



YUKON SURFACE RIGHTS BOARD

RULES OF PROCEDURE



**Yukon Surface Rights Board - Rules of Procedure
Table of Contents**

PART ONE: GENERAL.....	1
s.1 Title.....	1
s.2 Definitions.....	1
s.3. Application to Other Statutes.....	1
s.4 Public Register.....	1
s.5. Service.....	2
s.6. Correspondence and Communications.....	2
s.7. Alteration of Time Periods.....	2
PART TWO: APPLICATIONS TO THE BOARD.....	2
s.8. Negotiations Prior to Application	2
s.9. Application.....	2
s.10. Request for Additional Information.....	3
s.11. Acceptance of an Application.....	4
s.12. Amendments to An Application Prior to a Hearing.....	4
PART THREE: MEDIATION.....	4
s.13. Offer of Mediation.....	4
s.14. Mediation.....	5
s.15. Mediation Settlements.....	5
PART FOUR: HEARINGS.....	6
s.16 Proceeding to a Hearing.....	6
s.17 Mediation Statements and Hearings.....	6
s.18 Hearing Procedures.....	6
s.19 Notice of a Hearing - Parties.....	6
s.20 Notice of a Hearing - Public.....	6
s.21 Notice of Response.....	7
s.22 Additional Information.....	7
s.23 Interpreter.....	7
s.24 Appointment to Panels.....	8
s.25 Panel Chairperson.....	8
s.26 Representations at a Hearing.....	8
s.27 Order of Appearance at Hearings.....	8
s.28 New Evidence.....	9
s.29 Objections.....	9
s.30 Adjournment and Postponement of Hearings.....	9
s.31 Transcripts.....	9
s.32 Costs.....	10
s.33 Limitations on Costs.....	10
s.34 Awards of Costs.....	10
s.35 Criteria for Assessing Costs.....	10
s.36 Orders of the Board.....	11
s.37 Entry Fee.....	11
s.38 Confidential Information.....	11
SCHEDULES.....	13
- Schedule A: Fees.....	13

RULES OF THE YUKON SURFACE RIGHTS BOARD

PART ONE: GENERAL

Title

1. These Rules shall be called the "Yukon Surface Rights Board Rules of Procedure".

Definitions

2. In these Rules

'Act' means the *Yukon Surface Rights Board Act* (Canada);

'Board' means the Yukon Surface Rights Board;

'panel chairperson' means the person designated pursuant to section 25 of the Rules;

'party' means any person who meets the requirements of section 29 of the Act;

'Rules' means the Yukon Surface Rights Board Rules of Procedure; and

unless a contrary intention appears, all other terms used in the Rules have the same meaning as in the Act.

Application to Other Statutes

3. If an application is made to the Board to exercise its powers or perform a duty or function conferred on the Board under a statute other than the Act, these rules shall apply so far as applicable.

Public Register

4. (1) The Board shall maintain its public record of all applications made to the Board and orders and other decisions made by the Board in respect of those applications in a public register.

- (2) The public register shall not contain copies of any information declared by the Board to be confidential as set out in section 38.

- (3) The public register shall be located at the head office of the Board and shall be accessible to the public during normal business hours.

Service

5. All documents, notices and other written material required to be submitted to the Board or to another party by the Act or these Rules must be served by personal service, registered mail or facsimile.

Correspondence and Communications

6. To ensure the application and hearing process is open and fair to all parties, all correspondence and information required to be submitted under these Rules to the Board shall be sent to the head office of the Board and all oral communications, outside of those made at a hearing, will be directed to the Executive Director of the Board.

Alteration of Time Periods

7. Any time period set out in the Rules may be lengthened by the Board or shortened with the consent of the parties and the Board.

PART TWO: APPLICATIONS TO THE BOARD

Negotiations Prior to Application

8. As stated in subsection 26(1) of the Act, no person may apply to the Board for an order unless the person has attempted to resolve the matter in dispute by negotiation. Such negotiations shall include a course of action involving the person applying to the Board and an appropriate representative of the other party undertaking some or all of the following:

- (a) telephone meetings;
- (b) in person meetings;
- (c) mediation; and
- (d) an exchange of correspondence.

