



SURFACE RIGHTS BOARD INFORMATION SHEET #1

OVERVIEW

General Information

The Surface Rights Board provides dispute resolution services to landowners and companies that have rights to explore for, develop or produce petroleum, natural gas, coal or minerals. The Board resolves disputes on the amount of compensation payable for surface access or terms of a surface lease. This Information Sheet provides an overview of the typical steps in a case.

In British Columbia, most landowners do not own subsurface rights to petroleum, natural gas, or minerals. The majority of subsurface rights are owned by the Crown. The government can issue rights to resource companies and free miners for the exploration or development of subsurface resources on private property. The resource company or free miner must compensate landowners for loss or damage caused by using their land for these purposes.

What the Board can do

The Board assists in resolving the following types of disputes:

1. Right of Entry and Compensation:

Disputes about right of entry to the owner's land for exploration, production or development of a subsurface resource and the compensation payable to the landowner for the entry.

Note: In disputes between a free miner and a landowner, the Chief Gold Commissioner will attempt to resolve the dispute prior to any application to the Board.

2. Damages:

Disputes about the amount payable when there has been damage to the land or loss caused by the exploration, development or production of a subsurface resource. An application can be made by:

(a) the owner or occupier of land subject to a right of entry, or

(b) the owner or occupier of land immediately adjacent to land subject to a right of entry.

3. Rent Renegotiation:

Disagreements on the renegotiation of rental provisions in a surface lease.

4. Other disputes:

- Disagreements about whether the terms of a surface lease have been complied with; or
- Whether the oil and gas activity proposed in a surface lease is substantially different from what was approved by the British Columbia Energy Regulator.

What the Board can not do

The Board can not assist landowners and companies with disputes about:

- how a wellsite is developed or a pipeline is constructed;
- concerns about health and safety or the environment;
- minimizing interference caused by the oil and gas or mining activity; or
- other regulatory requirements.

These types of disputes will be referred to the British Columbia Energy Regulator.

The Board can not prevent a company from purchasing the subsurface rights to oil, gas or minerals. Nor can it prohibit the subsequent exploration or development on private land if activity is permitted by the British Columbia Energy Regulator. These rights are subject to legislation including the *Oil and Gas Activities Act*, the *Petroleum and Natural Gas Act*, and the *Mineral Tenure Act*.

How to Apply

The Board has different Forms for different types of applications. The Board will review applications to ensure they are within its jurisdiction. If an application is missing information, the Board will write to the applicant to correct any deficiencies within a certain time. If the deficiencies are not corrected, or if an application is not within the Board's jurisdiction, the Board may dismiss the application.

Mediation

Mediation attempts to resolve the issues by mutual agreement. Usually, mediation starts with a teleconference. The Board's mediator may reach resolution during the teleconference or schedule further discussions in another teleconference or in-person meeting. The discussion and information provided in mediation is confidential and the parties may change their position on any issue if the dispute is not resolved.

If the parties do not resolve the dispute, the Board Member may:

- refer the case to arbitration; and/or
- issue an order for right of entry onto the property, with a security deposit and partial payment to the landowner for compensation.

Arbitration

An arbitration is a hearing where each party presents evidence and arguments to the Board.

The parties must attend a pre-hearing conference, usually by telephone. The Board member will consult with the parties and decide how the application will proceed including finalizing the issues, setting deadlines for producing evidence and witness lists and setting the date for the arbitration hearing.

Depending on the nature and complexity of the issues, the arbitration hearing may be in-person, by telephone conference, or by written submissions.

In-person hearings are open to the public and may be presided over by one or more members of the Board. The Board will control how the hearing is conducted, including how the evidence is presented and what evidence is admitted. The Board can issue summons requiring witnesses to attend a hearing. Persons giving evidence at a hearing must swear an oath or affirm that their evidence will be the truth.

The Board will send the parties a written decision with reasons as soon as possible after the arbitration has concluded. Due to the complexity of the case or other resource issues, the decision may take a few months.

Evidence

The Board may accept any evidence that is relevant to an issue in the application. It may also reject all or part of a party's evidence.

The Board will normally set timelines in advance of the hearing for the parties to submit documents or expert reports they intend to rely on in the hearing. The Board may refuse to admit evidence if it is not produced in advance as required.

Adjournments

If a party wants to adjourn or postpone a mediation or arbitration, he/she must send the Board a written request, copied to the other party, as soon as possible. An application for an adjournment should be made no later than 7 days before the hearing. The Board will usually not re-schedule a hearing unless sufficient notice is provided and there are good reasons for the postponement.

Withdrawals and Consent Orders

An applicant may withdraw or discontinue all or part of an application at any time, by completing a Form 3 – Application for Withdrawal and delivering it to the Board and the other parties. If the parties settle the application, they must advise the Board and either withdraw the application or request that the Board incorporate the terms of the settlement into a Consent Order.

Costs

The Board may order a party to pay part of the costs of another party. In exceptional circumstances, it may order a party to pay the costs of the Board. Ordinarily a landowner may expect to receive costs for preparing for and attending a mediation. In some cases, when a party is requiring entry to the land, the Board may order payment, in advance, of all or part of the landowner's anticipated costs.

Appealing the Board's Decision

Decisions of the Board may be judicially reviewed by the Supreme Court of British Columbia. The party appealing is responsible for filing the application with the Courts. The Board recommends parties seek legal advice if they are considering this action.

Other Information

The Board's Rules of Practice and Procedure and the following Information Sheets are available on the Board's website or from its office:

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| 1. Overview | 7. Withdrawing and Consent Orders |
| 2. How to File an Application | 8. Costs |
| 3. Mediations | 9. Judicial Review |
| 4. Arbitrations | 10. Complaints, Comments and Suggestions |
| 5. Evidence in an Arbitration | 11. Rent Review |
| 6. Adjournments | 12. Reconsideration |

Please contact us if you require further assistance:

SURFACE RIGHTS BOARD

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Web Site: www.surfacerightsboard.bc.ca

Application Forms and Information Sheets are available from any Service BC Centre (Government Agent) and Applications may be delivered to the Board either directly or through Service BC