

PROPOSED - Normal Farm Practices Protection Board Rules of Practice and Procedure

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Introduction

The Rules of Practice and Procedure are established by the Normal Farm Practices Protection Board (the “Board”) under sections 17(4) and 25.1(1) of the [Statutory Powers Procedure Act, RSO 1990, c S.22](#) and section 3(1) of the [Tribunal Adjudicative Records Act, 2019, SO 2019, c 7, Sch 60](#), to govern proceedings before the Board.

Mediation Protocol: Before a matter is brought to the Board for a hearing under the [Farming and Food Production Protection Act, 1998, SO 1998, c 1](#) it must have proceeded (unsuccessfully) through the Farm Practices Conflict Resolution Process established for Board cases by the Ontario Ministry of Agriculture, Food and Rural Affairs (“OMAFRA”). This is addressed in Rule 60. For further information on the conflict resolution process, please contact the OMAFRA Agricultural Information Contact Centre at 1-877-424-1300.

Purpose

The intent of these Rules is to provide a fair, open, and understandable process to facilitate and enhance public participation, to increase the efficiency and timeliness of proceedings and avoid unnecessary length and delay, and to assist the Board in fulfilling its statutory mandate.

Definitions

1. In these Rules:

- (1) "Adjudicative record" has the same meaning as in the [Tribunal Adjudicative Records Act, 2019, SO 2019, c 7, Sch 60](#);
- (2) "Applicant" means a person who has by notice required a hearing by the Board under the [Farming and Food Production Protection Act, 1998, SO 1998, c 1](#);
- (3) "Board" includes a panel or individual member of the Normal Farm Practices Protection Board;
- (4) "Document", in addition to written documentation, (i.e., letters, maps, charts, graphs, plans, etc.) includes videotapes, films, photographs, and other information recorded or stored by means of any device;
- (5) "Fax" means telephone transmission of a facsimile of a document;
- (6) "Hearing" is the proceeding before the Board, and includes, where appropriate in the context, written and electronic hearings, and individual hearing events within a proceeding, such as motion hearings and pre-hearing conferences;
- (7) "Motion" includes an application for a stay or an interim stay of an order or decision of the Board;
- (8) "Party" means the applicant who has required a hearing under the [Farming and Food Production Protection Act, 1998, SO 1998, c 1](#) an agricultural operator whose operation is subject to the hearing, a municipality with a direct interest in the result of the hearing, and any person or unincorporated group of persons specified by the Board as having an interest in the proceedings.

Part 1 - General

Application

2. These Rules are effective as of [date] and replace the Rules adopted October 14, 2009. These Rules apply to all proceedings, including further steps taken in proceedings that were commenced prior to [date].

Conflicts

3. Where any Rule is in conflict with the [Statutory Powers Procedure Act, RSO 1990, c S.22](#), or any other Act of the Legislature or any regulation issued pursuant to an Act of the Legislature, the provisions of the relevant statute and regulations govern.

Flexibility

4. Where any matter arises during the course of any proceeding that is not contemplated by these Rules, the Board may do whatever is necessary if permitted by law to enable it to effectively and completely adjudicate on the matter before it.
5. Provided that all statutory requirements are met, the Board may, in accordance with the spirit of these Rules and the principles of procedural fairness and natural justice, dispense with compliance with all or part of any Rule at any time, and may issue directions which shall govern the conduct of the proceedings and prevail over any provision of these Rules that is inconsistent with those directions. In particular, the Board may allocate procedural obligations among the parties, exempt parties from procedural obligations, limit procedural obligations or carry out these obligations itself, based on the capabilities, interests, and resources of the parties.

Enlarging or Abridging Time

6. (1) Where any time or time limitation is mentioned in these Rules, the Board may, on its own initiative or upon application by a party to the proceedings, extend or abridge the time prescribed on such terms, if any, as the Board deems necessary.

(2) The Board's discretion under subrule (1) may be exercised before or after the expiration of the time prescribed.

Written and Electronic Hearings

7. (1) The Board may hold written or electronic hearings in a proceeding and may, in any one proceeding, hold a combination of written, electronic, and oral hearings.

(2) Except if the purpose of a written hearing is to deal with procedural matters, the Board will not hold a written hearing if a party satisfies the Board that there is good reason for not doing so.

(3) Except if the purpose of an electronic hearing is to deal with procedural matters, the Board will not hold an electronic hearing if a party satisfies the Board that holding an electronic hearing rather than an oral hearing is likely to cause the party significant prejudice.

