

Normal Farm Practices and Protection Board Rules of Practice and Procedure

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Introduction

The Rules of Practice and Procedure are established by the Normal Farm Practices Protection Board (NFPPB) under section 25.1(1) of the *Statutory Powers Procedure Act*, to govern hearing proceedings before the Board.

Mediation Protocol: Before a matter is brought to the Board for a hearing under the *Farming and Food Production Protection Act*, it must have proceeded (unsuccessfully) through the Farm Practices Conflict Resolution Process established for NFPPB cases by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). This is addressed in Rule 65. (For further information on the conflict resolution process, please contact the OMAFRA Agricultural Information Contact Centre at 1-877-424-1300.)

Purpose

The intent of these Rules is to provide a fair, open and understandable process to facilitate and enhance public participation, to increase the efficiency and timeliness of proceedings and avoid unnecessary length and delay, and to assist the Board in fulfilling its statutory mandate.

Definitions

1. In these rules:

(1) "Applicant" means a person who has by notice required a hearing by the Board under the *Farming and Food Production Protection Act*;

(2) "Board" includes a panel or individual member of the Normal Farm Practices Protection Board;

(3) "Document", in addition to written documentation, (i.e., letters, maps, charts, graphs, plans, etc.) includes videotapes, films, photographs, and other information recorded or stored by means of any device;

(4) "Fax" means telephone transmission of a facsimile of a document;

(5) "Hearing" is the proceeding before the Board for which a notice of hearing has been given;

(6) "Interrogatory" means a question posed in writing by one party to another seeking facts or information relevant to the hearing or seeking clarification or explanation of issues or of material provided by the party to whom the interrogatory is addressed;

(7) "Motion" includes an application for a stay or an interim stay of an order or decision of the Board;

(8) "Party" means the applicant who has required a hearing under the *Farming and Food Production Protection Act*, an agricultural operator whose operation is subject to the hearing, a municipality with a direct interest in the result of the hearing, and any person or unincorporated group of persons specified by the Board as having an interest in the proceedings;

(9) "Person" means a person as defined in the *Statutory Powers Procedure Act* and the *Interpretation Act*.

(10) "Record" includes the applicant's notice requiring a hearing, the order or decision being challenged, and supporting documents, notices of hearing, memoranda of agreement, any interrogatories, answers to interrogatories and witness statements that have been filed, notices of motion, affidavits filed in support of Motions, Board orders, transcripts, exhibits, and the Board's decision.

Part 1 - General

Application

2. These Rules apply to all proceedings of the Normal Farm Practices Protection Board.

Conflicts

3. Where any Rule is in conflict with the *Statutory Powers Procedure Act* or any other Act of the Legislature or any regulation issued pursuant to an Act of the Legislature, the provisions of the relevant statute and regulations govern.

Flexibility

4. Where any matter arises during the course of any proceeding that is not contemplated by these Rules, the Board may do whatever is necessary if permitted by law to enable it to effectively and completely adjudicate on the matter before it.
5. Provided that all statutory requirements are met, the Board may, in accordance with the spirit of these Rules and the principles of procedural fairness and natural justice, dispense with compliance with all or part of any Rule at any time, and may issue directions which shall govern the conduct of the proceedings and prevail over any provision of these Rules that is inconsistent with those directions. In particular, the Board may allocate procedural obligations among the parties, exempt parties from procedural obligations, limit procedural obligations or carry out these obligations itself, based on the capabilities, interests and resources of the parties.

Enlarging or Abridging Time

6. (1) Where any time or time limitation is mentioned in these Rules, the Board may, on its own initiative or upon application by a party to the proceedings, extend or abridge the time prescribed on such terms, if any, as the Board deems necessary.

(2) The Board's discretion under subrule (1) may be exercised before or after the expiration of the time prescribed.

Notice

7. (1) Those persons who are to receive notice of a motion, pre-hearing conference or settlement conference shall include:
 - a. all parties;
 - b. such other persons as are determined by the Board.

(2) Those persons who are to receive notice of a hearing shall include all those entitled to receive notice under sub-sections 6(9) or 7(7) of the *Farming and Food Production Protection Act*.

Notice of Motions, Pre-Hearing Conferences, Settlement Conferences

8. (1) The Board shall:
- a. provide directions for giving notice; and
 - b. approve the form and content of the notice; or
 - c. prepare the notice itself.

(2) The cost of giving notice of a pre-hearing conference and the hearing shall be borne by the Board unless the Board otherwise directs.

(3) The cost of giving notice of a motion shall be borne by the person bringing the motion unless the Board otherwise directs.

