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Office of the
Chairman

**Environmental
Assessment
Board**

1 St. Clair Avenue West
Toronto, Ontario
M4V 1K7

April 9, 1987

Dear Sir/Madam:

As you may be aware, the Environmental Assessment Board indicated in its last Annual Report its intention to develop a comprehensive set of rules of practice designed to assist those appearing before the board, including members of the general public, lawyers, and expert witnesses.

The Board has formulated a draft set of rules and now wishes to elicit the views and comments of interested parties on the rules in advance of a public hearing, to be held at the Board's offices commencing on June 16th, 1987.

I am pleased to enclose a copy of the draft rules together with a Notice of Public Hearing setting out the details concerning participation in this important phase in the development of the Board's rules.

I invite as many of you as possible to take advantage of the opportunity to assist the Board in this endeavour and look forward to your participation at the hearing in June.

If you require any additional information please do not hesitate to contact the Board Secretary at (416) 323-4814.

Yours sincerely,

Michael I. Jeffery, Q.C.
Chairman

Enclosure

DRAFT

NOTICE OF PUBLIC HEARING

**REGARDING RULES OF PRACTICE FOR
THE ENVIRONMENTAL ASSESSMENT BOARD**

The Hearing

A Public Hearing will commence at 9:30 a.m. on Tuesday, June 16, 1987 in the Environmental Assessment Board's hearing room, 5th Floor, 1 St. Clair Avenue West, Toronto. The hearing is expected to last 2 days.

Purpose of the Hearing

The public hearing is to assist the Board in providing comprehensive Rules of Practice for the benefit of those appearing before the Board.

Copies of the Draft Rules

Copies of the Board's draft rules may be obtained by writing or phoning the Board Secretary at the address noted below.

Participation

The Board invites individuals, citizens' groups, associations, companies, ministries, agencies, and others who may be interested in the Board's procedures to participate in the hearing and prepare written submissions.

How to Participate

If you wish to participate, please write to the Board Secretary at the address below not later than April 30, 1987 setting out your name, address and telephone number and a brief statement of your intention to participate either orally or in writing, or by both means. If you cannot personally attend, the Board will accept and consider written submissions.

Written Submissions

Submissions should arrive at the Board's offices two weeks in advance of the hearing, on Monday, June 1, 1987. A list of these submissions will then be distributed to all those who have indicated they wish to participate. Copies of any of these submissions will be provided to those who request them from the Board Secretary.

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Scheduling of Presentations

The Board Secretary will schedule a time during which each person who wishes to make an oral submission should appear at the hearing, and will advise each person of that scheduled time.

Contents of Oral Submissions

Since all submissions will have been studied by the Board beforehand, reading of the entire submission at the hearing will not be necessary. A brief summary of the contents of the submission, any elaboration of that submission, and discussion of matters contained in other participants' submissions will be welcomed.

Important Deadlines

The Board expects all participants to cooperate with the following time schedule, so that everyone will have adequate opportunity to participate.

- Letters to Board indicating intention to participate April 30, 1987
- Arrival of written submissions at the Board's offices June 1, 1987
- Commencement of Public Hearing June 16, 1987

Further Information

Please contact:

Ms. Yvonne Lane
Board Secretary
1 St. Clair Avenue, West
Toronto, Ontario
M4V 1K6
(416) 323-4806

The Board accepts collect calls.

Dated at **TORONTO** this **9th** day of **APRIL, 1987.**
ENVIRONMENTAL ASSESSMENT BOARD


Michael I. Jeffery, Q.C.
Chairman

ENVIRONMENTAL ASSESSMENT BOARD RULES

1. In these rules:

- (1) "Board" includes a panel or individual member of the Board hearing a specific matter;
- (2) "Hearing" includes all proceedings before the Board for which a Notice of Hearing has been given;
- (3) "Proponent" includes any person, corporation or unincorporated group of persons bringing an application under the Environmental Assessment Act, the Environmental Protection Act, or the Ontario Water Resources Act for the Board's recommendations or decision.

PART I - GENERAL

2. These rules apply to all proceedings of the Environmental Assessment Board.
3. Where any matter arises during the course of any proceeding that is not provided for by these Rules, the Board may do whatever is necessary to enable it to effectually and completely adjudicate on the matter before it.
4. The Board may, at any time, direct either orally at a hearing or in writing, that the provisions of these Rules or any of them shall not apply, or shall apply in part only, 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.
5.
 - (1) Where any time or time limitation is mentioned in these Rules, the Board may upon its own motion or upon application by a party to the proceedings, extend or abridge the time prescribed.
 - (2) The Board's discretion under ss.(1) may be exercised before or after the expiration of the time prescribed.