Dismissal of Applications Without a Hearing

8. (1) The Board may dismiss an application without holding a hearing, or, after a hearing has commenced, refuse to continue with the hearing or make a decision if:
- a. the subject matter of the application is trivial;
 - b. the application is frivolous or vexatious;
 - c. the application was not made in good faith;
 - d. the applicant has not a sufficient personal interest in the subject matter of the application; or
 - e. the proceeding relates to matters that are outside of the Board's jurisdiction.

(2) The Board will not dismiss an application under Rule 8(1) without notifying the applicant and, where the jurisdiction of the Board is at issue, all other parties, of the reasons for the possible dismissal and without providing the opportunity to make submissions within a stated timeframe.

(3) Where dismissal is sought by motion made by a party, notice of such motion shall include the reasons for the possible dismissal.

(4) The Board or its administrative staff may decide not to process an application if the application is incomplete.

(5) The Board or its administrative staff will not decide to not process an application under Rule 8(4) without first notifying the applicant of the reasons why the application is incomplete and without providing reasonable opportunity for the applicant to complete their application.

(6) The Board may consider an application seemingly abandoned to be frivolous.

(7) After considering submissions received pursuant to Rule 8(2), the Board may dismiss an abandoned matter or set a timetable for resuming the matter.

(8) Where a timetable for resuming a matter has been ordered, the Board may dismiss a matter where the commencing party fails to adhere to the timetable.

Notice

9. (1) Those persons who are to receive notice of a hearing, including notice of motions, pre-hearing conferences or settlement conferences, shall include:
- a. all parties; and
 - b. such other persons as are determined by the Board.

(2) Those persons who are to receive notice of a hearing shall include all those entitled to receive notice under sub-sections 6(9) or 7(7) of the [Farming and Food Production Protection Act, 1998, SO 1998, c 1](#) and such notice may be given as provided for in sub-

sections 6(11) or 7(9) of the Act. Notice under subsections 6(9) or 7(7) of the Act may be augmented by notice given on a municipality's website.

Notice of Motions, Pre-Hearing Conferences, Settlement Conferences

10. (1) The Board shall:

- a. provide directions for giving notice; and
- b. approve the form and content of the notice; or
- c. prepare the notice itself.

(2) The cost of giving notice of a pre-hearing conference and the hearing shall be borne by the Board unless the Board otherwise directs.

(3) The cost of giving notice of a motion shall be borne by the person bringing the motion unless the Board otherwise directs.

Form and Content of Notices

11. (1) A notice of motion, pre-hearing conference, settlement conference or hearing shall be in writing unless the Board otherwise directs, and shall include the following information:

- a. the names of all parties;
- b. a reference to the statutory authority under which the motion, pre-hearing conference or hearing is being brought;
- c. a statement of the time, day, date and place and purpose of the motion, pre-hearing conference or hearing; and
- d. a statement that if the party notified does not attend and identify herself or himself to the Board, the Board may proceed in that party's absence and that party is not entitled to any further notice of the motion, prehearing conference, settlement conference or hearing.

(2) A notice of motion shall also include the grounds for the motion, a list of documents to be relied on at the hearing of the motion, and a statement of the relief sought, and shall include all supporting materials together with an indication of any oral evidence sought to be presented.

(3) A notice of a written hearing shall include the information stipulated in Rule 11(1) with necessary modifications and, except if the purpose of a written hearing is to deal with procedural matters, shall include a statement that the hearing shall not be held as a written hearing if a party satisfies the Board that there is good reason for not holding a written hearing and shall indicate the manner in which a party may object to the proposed written format.

(4) A notice of an electronic hearing shall include the information stipulated in Rule 11(1) with necessary modifications and, except if the purpose of an electronic hearing is to deal with procedural matters, shall include a statement that the hearing shall not be held as an electronic hearing if a party satisfies the Board that holding an electronic hearing is likely to cause significant prejudice and shall indicate the manner in which a party may object to the proposed electronic format.

Giving or Service of Notices and Documents

12. (1) Notice of all Hearings held shall be given at least twenty-one days before the Hearing is to commence to all Parties, unless otherwise directed by the Board.

(2) A Party bringing a Motion shall give Notice of the Motion to all other Parties at least seven days before the Hearing of the Motion is to commence, unless otherwise directed by the Board.

