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# SURFACE RIGHTS BOARD

  

# RULES

# **RULES OF THE SURFACE RIGHTS BOARD**

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# **RULES OF THE SURFACE RIGHTS BOARD**

## **PART 1**

### **PURPOSE, APPLICATION OF RULES, DEFINITIONS**

#### **1. Purpose**

- (1) The purpose of these Rules is to provide a means by which applications filed with the Board can be resolved through a fair and independent process in a timely and cost effective way.
- (2) The Board may publish Guidelines, interpretation bulletins, information sheets and forms to assist parties in using these Rules.
- (3) Unless otherwise ordered, these Rules apply to all proceedings before the Surface Rights Board.

#### **2. The Rules are intended:**

- (1) To identify the real issues in dispute.
- (2) To facilitate the most effective way of resolving the dispute at the least expense.
- (3) To encourage the parties to resolve the dispute themselves, by agreement as early as possible.
- (4) To encourage parties to communicate.
- (5) To provide an independent, effective, efficient and fair process.

#### **3. Conflict between the Rules, Acts and Regulations**

If any of these Rules conflict or are inconsistent with an Act or Regulation, the Act or Regulation prevails to the extent of the conflict or inconsistency.

#### **4. Effective Date**

- (1) These Rules will come into effect on December 1, 2010 superseding all Rules made before that date.

## 5. Definitions

In these Rules:

“*Act*” means the *Surface Rights Act* as amended;

“*Address for Delivery*” means a current postal address, physical address, facsimile transmission number, if any, and e-mail address, if any;

“*Adjourning*” involves a Member's decision regarding when the proceeding or the hearing of an application will proceed and/or be completed;

“*Applicant*” means one or more person who files an application with the Board;

“*Application*” means any matter brought before the Board and includes all information required to be given to the Board in respect of the application;

“*Board*” means the Surface Rights Board;

“*Board Administrator*” means a person employed or engaged by the Board;

“*Chair*” means the Chair of the Board;

“*Deliver*” includes “service”, and means to provide or send to the Board or another party or parties;

“*Document*” includes paper, letter, book, map, plan, drawing, photograph, film, recording, optical or electronic storage device, and any other thing on which information is recorded or stored;

“*File*” means delivery of an electronic or written communication to the Board;

“*Guideline*” means general statements of principles of the Board that are non-binding and intended to inform and guide those subject to actions under the relevant legislation;

“*Hearing*” means a hearing by the Board under the Act or other relevant legislation authorizing the Board to make a decision;

“*Licensed Land Agent*” means a ‘land agent’ as licensed pursuant to the *Land Agents Licensing Act*;

“*Mediation*” means a form of dispute resolution aimed to assist parties in reaching an agreement;

“*Mediator*” means an individual, member or members appointed by the Chair to mediate an application;

“*Member*” means a member of the Board appointed under the Act;

*“Notice of Hearing”* means a notice from the Board stating the date, time and place that the Board will hold a hearing and giving reasonable particulars of the matter in respect of which the hearing will be held;

*“Occupant”* means an occupant as defined in the *Act*;

*“Operator”* means an operator as defined in the *Act*;

*“Owner”* means an owner as defined in the *Act*;

*“Panel Chair”* means the member designated to preside at a hearing;

*“Party”* or *‘parties’* means an applicant, operator, a respondent, owner, occupant, lessor, or any other person named in an application or an order of the Board;

*“Proceeding”* means a pre-hearing dispute resolution conference, mediation or hearing.

*“Reports”* means all appraisal reports and other documentary evidence prepared by a person, other than a party, which is intended to give written opinion evidence and testimony based on education, training and/or experience;

*“Representative”* means a person, lawyer or licensed land agent who has authority to act for a party;

*“Rescheduling”* involves a Board Administrator setting a new date for a proceeding in advance of the date originally set for it, usually confirmed by a new notice;

*“Respondent”* means an owner or occupant named as a respondent in an application to or in an order of the Board;

*“Settlement”* means an agreement respecting compensation reached by the parties to an application before the Board;

## **6. Application of Rules**

- (1) All parties must comply with these Rules and any Board Guidelines issued unless the Board otherwise orders.
- (2) The Board may exercise any power under these Rules on its own initiative or on the application of a party.
- (3) The Board may waive or vary a requirement of these Rules and may shorten or lengthen any time limits in these Rules at its discretion.

