



## How to Prepare for a Hearing for a Review of Annual Compensation (S. 27)

### Why do I need to prepare for a hearing?

- The Panel will make a decision based upon evidence and argument heard at the hearing.
- You are responsible for gathering and presenting your evidence and argument to the Panel.

### What will the Panel decide at the s. 27 hearing?

- The Panel will determine the rate of compensation for a surface lease.
- The will determine the effective date and whether notice was given by either party.
- The Panel may confirm the current rate or increase or decrease the rate of compensation.
- The Panel will consider the following:
  - the loss of use of the area granted to the Operator
  - any adverse effect of the area granted on the remaining land
  - any nuisance, inconvenience and noise that might be caused by or arise from or in connection with the Operator's operations

### What happens at the s. 27 hearing?

1. The hearing is normally heard by a panel of three members, led by a Panel Chair.
2. The order of presentation at most hearings, is as follows:
  - The Chair outlines the procedures to be followed for the hearing.
  - Usually the party who made the application goes first (the applicant).
  - The applicant presents his or her case to the panel. The applicant may make written presentation, verbal evidence, call witnesses, and present documents.
  - The other party has the opportunity to question the applicant, and any witnesses who testify on behalf of the applicant.
  - The panel will also have a chance to question the applicant and the applicant's witnesses.
  - Following the completion of the applicant's case, the operator will make its presentation.
  - The applicant will then be given an opportunity to question the operator and its witnesses and the panel will also have the opportunity to question the operator.

### How can I prepare for the s. 27 hearing?

- Familiarize yourself with the Surface Rights Act and Rules, particularly sections 27 and 39.
- Determine the rate of compensation that you intend to request at the hearing.
- Gather your evidence regarding the effective date, notice, loss of use, adverse effect, nuisance, inconvenience and noise.
- Prepare your argument explaining why the rate of compensation should be as requested.
- Ask questions at the dispute resolution conference (DRC) which is organized by the Board.
- Keep negotiating with the other party and consider participating in an SRB mediation.
- Even if the other party is not participating in the hearing, it is still necessary to present your evidence and arguments to the Panel. This includes abandoned wells.

## **Do I need to present evidence at the hearing?**

- You must present evidence to support your requested rate of compensation.
- The Panel makes their decision regarding the rate of compensation based on the evidence.
- Please note that presenting evidence does not guarantee the result you seek, but if you do not present evidence to the Panel, you will not be successful.
- You are responsible for gathering and choosing the evidence that you present to the Panel.
- See the **enclosed Sample Evidence Package** for some helpful ideas.
- Your evidence might include verbal evidence through witnesses, documents including surface leases, photographs, and maps; and expert witnesses to give an opinion about technical or specialized areas.
- The other party is also entitled to present evidence at the hearing.
- The other party and the Panel may ask you questions about your evidence.
- Review the other party's evidence and prepare questions that you might want to ask that party.
- Evidence is usually exchanged prior to the hearing. At the DRC, the parties will set deadlines to exchange documents with each other. This may include written evidence or reports the parties intend to present at the hearing.
- Evidence that was not exchanged prior to the hearing may not be introduced during the hearing without permission from the hearing panel.

## **Do I need to present an argument to the Panel?**

- Usually you will be invited to explain the reasons why the rate of compensation should be as you request. This is called your argument.
- In your argument, you should point to the evidence you presented that supports your position.
- The argument is usually done verbally and you can use notes as you speak. Sometimes the Panel will agree to accept a written argument instead.
- The other party also has the right to present their argument to the Panel.

## **What costs can I claim?**

- Under the section 39 Surface Rights Board Act and section 30 of the Rules, you may be awarded reasonable costs of and incidental to the proceedings. This may include legal representation, experts, travel, preparation time, and materials. Bring invoices, your receipts and the hours/dates you are claiming.

## **Are there alternative options to a hearing?**

- It is important to negotiate in good faith to try to reach an agreement prior to the hearing.
- The Board's preferred approach to resolving applications is through its dispute resolution/mediation program, as it is faster, cheaper and builds better relationships.

## **Where can I locate additional information and resources?**

- Surface Rights Board Rules and Guidelines, visit [www.surfacerights.alberta.ca/](http://www.surfacerights.alberta.ca/)
- Surface Rights Board decisions, visit [www.canlii.org/en/ab/absrb/](http://www.canlii.org/en/ab/absrb/)
- Farmers' Advocate Office, visit [www.farmersadvocate.gov.ab.ca](http://www.farmersadvocate.gov.ab.ca)

## **I have a question, who can I call?**

- Please call the Surface Rights Board at (780) 427-2444 and speak to a Case Coordinator.

*\*\*Please note, the information contained in this document is for informative purposes only, and is not to be construed as legal advice. Please feel free to contact a Lawyer for legal advice or retain other representation as you decide.*