Form and Content of Notices

9. (1) A notice of motion, pre-hearing conference, settlement conference or hearing shall be in writing unless the Board otherwise directs, and shall include the following information:
- a. the names of all parties;
 - b. a reference to the statutory authority under which the motion, pre-hearing conference or hearing is being brought;
 - c. a statement of the time, day, date and place and purpose of the motion, pre-hearing conference or hearing; and
 - d. a statement that if the party notified does not attend and identify herself or himself to the Board, the Board may proceed in that party's absence and that party is not entitled to any further notice of the motion, prehearing conference, settlement conference or hearing

(2) A notice of motion shall also include the grounds for the motion, a list of documents to be relied on at the hearing of the motion, and a statement of the relief sought, and shall include all supporting materials together with an indication of any oral evidence sought to be presented.

Giving or Service of Notices and Documents

10. (1) Notice of all Hearings held shall be given at least twenty-one days before the Hearing is to commence to all Parties - unless otherwise directed by the Board.

(2) A Party bringing a Motion shall give Notice of the Motion to all other Parties at least seven days before the Hearing of the Motion is to commence - unless otherwise directed by the Board.

(3) Notice of a Pre-Hearing/Settlement Conference shall be given to all Parties and to any other person the Board directs at least seven days before the Pre-Hearing/Settlement Conference is scheduled to commence.

11. (1) Where a Notice of other document is required to be given, served, or provided under these Rules, service may be effected in the following manners;

- a. by personal delivery;
- b. by Regular, Certified or Registered Mail;
- c. by courier service, including Priority Post; or,
- d. subject to subsection (5) by telephone transmission of a facsimile (fax).

(2) A document that is served by fax shall include a cover page or a notation on the first page of the document indicating:

- e. the sender's name, address and telephone number;
- f. the name of the person to be served;
- g. the date and time the document is transmitted;
- h. the total number of pages transmitted including the cover page;
- i. the telephone number from which the document is transmitted; and
- j. the name and telephone number of a person to contact in the event a problem arises with the transmission.

(3) If the Party to be notified or served is represented by Counsel, the Notice or document shall be given to Counsel rather than to the Party.

(4) (a) In addition, where the Board considers it appropriate that the public be informed, the Board or the Board Secretary may require a Public Notice to be issued in such manner as is appropriate in the circumstances. This will usually be by publication on at least one occasion in a newspaper having general circulation in the locality of the property which constitutes the subject-matter of the notice requiring a hearing.

(b) the Public Notice shall be published both in English and French in those areas of the Province designated as bilingual.

(5) No document longer than ten pages may be served or filed with or on the Board or served on any other party by fax without the prior consent of the Board Secretary, Chair, or Vice Chair or the other party – as the case may be.

12. (1) Any such Notice or document that is sent by mail addressed to the last known address of the Party to be served shall be deemed to have been served on the fifth day after mailing. If sent by Priority Post or courier it shall be deemed to have been served on the third day; if by fax, on the same day.

(2) If the Party to whom the Notice or document is being given or served establishes that he or she did not, acting in good faith, through accident, absence, illness or other cause beyond his or her control receive the Notice until a later date, the Board may deem the giving of service to have been effected at a later date or may extend the date for the giving of service.

Filing of Notices and other Documents

13. (1) Where a Notice or document is to be filed with the Board, the date of filing is the date on which the Notice or document arrives at the Board's office or is provided to the Board at the Motion, Pre-hearing/Settlement Conference or Hearing.

(2) When the Board must receive an original document, such as an affidavit with an original signature, if filing is done by fax, the original shall be made available for filing as an exhibit at the hearing of the Motion, Pre-hearing/Settlement Conference or at the Hearing, as the case may be.

Proof of Service

14. (1) Service or giving of every document or notice in respect of a matter before the Board shall be evidenced by an affidavit, filed with the Board, setting out how and when service was effected. The original document or notice or a copy of the document or notice, or if the notice was published, an original or a copy of each page of the newspaper containing the notice, shall be attached to the affidavit and marked as an exhibit to the affidavit.

(2) An applicant who is an individual and is not represented by a lawyer or agent may prove that he or she served or gave a document or notice by filing a statement of service in Form 2 with the original or a copy of the document or notice attached to it, instead of an affidavit.

(3) A party's or his or her lawyer's or agent's written admission or acceptance of service is sufficient proof of service and need not be verified by affidavit.

Board May Proceed

15. Where notice of a motion, pre-hearing conference, or hearing has been given in accordance with these Rules and statutory requirements and a party does not attend the hearing of the motion, pre-hearing conference, or hearing, the Board may proceed in that party's absence and that party is not entitled to any further notice of that portion of the proceedings, unless the Board otherwise directs.

