

# PROCEDURAL RULES

*FOR THE JURISDICTIONAL ASSIGNMENT PLAN*

*OF THE*

*ALBERTA CONSTRUCTION INDUSTRY*

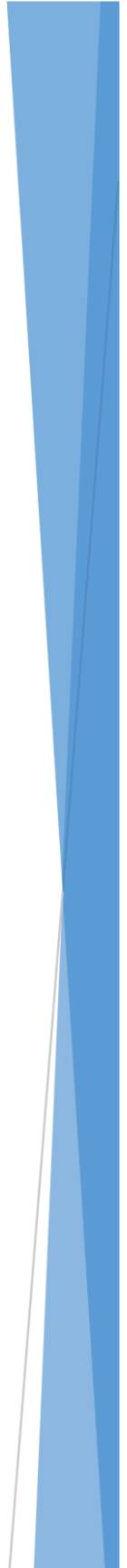
Established by the

**Coordinating Committee of Registered Employers' Organizations**

And the

**Building Trades of Alberta**

Revised June 2016



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The Procedural Rules are adopted pursuant to Article 4 of the *Memorandum of Understanding* between the Coordinating Committee of Registered Employers' Organizations (the "**Coordinating Committee**") and the Building Trades of Alberta (the "**BTA**").

#### **ARTICLE 1: EFFECTIVE DATE**

These Procedural Rules take effect on the date prescribed in the Regulation made by the Minister pursuant to Section 202 of the *Alberta Labour Relations Code*.

#### **ARTICLE 2: DEFINITIONS**

**Agreements between Unions:** There are various types of Agreements - Agreements of Record, and other National, Provincial, and Local Agreements. These Agreements are not binding on other Unions not signatory to the Agreements and, insofar as the *Canadian Plan* is concerned, they do not affect the claims or rights of work jurisdiction of Unions not signatory to the Agreement.

**Agreements of Record:** Agreements between Building Trades Unions which have been recorded with the *Canadian Plan* and are binding on the signatory Unions. These are the only Agreements contained in the "Green Book". Agreements of Record are applicable only to the Parties signatory to such agreements.

**Appeal Board:** Means the board which is established by Article 8 of the Memorandum of Understanding and governed by these rules, for the purpose of hearing appeals of decisions by the Umpire.

**Appeal Panel:** Means the members of the Appeal Board who are selected to hear an appeal. A Panel is comprised of a Chair and 2 Appeal Board members.

**Canadian Plan:** Means the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry covering the U.S. and Canada (As amended through May 2011), or its successor.

**Contractor/Participating Contractor:** Means a Contractor (Employer) to whom a collective agreement as is referred to Section 2(1) of the Regulation applies. May be referred to as "Participating Contractor or Contractor".

**Costs:** Means costs assigned to a losing Party or Parties with respect to all costs associated with convening a hearing in response to a Request for Review or Application for Appeal. Costs include the Umpire or Appeal Panel fees for preparation of a hearing, the hearing itself and time spent writing the decision. Costs also include any out of pocket expenses incurred by the Umpire or Appeal Panel.

**Decision of Umpire:** Means the decision of work assignment made by the Umpire.

**Decisions of Record:** Decisions of Record are those which appear in the publication commonly referred to as the "Green Book" published and approved by the Building and Construction Trades Department, AFL-CIO, (current issue), and are international or national in scope.

They are applicable to all Unions even though a dispute which resulted in a Decision of Record may originally have involved only two Unions.

They are not to be confused with job decisions rendered by the *Canadian Plan* which apply only to the SPECIFIC JOBS and Unions named in the job decisions. However, the *Canadian Plan* is required to give due consideration to Decisions of Record in arriving at job decisions.

Decisions of Record in the "Green Book" do not appear in chronological order and are always referred to by dates.

**JAC:** Means Joint Administrative Committee as established by the Memorandum of Understanding.

**Jurisdictional Dispute:** Means a dispute between Unions and/or Unions and a Contractor over the assignment of work, or a difference between two or more Unions as to which trade shall do certain work.

**Parties:** Means Participating Unions and Contractors.

**Plan:** Means Jurisdictional Assignment Plan of the Alberta Construction Industry established by the Memorandum of Understanding.