## **7. Effect of Non-Compliance**

If a party refuses or fails without a reasonable excuse to comply with these Rules, any Board Guideline, or an order, direction or ruling of the Board, or to attend any proceeding under these Rules, the Board may make any decision, order, final order, or direction it considers appropriate in the circumstances, including one or more of the following:

- (a) an order limiting the participation of a party in the proceeding or limiting the evidence which may be presented by a party in the proceeding;
- (b) where the non-complying party is the applicant, an order dismissing the application or deeming the application to be withdrawn; and/or
- (c) an order that the non-complying party pay the costs of another party resulting from the non-compliance.

In making a decision, order, final order, or direction it considers appropriate under this section, the Board will consider whether there has been substantial compliance and whether a party has been prejudiced by the failure to comply.

## **8. Enlarging or Abridging Time**

The Board may, on any conditions it considers proper, shorten or lengthen the time required by these Rules for doing anything or taking any proceedings.

# **REPRESENTATIVES**

## **9. Right to be represented**

- (1) A party has the right to be represented by another person before the Board.
- (2) When a party retains a representative, that is not a lawyer or a licensed land agent, a written notice of representation must be filed with the Board.
- (3) The notice of representation must be in the prescribed form and:
  - (a) be in writing, be dated, and be signed by the party appointing the representative,
  - (b) appoint and authorize the representative to act on behalf of the party,
  - (c) include the Board file number and a description of the matter that the representative is appointed and authorized to act on behalf of the party, and

- (d) include the representative's postal address and telephone number, and fax and cell phone numbers, if any.
- (4) Lawyers or licensed land agents that represent parties before the Board must:
  - (a) notify the Board in writing that they represent the party and include their address for delivery, telephone, fax, email address, if any.

#### **10. Giving Notice to a Representative is Notice to a Party**

Unless otherwise indicated in the Rules a notice given to a representative, by the Board or by a party is notice to the party for whom the representative acts.

#### **11. Representative Ceasing to Act**

If a representative ceases to act for a party, the party or the representative must promptly file a written notice with the Board and send a written notice to the other parties.

### **SURFACE RIGHTS BOARD AND COMMUNICATIONS WITH THE BOARD**

#### **12. Communications with Board and with Parties**

- (1) Other than communications required with a member assigned to a pre-hearing dispute resolution conference or mediation, any communication with the Board must be through a Board Administrator. A party must not attempt to speak to or write directly to a member outside a hearing regarding matters before the Board.
- (2) No party should give any evidence or submissions to a member, except in the presence of the other parties at a proceeding to avoid the perception of bias.
- (3) A party must include the Board file number assigned by the Board on any communication that the party files with the Board.
- (4) A party must send a copy of any communication filed with the Board to the other parties.
- (5) A communication received by the Board after the Board's business day of 4:30 p.m. has ended is deemed to be filed on the next business day.
- (6) It is the party's responsibility to ensure the Board has the party's current address. A party must provide the Board with written notice of the party's address for delivery and the address for delivery of the party's representative, if any.

- (7) If a party fails to notify the Board of the party's current address and the Board receives notification by returned mail, or otherwise, that the party is no longer at the address on the Board's file, the Board may decide not to send further communications to that address.
- (8) If a party is represented by a representative, unless otherwise requested by the party, the Board and other parties may communicate with that party at the address for delivery of the representative.
- (9) A party or a representative must immediately notify the Board and other parties of a change of address for delivery.

### **13. Guidelines**

The Board may make Guidelines to help parties and the Board with an application or any aspect of it, to help explain the Act, Regulations and or these Rules.

If the Guidelines conflict or are inconsistent with these Rules or an Act or Regulation, the Rules, Act or Regulation prevails to the extent of the inconsistency.

