

# MEDIATION AND ARBITRATION BOARD

## **RULES**

August 1, 2008

**RULES OF THE  
MEDIATION AND ARBITRATION BOARD**

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# Rules of the Mediation and Arbitration Board

August 1, 2008

## Purpose

1. (1) The purpose of these Rules is to facilitate the just and timely resolution of applications filed with the Board.
- (2) The Board may publish guides and information sheets to assist parties in using these Rules and completing the forms required under these Rules.
- (3) The Chair may issue practice directions to provide information or set requirements for Board practice and procedure.

## Effective Date

2. (1) These Rules may be cited as the Mediation and Arbitration Board Rules and will come into effect on August 1, 2008 superseding all Rules made before that date.
- (2) Unless otherwise ordered, these Rules apply to all applications before the Board whether commenced before or after August 1, 2008.

## Interpretation

3. In these Rules:

“Act” means the *Petroleum and Natural Gas Act*, RSBC 1996, c. 210 as amended;

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

“agent” means a person, other than a lawyer, who has written authority to act for a party;

“applicant” means one or more person who files an application with the Board and any person that the Board adds as an applicant;

“application” means an application for mediation or arbitration under the Act, the *Pipeline Act*, RSBC 1996, c. 364, the *Mineral Tenure Act*, RSBC 1996, c. 292, the *Mining Right of Way Act*, RSBC 1996, c. 294, the *Geothermal Resources Act*, RSBC 1996, c. 171, or the *Coal Act*, Stats BC 2004, c. 15, all as amended;

“arbitrator” means a member or members appointed by the Chair to arbitrate an application;

“Board” means the Mediation and Arbitration Board established under section 13 of the Act, and includes a member;

“business day” in relation to the Board, means the Board’s opening hours designated by the Chair in a practice directive under Rule 1(3), excluding holidays;

“Chair” means the chair of the Board;

“deliver” includes sending by ordinary mail, leaving with the Board or a party, and depositing in a mail box or receptacle at the residence or place of business, and includes facsimile transmission or electronic mail to the residence or place of business;

“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;

“expert report” or “expert evidence” means evidence expressing an opinion based on education, training or experience;

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

“mediator” means a member or members appointed by the Chair to mediate an application;

“member” means a member of the Board appointed under the Act, and includes the member designated as the Chair or vice-chair, a panel of members, a temporary member appointed under section 6 of the *Administrative Tribunals Act*, and a temporary chair appointed under section 4 of the *Administrative Tribunals Act*;

“panel chair” means the member designated to preside at an arbitration hearing;

“party” means an applicant or respondent;

“produce” in relation to a document or other thing that is required to be produced by these Rules or an order of the Board means to provide by mail, courier, fax transmission, electronic mail, or a means specified by an order of the Board so that the document or other thing to be produced is received at the address for delivery of the recipient by 3:00 pm on the date that it is required to be produced;

“respondent” means one or more persons against whom an application is made and any person the Board adds as a respondent;

“vice chair” means a member designated as vice-chair by the Lieutenant Governor in Council.

### **Application of Rules and Board Powers**

4. (1) All parties must comply with these Rules and any practice directions issued under Rule 1(3), 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.

### **Effect of Non-compliance**

5. If a party refuses or fails without reasonable excuse to comply with these Rules, a practice direction under Rule 1(3), or an order, direction or ruling of the Board, or to attend any proceeding under these Rules, the Board may make any decision, 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;

- (c) an order that the non-complying party pay the costs of another party or of the Board resulting from the non-compliance.

### **Communications with Board and with Parties**

- 6. (1) A party must include the case file number assigned by the Board on any communication that the party files with the Board.
- (2) A party must send a copy of any communication filed with the Board to the other parties.
- (3) A communication received by the Board after the Board's business day has ended is deemed to be filed on the next business day.
- (4) 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 agent or lawyer, if any.
- (5) If a party is represented by an agent or lawyer, unless otherwise requested by the party, the Board and other parties may communicate with that party at the address for delivery of the agent or lawyer.
- (6) A party or an agent or lawyer representing a party must immediately notify the Board and other parties of a change of address for delivery.
- (7) If a communication is sent to a party's address for delivery by mail, the communication is deemed to be delivered five days after it was mailed, in the absence of evidence to the contrary.
- (8) If a communication is sent to a party's address for delivery by facsimile transmission or electronic mail, the communication is deemed to be delivered the following business day, in the absence of evidence to the contrary.
- (9) If ordinary methods of delivery have not been or are not likely to be effective, the Board may permit or require an alternative method of delivery.