Motions, including Applications for Stays of Orders and Decisions and Stays of Board Decisions

16. Motions may be made by the applicant and the agricultural operator and by any other person seeking to become a party prior to the commencement of the hearing and thereafter by any party, or with the Board's permission, by another person.
17. Except for motions to be heard at a hearing, before a notice of motion is served an appointment shall first be obtained from the Board for hearing the motion.
18. The Board, in hearing a motion, may permit oral evidence in addition to or instead of any affidavit or other supporting material accompanying the notice of motion. Any person wishing to adduce oral evidence on a motion shall satisfy the Board that this is necessary and will not prejudice any party, shall obtain the Board's permission, and shall arrange at his or her own expense for the presence of a court reporter. In deciding whether to give permission, the board may take into consideration any cost or inconvenience to the Board.
19. Any party wishing to depart from the procedures for motions specified by these Rules shall, at the earliest opportunity available, obtain the Board's leave to do so. Leave shall be sought either during the course of an already scheduled appearance before the Board at which all other parties are present, by written notice of motion, or by way of a telephone conference call with the Board or the Board Secretary and all other parties to the hearing. At the time leave is sought the other parties shall have an opportunity to make submissions regarding the propriety of the request and the need for the Board to impose terms and conditions in the event leave is granted in whole or in part.
20. Any affidavits filed in response to a motion shall be served and filed at least two days prior to the hearing of the motion, except where leave for an abridgment of the time has been granted pursuant to Rule 19.

Hearing of Motions by Conference Telephone Call

21. Where all parties and the member or panel before whom the motion is to be heard consent, or in urgent circumstances without the consent of all parties, the motion may be heard by means of a conference telephone call

Postponements and Adjournments

22. (1) A date for a hearing, pre-hearing conference, settlement conference or motion that has been fixed by the Board with the agreement of all parties or counsel for the parties

will be considered peremptory to all consenting parties and counsel will be considered to have committed themselves to be present on the date fixed and to have undertaken to make no other commitments that will render their attendance impossible.

(2) The Board may grant an adjournment during the course of the hearing upon motion made orally and may add such terms and conditions as the Board may deem appropriate.

Pre-Hearing/Settlement Conferences

23. (1) In any proceeding the Board, on its own initiative or on the Motion of any Party or any person seeking Party status, may direct the Parties to make submissions in writing or may hold one or more Pre-Hearing/Settlement Conferences, for the purposes of:
- a. identifying Parties;
 - b. defining, formulating or simplifying issues;
 - c. clarifying, amplifying or limiting an application, intervention or reply;
 - d. deciding the procedure to be adopted in the proceeding;
 - e. disclosure of evidence, including
 - i. identifying documents the Parties intend to rely upon;
 - ii. exchanging or arranging for the exchange of documents among Parties;
 - iii. identifying witnesses, the nature of their evidence, and their order of presentation;
 - iv. considering the advantages and disadvantages of filing witness statements and interrogatories and establishing a procedure for their service and filing if needed;
 - f. setting the date and place for commencement of the Hearing;
 - g. estimating the length of the Hearing;
 - h. deciding any other matters that may aid in the simplification or most just disposition of the Proceeding;
 - i. considering the possibility of settlement of any or all of the issues in the Proceeding; and
 - j. for any other purpose that the Board deems appropriate.
24. Whoever attends a Pre-hearing/Settlement Conference on behalf of the parties or persons seeking party status must be authorized to take positions on and make decisions regarding the matters listed in Rule 23 and must be authorized to enter into a memorandum of agreement setting out the results of the conference.
25. Issues raised at a Pre-hearing/Settlement Conference may be determined by the parties or their counsel signing a memorandum of agreement setting out the results of the conference or by the Board making an order, and the memorandum or order binds the parties to the memorandum or order unless the member or panel conducting the hearing orders otherwise to prevent injustice.

26. No communication shall be made to the member or panel presiding at the hearing or a motion with respect to any statement made at a Pre-hearing/Settlement Conference, except as disclosed in the memorandum or order under Rule 25.
27. A member who conducts a Pre-hearing/Settlement Conference shall not participate in the hearing without the consent of all parties to the hearing.

Part 2 - Disclosure of Evidence, Particulars, etc.

Interrogatories

28. a. (1) The Board may order that interrogatories be exchanged among the parties.