## **PART 2**

### **APPLICATIONS TO THE BOARD**

#### **FILING AN APPLICATION**

### **14. Form of Application**

- (1) An operator who wishes to apply for a right of entry order must comply with the requirements in *Surface Rights Act General Regulation*.
- (2) Where a form is prescribed by the Board the application must include a completed form. An application must be in writing and contain the following:
  - (a) A description of the relief applied for;
  - (b) The reasons that the application is made;
  - (c) A reference to the section of the statute relevant to the application;
  - (d) A clear and concise statement of the facts relevant to the application;
  - (e) Any other information required by the Board or the relevant statutory provision;

- (f) Any other information that may be useful in explaining or supporting the application;
- (g) The applicant's name, address, telephone number, fax number and, if available, e-mail address; and
- (h) If the applicant is represented by a representative, the representative's name, address, telephone number, fax number and, if available, e-mail address.

## **15. Board Administrator Review of Applications**

- (1) When an application is submitted for filing, a Board Administrator shall review applications and may by notice to the applicant(s) refuse or suspend processing application(s) based on the following:
  - (a) Failure to submit the information and documentation required with the application;
  - (b) Failure to comply with these Rules;
  - (c) Failure to comply with the requirements of the Act;
  - (d) The application was filed later than the statutory deadline.
- (2) The Board Administrator may deliver a written notice with reasons to the applicant requiring the applicant, within a reasonable amount of time to complete the application, provide additional information or documentation, or correct deficiencies.
- (3) If an applicant fails to provide any information required to be submitted within a reasonable amount of time, the Board may consider the application withdrawn.
- (4) An applicant who disagrees with a notice from a Board Administrator may ask the Board to review the application in which case the Board may:
  - (a) require an applicant to provide information, in addition to the application submitted, to assist the Board in determining whether the application can be accepted. If the applicant then fails to provide the information requested within a reasonable amount of time the Board may consider the application withdrawn;
  - (b) dismiss the application; or
  - (c) accept the application, or
  - (d) accept the application with conditions;

- (e) waive any of the requirements under the Rules if satisfied that there is good reason to do so.
- (5) If it appears to the Board that all or part of an application is not within its authority, or if a party on written application to the Board questions the Board's jurisdiction in an application, the Board may give the parties the opportunity to provide further information, evidence, or submissions and may conduct a proceeding to determine whether it has jurisdiction.
- (6) Any information provided in accordance with this section shall be considered part of the applicant's application.

## **16. Acceptance of an Application**

When an application has been reviewed and is considered complete, a Board Administrator will notify the applicant that the application is accepted within a reasonable time.

Although a Board Administrator will review applications, it is always the applicant's responsibility to ensure that their application is complete, accurate and in compliance with the requirements of the Board and the statutory requirements. Ultimately it will be up to the Board panel hearing the application to decide whether or not the application is valid.

## **17. Delivery of Documents**

- (1) Subject to subsection (3) and (4) a document required to be delivered or served may be delivered on a person:
  - (a) by personal delivery;
  - (b) by courier service, ordinary mail, fax or electronic means to the address given by the person;
  - (c) to the party's representative; or
  - (d) by any other method the Board directs.
- (2) If a person required to deliver a submission or other document fails to do so, the Board may deliver a copy of the submission or other document on the party.
- (3) A document may be delivered by electronic means only if the person being served has the information technology, equipment, software and processes for receiving or retrieving the document.
- (4) An application for a right of entry order must be served:
  - (a) by personal delivery;

- (b) by registered mail to the last known address of the Respondent;
  - (c) by delivery to a lawyer who may, in writing, accept service on behalf of the person to be served. The date of service of the application is the date the application is accepted in writing by the lawyer; or
  - (d) by such other method as the Board directs.
- (5) Proof of service of a right of entry application before the Board must be by affidavit setting out on whom the application was served and the means of service. In any other applications before the Board, the Board may require a person to file an affidavit of service setting out on whom a document was delivered and the means taken to effect delivery.
- (6) The date of service of a document is the day on which the person being served receives the document unless it is received after 4:30 in the afternoon in which case the date of service is deemed to be the next day.
- (7) If a document is sent to a party's address for delivery by mail, it is deemed to be delivered seven (7) days after it was mailed, in the absence of evidence to the contrary.
- (8) If a document is sent to a party's address for delivery by facsimile transmission or electronic mail, the document is deemed to be delivered the following business day, in the absence of evidence to the contrary.
- (9) If ordinary methods of delivery or service have not been or are not likely to be effective, the Board may permit or require an alternative method of delivery or service.