(3) Notice of a Pre-Hearing or Settlement Conference shall be given to all Parties and to any other person the Board directs at least seven days before the Pre-Hearing or Settlement Conference is scheduled to commence, unless otherwise directed by the Board.

13. (1) Where a Notice or other document is required to be given, served, or provided under these Rules, service may be effected in the following manners:

- a. by personal service;
- b. by Regular, Certified or Registered Mail;
- c. by courier service, including Priority Post;
- d. subject to subrule (5), by Fax; or
- e. subject to subrule (6), by email.

(2) A document that is served or filed by Fax shall include a cover page or a notation on the first page of the document indicating:

- a. the sender's name, address, and telephone number;
- b. the name of the person to be served;
- c. the date and time the document is transmitted;
- d. the total number of pages transmitted including the cover page;
- e. the telephone number from which the document is transmitted; and
- f. the name and telephone number of a person to contact in the event a problem arises with the transmission.

(3) If the Party to be notified or served is represented by Counsel, the Notice or document shall be given to Counsel rather than to the Party.

(4) In addition, where the Board considers it appropriate that the public be informed, the Board may require a public notice to be issued in such manner as is appropriate in

the circumstances. This will usually be by publication on at least one occasion in a newspaper having general circulation in the locality of the property which constitutes the subject-matter of the notice requiring a hearing.

(5) No document longer than ten pages may be filed with the Board or served on any other party by Fax without the prior consent of the Board or the other party as the case may be

(6) Notices or other documents may be served by the Board and by any party to an email address confirmed by the Board as being the official email contact for the party. An acknowledgement of receipt shall be provided by a recipient of service by email. Where a file size exceeds 10 MB, the contents shall be sent using multiple emails.

14. (1) Any such Notice or document that is sent by mail addressed to the last known address of the Party to be served shall be deemed to have been served on the fifth day after mailing. If sent by Priority Post or courier it shall be deemed to have been served on the third day; if by Fax or email, on the same day.

(2) If the Party to whom the Notice or document is being given or served establishes that he or she did not, acting in good faith, through accident, absence, illness or other cause beyond his or her control receive the Notice until a later date, the Board may deem the giving of service to have been effected at a later date or may extend the date for the giving of service.

Filing of Notices and Other Documents

15. (1) Where a Notice or document is to be filed with the Board, the date of filing is the date on which the Notice or document arrives at the Board's office.

(2) When the Board must receive an original document, such as an affidavit with an original signature, if filing is done by Fax or email, the original shall be made available for filing as an exhibit at the hearing of the Motion, Pre-hearing Conference or at the Hearing, as the case may be.

Proof of Service

16. (1) Service of every document or notice in respect of a matter before the Board shall be evidenced by a Certificate of Service (see [Appendix](#)), filed with the Board, certifying how and when service was effected. The original document or notice or a copy of the document or notice, or if the notice was published, an original or a copy of each page of the newspaper containing the notice, shall be attached to the Certificate.

(2) A party's or his or her lawyer's or agent's written admission or acceptance of service

is sufficient proof of service and need not be verified by the Certificate referred to in subrule (1).

Board May Proceed

17. Where notice of a motion, pre-hearing conference, or hearing has been given in accordance with these Rules and statutory requirements and a party does not attend the hearing of the motion, pre-hearing conference, or hearing, the Board may proceed in that party's absence and that party is not entitled to any further notice in the proceedings, unless the Board otherwise directs.

Motions, including Applications for Stays of Orders and Decisions

18. Motions may be made by an applicant, an agricultural operator, or a municipality and by any other person seeking to become a party prior to the commencement of the hearing and thereafter by any party, or with the Board's permission, by another person.
19. Except for motions to be heard at a hearing or motions heard in writing, before a notice of motion is served an appointment shall first be obtained from the Board for hearing the motion.
20. The Board, in hearing a motion, may permit oral evidence in addition to or instead of any affidavit or other supporting material accompanying the notice of motion. Any person wishing to adduce oral evidence on a motion shall satisfy the Board that this is necessary and will not prejudice any party, shall obtain the Board's permission, and shall arrange at his or her own expense for the presence of a court reporter. In deciding whether to give permission, the Board may take into consideration any cost or inconvenience to the Board.
21. Unless otherwise directed by the Board, any party wishing to depart from the procedures for motions specified by these Rules shall, at the earliest opportunity available, obtain the Board's leave to do so. Leave shall be sought either during the course of an already scheduled appearance before the Board at which all other parties are present, by written notice of motion, or by way of a telephone conference call with the Board and all other parties to the hearing. At the time leave is sought the other parties shall have an opportunity to make submissions regarding the propriety of the request and the need for the Board to impose terms and conditions in the event leave is granted in whole or in part.
22. Any affidavits filed in response to a motion shall be served and filed at least two days prior to the hearing of the motion, except where leave for an abridgment of the time has been granted pursuant to Rule 21 or except where the Board orders otherwise.