(2) When interrogatories and answers to interrogatories are ordered, the parties upon which each party is to serve such interrogatories and answers and the dates by which they are to be served shall be determined by the Board.

b. (1) Interrogatories shall contain a written request for information directed from one party to another, addressed to the party, numbered consecutively for each item of information requested, shall be dated, and shall be served within the time limit directed by the Board.

(2) Where interrogatories have been directed to a party and served on that party in accordance with the Board's direction, the party shall:

- a. provide full and adequate answers to each interrogatory; and
- b. serve a copy of the answers within the time limit and upon the parties as directed by the Board

(3) Answers to interrogatories shall correspond to the form and content of the interrogatories.

(4) A party who is unable or unwilling to provide a full and adequate answer to an interrogatory shall:

- where the party contends that the interrogatory is not relevant, provide a response that sets out reasons in support of that contention;
- where the party contends that the information necessary to provide an answer is not available or cannot with reasonable effort be provided, provide a response that sets out the reasons for the unavailability of such information and provide an alternative available information that the party considers would be of assistance to the person directing the interrogatory;

- where the party contends that the information sought is of a confidential nature, provide a response that sets out the reasons why it is considered confidential; or
- otherwise explain why such an answer cannot be given.

Where a party is not satisfied with the responses given, the party may file a motion to have the matter settled by the Board.

29. Where answers to interrogatories directed to the applicant are not served within the time ordered or do not answer the questions of the party submitting the interrogatories, a motion may be brought to compel a response or to dismiss the appeal and the Board may take any steps or make any order as is just.

Witness Statements

30. (1) The Board may, on its own initiative or at the request of any party, order that witness statements be exchanged among the parties and filed with the Board.

(2) When witness statements are ordered, the dates and parties upon which each party is to serve such witness statements shall be determined by the Board.

31. (1) Witness statements shall contain the following:

- name and business address of the witness (and qualifications or curriculum vitae, if appropriate); whether or not the witness has an interest in the application and, if so, the nature of the general or special interest;
- whether the evidence will be factual evidence or opinion evidence or both;
- whether the witness has some special skill which he or she possesses by reason of experience or study which qualifies him or her to give evidence;
- a full but concise statement of the evidence;
- reference to and identification of proposed exhibits which are part of the witness' evidence, including: supporting documents, plans, reports, technical memoranda, etc. (a separate sheet shall be attached to the statement listing the exhibits);
- an acknowledgment that the witness intends to appear before the Board if requested by the party submitting his or her witness statement and be subject to examination and cross-examination; and
- the date of the statement

(2) A formal report prepared by the witness for the purpose of the hearing may be utilized as a witness statement, provided that the required information is contained therein or supplied by way of addendum.

32. (1) Every party is required to submit a list of its witnesses to the Board not less than two weeks before the hearing.

(2) On the day of the hearing, further witnesses may be added to a party's witness list at the discretion of the Board.

Further Information/Filing of Information

33. (1) The Board may order any party to provide such further information, particulars or documents as the Board considers necessary for a full understanding of the issues.

(2) The Board or the Board Secretary may require that any list of documents, interrogatory, answer to an interrogatory, witness statement or other information, particulars or documents provided by the parties to each other be filed if in the Board's opinion this is necessary for the fair, efficient, or timely disposition of any portion of the proceedings.

Part 3 - Hearing Procedures and Evidence

Consolidation of Applications

34. (1) Where the Board considers that two or more applications are related to each other because:

- a. they are made against the same person and bring into question the same or similar issue; or
- b. they have questions of law or fact in common, the Board may combine the applications and deal with them in one proceeding.

Hearings in French

35. (1) The Board may conduct its proceedings or any portion of them in the French language when a request is made,

- a. by a party; or
- b. by a party added after the commencement of the hearing, if the Board considers it necessary for the fair disposition of the matter

(2) Nothing herein shall preclude the presentation of submissions or evidence in either the French or English languages.

(3) Where a hearing is to be conducted in the French language, the notice of such hearing shall specify that the hearing is to be so conducted and shall further specify that English may also be used.

(4) Where a written submission or written evidence is provided in either French or English, the Board may order any party or person presenting such written submission or written evidence to provide it in the other language if the Board considers it necessary for the fair disposition of the matter.

Other Languages and Assistance to the Visually and Hearing Impaired Participants

36. (1) Where it is brought to the Board's attention that a party would prefer to give evidence in another language and to have the evidence of others interpreted into that other language, a witness would prefer to give evidence in another language, or services are required to assist persons who are visually or hearing impaired to participate in the proceedings, the Board may provide such interpretation or other services at its own or the applicant's expense.