## **PART 3**

### **PRE-HEARING ISSUES, DISPUTE RESOLUTION and MEDIATION**

#### **18. Pre-hearing Dispute Resolution Conferences**

- (1) After receiving an application, or immediately after a right of entry is made, the Board may schedule a pre-hearing dispute resolution conference at which the parties must attend to discuss the preparations for the hearing and the hearing itself, including attempts to define and narrow the issues in dispute, disclose potential evidence and witness lists, and discuss the possibilities of mediation.
- (2) If a party fails to attend a pre-hearing dispute resolution conference without an explanation satisfactory to the Board, the Board may proceed in that party's absence.

## 19. Procedure at Pre-hearing Conferences

- (1) At the pre-hearing conference, the presiding Member shall first discuss the following with the parties:
  - (a) identification of the issues and whether the issues can be simplified;
  - (b) whether any facts or evidence can be agreed upon;
  - (c) whether any or all of the issues can be settled;
  - (d) issues relating to disclosure and the exchange of information; and
  - (e) the advisability of attempting other forms of resolution of the matter.
  
- (2) The member conducting a pre-hearing dispute resolution conference may make any order the member considers appropriate for the efficient conduct of the application and, without limitation, may:
  - (a) provide non-binding opinions on any issue or the likelihood of success of any issue in the application;
  - (b) schedule a site visit and determine the terms of participation for a site visit;
  - (c) schedule or reschedule a mediation;
  - (d) schedule or reschedule a hearing;
  - (e) adjourn a mediation or hearing;
  - (f) require a party to produce for the Board and the other parties lists of witnesses intended to be called at a hearing;
  - (g) require a party to produce to the Board and the other parties an expert report to be tendered at a hearing;
  - (h) require a party to produce to the Board and the other parties copies of any documents or other records that will be submitted as evidence at a hearing;
  - (i) require the parties to prepare and file an agreed statement of facts;
  - (j) require the parties to prepare and file written submissions;
  - (k) review the procedure to be followed at the hearing;
  - (l) order a party to pay part of the costs of another party incurred to date;

- (m) report the results of the dispute resolution conference including a summary of the issues and any orders, directions or rulings of the Board, excluding any non-binding opinions or non-binding evaluation of the success of any issue offered by the presiding member; and
  - (n) make any order or final order or decision the member considers appropriate.
- (3) A pre-hearing dispute resolution conference is not open to the public.

## **20. Mediation**

- (1) At any time after an application is made to the Board, the Board may, before conducting a hearing, on its own initiative or on the written request of any of the parties, convene one or more meetings for the purpose of mediating a resolution of the issues in dispute.
- (2) If the parties are not able to resolve all of the issues in dispute through mediation, the Board may determine those issues before a hearing or other proceeding before the Board.
- (3) At any time before concluding a mediation process, the Board may, on its own initiative or on the written request of any of the parties, discontinue the mediation process and determine the issues in dispute before a hearing of the Board.
- (4) The Chair may direct that mediation be conducted by one or more members or appoint another person to conduct a mediation.
- (5) The Board may conduct mediation in person, by telephone conference call or by some other method.
- (6) The Board may determine the location for an in person mediation and will consider the convenience and cost to the parties and the Board, and the need, if any, to view the land that is the subject of an application.
- (7) In a mediation the mediator has discretion in the manner in which the mediation will be conducted and may:
  - (a) facilitate discussion between the parties towards a settlement of the issues;
  - (b) meet with the parties individually or together;
  - (c) schedule another meeting.
- (8) A mediation is not open to the public.

## **PART 4**

### **THE HEARING AND THE DECISION**

#### **21. Scheduling a Hearing**

The Board when determining compensation must schedule a date, time and place for a hearing if:

- (a) it has received the completed application and all required documents, or a right of entry order has been issued;
- (b) there is no unresolved application or issue that should delay the scheduling of a hearing; and
- (c) the prehearing dispute resolution conference or mediation did not resolve the compensation issue in dispute.

#### **22. At the Hearing a party to an Application has the right to**

- (a) receive a copy of documents in the Board's possession that are related to the proceeding;
- (b) present evidence;
- (c) call witnesses;
- (d) question or cross-examine witnesses who give evidence at a hearing;
- (e) make submissions on the evidence and issues under dispute; and
- (f) receive copies of the written submissions and evidence provided to the Board by the other parties to the proceeding.

