

"Policy and Procedure Manual"

Surface Rights Board - Manitoba

The **Surface Rights Board** ("the Board") is a quasi-judicial board established under **The Surface Rights Act** ("the Act") whose primary function is to arbitrate disputes relating to right of entry and compensation for surface rights used by holders of oil and natural gas rights. The Board is an independent, impartial body responsible for hearing all sides and, from the evidence, making decisions within the framework of the Act.

The Board, upon the request of the parties involved and prior to any hearing being held, may provide **mediation services** to settle any and all matters in dispute.

A booklet entitled "**Surface Rights in Manitoba - A Guide for Land Owners, Occupants and Operators**" provides a comprehensive information source, in layman's language, to help land owners, occupants and operators to understand the Act and the duties and responsibilities of the Board. Parties are encouraged to use the Guide. The Guide is available on the website: www.manitoba.ca/minerals

Background/Intent

Subsection 7(1) of the Act provides the authority for the Board to make rules governing the practice and procedure and business of the Board. The following procedures are intended to provide assistance in the dispute resolution process.

Operating Directive/Procedure

This directive covers five (5) parts relating to:

1. Mediation services
2. Evidence
3. Site visitation
4. Costs
5. Communication with the Board

1. **Mediation Services** *refer to clause 10(f) of Act*

Mediation services by a member of the Board are available prior to any hearing being held to settle any or all matters in dispute.

Note: *Due to the limited number of members on the Board, parties to a dispute may be required to agree that the Board member providing the mediation service will not be barred from also being a member of a hearing panel, should the mediation process be unsuccessful.*

2. **Evidence** *refer to Subsections 7(3) & (4) of the Act*

- a. There is to be a complete and full exchange between the parties, at least ten (10) days before the hearing, of all documents that a party intends to rely upon in evidence, including comparable leases, expert reports, sketches, surveys, etc. Failure to exchange may result in the document(s) being inadmissible.
- b. Offers of settlement made by the operator during negotiations are considered to be "without prejudice" and are not to be disclosed in the application or at any time during the hearing.

The "final offer of settlement" shall be filed in a sealed envelope with the Board Administrator by the operator before the start of the hearing. This offer will only be disclosed to the Board members after the decision on compensation has been made, and is then used to determine the applicability of the 90% rule under *Subsections 26(4) and (5)* of the Act regarding the awarding of "costs".

- c. Issues being heard are to be confirmed at the commencement of the hearing. If there are any preliminary issues, they should also be presented at this stage.
- d. The order of presentation will usually be the applicant presenting its case first, then the respondent. After a party has completed its presentation, the other party may cross-examine.
- e. All claims must be proven by proper evidence.
For hearings pertaining to compensation, parties should focus their evidence to the various matters stipulated in Subsection 26(1) of the Act. If no evidence is presented on a given matter, the Board, in considering that matter, may be unable to make an award. However, parties may consent to an amount for a given matter or a party can suggest the Board award an amount which has been established by past Board decisions for the same situation, or by the market place (comparable leases). Evidence can be presented to increase or decrease that amount.
- f. The Board is not bound by technical rules of evidence.
Normally, a person providing evidence shall do so under oath or affirmation.
Rambling, irrelevant, or repetitive evidence is discouraged and may be disallowed.
Derogatory or malicious remarks about persons present, or not present, are discouraged.
- g. Parties are encouraged to ask for short adjournments during the hearing in order to discuss settlement of any or all of the issues.
- h. At the conclusion of a hearing, after all evidence has been presented and cross-examination completed, parties will be given an opportunity to provide a closing argument/statement.
No new evidence will be permitted.
- i. Each Board member has the right to interrupt the proceedings at any time in order to ask questions.
- j. Transcripts of proceedings are normally not prepared. However, hearings may be recorded at the discretion of the Board. A party wishing a copy of any recording made by the Board can obtain same by paying the costs of copying the recording. Should such party have the recording transcribed, a copy of the written transcript shall be provided to the Board.

3. Site Visitation *refer to Subsections 25(2) & (3) of the Act*

The Board may, on its own initiative, or at the request of either party, visit the site in dispute. This will be done at a time when the Board considers it will be the most beneficial. The Board is required to give both parties to the dispute 3-days notice of the date and time of the visit, and the parties may attend the visit. A party may direct the Board's attention to items which relate to the dispute (e.g. boundaries of leased area, damaged area, etc), but no presentations related to the dispute are to be made.

4. Costs *refer to Subsections 26(2) - (5) of the Act*

- (a) Costs of and incidental to any proceedings of the Board are in the discretion of the Board, subject to the 90% rule under *Subsections 26(4) and (5)*.

The 90% rule requires the Board to award costs to the landowner or occupant when the final offer of settlement is less than 90% of compensation ordered by the Board.

Where the "final offer of settlement" is greater than the compensation ordered by the Board, the Board is prohibited from awarding costs of any kind to the landowner or occupant.

- (b) The following are "**Cost Guidelines**", which the Board may use, where applicable, to determine costs for a typical single application hearing, all subject to the discretion of the Board:

- (i) Preparation, filing and serving of application and notices
 \$150 per application/proceeding
- (ii) Preparation for hearing (production, exchange & review of documents, including legal fees)
 \$300 per application
- (iii) Participation at hearing (presenting & defending position, cross examining other party, including legal fees)
 \$450 per proceeding
- (iv) **\$100** for **Disbursements** reasonably incurred in the preparation for, and participation in, the hearing of the application(s), including but not limited to:
 - material purchases (paper, binders, ink, maps, plans, documents)
 - services (record searches, photocopying, printing, binding, postage, courier)
 - travel related expenses (mileage)

- (c) In making an order for the payment of a party's costs, the Board may consider the following:

- i. the necessity of the hearing and reasons for incurring costs;
- ii. the complexity of the proceeding;
- iii. the contribution of the representatives and experts retained;
- iv. the conduct of a party in the proceeding;
- v. whether a party has unreasonably delayed or lengthened a proceeding;
- vi. the degree of success in the outcome of a proceeding;
- vii. the reasonableness of any costs incurred; and
- viii. any other factor the Board considers relevant.

5. Communication with Board

Communication with any member of the Board is discouraged.
All contact with the Board should be made through the **Board Administrator** at:

Toll Free: 1-800-223-5215
Ph: 204-945-4823
Fax: 204-948-2578
Email: Jo-Anne.Lodon@gov.mb.ca

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