(2) Prior to a notice of hearing being given, the Board may determine that notice should be given in a language other than French or English and may provide such notice at its own expense.

Media Coverage

37. (1) Radio, television and motion picture videotaping, filming or recording of Board proceedings or any portion of them may be permitted at the discretion of the Board, subject to any terms and conditions the Board may impose.

(2) Where permission is sought under subrule (1), a request should be made to the presiding Chair prior to the commencement of the part of the hearing sought to be recorded.

(3) The presiding Chair may disallow the video taping, filming or recording of all or portions of the hearing if, in the opinion of the Chair, such coverage would inhibit specific witnesses or disrupt the process in any way.

(4) In cases where videotaping, filming or recording is allowed, the following guidelines shall be applied, unless the presiding Chair orders otherwise:

- a. only photographic and audio equipment which does not produce distracting sound or light should be used;
- b. when possible, audio pick-up should be from existing audio systems present in the hearing facility;
- c. photographic and audio equipment should be positioned unobtrusively before the proceedings begin and must not be moved while the hearing is in progress.

Record

38. (1) The Board shall maintain a record for each of its hearings and pre-hearing conferences.
- (2) One copy of the record shall be maintained and shall be available upon reasonable time requests for perusal by any person during normal business hours at the Board's office.
- (3) A person may examine any document filed with the Board and forming part of the public record and, upon payment of the Board's fee, take copies of such document unless a statute, an order of the court or an order of the Board provides otherwise.
- (4) Subject to the Freedom of Information Act, the Board may order that any document or part of a document filed with an application or at a hearing or any transcript or oral evidence given in settlement conferences or prehearing conferences is to be treated as confidential, be sealed and not be subject to public disclosure.
- (5) Any order under subrule (4) shall be made only after all interested parties have had an opportunity to make submissions to the Board in respect of the confidentiality claim.
- (6) Any order under subrule (4) shall be made only if required by statute or if the Board is satisfied that the person making the claim will be substantially harmed if the document is not treated as confidential, and the reasons for such an order shall be provided, if a party so requests.

Court Reporters and Recording of Hearing

39. (1) The Board may require that a court reporter attend Hearings, Pre-Hearing/Settlement Conferences and Motions of the Board.
- (2) When a court reporter is required to attend by the Board or a Party, the reporter shall record all testimony and argument.
- (3) All transcripts or copies of transcripts and all electronic records requested by a Party to the proceedings, or other persons, shall be paid for by that Party or those other persons.
- (4) The recording of evidence and argument and the production of transcripts thereof shall be completed in accordance with Section 5 of the *Evidence Act, RSO 1990 c. E.23*, as amended and the Regulations there under and **Rule 4.09** of the **Rules of Civil Procedure**, as amended from time to time, with all necessary, consequential and appropriate changes in place.

(5) Where a Party orders a transcript of all or part of the proceedings in an Application, it shall provide one copy of the same to the Board to be part of the Board's record pursuant to Section 20 of the ***Statutory Powers Procedure Act, RSO 1990 c. S.22***, as amended and one copy to any other Party (as defined herein), as the case may be, without charge.

(6) Where the Board does not intend to require the attendance of a court reporter it will give notice of this decision to the Parties.

(7) Where the Board does not require the attendance of a court reporter, any Party may arrange the attendance of a court reporter at the Party's expense, provided that the first Party to order a transcript shall also order a copy to be provided to the Board and all other Parties as part of the record at no charge to the recipient.

Documents as Evidence

40. (1) Where the Board is satisfied with the authenticity of a copy of a document or other material, it may be admitted as evidence at a hearing.

(2) Copies of official or public documents or documents purporting to be certified under the hand of the proper officer, or the person in whose custody they are placed, shall be documents receivable in evidence by the Board as prima facie proof of the original without proof of the signature or official position of the person appearing to have signed it.

41. (1) Any party tendering a document as evidence must provide one copy for each Board Member, for each party, for the court reporter, and an additional copy or, if practicable, the original document, to be marked as the official exhibit.

(2) Where a document has been filed in evidence at a hearing, the Board may, or the person producing it or entitled to it may, with leave of the Board, cause the document to be photocopied and the Board may authorize the photocopy to be filed in evidence in place of the original document filed and release the original document filed.

Summons

42. (1) The Board may issue a summons to a witness on its own initiative or upon request of a party.

(2) The Board may by summons require any person, including a party:

- a. to give evidence under oath or affirmation; and

- b. to produce in evidence such documents or other things as specified in the summons, relevant to the subject matter of the proceedings and not inadmissible in evidence by reason of privilege or statutory prohibition.