## **Filing an Application**

7. (1) Applications to the Board must be made using the appropriate form provided in Schedule A of these Rules.
- (2) An application must be accompanied by an affidavit verifying service of the application by registered mail on each person who could reasonably be expected to be directly affected by the application.
- (3) When an application is filed, the Board will review the application to ensure that:
  - (a) the application is complete and complies with these Rules;
  - (b) the application complies with the requirements of the Act;
  - (c) the application appears to be within the jurisdiction of the Board.
- (4) If the application is not complete, the Board may deliver a written notice of deficiencies to the applicant requiring the applicant to complete the application or correct the deficiencies.
- (5) If the application does not comply with the requirements of the Act, the Board may so advise the applicant in writing and dismiss the application without further notice.
- (6) If it appears to the Board that all or part of an application is not within its jurisdiction, 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 hearing to determine whether it has jurisdiction.

## **Addition of Parties**

8. (1) Any person directly affected by an application may apply to the Board to be added as a party to the application.
- (2) A request to be added as a party must be in writing and must:
  - (a) include information as to how the person requesting to be added is directly affected by the application; and

- (b) state the level of requested participation.
- (3) Without limitation, the Board will consider whether the person making the request is directly affected by the application, the timeliness of a request, the prejudice, if any, to the other parties, whether the interest of the person making the request can be adequately represented by another party, and whether adding the person as a party will delay or unduly lengthen the proceedings.
- (4) The Board may provide a copy of the request to the other parties to the application and seek submissions from them before making a decision on whether or not to add the person as a party.
- (5) The Board may impose terms and conditions limiting the participation of a person added as a party in the proceeding.

### **Pre-Hearing Conferences**

- 9. (1) At any time after receiving an application, on the written application of a party, or on the Board's own initiative, the Board may require the parties to attend a pre-hearing conference.
- (2) The member presiding at a pre-hearing conference may make any order the member considers appropriate for the efficient conduct of the application and, without limitation, may
  - (a) canvass the issues and any steps taken to reach agreement on the issues;
  - (b) assist the parties to clarify, narrow or simplify the issues;
  - (c) determine whether any issues are not within the jurisdiction of the Board;
  - (d) facilitate discussion between the parties to assist with resolution of any issues;
  - (e) provide non-binding opinions on any issue in the application;
  - (f) provide a non-binding evaluation of the likelihood of success of any issue in the application;
  - (g) require a party to produce to the Board or another party, or allow the Board or another party access to, any documents

or other information which may be material and relevant to an issue in the appeal;

- (h) require a party to produce to the Board or another party a written summary of a witness's evidence, expert reports or written submissions;
- (i) schedule a site visit and determine the terms of participation for a site visit;
- (j) schedule or reschedule a mediation;
- (k) schedule or reschedule an arbitration hearing;
- (l) adjourn a mediation or arbitration hearing;
- (m) require a party to produce for the Board and the other parties lists of witnesses intended to be called at an arbitration hearing and a written summary of a witness's evidence;
- (n) require a party to produce to the Board and the other parties an expert report or a written summary of the opinion evidence of an expert witness to be tendered at an arbitration hearing;
- (o) 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 an arbitration hearing;
- (p) require a party or a proposed witness to answer, under oath or affirmation by way of oral examination or affidavit, questions of another party before the commencement of an arbitration hearing;
- (q) require the parties to prepare and file an agreed statement of facts;
- (r) require the parties to prepare and file written submissions;
- (s) require the attendance of a witness at an arbitration hearing;
- (t) impose time limitations and terms and conditions on the production of documents, expert reports, agreed statements of facts, written submissions or any other process necessary for the fair and efficient management of an application;

- (u) order a party to pay part of the costs of another party incurred to date;
  - (v) report the results of the pre-hearing 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.
- (3) If the member presiding at a pre-hearing conference provided a non-binding opinion on any issue or provided a non-binding evaluation of the likely success of any issue, that member will not be designated as a mediator or arbitrator of the application unless all parties consent.