23. Notwithstanding any time limits specified in the Rules for motions, any party intending to bring a motion at a hearing shall do his or her best to give all other parties adequate opportunity to prepare for the hearing of the motion, including providing as much notice as possible and providing copies of cases and statutes relied on.

Postponements and Adjournments

24. (1) A date for a hearing, pre-hearing conference, settlement conference or motion that has been fixed by the Board will be considered peremptory meaning that the matter will proceed on that date unless there are extenuating circumstances.

(2) The Board may grant an adjournment during the course of the hearing upon motion made orally and may add such terms and conditions as the Board may deem appropriate.

Pre-Hearing and Settlement Conferences

25. In any proceeding the Board, on its own initiative or on the motion of any Party or any person seeking Party status, may direct the Parties to make submissions in writing or may hold one or more Pre-Hearing Conferences, for the purposes of:

- a. identifying Parties;
- b. defining, formulating, or simplifying issues;
- c. clarifying, amplifying, or limiting an application, intervention or reply;
- d. deciding the procedure to be adopted in the proceeding;
- e. disclosure of evidence, including
 - i. identifying documents the Parties intend to rely upon;
 - ii. exchanging or arranging for the exchange of documents among Parties;
 - iii. identifying witnesses and the nature of their evidence;
 - iv. considering the advantages and disadvantages of filing witness statements and establishing a procedure for their service and filing if needed;
- f. setting the date and place for commencement of the Hearing;
- g. estimating the length of the Hearing;
- h. deciding any other matters that may aid in the simplification or most just disposition of the Proceeding; and
- i. for any other purpose that the Board deems appropriate.

26. Whoever attends a Pre-hearing Conference on behalf of the parties or persons seeking party status must be authorized to take positions on and make decisions regarding the matters listed in Rule 25.

27. In any proceeding, the Board may hold a settlement conference to consider the possibility of settlement of any or all of the issues in the proceeding. A settlement conference may be held on the same day as a pre-hearing conference. Whoever attends

a settlement conference on behalf of a party must be authorized to take positions on the settlement of issues.

28. No communication shall be made to the member or panel presiding at the hearing or a motion with respect to any statement made at a Settlement Conference, except as disclosed or permitted by order.
29. A member who conducts a Settlement Conference shall not participate in the hearing without the consent of all parties to the hearing.

Part 2 - Disclosure of Evidence, Particulars, etc.

Witness Statements

30. (1) The Board may, on its own initiative or at the request of any party, order that witness statements be exchanged among the parties.
 - (2) When witness statements are ordered, the dates and parties upon which each party is to serve such witness statements shall be determined by the Board.
31. (1) Witness statements shall contain the following:
 - a. name and business address of the witness (and qualifications or curriculum vitae, if appropriate); whether or not the witness has an interest in the application and, if so, the nature of the general or special interest;
 - b. whether the evidence will be factual evidence or opinion evidence or both;
 - c. whether the witness has some special skill which he or she possesses by reason of experience or study which qualifies him or her to give opinion evidence;
 - d. a full but concise statement of the evidence;
 - e. reference to and identification of proposed exhibits which are part of the witness' evidence, including: supporting documents, plans, reports, technical memoranda, etc. (a separate sheet shall be attached to the statement listing the proposed exhibits);
 - f. an acknowledgment that the witness intends to appear before the Board if requested by the party submitting his or her witness statement and be subject to examination and cross-examination; and
 - g. the date of the statement
 - (2) A formal report prepared by the witness for the purpose of the hearing may be utilized as a witness statement, provided that the required information is contained therein or supplied by way of addendum.
32. (1) Every party is required to submit a list of its witnesses to the Board not less than two weeks before the hearing.

(2) On the day of the hearing, further witnesses may be added to a party's witness list at the discretion of the Board.

Further Information/Filing of Information

33. (1) The Board may order any party to provide such further information, particulars or documents as the Board considers necessary for a full understanding of the issues.

(2) The Board may require that any list of documents, witness statement or other information, particulars or documents provided by the parties to each other be filed if in the Board's opinion this is necessary for the fair, efficient, or timely disposition of any portion of the proceedings.