(3) Any summons issued shall be served personally on the person summoned, and the person shall be paid the same fees and allowances as a witness summoned to appear before the Ontario Court of Justice (General Division). The fees and all allowances need not be paid in advance, but must be paid before the witness testifies, if requested.

(4) The summons may be in Form I or in any other form substantially conveying the same information as that form.

Note: Form 1 to these Rules is substantially the same as Form 1 under the *Statutory Powers Procedure Act*.

43. Notwithstanding any time limits specified in the rules for motions, any party intending to bring a motion at a hearing shall do his or her best to give all other parties adequate opportunity to prepare for the hearing of the motion, including providing as much notice as possible and providing copies of cases and statutes relied on.

Opening Statements

44. (1) Unless the Board otherwise directs, at the beginning of each hearing, each party will give a brief opening statement that describes the issues that party will address at the hearing. The statement should include an outline of the evidence the party intends to call, a list of witnesses, the topics to be covered, and the amount of time required.

The opening statements will be made in the following order:

1. The applicant
2. The Agricultural operator or the municipality as the case may be
3. Other parties

Order of Presentation

45. Evidence at a hearing shall be presented by parties as the Board may direct and, in the absence of any such direction in the following order:
 1. the applicant;
 2. other parties whose interest or position is, in the Board's opinion, similar to the applicant's;

3. the agricultural operator or the municipality as the case may be;
 4. other parties whose interest or position is, in the Board's opinion, similar to the agricultural operator's or the municipality's as the case may be;
 5. the Board's witnesses, if any;
 6. the applicant, in reply;
46. Parties shall examine, cross-examine and re-examine witnesses as the Board may direct and, in the absence of any such direction in the following order, but with order rotating in accordance with which party is presenting evidence:
1. the applicant;
 2. other parties whose interest or position is, in the Board's opinion, similar to the applicant's;
 3. the agricultural operator or the municipality as the case may be;
 4. other parties whose interest or position is, in the Board's opinion, similar to the agricultural operator's or the municipality's as the case may be;
 5. the Board's counsel, if any;
 6. the applicant in re-examination;

Oath or Affirmation

47. Witnesses who appear personally at a Board hearing shall be examined orally after affirming that their evidence will be true.

Exclusion of Witnesses

48. The Board may, upon motion, order a witness or witnesses to be excluded from the hearing until called to give evidence.

Expert Witnesses

49. (1) A witness having technical or special knowledge, who is retained by a party or the Board to give evidence, shall provide at the request of the Board a written curriculum vitae of his or her qualifications and experience.

(2) Any party may challenge the qualifications of a witness having technical or special knowledge, before or during the course of his or her testimony. However, it is not normally the Board's practice to hold a formal hearing to qualify a witness as an expert, provided that a degree of specialized knowledge is shown on the curriculum vitae.

(3) The Board, in its discretion, will determine the weight to be given each witness' testimony and the witness' qualifications and experience will be a factor in determining the weight to be given such testimony.

50. On the request of a party or on its own initiative, the Board may retain at its own expense any person having technical or special knowledge to assist the Board and to give evidence in respect of any matter before it. In such cases, the following procedures shall govern.

(1) any such request shall be made by motion to the Board as soon as practicable after the appointment of the hearing panel or at a pre-hearing conference if one is held, and otherwise as soon as practicable after the need for such a witness is recognized by the party;

(2) the Board must be satisfied that the proposed witness will be of assistance to the Board in understanding the issues before it;

(3) the Board shall decide who shall be appointed;

(4) the Board shall retain the right to settle all terms of any such appointment, including remuneration and the scope of any inquiry, and may direct that such witness:

- a. provide a written report of findings and conclusions;
- b. attend the hearing during presentation of evidence by others expert and in the same field, and
- c. explain and evaluate such evidence as required by the Board.

(5) Any witness retained by the Board shall testify orally and be subject to cross-examination.

Witness Panels

51. (1) The Board may permit evidence to be given by a number of witnesses sitting as a panel, provided that the Board is satisfied that in the particular case the tendering of evidence in this manner will result in a full and fair hearing and is in the public interest.

(2) Questions addressed to a witness panel may be directed to specific members of the panel or to the panel in general.

(3) Where a question is directed to a specific member of a panel and he or she asserts an inability to answer due to lack of knowledge or qualifications, the Board may permit another member of the panel to provide the answer.

Agreed Facts

52. The Board may receive and act upon any facts agreed upon by the parties without proof or evidence.

Site Visits

53. (1a) The Board may, on its own initiative or at the request of any party, make one or more site visits or property inspections.