Application

9. (1) A person applying to the Board for an order shall provide written notice to the other party to the dispute that the application is being made.

(2) An application shall include:

- (a) the applicant's name, address for service, telephone number and facsimile number;

- (b) if applicable, the name of the person designated as the contact person or agent for the applicant and this person's address for service, telephone number and facsimile number;
 - (c) the name of the other party to the dispute and their address, telephone number and facsimile number, and if known, the other party's designated contact person;
 - (d) a copy of the notice provided to the other party, as described in subsection (1), with proof of the notice having been sent to them;
 - (e) a concise statement of the nature of the dispute and the order sought;
 - (f) a record of the negotiation efforts, as described in subsection (3); and
 - (g) any other information, sketches or maps that may be of assistance to the Board.
- (3) The record of negotiation must demonstrate that the applicant made a reasonable attempt to resolve the matter in dispute by negotiation. The record must identify, at minimum:
- (a) the name of the person identified as the appropriate representative with whom negotiations must be conducted on behalf of the other party;
 - (b) the date, location, time and duration of all meetings between the applicant and the individual referred to in paragraph (a) and a brief summary of the content and result of the meeting;
 - (c) the date, time and duration of all telephone calls between the applicant and the individual referred to in paragraph (a) and a brief summary of the content and result of the telephone call;
 - (d) the names of all persons who participated in the meetings or telephone calls;
 - (e) the name of the person who initiated the telephone calls or meetings;
 - (f) a list of all correspondence exchanged between the applicant and the individual referred to in paragraph (a) with a brief summary of the content of the correspondence; and
 - (g) any other information related to the efforts of the applicant and the other party to negotiate a settlement to the dispute.
- (4) If after reviewing the application the chair determines that the application is incomplete, he/she shall, as soon as is practicable, notify the applicant that the application is deficient and cannot be accepted as submitted.

Request for Additional Information

10. (1) The chairperson may require an applicant to provide information, in addition to the application submitted by the applicant, for the purpose of assisting the Board in determining whether an application can be accepted.

(2) Any information provided in accordance with subsection (1) shall be considered part of the applicant's application.

(3) If an applicant fails to provide any information required to be submitted pursuant to subsection (1) within a reasonable amount of time, the chairperson may consider the application withdrawn.

Acceptance of an Application

11. (1) Once an application is considered complete by the chairperson, the Board shall review all of the information submitted by an applicant to determine if the application can be accepted.

(2) The Board shall notify the applicant and the other party of their decision to accept or reject the application as soon as possible after reviewing it and shall file a notice of acceptance or rejection on the public register.

(3) When the Board accepts an application, they shall send a copy of the application to the other party.

Amendments to An Application Prior to a Hearing

12. (1) After an application is accepted, an applicant may amend their application by submitting, in writing, the proposed amendment and reasons for the amendment to the Board.

(2) As soon as practicable, the chairperson shall determine whether the proposed amendment is within the scope of the application submitted and can be accepted or if the amendment fundamentally changes the application such that a new application should be submitted by the applicant. The chairperson shall advise the applicant of his/her decision in writing.

(3) If the requested amendment is accepted by the chairperson, the applicant shall provide a copy of the amendment and a copy of the chairperson's acceptance of the amendment to the other party.

(4) Notwithstanding the above, no amendments to an application shall be made after the Board has issued a notice of the hearing in accordance with section 19.

PART THREE: MEDIATION

Offer of Mediation

13. (1) The Board shall offer the option of mediation to the parties within 10 calendar days of accepting an application.

(2) A party electing to participate in a mediation session shall file with the Board the form provided by the Board, within the time specified by the Board.