## **Mediations**

10. (1) A mediation is a “dispute resolution process” within the meaning of the *Administrative Tribunals Act*.
- (2) The chair may direct that a mediation be conducted by one or more members.
- (3) The Board may conduct a mediation in person, by telephone conference call or by some other method.
- (4) 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.
- (5) In a mediation the member presiding 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 mediation.
- (6) If the member presiding at the mediation believes that an application cannot be resolved by mediation, the member may make an order refusing further mediations and may

- (a) dismiss an application; or
  - (b) invite the parties to make brief representations as to the terms to include in a mediator's order and make an order in writing.
- (7) The mediator may make an order for a party to pay costs to another party or to the Board under Rule 16(1).
- (8) A mediation is not open to the public.

### **Arbitration Hearings**

11. (1) The chair may direct that an arbitration hearing be conducted by a panel consisting of
- (a) a single member; or
  - (b) two or more members one of whom is to be the panel chair.
- (2) The decision of a single member panel or a majority of the members of a panel is the decision of the board, and in the case of a tie, the decision of the panel chair governs.
- (3) The member presiding at a mediation will not be designated as a panel member for an arbitration hearing of the same application unless all parties consent.
- (4) The Board may conduct an arbitration hearing in person, by telephone conference call, by way of written submissions, or by some other method.
- (5) The Board may determine the location for an in person arbitration 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.
- (6) The member presiding at an arbitration hearing has discretion in the manner in which the hearing will be conducted and, without limitation, may
- (a) determine the order of proceeding;
  - (b) administer oaths and affirmations;

- (c) add parties and impose terms and conditions limiting the participation of those parties at the hearing;
  - (d) exclude a witness from the hearing;
  - (e) make determinations on the admissibility of evidence;
  - (f) require the production of evidence;
  - (g) require the attendance of witnesses;
  - (h) 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;
  - (i) ask questions to clarify issues or facts;
  - (j) ask questions of a witness in the nature of direct or cross-examination;
  - (k) 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;
  - (l) require parties to provide written submissions;
  - (m) 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;
  - (n) adjourn a hearing;
  - (o) make an order for a party to pay costs to another party or to the board in accordance with Rule 16(2); and
  - (p) make any other order necessary for the just and timely resolution of the application.
- (7) A party who intends to rely on legal authorities in an arbitration hearing must provide a copy for each panel member and for each party.

- (8) Unless otherwise ordered by the Board, an arbitration hearing is open to the public.

## **Evidence**

12. (1) Except as provided by Rule 12(2), every witness must make a solemn affirmation that their evidence will be the truth.
- (2) If a witness wants to swear an oath involving a religious text, the party calling that witness must provide the religious text.
- (3) Unless otherwise ordered by the Board, if a party wants to tender the opinion evidence of an expert at an arbitration hearing, the party must deliver the expert's written report to the other parties and to the Board no later than 60 days before the start of the hearing.
- (4) Unless otherwise ordered by the Board, if a party wants to tender the opinion evidence of an expert in response to an expert report produced under Rule 12(3), the party must deliver the expert's written report to the other parties and to the Board no later than 30 days before the start of the hearing.
- (5) If a party wants to tender opinion evidence in rebuttal to a report delivered under Rule 12(4), the party must promptly give notice to the other parties and seek directions from the Board respecting the timing for delivery to the other parties of a rebuttal report or written summary of a rebuttal opinion.
- (6) The written report of an expert must include a statement of the expert's qualifications.
- (7) If a party wants to cross-examine an expert on his or her report, the party must deliver notice to the party tendering the opinion of the expert, the other parties and the Board that the expert is required to attend the arbitration hearing for cross-examination.
- (8) A party who intends to tender a document as evidence at an arbitration hearing must provide, in addition to the document to be marked as an exhibit, a copy of the document for each panel member and each party.