Preliminary Hearings

6.
 - (1) Preliminary hearings, that constitute part of the hearing, may be held,
 - (a) to define the issues in dispute;
 - (b) to arrange for the exchange among parties of all documents relevant to the issues;
 - (c) to consider the advantages of filing witness statements and interrogatories and to establish a procedure for filing;

- (c) for sewage treatment plants, all registered owners and tenants within 120 metres of the property boundary;
 - (d) for sewer mains, all abutting registered owners and tenants;
 - (e) for utility and transportation route proposals, all owners and tenants, as identified on the last revised property assessment rolls, located within a distance of 120 metres from the edge of a right-of-way.
10. (1) Notice of all hearings held under the Environmental Assessment Act shall be given at least 30 days before the hearing is to commence, unless otherwise directed by the Board.
- (2) Notice of all hearings held under the Environmental Protection Act shall be given at least 30 days before the hearing is to commence, unless otherwise directed by the Board.
- (3) Notice of all hearings held under the Ontario Water Resources Act shall be given at least 21 days before the hearing is to commence, unless otherwise directed by the Board.
11. Any notice required to be served by these Rules shall be served or published as follows unless the Board orders otherwise and in any event shall be done in accordance with the applicable statutory provisions:
- (1) by personal delivery, or by ordinary mail to the party or to the office of the solicitor acting for such party, by properly addressing, prepaying and posting an envelope with the return address thereon containing the document to be served; and
 - (2) by publication, on at least one (1) occasion in a newspaper having general circulation in the locality of the proposal, or, under the Environmental Protection Act, on at least three (3) occasions in a newspaper having general circulation in the locality of the proposal.
12. (1) Where the Board is of the opinion that it is impracticable to give notice to all or any of the parties individually, the Board may, instead of doing so, cause or permit reasonable notice of a hearing, motion, or public meeting to be given to such parties by public advertisement or otherwise as the Board may direct.
- (2) Subsection (1) does not apply to hearings under the Environmental Protection Act or the Ontario Water Resources Act.

- (2) The date of filing of any document with the Board is the date on which the document arrived at the Board's offices.

Parties

19. (1) The Board may designate as a party any person, corporation or unincorporated group of persons which has an interest in or is affected by the proposal being considered by the Board.
- (2) The Board may, in its discretion, limit the procedural obligations of some parties, depending upon the interests and resources of such parties.

Motions

20. (1) In any hearing before the Board, the Board may entertain motions, relevant to the proceedings of the Board, brought by any party.
- (2) A notice of motion shall be in writing except during the course of a hearing when the Board may grant leave for such a motion to be made orally.
- (3) No notice of motion shall be served unless an appointment has first been obtained from the Board for hearing the motion and directions have been given by the Board as to service.
- (4) Unless otherwise directed by the Board, there shall be at least two days between the service of a notice of motion and the day fixed for a hearing of the motion.
- (5) A notice of motion shall be made returnable at a location established by the Board.
- (6) The notice of motion shall set out clearly the relief requested and shall include all supporting material together with an indication of any oral evidence intended to be presented.
- (7) The Board, in hearing a motion, may permit oral evidence in addition to any supporting material accompanying the notice of motion.

Hearings in French

21. (1) The Board may conduct a hearing in the French language if so requested by a party who speaks the French language and such request is made,
 - (a) at the time of making an application or the initiating of a motion; or
 - (b) after the making of an application or the initiating of a motion, if the Board considers it necessary for fair disposition of the matter.

Media Coverage

24. (1) Radio and television recording of Board proceedings 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 ss.(1), a request should be made to the presiding chairman prior to the commencement of a particular hearing.
- (3) The presiding chairman may disallow the videotaping or recording of all or portions of the hearing if, in his opinion, such coverage would inhibit specific witnesses or disrupt the process in any way.
- (4) In cases where videotaping or recording is allowed, the following guidelines shall be applied, unless the presiding chairman orders otherwise:
- (a) only photographic and audio 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) media personnel should not move about while the hearing is in progress; and
 - (d) photographic and audio equipment should be positioned unobtrusively before the proceedings begin and should not be moved while the hearing is in progress.

Record

25. (1) The Board shall maintain a record which shall include transcripts, exhibits, correspondence and the Board's report or decision relating to each of its hearings.
- (2) One copy of the record shall be maintained and shall be available to any person during normal business hours at the Board's office and at other locations, if any, specified by the Board.
- (3) A person may examine any document filed with the Board and forming part of the public record and, upon payment of the Board's fee, take copies of such document unless an Act, an order of the court or an order of the Board provides otherwise.
- (4) The Board may order that any document filed with an application or at a hearing be treated as confidential, be sealed and not form part of the public record.

- (3) 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, and provided that it is signed by the witness.