Mediation

14. If all parties are willing to participate in a mediation session, the following rules shall apply.

- (a) The Board shall appoint a mediator acceptable to the parties.
- (b) The Board will schedule the first mediation session between the parties with the mediator and shall notify all parties and the mediator, in writing, of this date no later than 14 calendar days before the first mediation session is to be held.
- (c) Upon receipt of the written notice referred to in paragraph (b), the parties and the mediator shall confirm that they will attend the first mediation session in writing no later than 7 calendar days before the date fixed for the first mediation session. Failure of the parties to provide the written confirmation within the allotted time may result in the cancellation of the offer of mediation by the Board.
- (d) The Board shall pay the amount set out in Schedule A in relation to the costs of the mediation session. If the costs of a mediation session exceed the amount set out in Schedule A, the parties are responsible for those additional costs.
- (e) The terms and conditions agreed to or the decision reached at a mediation session shall not be construed to be an order of the Board.

Mediation Settlements

15.(1) If mediation resolves the dispute between the parties, the parties may submit to the Board the terms and conditions agreed to or the decision reached for the purposes of the making the mediation settlement an order of the Board.

(2) The Board will not accept a mediation settlement for the purposes of making it an order if, in the opinion of the Board:

- (a) all parties to the mediation have not consented, in writing, to the mediation settlement becoming an order of the Board; and
- (b) the terms and conditions of the mediation settlement are contrary to law.

(3) If mediation resolves the dispute between the parties but the parties determine that they do not wish to submit the mediation settlement to the Board, the parties shall so advise the Board and the relevant application shall be considered withdrawn by the applicant.

PART FOUR: HEARINGS

Proceeding to a Hearing

16. A hearing will be held if
- (a) any party notifies the Board of their desire to proceed to a hearing;
 - (b) any party fails to confirm its attendance at the first mediation session, as provided for in paragraph 14(c); or
 - (c) the parties fail to reach a mediated settlement within a period of 60 calendar days from the date the first mediation session was scheduled, as set out paragraph 14(b), unless otherwise agreed to by the Board.

Mediation Statements and Hearings

17. Any statements made by the parties at a mediation session shall not be admissible as evidence in any hearing before the Board, without the consent of the parties.

Hearing Procedures

18. Subject to section 38 hearings shall be open to the public.

Notice of a Hearing - Parties

19. The Board shall issue a notice of a hearing to the parties no less than 21 calendar days before the date fixed for the hearing. The notice of hearing shall include:
- (a) time, date and place of the hearing;
 - (b) the legal authority for the hearing;
 - (c) the final date and time for a party to file a notice of response pursuant to section 21;
 - (d) the address of the head office of the Board where a notice of response may be filed; and
 - (e) any other information the Board considers relevant.

Notice of a Hearing - Public

20. At least 21 calendar days before a hearing, the Board shall issue a notice to the public identifying the parties to the dispute, the nature of the dispute to be resolved and the date and location of the hearing in a periodical that, in the opinion of the Board, has a large circulation in the Yukon.

Notice of Response

21.(1) A party, other than the applicant, who wishes to make representations to the Board in relation to the application must file a notice of response. The notice of response must be received by the Board no later than 14 calendar days before the date fixed for the hearing.

(2) In a notice of response, a party shall include:

- (a) the person's complete name, address for service, telephone number and facsimile number;
- (b) if applicable, the name of the person designated as the party's contact person or agent and this person's address for service, telephone number and facsimile number;
- (c) a clear statement of their interest in the dispute;
- (d) a clear statement of their position;
- (e) their intention as to whether or not they will appear at the hearing;
- (f) a copy of all information and supporting documents that may be useful in explaining their position and interests; and
- (g) a copy of any authorization appointing a representative to act on the party's behalf.

(3) After a notice of response is filed with the Board, the Board, as soon as practicable, shall deliver a copy of the notice of response to the other party.

(4) Pursuant to s.30 of the Act, if in the notice of response a party fails to state their intention to appear at the hearing, the Board may deem the party to have consented to the hearing of the application in that party's absence.

Additional Information

22.(1) As a result of reviewing the information supplied in a notice of response and the application, the Board may require a party to provide further information and supporting documents. The Board shall specify in its request for information the date by which the information must be received and the reasons for the request.

(2) Any information provided in accordance with subsection (1) shall be considered part of the party's notice of response or application, as appropriate, and shall be distributed to the other party by the Board.