(1b) The Board shall in each case set out the rules and procedures to be followed during the site visit.

(2) Where a site visit is made, the Board shall indicate on the record the fact that it made the visit, the date and time and those present. The Board may also indicate on the record any observations it considered significant.

Release of Exhibits

54. Where any document or thing is filed as an exhibit, the Board may release the exhibit to any party at any time during or after the hearing on consent of the parties. In the absence of consent, the Board may return the exhibit to the party tendering it after the disposition of any appeal or, where an appeal is not taken, after the expiration of the time for appeal.

Part 4 - Facilitating Public Participation

Public Testimony

55. Any person having relevant testimony may, with the Board's permission, testify without becoming a party to the hearing or being called as a witness by a party.

Written Submissions

56. (1) The Board prefers evidence to be given orally at the hearing so that the evidence given may be tested by cross-examination. However, where notice of a hearing has been given, any person who does not wish to be a party to the hearing or testify but who wishes to make his or her views regarding the hearing known to the Board may file with the Board a written submission commenting on the hearing, which describes the nature of the person's interest in the hearing and states clearly his or her views regarding the hearing, together with any relevant information that may be useful in explaining or supporting those views.

(2) Before a written submission is made part of the record, the Board shall make it available to all other parties to the hearing and provide an opportunity for parties to comment on its relevance, admissibility, and whether it would be unfair to make the submission part of the record without an opportunity to cross-examine the person making the written submission.

(3) The Board may take into account any such written submission unless, after hearing submissions, it determines that accepting it as evidence would unduly prejudice any party.

57. A person who testifies or files a written submission pursuant to this Part does not by that act alone become a party to the hearing.

Evening Sessions

58. The Board may, at its discretion, hold one or more evening sessions during the course of the hearing.

Part 5 - Additional Provisions

Board Counsel

59. The Board may appoint and direct its own counsel to:

(1) advise the Board on matters of law and procedure and on such other matters as the Board requests;

(2) conduct the examination-in-chief of Board-appointed witnesses if the Board has retained such witnesses;

(3) cross-examine witnesses; and

(4) provide liaison with counsel acting on behalf of parties, and parties that are unrepresented by counsel.

Argument and Submissions

60. (1) The Board may order the parties to submit written argument in addition to, or instead of, oral argument.

(2) All parties shall be given an adequate opportunity to respond to any written arguments and/or written submissions.

(3) In both written and oral argument, facts or quotations from the oral evidence on which the argument is based are to be referenced with the transcript volume and page number, if transcripts are available and, if the fact or quotation is from documentation filed as an exhibit, the exhibit number and page.

(4) Parties should, at the time of delivering argument, make known to the Board any terms and conditions, that they would like the Board to include to its order. Copies of draft terms and conditions, should be distributed to other parties a sufficient time before argument is delivered to allow them to be addressed in their argument.

Effect of Order

61. Any Board Order is effective from the date upon which it is pronounced orally or upon which it is signed, whichever is earlier, unless the Board states otherwise.

Decisions

62. (1) The Board may pronounce an oral decision at the end of the hearing or it may reserve its decision and provide a written decision at a later date.

(2) If the Board gives an oral decision, it may issue a written version of the oral decision at a later date.

(3) The Board may at its discretion and in an effort to provide greater clarity vary the wording of its oral decision in any written version without affecting the intent of the oral decision.

(4) The Board's decision shall include reasons for its decision.

(5) The Board may issue its reasons for decision separate from its decision.

(6) Where any Board member who sat on a hearing, dissents in writing from the majority decision of the Board, a copy of the dissenting reasons shall be attached to the decision.

(7) The Board's decision shall be sent to all parties to the hearing, and such other persons as may be determined by the Board.

Stays of Board Decisions

63. A party may make an application for a stay of the Board's decision immediately following the pronouncement of the decision at the end of the hearing for the purpose of an anticipated appeal to the Divisional Court. Thereafter, any application for a stay shall be made to the Divisional Court unless the Board determines that it is in a better position than the Divisional Court to determine the issues raised in the application.

Review of Decisions and Orders

64. After a decision or order has been issued, if the Board considers it advisable, the Board may review all or part of its decision or order, and may confirm, vary, suspend or cancel the decision or order. Such review shall take place within a reasonable time after the decision or order is made.

Alternative Dispute Resolution

65. (1) Before accepting an application for a hearing, the Board shall be satisfied that the Farm Practices Conflict Resolution Process established by the Environmental Management Branch of the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) has been applied and has been unsuccessful in resolving the conflict between the parties.

