



SURFACE RIGHTS BOARD INFORMATION SHEET #5

EVIDENCE IN AN ARBITRATION

Evidence

Evidence is the material submitted to a decision-maker to establish the factual basis for the decision. Generally, it provides the “proof” of the issues in dispute. The Board cannot make a decision without evidence to support it.

Evidence may be provided by the oral testimony of witnesses, by documents, by photographs, by the opinions of experts, or by physical objects. The Board can only consider the evidence included with the application form and evidence provided by the parties. The Board will not seek out evidence beyond that provided to it.

Information and documents provided to the Board in a mediation, do not become evidence in an arbitration unless the party resubmits them as evidence for the arbitration hearing.

Witnesses must take an oath or affirmation that their evidence will be the truth. Whether a person swears an oath or affirms to tell the truth, the person is bound by conscience and law to tell the truth.

When the issue is the amount of compensation payable to a landowner for the entry, occupation and use of land, the Board may consider evidence on:

- the value of the land;
- the owner’s loss of a right or profit from the land, such as crop loss;
- temporary or permanent damage from the entry, occupation or use;
- whether part of the land has been severed, including details on the negative effects;
- nuisance and disturbance;
- the effect of any other rights of entry on the land; and
- the terms of other surface lease or right of way agreements.

The best evidence of land value can be found from sales of other similar properties. A qualified appraiser or realtor may be able to give opinion evidence about the value of land. See the discussion of expert evidence below.

The Board must consider all the evidence before it and decide which evidence it prefers. The Board may accept or reject all or part of a party’s evidence. It is not bound by the technical and legal rules of evidence and may accept evidence that would not necessarily be accepted in a court - as long it is relevant.

Expert Evidence

Expert evidence is an opinion, expressed by someone who is qualified in a particular field. Usually, the “expert” has specialized education, training or experience in the subject that he/she is providing an opinion on. For example, the Board could accept, as an expert report, the appraisal report of a qualified appraiser in which the appraiser expresses an opinion on value.

Witnesses who are not “experts” may not be entitled to give opinions on matters outside common everyday experience. If their opinions are admitted, they may be given less weight by the hearing panel.

Expert opinion evidence must be delivered to the Board and to the other party in advance of an arbitration hearing. Usually, the Board provides the parties with specific deadlines for the delivery of written evidence and reports. If no specific deadlines are provided, an expert’s written report must be delivered no later than 60 days before the hearing. If the other party wants to present an expert opinion in response, this must be delivered no later than 30 days before the hearing. A final reply report must be delivered no later than 15 days before the hearing. Parties must seek the direction of the Board if they want to submit any further expert evidence.

Expert reports must include:

- a) the expert’s contact details;
- b) a statement of the expert’s area of expertise, qualifications, and employment in their area of expertise;
- c) the instructions provided to the expert in seeking the opinion;
- d) the expert’s opinion including reasons for their opinion;
- e) a description of facts and assumptions relied on in making their opinion;
- f) citations for any resources relied upon in making their opinion; and
- g) a statement that the expert is aware of the expert’s duty and has made the report in conformity with that duty.

If you want to question the expert on his or her report, you must give notice to the other party that they require the expert to attend the arbitration hearing for cross-examination. Unless required for cross-examination, the author of an expert report is not required to attend an arbitration hearing.

Copies of reports and other documents

Unless advised otherwise, provide the Board with two copies and each other party with one copy of all reports and documents that will be used as evidence at an arbitration hearing.

For questions or other Information Sheets, please contact us or see our web site at:

1270 – 605 Robson Street Vancouver, B.C. V6B 5J3	Telephone: 604-775-1740 Facsimile: 604-775-1742 Toll-Free Telephone: 1-888-775-1740 Toll-Free Facsimile: 1-888-775-1742
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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	