#### **23. Applications considered by written submissions**

- (1) Where the Board decides that it is appropriate, it may
  - (a) make a decision with respect to a proceeding on the basis of the documents filed by the parties; or
  - (b) require additional information and material from the parties before making a decision.

- (2) If the Board is considering an application by written submissions, the Board may issue a notice to the parties.

A notice must

- (a) be in writing;
  - (b) briefly describe the subject matter of the application;
  - (c) indicate the date by which a written submission must be filed;
  - (d) state that the Board may grant the application or issue a decision if there are no submissions objecting to the application;
  - (e) indicate that copies of the application and other documents filed in support of the application are available for viewing at the Board offices, indicate the address of the Board offices where the application and other documents are available for viewing and the hours during which they may be viewed; and
  - (f) contain any other information that the Board considers necessary.
- (3) If a submission or submissions are filed, the Board may
- (a) set the application for a pre-hearing dispute resolution conference, a mediation, or hearing;
  - (b) issue a decision with respect to the application; or
  - (c) dismiss the application.

#### **24. Notice of Hearing**

If the Board decides to set an application for a hearing, the Board shall issue a notice of hearing.

- (1) A notice of hearing must
- (a) be in writing;
  - (b) briefly describe the subject-matter of the hearing;
  - (c) indicate the date, time and place of the hearing;
  - (d) indicate the name and address of the applicant or the applicant's representative;

- (e) indicate the address of the location of the Board's offices where the application and other documents are available for viewing and the hours during which they may be viewed; and
- (f) contain any other information that the Board considers necessary.

## **25. Adjourning and Rescheduling**

- (1) The Board may adjourn or reschedule a proceeding at any time on its own initiative.
- (2) The parties may apply to the Board not less than five (5) days before the date of a proceeding to have the proceeding rescheduled by consent.
- (3) An application to reschedule by consent shall include written consent of all parties interested in the proceeding.
- (4) A Board administrator may reschedule a proceeding upon receipt of the first request if that request includes confirmation that the consent of the other parties interested in the proceeding has been obtained. Subsequent and contested rescheduling requests will be decided by the Board.
- (5) A party may apply to the Board in writing not less than seven (7) days before the date of a proceeding to have the proceeding rescheduled.
- (6) An application for a rescheduling of a proceeding must be copied to the other parties and must include the reasons and evidence relied upon in support of the rescheduling.
- (7) The Board may require further information or submissions from the parties, require the parties to attend a conference and make further submissions regarding the application for the rescheduling, and allow or disallow the rescheduling request.
- (8) The Board will not grant an application for a rescheduling of a proceeding unless the Board considers it reasonable and the request will not be prejudicial to the other parties.
- (9) If the Board grants the rescheduling, the Board may order any terms or conditions, attendance at conferences, production of documents or reports, payment of the costs, or any other matters which may assist with the fair and efficient conduct of the application.
- (10) If a party is unable to obtain consent to a rescheduling from the other parties in advance of the scheduled proceeding date, or if the party does not make the application to the Board within the prescribed time before the proceeding, the party or their agent must attend on the date of the proceeding to request an adjournment from the Board. A request for an adjournment will normally be heard at the outset of the session for which the proceeding is scheduled.

- (11) The Board may adopt Guidelines outlining factors it will consider when exercising its discretion to reschedule or adjourn a proceeding.

## **26. Withdrawal of an Application**

- (1) Subject to subsection (2) a party may withdraw all or part of an application at any time in writing to the Board and deliver a copy of this request to the other parties.
- (2) An operator who wishes to withdraw an application for a right of entry order filed with the Board must, in writing, request the Board to cancel the application and deliver to all parties a copy of this request.
- (3) Upon receipt of a request to withdraw the application under subsection (2) the Board will consider whether there is any claim from the respondents named in the application for costs in connection with the application and may:
  - (a) cancel the application, or
  - (b) cancel the application with an order for payment of costs;

## **27. Settlement**

The Board may adopt a settlement as an order of the Board:

- (1) If the parties settle an application, they must advise the Board that the application has been settled and the Board may dismiss the application.
- (2) If the parties settle an application with respect to compensation they may apply to the Board for a compensation order incorporating the terms of settlement using the Form prescribed by the Board
- (3) In an application for an order under subsection (2) the Board may require further information or submissions from the parties regarding the application, and make an order incorporating the terms of settlement of an application if it is satisfied the order is consistent with the legislation; or provide the parties with reasons if it declines to make an order.

