Notice of the appeal” and substituting “Notice of an application for leave to appeal”;**

**(c) by adding the following after subsection (3):**

**(3.1)** If an applicant makes a written request for materials to the Board for the purpose of the application for leave to appeal under subsection (2), the Board shall provide the materials requested within 14 days from the date on which the written request is served on the Board.

**(3.2)** An applicant shall not request under subsection (3.1) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for leave to appeal, direct that the Board provide the transcript within the time provided by the Court.

**(d) by adding the following after subsection (4):**

**(4.1)** On leave to appeal being granted by a judge of the Court of Appeal, the appeal shall proceed in accordance with the practice and procedure of the Court of Appeal.

**(4.2)** The notice of appeal shall be given to the parties affected by the appeal and to the Board.

**Natural Resources Conservation  
Board Act**

**6(1)** Amends chapter N-3 of the Revised Statutes of Alberta 2000.

(2) Section 31 presently reads:

*31(1) Subject to subsection (2), an appeal lies from the Board to the Court of Appeal on a question of jurisdiction or on a question of law.*

*(2) Leave to appeal shall be obtained from a judge of the Court of Appeal on application made within one month after the making of the order, decision or direction sought to be appealed from, or within a further time that the judge under special circumstances allows.*

*(3) Notice of the appeal shall be given to the parties affected by the appeal and to the Board.*

*(4) An order or direction of the Board takes effect at the time prescribed by the order or direction, and its operation is not suspended by any appeal to the Court of Appeal, or by any further appeal, but the Board may if it thinks fit suspend the operation of its order, when appealed from, until the decision of the Court of Appeal is rendered or the time for appeal to the Supreme Court of Canada has expired or any appeal is abandoned.*

*(5) Within 30 days after leave to appeal has been obtained, the Board shall forward to the Registrar of the Court the transcript and record of the hearing, its findings and reasons for the order or direction.*

*(6) On receipt of the transcript, record, findings and reasons from the Board, the Registrar shall set the appeal down for hearing at the next sittings that will commence at least 2 weeks after the appeal is so set down, and after the appeal has been set down, the party appealing shall give to the parties affected by the appeal or the solicitors by whom those persons were represented before the Board, and to the Board, notice in writing that the appeal has been so set down for hearing, and the appeal shall be heard by the Court of Appeal as speedily as practicable.*

## **Public Utilities Board Act**

**Amends RSA 2000 cP-45**

**7(1) The *Public Utilities Board Act* is amended by this section.**

**(2) Section 69 is repealed.**

**(3) Section 70 is repealed and the following is substituted:**

### **Appeal from Board**

**70(1)** Subject to subsection (2), an appeal lies from the Board to the Court of Appeal on a question of jurisdiction or on a question of law.

**(2)** An application for leave to appeal must be filed and served within 30 days from the day that the order, decision, rule or regulation sought to be appealed from was made, or within a further period of time granted by the judge where, in the opinion of the judge, the circumstances warrant it.

*(7) On the hearing of the appeal, no evidence other than the evidence that was submitted to the Board on the making of the order or direction appealed from shall be admitted, and the Court of Appeal shall proceed either to confirm, vary or vacate the order or direction appealed from, and in the last event shall refer the matter back to the Board for further consideration and redetermination.*

*(8) On the hearing of the appeal, the Court may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law, as the case may be, and shall certify its opinion to the Board.*

*(9) The Board is entitled to be heard by counsel or otherwise on the argument of an appeal.*

*(10) Neither the Board nor any member of the Board is in any case liable to costs by reason or in respect of an appeal or application.*

*(11) If the order or direction is set aside or a variation is directed, the matter shall be reconsidered and redetermined by the Board, and the Board shall vary or rescind its order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.*

### **Public Utilities Board Act**

**7(1)** Amends chapter P-45 of the Revised Statutes of Alberta 2000.

(2) Section 69 presently reads:

*69 An order of the Board takes effect at the time prescribed by the order or if no date is prescribed, on the date of the order, and its operation is not suspended by an appeal to the Court of Appeal unless otherwise ordered by the Court of Appeal, but the Board itself may suspend the operation of its order, when appealed from, until the decision of the Court of Appeal is rendered, if the Board thinks fit.*

(3) Section 70 presently reads:

*70(1) Subject to subsection (2), on a question of jurisdiction or on a question of law, an appeal lies from the Board to the Court of Appeal.*

*(2) Leave to appeal shall be obtained from a judge of the Court of Appeal on application made within one month after the making of the order, decision, rule or regulation sought to be appealed from, or within any further time that the judge under special circumstances allows, and on notice to the parties and to the Board, and on hearing those of them that appear and desire to be heard, and the costs of the application are in the discretion of the judge.*

- (3) Notice of an application for leave to appeal must be given to the parties affected by the appeal and to the Board.
- (4) If an applicant makes a written request for materials to the Board for the purpose of the application for leave to appeal, the Board shall provide the materials requested within 14 days from the date on which the written request is served on the Board.
- (5) An applicant shall not request under subsection (4) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for leave to appeal, direct that the Board provide the transcript within the time provided by the Court.
- (6) An order, decision, rule or regulation of the Board takes effect at the time prescribed by the order, decision, rule or regulation, and the operation of the order, decision, rule or regulation is not suspended by the commencement or conduct of any appeal to the Court of Appeal or of any further appeal.
- (7) Notwithstanding subsection (6), where the Board thinks fit, the Board may suspend the operation of an order, decision, rule or regulation until
- (a) the decision of the court hearing the appeal is rendered or the time for appeal to the Supreme Court of Canada has expired, or
  - (b) the appeal has been abandoned.
- (8) On leave to appeal being granted by a judge of the Court of Appeal, the appeal shall proceed in accordance with the practice and procedure of the Court of Appeal.
- (9) The notice of appeal must be given to the parties affected by the appeal and to the Board.
- (10) Within 30 days from the day that leave to appeal is obtained, the Board shall forward to the Registrar of the Court of Appeal the transcript and record of the hearing, its findings and reasons for the order, decision, rule or regulation.
- (11) On the hearing of the appeal,



- (a) no evidence may be admitted other than the evidence that was submitted to the Board on the making of the order, decision, rule or regulation that is being appealed from;
- (b) the Court of Appeal may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law, as the case may be, and shall certify its opinion to the Board;
- (c) the Court of Appeal shall proceed to confirm, vacate or give directions to vary the order, decision, rule or regulation that is being appealed, and where the Court vacates or gives directions to vary the order, decision, rule or regulation, the Court shall refer the matter back to the Board for further consideration and redetermination.

**(12)** The Board is entitled to be represented, by counsel or otherwise, on the argument of an appeal.

**(13)** Neither the Board nor any member of the Board is in any case liable for costs by reason or in respect of an appeal or application.

**(14)** If an order, decision, rule or regulation is vacated or a variation is directed, the matter must be reconsidered and redetermined by the Board, and the Board shall vary or rescind its order, decision, rule or regulation in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.