## Request for Summons

13. (1) A party may apply to the Board in writing, at least fourteen (14) days before the first day of the hearing for an order requiring another person to attend an arbitration hearing as a witness.
- (2) An application under Rule 13(1) must be copied to the other parties, and include:
  - (a) the name and address of the witness;
  - (b) the reason the person's attendance is required;
  - (c) any attempts made to have the witness voluntarily attend the hearing or provide documents or other information;
  - (d) a description of any documents or other items which the witness is requested to bring to the hearing; and
  - (e) the reasons why the witness's evidence, documents or other items are relevant to the issues in the arbitration hearing.
- (3) If the Board is satisfied that the person has relevant evidence or documents which otherwise might not be available at the hearing and considering the cost involved in compelling the witness to attend, the Board may issue a summons in Form 4 requiring the attendance, on such terms and conditions as it sees fit.
- (4) If a summons is issued, the party who applied for the summons must serve the summons within a reasonable time before the witness is required to appear.
- (5) A party may serve a summons by leaving a copy of the summons with the witness together with witness fees calculated in accordance with Schedule B or as otherwise ordered by the Board, or by leaving the summons and witness fees at the witness's residence.
- (6) A person who is summoned to appear at a hearing may apply to the Board in writing before the hearing, or in person at the hearing, for the summons to be vacated or varied.
- (7) The Board may cancel or vary the summons if it is satisfied that the evidence of the person is not relevant, may be obtained through some other means, is protected by privilege, the person is not able

to provide the information sought, or the attendance of the person will be unduly inconvenient.

### **Adjournments**

14. (1) The Board may adjourn a mediation or arbitration hearing at any time on its own initiative.
- (2) A party may apply to the board in writing not less than seven (7) days before the date of a mediation or arbitration hearing to have the mediation or arbitration hearing adjourned.
- (3) An application under Rule 14(2) for an adjournment of a mediation or arbitration hearing must be copied to the other parties and must include the reasons and evidence relied upon in support of the adjournment.
- (4) The Board may require further information or submissions from the parties, require the parties to attend a pre-hearing conference and make further submissions regarding the application for the adjournment, and allow or disallow the adjournment.
- (5) The Board will not grant an application for an adjournment of a mediation or arbitration hearing unless the Board considers it reasonable and the adjournment will not be unduly prejudicial to the other parties.
- (6) If a mediation or arbitration hearing is adjourned, the Board may order any terms or conditions respecting rescheduling, attendance at pre-hearing conferences, production of documents or reports, payment of the costs of a party or the Board, or any other matters which may assist with the fair and efficient conduct of the application.

### **Withdrawal or Settlement of an Application**

15. (1) A party may withdraw all or part of an application at any time by completing Form 3 and delivering it to the Board with a copy to the other parties.
- (2) If the parties settle an application, they must advise the Board that the application has been settled and, subject to Rule 15(3), the Board will dismiss the application.

- (3) If the parties settle an application, they may apply to the Board for a consent order incorporating the terms of settlement.
- (4) In an application for a consent order under Rule 15(3), the Board may require further information or submissions from the parties, require the parties to attend a pre-hearing conference and make further submissions regarding the application for a consent order, and make a consent 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 a consent order.

### **Costs**

16. (1) The Board may order a party to pay part of the costs of another party in relation to all or part of the board's proceedings.
- (2) Regardless of Rule 16(1), unless otherwise ordered by the Board, in an application under section 16(1)(a) of the Act, the applicant shall pay the respondent landowner's costs in relation to mediation of the application.
- (3) Costs payable under Rules 16(2) shall include a reasonable amount in compensation for the landowner's time and expenses including a reasonable amount for professional fees incurred.
- (3) An application for costs under Rule 16(1) must be in writing and must include
  - (a) reasons to support the application;
  - (b) a detailed description of the costs sought; and
  - (c) copies of any invoices or receipts for disbursements
- (4) In making an order for the payment of a party's costs, the Board will consider
  - (a) the reasons for incurring costs;
  - (b) the contribution of counsel and experts retained;
  - (c) the conduct of a party in the proceeding;

- (d) whether a party has unreasonably delayed or lengthened a proceeding;
  - (e) the degree of success in the outcome of a proceeding;
  - (f) the reasonableness of any costs incurred;
  - (g) any other factor the Board considers relevant.
- (5) If the Board finds that the conduct of a party has been improper, vexatious, frivolous or abusive, the Board may order that party to pay part of the actual costs of the Board in connection with an application in accordance with the Tariff at Schedule C, as amended from time to time.

### **Decisions and Orders**

17. (1) Except as provided in Rule 11(2), a decision or order of a member is a decision or order of the Board.
- (2) Unless otherwise specified by the Board, a decision or order is effective on the date on which it is issued in writing.
- (3) 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) an arithmetic error.