## **28. Hearings**

- (1) The Board may conduct a hearing in person, by telephone conference call, by way of written submissions, or by some other method. The Board will consider the complexity of the matter in dispute, the number of witnesses, whether reports are to be filed and the convenience and the cost to the parties and the Board.
- (2) The Chair in accordance with the Act may direct that a hearing be conducted by a panel consisting of:
  - (a) a single member; or

- (b) any number of members one of whom is to be the panel chair,
  - (i) and will consider the complexity of the matter in dispute, the number of witnesses, whether reports are to be filed and the convenience and the cost to the parties and the Board.
  - (ii) The decision of a single member panel or a majority of the members of a panel is the decision of the Board. In the event of a tie vote then the panel chair shall have the deciding vote.
- (3) The member conducting a mediation will not be designated as a panel member for a hearing of the same application unless all parties consent.
- (4) The Board may determine the location for a hearing and will consider the convenience and cost to the parties and the Board, and the need, if any, to view the land that is the subject of an application.
- (5) The panel at a hearing has discretion on how the hearing will be conducted and, without limitation, may:
  - (a) determine the order of proceeding;
  - (b) administer oaths and affirmations;
  - (c) exclude a witness from the hearing;
  - (d) make determinations on the admissibility of evidence;
  - (e) require the production of evidence;
  - (f) require the attendance of witnesses;
  - (g) proceed in a party's absence or in the absence of any submissions from a party where the party has had notice of the proceeding;
  - (h) ask questions to clarify issues or facts;
  - (i) ask questions of a witness in the nature of direct or cross-examination;
  - (j) place time limitations on any part of the hearing including presentation of evidence, the examination or cross-examination of witnesses, or presentation of opening or closing submissions;
  - (k) require parties to provide written submissions;
  - (l) make any order considered necessary for the maintenance of order at the hearing including imposing restrictions on a person's participation in or attendance at a hearing and excluding a person from participation or attendance at a hearing;

- (m) adjourn a hearing;
  - (n) make an order for a party to pay costs to another party; and
  - (o) make any other order necessary for the just and timely resolution of the application.
- (6) A party who intends to rely on legal authorities/cases in a hearing must provide a copy for each panel member and for each party.
- (7) Unless otherwise ordered by the Board, a hearing is open to the public.

### **29. Evidence and Disclosure**

- (1) Unless otherwise ordered by the Board, if a party wants to submit a report at a hearing, the party must deliver the report to the other parties no later than 14 days before the start of the hearing.
- (2) A party who intends to put forward a document as evidence at a hearing must provide a copy to be marked as an exhibit and a copy of the document for each panel member and each party.
- (3) Evidence or information submitted by a party with respect to an application at any time before the application is disposed of by the Board is not confidential and must not be withheld from persons interested in the application.

### **30. Written Submissions**

- (1) A party to any proceedings before the Board who will not be present or represented at a hearing held by the Board may submit written submissions to the Board and the other parties not later than 14 days before the time fixed for the hearing.
- (2) A written submission must be signed by the party filing it or by that person's representative.

## **COSTS**

### **31. Costs Award**

- (1) The Board may award costs to a party if the Board is of the opinion that the costs are directly and necessarily related to the proceeding. A request for costs must include:
- (a) reasons to support the request;

- (b) a detailed description of the costs sought; and
  - (c) copies of any invoices or receipts for disbursements or expenses.
- (2) In making an order for the payment of a party's costs, the Board may consider:
- (a) the reasons for incurring costs;
  - (b) the complexity of the proceeding;
  - (c) the contribution of the representatives and experts retained;
  - (d) the conduct of a party in the proceeding;
  - (e) whether a party has unreasonably delayed or lengthened a proceeding;
  - (f) the degree of success in the outcome of a proceeding;
  - (g) the reasonableness of any costs incurred;
  - (h) any other factor the Board considers relevant.