**Plan Secretary:** Means the Secretary as appointed by the JAC.

**Prevailing Practice:** The practice of that Union which submits valid evidence indicating that its members have performed more of the work in the area where the dispute exists than have members of other Unions. Evidence from contractors which employ all of the trades involved in the dispute is preferred. The area, for the purpose of determining the Prevailing Practice, is defined as the geographical jurisdiction of the Building Trades of Alberta.

**Umpire:** Means the person or persons established by Article 7 of the Memorandum of Understanding.

**Union/Participating Union:** Means a Building Trades Union as defined in section 1(c) of the Regulation. May be referred to as "Participating Union or Union".

**Work Assignments** – are categorized accordingly:

- a) Proposed Assignment: means the initial step wherein the contractor declares their intention to assign certain work to certain unions.
- b) Final Assignment: means the final decision by the contractor on assigning certain work to certain unions after the Jurisdictional Markup Meeting has been held with the unions.
- c) Specific Assignment: means the assignment of work as determined by the Umpire. The “Proposed Assignment” shall be considered the “Specific Assignment” where the assignment remains unchallenged before the Umpire.

**Work Stoppage:** Means a cessation of work or refusal to work or a refusal to continue to work for the purpose of compelling an Employer to assign work or to change an assignment of work.

### **ARTICLE 3: UMPIRE RESPONSIBILITIES**

- (a) The Umpire decides all questions and matters relating to jurisdiction of work assignments affecting the Participating Unions, including whether there is the presence of a bargaining relationship between a Contractor and a Union(s) claiming the work.
- (b) The Umpire has the authority to control the review process in accordance with the Plan Rules.
- (c) The Umpire is independent of the Parties and impartial as between the Parties. The Umpire must treat the Parties equally and fairly.
- (d) The Umpire shall give full opportunity for all Parties affected by the work in dispute to be heard and to present evidence before making a decision.
- (e) The Umpire shall disclose to the Parties where circumstances give rise to a conflict of interest or give rise to a reasonable apprehension of bias. The Parties may object to the Umpire hearing a matter should they believe there exists a conflict of interest or potential bias.
- (f) The Umpire shall make findings and decisions expeditiously.
- (g) The Umpire shall only hear or render a decision on the assignment of disputed work in respect of which the application has been filed before the work has been completed.

**ARTICLE 4: CONTRACTOR RESPONSIBILITIES**

- (a) There can be no stoppage of work for any reason arising out of any jurisdictional dispute.
- (b) When a Contractor has made a final work assignment, the work must continue without interruption unless otherwise directed by the Umpire or by agreement between the Unions involved.
- (c) The Contractor who has the responsibility for the performance of the work shall make a proposed and final work assignment. For instance, if Contractor "A" subcontracts certain work to Contractor "B", then Contractor "B" has the responsibility for making the work assignments included in his contract. If Contractor "B" in turn subcontracts certain work to Contractor "C", then Contractor "C" has the responsibility for making the work assignments for the work.
- (d) The work assignments by the Contractor shall be made on the following basis:
  - i. Where a Decision of Record applies to the work, or where an Agreement of Record between Unions applies to the work, the Contractor assigns the work in accordance with such an Agreement or Decision of Record. Where a local trade agreement between two unions exists, the Contractor shall assign the work in accordance with such trade agreement providing such trade agreement does not affect another trade.
  - ii. Where no Decision of Record or Agreement of Record applies, the final work assignment shall be made in accordance with established trade practice and the Prevailing Practice and with due consideration for efficiency, safety, good management, and the presence within the membership of the local union of workers qualified to perform the work, and a desire by all Parties to eliminate excessive allocation of manpower.
  - iii. If a question of jurisdiction has arisen prior to the final work assignment where no Decision of Record or Agreement of Record applies, or where there is no predominant practice in the Province, the Contractor must still make a final work assignment, but only after consulting the representatives of the contesting Unions and after considering any arguments or facts the Unions may wish to present regarding the applicable Decisions or Agreements of Record or Prevailing Practice. When necessary, the Contractor shall also make inquiries locally regarding established practices.

**ARTICLE 5: UNION RESPONSIBILITIES**

- (a) There shall be no stoppage of work for any reason arising out of any jurisdictional dispute.
- (b) When a Contractor has made a final work assignment, and a Union claims that a Contractor has failed to assign work appropriately or in accordance with the procedures specified above, the Union shall direct its members to remain at work, then make a Request for Review.