Expert Witnesses

28. (1) An expert witness retained by a party or participant or the Board to give evidence shall provide a written curriculum vitae of his qualifications and experience.
(2) Any party or participant who wishes to challenge the qualifications of an expert witness should do so after the witness is qualified and prior to any testimony relating to the witnesses' opinions.
(3) No witness shall give opinion evidence unless the Board is satisfied that the witness is duly qualified.
(4) Evidence given by the expert witnesses shall be confined to the area of expertise claimed, and the facts upon which the opinion is based must be made clear, and must be proved by admissible evidence.
29. Lay witnesses may, at the discretion of the Board, give opinion evidence when the opinion is a summary of impressions within the realm of normal human experience, and when it is based on personal knowledge of the facts used to form the opinion, and those facts are stated in the evidence.
30. The Board may, on its own motion, retain expert assistance in respect of any matter before it.
31. The Board may, at the request of any party or participant, consider the appointment of expert witnesses to assist the Board. In such cases, the following procedures shall govern:
 - (1) Any such request shall be made by motion to the Board as soon as possible after the appointment of the hearing panel or at a preliminary hearing if one is held.
 - (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.

Protection for Witnesses

34. (1) Under the Ontario Evidence Act, a witness at a hearing shall be deemed to have objected to answer any question asked him upon the ground that the answer may tend to incriminate the witness or may tend to establish liability to civil proceedings or to a prosecution under any Act of the legislature, and no answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceeding, other than a prosecution for perjury in giving such evidence.
- (2) Any witness has the right to object to answer any questions under Section 5 of the Canada Evidence Act, on the basis that the answer may tend to incriminate him, or may tend to establish his liability to a civil proceeding, and such objection shall have the effect that the answer shall not be used against him, other than in a prosecution for perjury.
- (3) Objections to the giving of evidence under subsections (1) and (2) do not excuse the witness from answering any questions put to him.

Privileged Communications

35. (1) The following shall be considered privileged communications for the purposes of the Board's hearings:
- (a) Solicitor-client privilege, provided that the primary purpose of the document or communication for which the privilege is claimed was to assist Counsel in preparation for the hearing, rather than for another purpose or purposes;
- (b) Privilege against disclosing communications made in furtherance of settlement.
- (2) The specification of privileged communications in subsection (1) does not limit the ability of a witness to claim, subject to the Board's ruling, any other privilege.

Board Counsel

36. The Board may appoint its own Counsel and direct him to:
- (1) advise the Board on matters of law and procedure and on such matters as the Board requests;
- (2) call evidence;
- (3) assist Counsel acting on behalf of parties;

Witness Statements and Interrogatories

40. (1) The Board may, on its own motion, or at the request of any party, direct that witness statements and interrogatories be filed by such parties as the Board deems appropriate in advance of the presentation of oral evidence.
- (2) When witness statements and interrogatories are ordered, the timing at which each party is to present such witness statements or interrogatories shall be determined by the Board.
- (3) Interrogatories shall contain a written request for information directed from one party to another party to the hearing, addressed to the party, numbered consecutively for each item of information requested, dated, and served within the time limit directed by the Board.
- (4) The Board may order that copies of witness statements, interrogatories, and answers to interrogatories shall be filed with the Board and served on all parties.
- (5) A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall:
- (a) where the party contends that the interrogatory is not relevant, provide a response that sets out reasons in support of that contention;
 - (b) where the party contends that the information necessary to provide a response is not available, provide a response that sets out the reasons for the unavailability of such information and provide any alternative available information that the party considers would be of assistance to the person directing the interrogatory; or
 - (c) where the party contends that the information sought is of a confidential nature, provide a response that sets out the reasons why it is considered confidential.

Production

41. (1) Any party may, at any time before a hearing, give notice in writing to any other party in whose application, witness statement, response to an interrogatory, or report, reference has been made to a document, to produce that document for inspection by the party giving the notice and to permit him or his solicitor to make copies thereof.
- (2) Any party who fails to comply with a notice given to him pursuant to subsection (1) within ten (10) days from its receipt is not entitled to put the document referred to in the notice in evidence on his behalf

- (6) Board Counsel, if any;
- (7) the proponent, in re-examination.

Witness Panels

- 45. 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 in the public interest.

Copies of Documents

- 46. (1) Where the Board is satisfied with the authenticity of a copy of a document or other thing, it may be admitted as evidence at a public hearing.
- (2) Where a document has been filed in evidence at a public 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 document filed and release the document filed.

Certified Copies

- 47. Certified copies of documents shall be receivable in evidence by the Board as prima facie proof of the facts set out therein without proof of the signature or the official position of the person appearing to have signed it.

Documents to be Used in Cross-Examination

- 48. Any party intending to use in cross-examination a document not already in evidence shall give sufficient notice of such intention to the party whose witness is being cross-examined to enable the witness to familiarize himself with the document.

Site Visits

- 49. The Board may make a site visit or inspect property.

Argument and Submissions

- 50. The Board may order written argument to be submitted by the parties in addition to or in lieu of oral argument.

Effect of Order

- 51. Any Board order is effective from the date upon which it is announced orally or upon which it is signed, whichever is earlier.