## SCHEDULE A

### FORMS

| Form      | Name  |
|-----------|---|
| <b>1A</b> | Application for Mediation and Arbitration ( <i>Petroleum and Natural Gas Act, s. 16(1)(a), Pipeline Act, Geothermal Resources Act</i> ) |
| <b>1B</b> | Application for Mediation and Arbitration ( <i>Mining Act, Mineral Tenure Act, or Coal Act</i> )  |
| <b>1C</b> | Application for Mediation and Arbitration ( <i>Petroleum and Natural Gas Act, s. 16(1)(b)</i> )   |
| <b>1D</b> | Application for Arbitration ( <i>Petroleum and Natural Gas Act, s. 12(1)</i> )  |
| <b>2</b>  | Notice to Lessee/Lessor for Renegotiation   |
| <b>3</b>  | Application for Withdrawal  |
| <b>4</b>  | Summons   |
| <b>5</b>  | Application for Return of Security Deposit  |

## SCHEDULE B

### WITNESS FEES

#### Rule 13

This Schedule sets out the fees that must be tendered to a witness served with a Summons under Rule 13.

#### Daily Witness Fee

1. For any witness, other than a party or present officer, director or partner of a party to a proceeding, for each day or part of a day, a daily witness fee of \$100. A Witness who is a party or a present officer, director or partner of a party to the proceeding is not entitled to a daily witness fee.

#### Travel

2. For any witness in an arbitration hearing where the hearing is held at a place
  - a) within 200 km by road (including any ferry route within the provincial road system) of where the witness resides, \$.47 per km each way by road (excluding any ferry route) between his or her residence and the place of hearing and the cost of any ferry passage for a passenger vehicle and driver and any road tolls; or
  - b) more than 200 km from where a witness resides, the cost of return economy airfare by scheduled airline plus \$.47 per km each way from the witness's residence to the departure airport and the cost of ground transportation by taxi or shuttle bus from the arrival airport to the place of hearing.

#### Allowances

3. Meal allowance in accordance with Government of British Columbia Treasury Board guidelines for provincial employees when the witness must travel 100 km or more to the place of hearing.
4. Allowance for overnight accommodation at provincial government approved rates when a witness resides 100 km or more from the place of hearing for each night that the witness is required to remain overnight.

SCHEDULE C

**TARRIF OF BOARD COSTS**

Rule 16(6)

This tariff is a guideline for determining costs when the Board issues an order for a party to pay Board costs according to Rule 16(6). These are estimated costs to the Board for performing the listed tasks. The actual costs will vary, depending upon the circumstances of a specific appeal. The Board may conduct a more accurate accounting and may award costs that differ from the amounts estimated below.

| ITEM | TASK  | COST  | COMMENTS  |
|------|---|---|---|
| 1    | Process new application and acknowledge receipt   | \$30  |   |
| 2    | Issue request to correct deficiency   | \$20  |   |
| 3    | Consideration of jurisdictional issue   | \$200   | Will vary depending on the efforts to gather more information & complexity of issue |
| 4    | Arrange and issue notices for Pre-hearing conference, mediation or arbitration                        | \$20 to \$75  | Will vary depending upon difficulty in scheduling                                   |
| 5    | Conduct pre-hearing conference  | \$50 per hour   | Will include preparation time   |
| 6    | Receive and process procedural application (e.g. adjournment)   | \$50  | Plus costs of pre-hearing conference, if required                                   |
| 7    | Prepare and issue summons to a witness  | \$40  |   |
| 8    | Conduct site visit  | \$50/hour for each Board Member                         | Plus actual disbursements (e.g. travel expenses)                                    |
| 9    | Attendance of Recording Secretary at arbitration hearing  | Actual costs  | Actual costs to Board of contracted recording secretary                             |
| 10   | Conduct mediation or arbitration hearing, or when hearing cancelled less than 7 days before scheduled | \$200/half day or portion thereof for each panel member | Plus actual disbursements (e.g. For hearing facility, travel expenses)              |
| 11   | Preparation of transcripts of a hearing   | Actual costs  | Transcripts are prepared by a private contractor                                    |
| 12   | Other tasks, not referred to above  | as estimated by Chair                                   |   |

**For more information on costs, see the Board's Information Sheet #9 - Costs.**