Part 3 - Hearing Procedures and Evidence

Consolidation of Applications

34. If two or more proceedings before the Board involve the same or similar questions of fact, law or policy, the Board may,

(a) combine the proceedings or any part of them, with the consent of the parties;

(b) hear the proceedings at the same time, with the consent of the parties;

(c) hear the proceedings one immediately after the other; or

(d) stay one or more of the proceedings until after the determination of another one of them.

Hearings in French

35. (1) The Board may conduct its proceedings or any portion of them in French when a request is made. A request should be made at least 30 business days before the hearing so that arrangements for interpreter and translation services, if needed, may be made.

(2) Nothing herein shall preclude the presentation of submissions or evidence in either the French or English languages.

(3) Where a hearing is to be conducted in French in whole or in part, the notice of such hearing shall specify that the hearing is to be so conducted and shall further specify that English may also be used.

(4) Where French language services are being provided by the Board in a proceeding, the Board will provide all of its correspondence, orders and decisions in French and

English, but will not translate documents that are filed by parties or their representatives from French to English or from English to French.

Other Languages, Accessibility and Accommodation

36. (1) Where it is brought to the Board's attention that a party would prefer to give evidence in another language and to have the evidence of others interpreted into that other language or a witness would prefer to give evidence in another language, the party shall provide a qualified and independent interpreter at the sole expense of the party. Prior to accepting the interpreter the Board will examine the interpreter to ensure that he/she is not biased and has qualifications such as being a certified court interpreter or prior experience.

Where a party requires an interpreter in a language other than English or French, the party shall notify the Board, and provide an interpreter at their own expense. An interpreter shall be competent and independent of the parties and shall swear or affirm that he/she will interpret accurately.

(2) Prior to a notice of hearing being given, the Board may determine that notice should be given in a language other than French or English and may provide such notice at its own expense.

(3) Parties and witnesses that have specific accommodation needs or accessibility requirements should contact the Board at least 10 business days before the hearing commences.

Adjudicative Records

37. (1) A person may examine any adjudicative record in the possession of the Board and, subject to Rules 37(2) to 37(7), be provided with copies of such adjudicative record unless a statute, regulation, order of a court or order of the Board provides otherwise.

(2) Pursuant to section 2 of the [*Tribunal Adjudicative Records Act, 2019, SO 2019, c 7, Sch 60*](#), the Board may order that any adjudicative record or part of an adjudicative record be treated as confidential, be sealed and not form part of the public record.

(3) The Board may charge a fee for providing copies of adjudicative records.

(4) Fees payable under Rule 37(3) are:

- (i) For photocopies and computer printouts, 20 cents per page
- (ii) For records provided on a memory device, \$10 for each device
- (iii) For costs incurred in locating, retrieving, processing, copying, or sending adjudicative records, \$15 for each 15 minutes spent by any person

(5) Fees under Rule 37(3) shall be paid by cheque payable to the Minister of Finance.

(6) Where a transcript in the possession of the Board is requested, the Board shall provide the requester with the name and contact information of the court reporter who prepared the transcript.

(7) Where an estimated amount payable under this rule for adjudicative records is greater than \$100, the Board may require a deposit of 50% of the estimate be paid before further steps are taken to respond to the request.

(8) A document to be signed on behalf of the Board may be signed by the Chair, a Vice-Chair, a member of the Board, or by the Board Secretary.

Hearings Open to Public

38. (1) Board hearings shall be open to the public, unless the Board is of the opinion that,

- i. matters involving public security may be disclosed; or
- ii. intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the Board may hold the hearing in the absence of the public.

(2) i. Rule 38(1) does not apply to electronic hearings where holding an electronic hearing open to the public would be impractical.

ii. Rule 38(1) does not apply to a settlement conference.

(3) A party to an application may, at any time, make a motion to the Board requesting restricted access.

(4) The Board may, at any time, make an order for restricted access on its own motion.

Court Reporters and Recording of Hearing

39. (1) The Board may require that a court reporter attend Hearings.

(2) When a court reporter is required to attend by the Board or a Party, the reporter shall record all testimony and argument.

(3) All transcripts or copies of transcripts and all electronic records requested by a Party to the proceedings, or by other persons, shall be paid for by that Party or those other persons.