## **DECISIONS, NOTICES OF DECISIONS, AND ORDERS**

### **32. New or Additional Information**

- (1) If, before a decision is made, evidence that was not available before the hearing becomes available, or if evidence available before the hearing but which could not, on reasonable and justifiable grounds, be produced at the hearing, becomes available, the Board may:
- (a) consider whether the evidence should be presented;
  - (b) provide an opportunity for every other party to review the information and make submissions on it and its relevance;
  - (c) consider reopening the hearing to hear evidence related to the information;
  - (d) consider giving notice to the parties to hear representations on the application of the Act or the Regulations with respect to the information.

### **33. Signing the Decision or Order**

A decision or order of a panel of the Board must be signed on behalf of the panel by a member of that panel, or in that panel's absence another member.

### **34. Effective Date of Decision**

The decision of a panel of the Board is the official decision of the Board effective on and after the date the decision is signed, unless otherwise specified by the Board.

### **35. Notification and Distribution of Decision**

The Board must send each decision it makes to all parties to the application.

### **36. Clarification, Corrections of Technical Errors or Slips**

- (1) The panel of the Board making a decision may clarify any directions given in respect of a decision at the request of an affected person.
- (2) The Board may amend a final decision to correct:
  - (a) a clerical or typographical error;
  - (b) an accidental or inadvertent error, omission or other similar mistake; or
  - (c) errors of calculation.
- (3) These corrections may be made without first giving notice to the parties but the parties must subsequently be promptly notified of the correction.

## **REVIEW AND REHEARING**

### **37. Reconsideration of a Decision or Order**

- (1) A request by any party to have the Board review, rescind or amend a decision or order made by the Board must be in writing and:
  - (a) include the date and decision/order number of the decision/order;
  - (b) identify the issue or issues in the decision/order for which reconsideration is requested;
  - (c) set out the reasons for the request for reconsideration;

- (d) a brief explanation of how the party is adversely affected by the decision or the damage that has resulted or will result from the order, decision or direction;
  - (e) a brief description of the remedy sought;
  - (f) the party's name, address, telephone number, fax number and, if available, e-mail address; and
  - (g) if the party is represented by a representative, the representative's name, address, telephone number, fax number and, if available, e-mail address.
- (2) An application for a review must be filed and delivered to all of the parties to the proceeding for which the order, decision or direction of the Board was made.
  - (3) Before the Board considers an application every party must be given an opportunity to make representations on whether the basic requirements for reconsideration of a Board decision, order or direction have been met.
  - (4) The Chair shall appoint a panel to determine the preliminary question of whether the order, decision or direction made by it should be reviewed.
  - (5) The panel must review an application for reconsideration and only decide that a matter must be reconsidered if the basic requirements for reconsideration are met

The basic requirements for reconsideration are that:

- (a) the decision shows an obvious and important error of law or jurisdiction;  
or
  - (b) the decision shows an important error of fact, or an error of mixed fact and law, in the decision that affects the decision; or
  - (c) the decision was based on a process that was obviously unfair or unjust
- (6) A decision may also be reconsidered if the panel is satisfied that the decision is inconsistent with an earlier Board decision, any binding judicial authority, or is inconsistent with some other provision of the relevant legislation, *the Rules or Regulations*.
  - (7) A decision may also be reconsidered if the panel is satisfied that there was evidence at the time of the hearing that was not presented because it was unavailable to the party asking for reconsideration, and which is likely to make a substantial difference to the outcome of the decision.

### **38. Decision to Reconsider**

- (1) If the panel decides that a matter should be reconsidered, the Board may direct that a new hearing be held, or any other proceeding in accordance with these Rules.
- (2) After reconsideration conducted in any manner the Board considers appropriate, the Board may confirm, rescind or amend any decision, direction or order previously made by it.

### **39. Rehearing**

- (1) An application for a rehearing must be in writing and contain the following:
  - (a) a clear and concise statement of the facts relevant to the request for the rehearing;
  - (b) the reasons for the request for a rehearing;
  - (c) a brief explanation as to the nature of the prejudice or damage that will result if the rehearing is not granted;
  - (d) the applicant's name, address, telephone number, fax number and, if available, e-mail address; and
  - (e) if the applicant is represented by a representative, the representative's name, telephone number, fax number and, if available, e-mail address.
- (2) An application for a rehearing must be filed and delivered to the parties to the proceeding for which the original application was made.
- (3) If the Board grants the application it shall issue a notice of rehearing, and a hearing will be held in accordance with these Rules.