**ARTICLE 6: REQUESTS FOR REVIEW****Making a Request**

- (a) When an issue arises with respect to the assignment of work, a Union or Contractor may submit to the Umpire a Request for Review.
- (b) Requests for Review shall not be made without first attempting to resolve the matter by informal means. Should a Request for Review be submitted without prior attempts to resolve it informally, the Umpire has the authority to refer the matter back to the Parties.
- (c) Requests for Review must be made no later than 3 working days after first becoming aware of the jurisdictional dispute. Timelines are mandatory. Failure to Request a Review within the prescribed timelines shall result in abandonment of the dispute. The Umpire shall rule on the issue of timelines should the issue arise as a point of contention. The Umpire may also grant extensions of timelines upon request.
- (d) When a Union or Contractor wishes to submit a jurisdictional dispute to the Umpire for a decision, they shall download and fill out the *Request for Review Form* from CLRA's website and send the Form and any supporting documents to the Plan Secretary. Also submitted to the Plan Secretary shall be the filing fee as determined by the JAC. The Plan Secretary shall then assist the Parties in assigning an Umpire and coordinating a hearing. Contact information for the Plan Secretary and Umpire shall be available by contacting CLRA or the BTA. When more than one Umpire is appointed to the Plan, the Parties shall appoint the first available Umpire.
- (e) The Plan Secretary shall forward copies of the *Request for Review Form* and supporting documents to the Umpire, and the other Parties affected by the difference. Within 3 working days of receiving a copy of the *Request for Review Form*, the affected Party or Parties must then submit their response(s) and supporting documents to the Plan Secretary who shall forward such responses and documents to the Umpire and other affected Parties.

- (f) A Party's response referred to in (f) shall be made by downloading and filling out the *Request for Review [Response] Form* from CLRA's website and submitting it and any supporting documents to the Plan Secretary.
- (g) Subject to Article 6(k), no late documentation shall be accepted unless the Umpire is satisfied that the documentation was not reasonably available at the time the Request for Review was required to be made according to the prescribed timelines.
- (h) When a Union files a Request for Review and its members are refusing to work on the job or hold up disputed work, a hearing shall not be convened until the Union has returned its members to work.

### **Holding a Hearing**

- (i) The Umpire shall hold a hearing (oral/in person) within 5 working days of receipt of the *Request for Review [Response] Form*. No lawyers shall be permitted to present at nor assist in the preparation for a hearing. Only by agreement between the parties, may the matter be determined by written submissions to the Umpire.
- (j) The Umpire has the authority to run the hearing in a manner the Umpire feels best serves the purpose of gathering all the relevant facts in order to make a fair and reasonable decision. The format of the hearing shall be: Parties provide background information, positions and supporting documentation. Parties may provide evidence through witnesses. Parties have an opportunity to comment/respond to the other Party's position. Final statements are made with a clear request for remedy.
- (k) If during the hearing, the Umpire finds there is a substantial and material question of fact, technology or design which cannot be resolved on the basis of the available evidence, the Umpire may temporarily suspend the hearing in order to take a view of the workplace and make any further investigations required to answer such questions.

### **The Decision**

- (l) In making a decision, the Umpire shall determine whether a previous Decision of Record Agreement of Record or Agreement between the disputing Unions involved in the case applies. If no such Decision nor Agreement is in effect, the Umpire considers established trade practice, prevailing practice, together with a reasonable acceptance of considerations for efficiency, safety, good management, and a desire by all Parties to eliminate excessive allocation of manpower.
- (m) The Umpire shall issue a written decision within 3 working days of the date of the hearing. This time limit may be extended by mutual agreement between the Parties to a maximum of an additional 3 working days. The Umpire shall forward the decision to the Plan Secretary to provide to the affected Parties and to file with CLRA and the BTA for central



reference purposes. Decisions shall be as brief and concise as possible. At a minimum, the decision shall include:

- i. A summary of the facts and description of the dispute
  - ii. Decisions of work assignments including rationale and referenced Decisions of Record, Agreements of Record and the other considerations referenced in Article 6(l)
  - iii. Assignment of costs
- (n) All costs related to requesting a review shall be assigned to the losing Party or Parties. An affected Union that refrains from participating may be assessed some or all of the costs. Notwithstanding the assignment of costs according to the “loser pay” principle, in circumstances where it is difficult to identify the “loser” or when the payment of the full costs by the “loser” may be unfair in light of all of the issues and circumstances, the Umpire shall have the authority to determine which party or parties shall bear the costs or portions thereof. Where an affected Union supported the position of an applicant Union in respect to a decision that went against the applicant Union, both may be considered to be losing Parties for the purposes of assigning costs. Parties must raise any issues with respect to costs at the hearing, otherwise the Umpire will assign costs strictly according to the loser pay principle.
- (o) Decisions by the Umpire shall be final and binding upon the Parties, subject to appeals made to the Appeal Board or Canadian Plan. Notwithstanding this, the Canadian Plan shall, respecting appeals of decisions issued under this Plan, be bound by Articles 7 and 8 of the Procedural Rules and by the provisions with respect to the considerations set out in Article 6(l) of the Procedural Rules.
- (p) The affected Unions and Contractors shall promptly comply with the decision of the Umpire.
- (q) The Umpire may levy fines, in the amount as determined by the JAC, for each day a Party fails to comply with a decision.
- (r) In the event of a failure to comply with a decision or directive of an Umpire, a Party may file a copy of the decision or directive with a clerk of the Court of Queen’s Bench of Alberta and seek a Court Order.
- (s) By agreement and application by the Parties, the Umpire may correct accidental errors within the content of the decision. This is not an avenue to change the decision itself, but rather an opportunity to correct errors of fact or incorrect references within the written decision.

**ARTICLE 7: EXCESSIVE ALLOCATION OF MANPOWER**

The Umpire shall not, wherever possible, render a decision that shall result in an excessive allocation of manpower occurring on the job. For the purpose of the Plan, the term "excessive allocation of manpower" shall include situations where a decision of the Umpire would result in a requirement to add more workers on the job site than would ordinarily be required in order to complete the work efficiently. Such situations could include the operation or use of certain equipment or tools which are commonly referred to as "tools of the trade" and which may be competently used by a variety of crafts in carrying out work. The term "excessive allocation of manpower" may also refer to work that is the work of a specific craft but which is of either such a short duration or is so infrequent on a periodic basis to render assignment of such work to that craft uneconomic. In such situations the Umpire shall have discretion in making awards that allow for a common sense resolution to such situations while maintaining the integrity of the specific Union's jurisdiction.

**ARTICLE 8: QUESTIONS OF BARGAINING RELATIONSHIPS**

- (a) In the event the Umpire determines that a Participating Union does not have a bargaining relationship with a Participating Contractor who has responsibility for making an intended assignment of work claimed by that Participating Union then the Umpire shall make an appraisal of the nature of the work, its likely duration, the amount of work, the nature of the business of the Participating Contractor, how the Participating Contractor may have carried out such work in the past, the likelihood of there being a change in the business of the Participating Contractor, that portion of the construction industry in which the Participating Contractor does business (i.e. Commercial/Institutional, or Industrial), and any other factor(s) that the Umpire may deem relevant. In such cases the Umpire, having reference to the factors above, may, or may not, determine it appropriate to award work to a Participating Union notwithstanding the absence of a bargaining relationship.
- (b) In any event, a decision of the Umpire shall not have the effect of either extending to that Participating Contractor subcontracting restrictions that are not included in a collective agreement that is binding upon that Participating Contractor or extending to that Participating Contractor any hiring obligations that are not included in a collective agreement that is binding upon that Participating Contractor.

**ARTICLE 9: APPEALS****Making an Appeal**

- (a) A Party may appeal a decision of the Umpire to the Appeal Board or to the *Canadian Plan*. A decision of the Appeal Panel may in turn be appealed to the *Canadian Plan*. A decision of the *Canadian Plan* is final and binding. Access to the *Canadian Plan* shall be limited only to appeal of decisions issued under the Alberta Plan.
- (b) A hearing on appeal shall not proceed if there is a failure by the appellant Union to comply with the Umpire's Decision.
- (c) When a Union or Contractor wishes to appeal a decision of the Umpire, they shall download and fill out the [Application for Appeal Form](#) from CLRA's website and send the Form and any supporting documents to the Plan Secretary within 3 working days of the date from which they received the Umpire's decision. Contact information for the Plan Secretary shall be available by contacting CLRA or the BTA. Timelines are mandatory. Failure to request an appeal within the prescribed timelines shall result in abandonment of the appeal. The Appeal Panel shall rule on the issue of timelines should the issue arise as a point of contention. The Appeal Panel may also grant extensions of timelines upon request. The Plan Secretary shall advise the Umpire of the Appeal.
- (d) The Plan Secretary shall assist the Parties in coordinating a hearing and assigning an Appeal Panel, including a Chair, from the members of the Appeal Board. The Parties shall appoint the first available Chair and members of the Panel.
- (e) The Plan Secretary shall forward copies of the Umpire's Decision, the *Application for Appeal Form* and supporting documents to the Appeal Panel and the other Parties affected by the Application. Within 3 working days of receiving a copy of the *Application for Appeal Form* and supporting documents, the affected Party or Parties must submit their response(s) to the Plan Secretary who shall forward such responses and documents to the Appeal Panel and the other affected Parties.
- (f) A Party's response referred to in (e) shall be made by downloading and filling out the [Application for Appeal \[Response\] Form](#) from CLRA's website and submitting it to the Plan Secretary.