(4) The recording of evidence and argument and the production of transcripts thereof shall be completed in accordance with Section 5 of the [Evidence Act, R.S.O. 1990 c. E.23](#), as amended and the Regulations thereunder and Rule 4.09 of the [Rules of Civil Procedure, RRO 1990, Reg 194](#) as amended from time to time, with all necessary, consequential and appropriate changes in place.

(5) Where a Party orders a transcript of all or part of the proceedings in an Application, it shall provide one copy of the same to the Board to be part of the Board's record pursuant to Section 20 of the [Statutory Powers Procedure Act, R.S.O. 1990 c. S.22](#), as amended and one copy to any other Party, as the case may be, without charge.

(6) Where the Board does not intend to require the attendance of a court reporter it will give notice of this decision to the Parties.

(7) Where the Board does not require the attendance of a court reporter, any Party may arrange the attendance of a court reporter at the Party's expense, provided that the first Party to order a transcript shall also order a copy to be provided to the Board and all other Parties as part of the record at no charge to the recipient.

Media Coverage and Recording Proceedings

40. (1) Recording of Board proceedings or any portion of them may be permitted at the discretion of the Board, subject to any terms and conditions the Board may impose.

(2) Where permission is sought under subrule (1), a request should be made to the presiding Chair prior to the commencement of the part of the hearing sought to be recorded.

(3) The presiding Chair may disallow the recording of all or portions of the hearing if, in the opinion of the Chair, such recording would inhibit specific witnesses or disrupt the process in any way.

(4) In cases where recording is allowed, the following guidelines shall be applied, unless the presiding Chair orders otherwise:

- a. only recording equipment which does not produce distracting sound or light should be used;
- b. when possible, audio pick-up should be from existing audio systems present in the hearing facility;
- c. recording equipment should be positioned unobtrusively before the proceedings begin and must not be moved while the hearing is in progress.

41. (1) Any party tendering a document as evidence must do so at the hearing, and, subject to any order of the Board in electronic hearings, provide one copy for each Board Member, for each party, for the court reporter, and an additional copy or, if practicable, the original document, to be marked as the official exhibit, unless otherwise ordered by the Board.

(2) Where a document has been filed in evidence at a hearing, the Board may, or the person producing it or entitled to it may, with leave of the Board, cause the document to be photocopied and the Board may authorize the photocopy to be filed in evidence in place of the original document filed and release the original document filed.

Documents as Evidence

42. (1) Where the Board is satisfied with the authenticity of a copy of a document or other material, it may be admitted as evidence at a hearing.

(2) Copies of official or public documents or documents purporting to be certified under the hand of the proper officer, or the person in whose custody they are placed, shall be documents receivable in evidence by the Board as prima facie proof of the original without proof of the signature or official position of the person appearing to have signed it.

Summons

43. (1) The Board may issue a summons to a witness on its own initiative or upon request of a party.

(2) The Board may by summons require any person, including a party:

- a. to give evidence under oath or affirmation; and
- b. to produce in evidence such documents or other things as specified in the summons, relevant to the subject matter of the proceedings and not inadmissible in evidence by reason of privilege or statutory prohibition.

(3) Any summons issued shall be served personally on the person summoned, and the person shall be paid the same fees and allowances as a witness summoned to appear before the Superior Court of Justice. The fees and all allowances need not be paid in advance, but must be paid before the witness testifies, if requested.

(4) The summons may be in [Form 1](#) found at the Ontario Central Forms Repository or in any other form substantially conveying the same information as that form.

Oath or Affirmation

44. Witnesses who appear personally at a Board hearing shall be examined orally after affirming or taking an oath that their evidence will be true.

Exclusion of Witnesses

45. The Board may, upon motion, order a witness or witnesses to be excluded from the hearing until called to give evidence.

Expert Witnesses

46. (1) A witness having technical or special knowledge, who is retained by a party or the Board to give evidence, shall provide at the request of the Board a written curriculum vitae of his or her qualifications and experience.

(2) Any party may challenge the qualifications of a witness having technical or special knowledge, before or during the course of his or her testimony. However, it is not normally the Board's practice to hold a formal hearing to qualify a witness as an expert, provided that a degree of specialized knowledge is shown on the curriculum vitae.

(3) The Board, in its discretion, will determine the weight to be given each witness' testimony and the witness' qualifications and experience will be a factor in determining the weight to be given such testimony.

47. On the request of a party or on its own initiative, the Board may retain at its own expense any person having technical or special knowledge to assist the Board and to give evidence in respect of any matter before it. In such cases, the following procedures shall govern.

