

SURFACE RIGHTS BOARD

Report Testimony Guideline

Purpose

1. The Board has implemented this guideline limiting the oral testimony which may be given in support of written Reports and other documentary evidence.
2. This guideline will apply to all hearings before the Surface Rights Board (“the Board”).

Objectives

3. There are serious problems of record cluttering and time consumption that are posed by unnecessary and unhelpful opinion testimony. It is not merely unhelpful; it is positively harmful, because it inflates the record which the parties and the Board must examine.
4. The time consumed by the unnecessary direct examination of written opinion testimony is time paid for by the parties in the form of additional counsel and witness fees and time away from employment, or business. For the Board, the cost is a diversion of resources that could be applied to other cases awaiting adjudication. There is a cost as well to other parties whose cases must be kept on hold when an ongoing proceeding is prolonged unnecessarily.
5. Unless otherwise provided by any law, the Board need not observe the rules of evidence observed by Courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Board may exclude unduly repetitious evidence, whether offered on direct examination or cross examination of witnesses.
6. It is not the intention that these guidelines limit or constrain the discretion of the Board to make whatever decision it believes is appropriate in the individual circumstances of each case, while taking into consideration all the circumstances of a particular case before it.

Definitions

7. “Board” means either a one-member Board or a three-member Board.
8. “Party” or “parties” means those individuals or organisations materially affected by the application or the outcome of the hearing.
9. “Guideline” means a policy that will normally be followed by the Board while taking into consideration all the circumstances of a particular case before it. It is not the intention that this guideline limit or constrain the discretion of the Board to make decisions it believes are appropriate.

10. "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 the person's special knowledge and which a party intends to introduce at the hearing.
11. "Testimony" means oral evidence given before the Board.

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12. Parties will only be provided with cross-examination regarding written evidence; and which cross examination may only be on points of evidence which require clarification.
13. Direct examination in support of written evidence submitted to the Board will not normally be allowed.
14. Failure to follow this guideline will not result in a loss of jurisdiction by the Board.

Exception to the Report Testimony Guideline

15. The Board retains the right to determine whether or not direct examination regarding written evidence will be allowed by the Board at a hearing.
16. The Board may normally allow the direct examination regarding written evidence if:
 - a) The Board determines that full direct examination of all of the written evidence, or partial direct examination of some portion of the written evidence, will be of assistance to the Board in making its determination of the issues before it; or
 - b) The written evidence has not been disclosed in accordance with the Board's Disclosure Guideline but has been allowed into evidence by the Board and direct examination is required for clarity of the information for the opposing party; or to assist the Board in making its determination of the issues before it; or
 - c) The written evidence is incomplete and a partial direct examination of the new or missing evidence is required to complete the party's case before the Board.
17. Where a party makes a request to present direct examination at a hearing regarding written evidence, the Board may take any of the following steps:
 - a) Request an explanation of: why the Reports require direct testimony in support; why the written testimony is not complete and clear; and, why the party will be prejudiced in any way by the exclusion of direct testimony in support of the written evidence;
 - b) Adjourn the hearing to make a decision on the request for direct examination in support of written testimony; and/or
 - c) Adjourn the hearing to allow the parties sufficient time to complete the Reports sufficiently to remove the alleged need for direct examination in support of it.

18. The Board will, in any event, allow cross examination on the written testimony and Reports; and will allow relevant reply from the party tendering the Reports as may be required to give full answer to any issue arising from the cross examination upon it.