

# **SURFACE RIGHTS BOARD**

## **Hearing Rescheduling and Adjournment Guideline**

### **Purpose**

1. This guideline will set out the steps to be taken by a party requesting rescheduling or adjournment and applies to all requests for rescheduling or adjournment of a hearing made to the Surface Rights Board (“the Board”).

### **Objectives**

2. The objectives of this guideline are to ensure that:
  - a) the Board is aware of all circumstances of a particular case before it;
  - b) Board decisions for rescheduling or adjournment of hearings are consistent and predictable, insofar as issues, evidence, and argument will allow;
  - c) Board decisions for rescheduling or adjournment of hearings embody the principles of natural justice and are based upon criteria that are fair and equitable; and
  - d) parties are aware of the expectations and procedures of the Board around rescheduling or adjournment of hearings.
3. 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.

### **Definition**

4. “Board” means either a one-member panel or a three-member panel of the Surface Rights Board.
5. “Party” or “parties” means the operator, the owner, the occupant, the lessor and any person entitled to compensation as defined by the *Surface Rights Act*, that would be materially affected by the application or the outcome of the hearing.

### **Steps that a party must take**

6. A party requesting the rescheduling or adjournment of a hearing must, in writing, and at least five (5) clear business days prior to the commencement of a hearing:
  - a) provide reasons adequate to justify rescheduling or adjournment to all parties to the hearing and obtain their unconditional consent;
  - b) provide three (3) alternate dates for hearing that are agreeable to the parties; and

- c) file the reasons, written consent of all parties and the agreed alternate dates for hearing, signed by all parties to the hearing, with the office of the Surface Rights Board.

**Five (5) clear days notice is required**

- 7. The Secretary of the Surface Rights Board will forward the request to a panel of the Board for a determination of the request for rescheduling or adjournment only if written consent, which complies with this guideline, is received by the office of the Surface Rights Board at least five (5) clear business days prior to the commencement of a hearing.

**Decision is in the Board's discretion**

- 8. Notwithstanding that all parties may agree, the reasons for the request for rescheduling or adjournment must set out, in detail, reasons that are sufficient for the Board to determine the reasonableness and fairness of the request.
- 9. Decisions to reschedule a hearing are discretionary decisions of the Board, subject to review, and will therefore be documented as a decision of the Board.
- 10. The Board may adjourn or reschedule a matter at any time, upon the application of a party or upon its own determination of necessity or convenience, for any length of time the Board considers advisable, and may impose terms and conditions, including the payment of costs.

**If a party cannot obtain consent of the other parties**

- 11. If a party is unable to obtain consent which complies with this guideline then:
  - a) the requesting party may make written request to the Board for a pre-hearing before the Board, at which the requesting party may make their application for rescheduling or adjournment; or
  - b) the requesting party may make the request at the commencement of the scheduled hearing; and
  - c) the Board will hear from all affected parties and make its decision.
- 12. Pre-hearings may be held by telephone conference or in person orally, as may be determined by the Board.

**Factors that the Board will consider in all cases**

- 13. When a party requests rescheduling or adjournment, the Board will, without limiting the Board's discretion to consider other factors, consider the following factors in making its decision:

- a) the purpose for the request, whether it is relevant to the proceedings and necessary for a fair hearing;
- b) whether the party making the request acted in good faith and reasonably attempted to avoid the necessity for the rescheduling;
- c) the position of the other party and the reasonableness of their actions;
- d) the seriousness of the harm resulting if the rescheduling request is denied;
- e) the seriousness of the harm resulting if the rescheduling is granted (e.g. to the other party, cost and inconvenience to the other party and to the Board, etc.);
- f) how many requests to reschedule the party has sought and been granted in the past;
- g) whether the parties were involved in selecting the date; and
- h) whether the date for hearing has been made peremptory upon one or more of the parties.

#### **Hearing must be set to a specific date**

- 14. Where a request to reschedule or adjourn a hearing is allowed, the Board should not:
  - a) make the rescheduling conditional upon the happening of an event which is outside of the case to which the re-scheduled hearing is part; or
  - b) postpone the hearing without setting a date for the rescheduled hearing.
- 15. If the Board grants the adjournment request, the hearing will be rescheduled to a specific date.

#### **No second request on same reasons**

- 16. Where a request to reschedule or adjourn a hearing has been denied by the Board prior to the commencement of the hearing, a party may not, prior to the commencement of the hearing, make a second request to reschedule or adjourn based upon the same reasons.

#### **Compassionate grounds for request**

- 17. If the request for an adjournment is made upon compassionate grounds, then the Board may grant the request, without compliance with the guidelines for rescheduling, if the Board has determined that:
  - a) a party, their representative or a witness is unable to attend because of death, ill health, accident, or injury, or owing to inclement weather; or

- b) there is some other matter beyond the control of the party.

**Similar cases under appeal are not factors to be considered**

- 18. An adjournment should not normally be granted for the sole reason that the Court has a matter before it, the decision of which may influence the outcome of the Board's decision.

**Hearing to proceed if request denied**

- 19. If a party does not attend at the scheduled hearing to request the rescheduling or adjournment and chooses to make the request in writing, or through an agent, friend, or by other means, rather than in person, and where the adjournment request is denied, then the hearing will proceed, at the scheduled time and place even in the party's absence.
- 20. If a request for rescheduling or adjournment is not granted, then the hearing will proceed at the scheduled time and place.