(1) any such request shall be made by motion to the Board as soon as practicable after the appointment of the hearing panel or at a pre-hearing conference if one is held, and otherwise as soon as practicable after the need for such a witness is recognized by the party;

(2) the Board must be satisfied that the proposed witness will be of assistance to the Board in understanding the issues before it;

(3) the Board shall decide who shall be appointed;

(4) the Board shall retain the right to settle all terms of any such appointment, including remuneration and the scope of any inquiry, and may direct that such witness:

- a. provide a written report of findings and conclusions;
- b. attend the hearing during presentation of evidence by others expert and in the same field, and

c. explain and evaluate such evidence as required by the Board.

(5) Any witness retained by the Board shall testify orally and be subject to cross-examination.

Witness Panels

48. (1) The Board may permit evidence to be given by a number of witnesses sitting as a panel, provided that the Board is satisfied that in the particular case the tendering of evidence in this manner will result in a full and fair hearing and is in the public interest.

(2) Questions addressed to a witness panel may be directed to specific members of the panel or to the panel in general.

(3) Where a question is directed to a specific member of a panel and he or she asserts an inability to answer due to lack of knowledge or qualifications, the Board may permit another member of the panel to provide the answer.

Agreed Facts

49. The Board may receive and act upon any facts agreed upon by the parties without proof or evidence.

Site Visits

50. (1a) The Board may make one or more site visits or property inspections.

(1b) The Board shall in each case set out the Rules and procedures to be followed during the site visit. Site visits are not to be used by the parties to gather evidence.

(2) Where a site visit is made, the Board shall indicate on the record the fact that it made the visit, the date and time and those present. The Board may also indicate on the record any observations it considered significant.

Release of Exhibits

51. Where any document or thing is filed as an exhibit, the Board may release the exhibit to any party at any time during or after the hearing on consent of the parties. In the absence of consent, the Board may return the exhibit to the party tendering it after the disposition of any appeal or, where an appeal is not taken, after the expiration of the time for appeal.

Part 4 - Facilitating Public Participation

Public Testimony

52. Any person having relevant testimony may, with the Board's permission, testify without becoming a party to the hearing or being called as a witness by a party.

Written Submissions

53. (1) The Board prefers evidence to be given orally at the hearing so that the evidence given may be tested by cross-examination. However, where notice of a hearing has been given, any person who does not wish to be a party to the hearing or testify but who wishes to make his or her views regarding the hearing known to the Board may file with the Board a written submission commenting on the hearing, which describes the nature of the person's interest in the hearing and states clearly his or her views regarding the hearing, together with any relevant information that may be useful in explaining or supporting those views.

(2) Before a written submission is made part of the record, the Board shall make it available to all other parties to the hearing and provide an opportunity for parties to comment on its relevance, admissibility, and whether it would be unfair to make the submission part of the record without an opportunity to cross-examine the person making the written submission.

(3) The Board may take into account any such written submission unless, after hearing submissions, it determines that accepting it as evidence would unduly prejudice any party.

54. A person who testifies or files a written submission pursuant to this Part does not by that act alone become a party to the hearing.

Evening Sessions

55. The Board may, at its discretion, hold one or more evening sessions during the course of the hearing.

Part 5 - Additional Provisions

Board Counsel

56. The Board may appoint and direct its own counsel to:

(1) advise the Board on matters of law and procedure and on such other matters as the Board requests;

(2) conduct the examination-in-chief of Board-appointed witnesses if the Board has retained such witnesses;

(3) cross-examine Board-appointed expert witnesses; and

(4) provide liaison with counsel acting on behalf of parties, and parties that are unrepresented by counsel.

Argument and Submissions

57. (1) The Board may order the parties to submit written argument in addition to, or instead of, oral argument.

(2) All parties shall be given an adequate opportunity to respond to any written arguments and/or written submissions.

(3) In both written and oral argument, facts, or quotations from the oral evidence on which the argument is based are to be referenced with the transcript volume and page number, if transcripts are available and, if the fact or quotation is from documentation filed as an exhibit, the exhibit number and page.

(4) Parties should, at the time of delivering argument, make known to the Board any terms and conditions that they would like the Board to include to its order. Copies of draft terms and conditions should be distributed to other parties a sufficient time before argument is delivered to allow them to be addressed in their argument.

Effect of Order

58. Any Board Order is effective from the date upon which it is pronounced orally or upon which it is signed, whichever is earlier, unless the Board states otherwise.