**Holding a Hearing**

- (g) The Appeal Panel shall hold a hearing (oral/in person) within 5 working days of receipt of the full particulars. No lawyers shall be permitted to present at nor assist in the preparation for a hearing. Only by agreement between the parties, may the matter be determined by written submissions to the Appeal Panel.

- (h) The Chair of the Panel has the authority to run the hearing in a manner they feel best serves the purpose of collecting the relevant facts in order to make a reasonable and equitable decision. The format of the hearing shall be: Parties provide the background information, positions and supporting documentation which was originally submitted to the Umpire. The Parties may provide evidence through witnesses. Parties have an opportunity to comment/respond to the other Party's position. Final statements are made with a clear request for remedy.
- (i) The Appeal Panel shall consider only the issues that were brought before the Umpire. The Appeal Panel may receive additional evidence only in the following circumstances:
- i. To establish what evidence was before the Umpire;
  - ii. Where evidence was offered to the Umpire but, in the opinion of the Appeal Panel, wrongfully found inadmissible by the Umpire, or
  - iii. Where the evidence could not with proper diligence have been presented to the Umpire in the original hearings;
  - iv. To determine questions of time limits

### **The Decision**

- (j) The Appeal Panel Chair shall issue a written decision within 3 working days of the date of the hearing. This time limit may be extended by mutual agreement between the Parties to a maximum of an additional 3 working days. The Appeal Panel Chair shall forward the decision to the Plan Secretary to provide to the Umpire, the affected Parties and to file with CLRA and the BTA for central reference purposes. Decisions shall be as brief and concise as possible. The decision of the Appeal Panel is to indicate the finding of the majority only. No dissenting opinions shall be written. At a minimum, the decision shall include:
- i. A summary of the facts and description of the dispute presented to the Umpire
  - ii. Reference to the Umpire's decision
  - iii. The final decision by the Appeal Board including rationale and referenced Decisions of Record, Agreements of Record and the other considerations referenced in Article 6(l)
  - iv. Assignment of costs
- (k) All costs associated with requesting an appeal shall be assigned to the losing Party or Parties. An affected Union that refrains from participating may be assessed some or all of the costs. Where an affected Union supported the position of an applicant Union in respect to a decision that went against the applicant Union, both may be considered to be losing Parties for the purposes of assigning costs. Parties must raise any issues with

respect to costs at the hearing, otherwise the Appeal Board will assign costs strictly according to the loser pay principle.

- (l) Decisions by the Appeal Board shall be final and binding upon the Parties, subject to appeals made to the Canadian Plan. Notwithstanding this, the Canadian Plan shall, respecting appeals of decisions issued under this Plan, be bound by Articles 7 and 8 of the Procedural Rules and by the provisions with respect to the considerations set out in Article 6(l) of the Procedural Rules.
- (m) The affected Unions and Contractors shall promptly comply with the decision of the Appeal Board.
- (n) In the event of a failure to comply with a decision, a Party may file a copy of the decision with a clerk of the Court of Queen's Bench of Alberta and seek a Court Order.
- (o) By agreement and application by the Parties, the Appeal Board may correct accidental errors within the content of the decision. This is not an avenue to change the decision itself, but rather an opportunity to correct errors of fact or incorrect references within the written decision.

#### **ARTICLE 10: AMENDMENTS**

The JAC shall make recommendations for amendments to the Procedural Rules to the Coordinating Committee and BTA. No amendments shall take effect unless they are subsequently agreed to by the Coordinating Committee and the BTA.