Interpreter

23. If the Board receives a request for an interpreter for either of the official languages of Canada or for a language of any of the Yukon First Nations from a party, in writing, no

later than 7 calendar days before the date fixed for the hearing, the Board shall make best efforts to provide the interpreter at its expense.

Appointment to Panels

24. Pursuant to s.33(1) of the Act, the chairperson shall assign members to panels. Panels shall be appointed no later than the date upon which the Board provides the notice of hearing to the parties as set out in section 19.

Panel Chairperson

25. The members of a panel will designate from amongst themselves a panel chairperson to preside over a hearing.

Representations at a Hearing

26. No person other than a party which has filed a notice of response pursuant to section 21 or the applicant shall make a representation at a hearing except with the permission of the panel chairperson.

Order of Appearance at Hearings

- 27.(1) The order of appearance of the parties at a hearing and the process for the hearing shall be as follows, unless otherwise determined by the panel chairperson:
- (a) applicant's submission to the panel;
 - (b) questions on the applicant's submission by the other party;
 - (c) questions on the applicant's submission by the panel;
 - (d) submission by the other party to the panel;
 - (e) questions on the other party's submissions, starting with the applicant;
 - (f) questions on the other party's submission by the panel;
 - (g) any comments from the public, if the panel chairperson believes it would be appropriate;
 - (h) response to any comments made by the public, if applicable, starting with the applicant and then the other party; and
 - (i) summary comments by the applicant and the other party, starting with the other party and ending with the applicant.

New Evidence

28. No new evidence shall be introduced at a hearing without the agreement of the panel and the other party.

Objections

29. A party may object to information (i.e. questions or evidence) presented at the hearing. Any objection raised must include the reasons for the objection. The panel chairperson will provide the other party with an opportunity to respond to the objection before making a decision on the objection.

Adjournment and Postponement of Hearings

30.(1) The panel will make every effort to conclude a hearing within the time scheduled. However, a panel may adjourn or postpone a hearing until a later date due to unforeseen or unexpected circumstances. Prior to adjourning or postponing a hearing, the panel will make best efforts to consult the parties respecting the adjournment or postponement.

(2) If a party requests an adjournment, the panel will consider the following in making its decision on the request:

- (a) the views of the other party;
- (b) whether the adjournment will contribute to the resolution of the dispute;
- (c) whether the adjournment will assist in ensuring that all parties are given an opportunity to be heard on the dispute;
- (d) the degree to which the need for the adjournment arises out of the intentional actions or the neglect of the party requesting the adjournment;
- (e) whether, after balancing any prejudice that may be caused to the party not requesting the adjournment against any prejudice that may be caused to the party requesting the adjournment if their request is not granted, the adjournment is justified in the circumstances; and
- (f) any other factors the panel considers relevant.

Transcripts

31. The Board shall prepare transcripts of hearings as soon as practicable and shall provide one copy of the transcript to each party. Upon request, additional transcripts will be provided, at the cost of the party making the request.

Costs

- 32.(1) A party may only request the award of costs against another party in relation to matters of a dispute considered by the panel.
- (2) A party shall make a request to the panel for an award of costs prior to the closing of the hearing.
- (3) Before making an order respecting costs, the panel shall ensure that the party against whom costs may be awarded is given an opportunity to fully consider the matter of costs and to respond to the request for costs.

Limitations on Costs

- 33.(1) Failure to provide adequate documentation will disallow that particular item.
- (2) Documentation supporting a request for costs must be received by the panel no later than 7 calendar days after the hearing.

Awards of Costs

- 34.(1) Any amount of costs awarded by the panel shall not exceed the amounts set out in Schedule A.
- (2) The fee information must include copies of all fee billings and show preparation and required attendance times in detail. The panel will review the costs claimed having regard to the circumstances and complexity of the hearing, the participation of the persons referred to in Schedule A and whether and when their attendance was required.
- (3) Receipts for all disbursements are required. Any award for meals and other travel-related expenses shall not exceed Treasury Board of Canada guidelines in effect at the time of the award. Travel, accommodation and meal expenses for local participants will not be considered by the panel.
- (4) The awarding of costs and the level of the costs awarded are in the discretion of the panel.