(2) At the request of any party to a proceeding, the Board may proceed to review, approve and make an Order, if appropriate, to facilitate any settlement achieved by means of the Farm Practices Conflict Resolution Process. At the direction of the Chair, such hearing may take place by way of written or electronic hearing as defined in the Statutory Powers Procedure Act R.S.O. 1990, c. S.22, as amended.

Costs

66. (1) Where a party believes that another party has acted clearly unreasonably, frivolously, in a vexatious manner, or in bad faith, considering all of the circumstances, it may ask for an award of costs. The party must notify the Board within 10 days after the written reasons are issued that the party will be seeking costs, against whom the costs are sought, and an indication of the approximate amount of costs being sought.

(2) If the request for costs is made within 10 days after the written reasons are issued, or if the Board directs that the hearing that the requests for costs is to be considered at a later date, the Board may direct the party or parties requesting costs to:

- i. Attend before the Board, on notice to the party or parties against whom costs are sought, on a date fixed by the Board, and make oral submissions with respect to the Application for costs provided that the party or parties against whom costs are sought shall also be permitted to make oral submissions with respect to the Application for costs; or
- ii. Within 35 days of the Board's direction, file written submissions on the Application for costs and serve each party against whom costs are sought, provided that, in addition to any other document the Board directs be provided, the documentation shall include:
 - a. The reasons for the request and the amount requested;

- b. An estimate of any extra preparation or hearing time caused by the alleged misconduct;
 - c. Copies of supporting invoices for expenses claimed or an Affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and
 - d. An Affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question; or
 - iii. Within 35 days of the Board's direction, file and serve a Notice of Motion for costs in accordance with the Board's Rules of Practice and Procedure. A Motion for costs shall proceed as an oral or electronic hearing as directed by the Board. If the Board directs the party or parties to bring a Motion for costs the Notice of Motion must contain the following information, in addition to such other information that the Board directs:
 - a. The reasons for the request and the amount requested;
 - b. An estimate of any extra preparation of hearing time caused by the alleged misconduct;
 - c. Copies of supporting invoices for expenses claimed or an Affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and
 - d. An Affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question.

(3) Where the Board directs a proceeding in writing in accordance with Rule 66 (2) (ii) or (iii), the party or parties against whom the Motion is made shall provide a written response to the Board and the other parties to whom the request for costs related within 15 days of service of the documentation from the party requesting costs.

(4) Where the Board directs a proceeding in accordance with Rule 66 (2) (ii) or (iii), the party requesting costs may provide to the Board and to other parties to whom the request for costs relates, a reply to a written response within 10 days of the date of service of the response.

(5) The Member who conducted the hearing on the merits will make the decision on the request for costs. If that Member is, for any reason, unable to hear the Motion, the Chair will direct another Member to hear the Motion.

(6) The Board may make a costs award for conduct at any time during a proceeding.

(7) The Board may deny or grant the request or award a different amount.

(8) Clearly unreasonable, frivolous, vexatious, or bad faith conduct can include, but is not limited to:

- d. Failing to attend a hearing event or to send a representative when properly given notice, without contacting the Board;
- e. Failing to give notice or adequate explanation or lack of cooperation during pre-hearing proceedings, changing a position without notice, or introducing an issue or evidence not previously mentioned;
- f. Failing to act in a timely manner or to comply with a procedural Order or direction of the Board where the result causes undue prejudice or delay;
- g. Conduct necessitating unnecessary adjournments or delays or failing to prepare adequately for hearing events;
- h. Failing to present evidence, continuing to deal with issues, asking questions or taking steps that the Board has determined to be improper;
- i. Failing to make reasonable efforts to combine submissions with parties of similar interest;
- j. Acting disrespectively or maligning the character of another party; and
- k. Knowingly presenting false or misleading evidence.

(9) The Board will consider the seriousness of the misconduct. If a party requesting costs has also conducted itself in an unreasonable manner, the Board may decide to reduce the amount awarded; the quantum of costs awarded shall be in the discretion of the Board. In determining the quantum the Board may take into consideration the concept of partial and substantial indemnity, and the Rules and Regulations regarding the quantum of costs awarded in the Ontario Superior Court of Justice.

(10) Awards of costs will bear interest at the post-judgment interest rate as determined under Section 129 of the *Courts of Justice Act*.

Amended October 14, 2009

Glenn C. Walker, Chair

First established December 19, 1991
First amendment October 13, 1998
Second amendment February 28, 2001
Third amendment March 3, 2003
Fourth amendment February 14, 2005
Fifth amendment May 11, 2007
Sixth amendment October 14, 2009

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