

# **SURFACE RIGHTS BOARD**

## **Guidelines for Consultation on Legislation**

### **Purpose**

1. This statement sets out the procedures and approaches to be followed where the Board develops rules of procedure and practice governing hearings, inquiries and proceedings; or where consultation is sought with the Board over proposed legislation. It also covers procedures to be followed by the Chair when assigned to hear cases that involve the interpretation of legislation where some involvement with the development of that legislation prior to its enactment has occurred. Legislation includes Regulations and Rules.

### **Objective**

2. It is essential to the proper and successful functioning of the Board that it functions in a manner that preserves and enhances its reputation within the community as an independent and impartial adjudicator of disputes between landowners, operators and the Government.

### **Process for Review of Board Rules, Guidelines and Procedures**

3. Where the Board develops and makes rules of procedure governing hearings, inquiries and proceedings conducted by them, they shall do so independently and separately from Government; but may request consultation from Government on issues such as:
  - a) the resources necessary to implement proposed measures;
  - b) administrative support for the implementation or enforcement of the proposed measures; or
  - c) the budget implications and impact of the proposed measures.

### **Process for Review of Government Legislation**

4. Where the Government is proposing legislative reforms that affect the Board and its jurisdiction, the Chair, in appropriate circumstances, may invite the Government to seek Board input, subsequent to its introduction in the legislature, on any potentially adverse and perhaps unintended consequences of the Bill's provisions. Such an invitation would lead to a non-confidential response, to the extent such a response is necessary or appropriate.
5. Where the Government seeks significant pre-enactment advice on a potential legislative initiative, the Chair may, in appropriate circumstances advise the Government of the powers and duties of the Board to make rules of procedure and practice governing hearings pursuant to Section 8(2) of the *Surface Rights Act*.

8(2) *The Board shall*

(a) *make rules of procedure and practice governing hearings, inquiries and proceedings conducted by it and regulating the places and times of its sittings*

6. When legislation is being considered for introduction which, due to its technical nature, may require consultation with the Board, the request should be made to the Chair. Where the Chair views the request for consultation to involve a proposal that is likely to be viewed by parties to proceedings before the Board as favouring landowners over operators or vice-versa, or one party over another, the Chair may advise the Government that it is not, in the view of the Chair, a consultation in which the Board should participate, or is one in which the Board should participate in a restricted manner such as through a single person who would, thereafter, be recused from adjudicating on the proposed legislation unless the parties consent.
7. Where consultation is sought on technical, including procedural and implementation issues such as:
  - a) the Board's ability to implement or enforce proposed measures;
  - b) the resources necessary to implement proposed measures;
  - c) the impact of existing Board jurisprudence and practices on proposed measures;
  - d) statistical information on the cases potentially impacted by such measures; or
  - e) issues such as the mechanics of the Board's processes for testing stakeholder impact, investigating applications and other tasks customarily assigned to the Board under legislation;

then, confidential pre-introduction consultation may occur subject to the procedures and protections outlined in this statement.

8. Where a request is made by Government to consult the Board on technical, including procedural or implementation, issues being considered, the request will be made to the Chair. The Chair should undertake the consultation alone, assisted as appropriate by administrative staff, or assign the responsibility to a responsible Board Member, ensuring always that there remain within the Board's complement, persons who have not participated in the consultation. That way, in the event of a Member recusing from a hearing, others would remain available for assignment in their stead.

### **Protection of the Hearing Process**

9. In all such cases, the Board would ensure, in advance of the consultation, that there is a person, not from the Board, responsible for drafting the proposed legislation (whether outside counsel to the Department, or to Government, or a person from the Office of

Legislative Counsel). In addition, the Board would ensure that there is an official, not from the Board, responsible for the presentation to Government of the policy choices involved in the proposed measures. In any consultation, it should be expressly understood that, as a condition of that consultation, the Board should not be put in the position of having to adopt, directly or indirectly, either of these roles.

10. In any case to which the Chair is assigned, where the case raises issues concerning the interpretation of a legislative provision that has been the subject of consultation in which the Chair participated, the Chair shall, prior to hearing the cases, disclose to the parties the fact that a consultation took place and the fact and extent, although not the substantive content, of that consultation.
11. In the event the Government retains outside counsel in the legislative drafting process and that counsel interacts with the Chair on a confidential basis, the Chair will recuse from sitting on any case involving the interpretation of the legislation concerned upon which that outside counsel appears. The same rule will apply to persons in that outside counsel's firm unless the panel hearing the case is satisfied that an appropriate ethical protection mechanism has been used within the firm in respect of that consultation process.