Decisions

59. (1) The Board may pronounce an oral decision at the end of the hearing or it may reserve its decision and provide a written decision at a later date.

(2) If the Board gives an oral decision, it may issue a written version of the oral decision at a later date.

(3) The Board may at its discretion and in an effort to provide greater clarity vary the wording of its oral decision in any written version without affecting the intent of the oral decision.

(4) The Board's decision shall include reasons for its decision.

(5) The Board may issue its reasons for decision separate from its decision.

(6) Where any Board member who sat on a hearing dissents in writing from the majority decision of the Board, a copy of the dissenting reasons shall be attached to the decision.

(7) The Board's decision shall be sent to all parties to the hearing, and such other persons as may be determined by the Board.

Alternative Dispute Resolution

60. Before accepting an application for a hearing, the Board shall be satisfied that the Farm Practices Conflict Resolution Process established by the Environmental Management Branch of the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) has been applied and has been unsuccessful in resolving the conflict between the parties.

Costs

61. (1) Where a party believes that another party has acted unreasonably, frivolously or in bad faith considering all the circumstances, it may ask for an award of costs within 30 days of an order or decision being made or the matter being withdrawn or dismissed.

(2) The Board may make a costs award for conduct at any time during the proceeding.

(3) The Board may grant or deny the request or award a different amount.

(4) Unreasonable, frivolous, vexatious, or bad faith conduct can include, but is not limited to:

- i. Failing to attend a hearing event or to send a representative when properly given notice, without contacting the Board;
- ii. Failing to give notice or adequate explanation or lack of cooperation during pre-hearing proceedings, changing a position without notice, or introducing an issue or evidence not previously mentioned;
- iii. Failing to act in a timely manner or to comply with a procedural Order or direction of the Board where the result causes undue prejudice or delay;
- iv. Conduct necessitating unnecessary adjournments or delays or failing to prepare adequately for hearing events;
- v. Failing to present evidence, continuing to deal with issues, asking questions or taking steps that the Board has determined to be improper;
- vi. Failing to make reasonable efforts to combine submissions with parties of similar interest;
- vii. Acting disrespectfully or maligning the character of another party; or

viii. Knowingly presenting false or misleading evidence.

(5) The Board is not bound to order costs when any of these examples occurs. The Board will consider the seriousness of the misconduct. If a party requesting costs has also conducted itself in an unreasonable manner, the Board may decide to reduce the amount awarded.

(6) Awards on costs will bear interest in the same manner as those made under section 129 of the [Courts of Justice Act, RSO 199, c C.43](#).

Amended October 14, 2009

Glenn C. Walker, Chair

First established December 19, 1991
First amendment October 13, 1998
Second amendment February 28, 2001
Third amendment March 3, 2003
Fourth amendment February 14, 2005
Fifth amendment May 11, 2007
Sixth amendment October 14, 2009
Seventh amendment [date]

For more information:

Toll Free: 1-877-424-1300

E-mail: ag.info.omafra@ontario.ca

Appendix

**Normal Farm Practices
Protection Board**

1 Stone Road West
Guelph, Ontario N1G 4Y2
Tel: (519) 826-3433
Fax: (519) 826-4232
Email: NFPPB@ontario.ca

**Commission de protection des pratiques
agricoles normales**

1 Stone Road West
Guelph (Ontario) N1G 4Y2
Tél.: (519) 826-3433
Télééc.: (519) 826-4232
Courriel: NFPPB@ontario.ca



Certificate of Service

IMPORTANT INFORMATION:

- The purpose of this Certificate of Service is to verify that a copy of a document has been served to the necessary Party(ies), in accordance with the Board's Rules of Practice.
- It is your responsibility to make sure you are following the Board's Rules of Practice, which contain specific requirements for the distribution, serving, and filing of documents.
- A Certificate of Service must be completed for each party you serve a document to.

I certify that I (last name, first name) _____, on the date of (yyyy/mm/dd) _____ served the following documents:

Check all that apply

- Notice of Appeal
- Notice of Withdrawal
- Summons
- Declaration of Representative
- Motion
- Request for Adjournment
- Evidence/Disclosure (briefly describe): _____
- Other (briefly describe): _____

On the following party, (last name, first name) _____

By the following method:

- Email
- Regular Mail
- Courier
- Facsimile
- Certified or Registered Mail
- Other (briefly describe): _____

Signed by (print name): _____

Signature: _____

Date (yyyy/mm/dd): _____