Criteria for Assessing Costs

35. The panel shall use the following criteria in the determination of costs:
- (a) the final decision of the panel on the application for an order;
 - (b) the complexity of the proceeding;
 - (c) the importance of the issue to any party;

- (d) the conduct of any party that unnecessarily lengthened the duration of the proceeding; and
- (e) any other matter relevant to the question of costs.

Orders of the Board

36. (1) The members of the panel or the panel chairperson shall sign any order made by that panel, including an interim access order issued pursuant to subsection 45(1) of the Act.

(2) If the parties have submitted a mediation settlement to the Board, pursuant to subsection 15(1), the Board may issue an order that reflects this settlement. This order may be signed by the Board or by the chair alone, with the approval of the Board.

Entry Fee

37. Any entry fee ordered shall be in the amount of \$125.00.

Confidential Information

38.(1) If written submissions or documents contain material that in the opinion of the submitting party should be treated as confidential, the material shall be clearly separated from any other submissions or documents and each page of the submission or document shall be marked 'Confidential' at the top of the page.

(2) If a party is of the opinion that oral information that he or she wishes to present should be treated as confidential, the party shall, before providing the information, advise the panel of the general nature of the information and request that the oral information be treated as confidential.

(3) A panel may go into an 'in camera' session or adjourn a hearing to consider a request that information be held confidential.

(4) If a panel receives a written request from a party who has filed a written submission or document marked 'Confidential' in accordance with subsection (1) or if a party has made a request that oral information be treated as confidential in accordance with subsection (2), the panel may treat the information as confidential if, in its opinion, the information could not be disclosed if a request to disclose the information was made pursuant to the *Access to Information Act (Canada)*.

(5) If a panel decides that the information could not be disclosed pursuant to the *Access to Information Act (Canada)*, the panel shall consider:

- (a) whether there are any mechanisms available and appropriate in the circumstances, such as a confidentiality agreement, which would enable the party providing the information to waive their right to non-disclosure;
 - (b) whether the party providing the information can more effectively narrow or limit the information to be presented to ensure that only such information as is strictly necessary to be held confidential is not disclosed; and
 - (c) whether it would be more appropriate for the panel to provide the other party with a summary of the information so as to enable them to understand the essence, but not the detail, of the information to be submitted so as to ensure that they are able to respond to all of the information presented to the panel.
- (6) If any written submission, document or oral information is submitted to the panel and the panel is of the view that it should not be treated as confidential, it shall
- (a) inform the party of its opinion; and
 - (b) advise the party that he or she may withdraw the submission or document or refrain from giving the oral information or present the information with the knowledge that it may be disclosed.
- (7) If a written submission or document is withdrawn by a party pursuant to paragraph (6)(b), the information contained in the document or submission shall be considered not to have been filed with the Board.
- (8) For the purposes of this section, 'confidential' information may include
- (a) trade secrets and related proprietary information of a party;
 - (b) information relating to any legal proceeding that is pending and that involves the party;
 - (c) traditional knowledge of a Yukon First Nation or a Yukon First Nation member or a transboundary First Nation or member of that First Nation; and
 - (d) archaeological, paleontological or other similar heritage information, including the location of burial sites, provided by the Yukon Government, a Yukon First Nation or the Government of Canada.

Schedule A: Fees

(Note: The following fees are subject to change by motion of the Board without prior notice)

1. Mediation Expenses

Not to exceed \$400.00

2. Schedule of Fees

The following schedule of fees shall be used by the Board in determining the awarding of costs

- (i) Fees
 - (a) legal Counsel - Maximum fee per hour - \$130.00; and
 - (b) consultants - Maximum fee per hour - \$130.00

- (ii) Disbursements
 - (a) accommodation and meals (hearing days only);
 - (b) return airfare, economy fare only;
 - (c) road travel - fuel expenses only;
 - (d) courier and postage;
 - (e) long distance telephone and facsimile charges; and
 - (f) photocopying - cost or \$0.25/page, whichever is less.