

ENVIRONMENTAL ASSESSMENT BOARD

A GUIDE
FOR
HEARINGS
UNDER

THE ONTARIO WATER RESOURCES ACT

THE ENVIRONMENTAL PROTECTION ACT

THE ENVIRONMENTAL ASSESSMENT ACT

JULY, 1983

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INTRODUCTION

The Environmental Assessment Board is an administrative tribunal of the Province of Ontario established in 1975 under The Environmental Assessment Act. Its principal function is to hold public hearings on enterprises, activities, plans or programs proposed to be undertaken in the Province of Ontario and which may have an impact on the natural or social environment.

It is an independent Board and, while it reports to the Legislature through the Minister of the Environment, it is not part of the Ministry of the Environment. It is comprised of full-time and part-time members. The full-time members consist of a Chairman and three Vice-Chairmen. There are eight part-time members at the present time.

The Board conducts hearings on environmental assessments under the Environmental Assessment Act (Section 5), on sewage works and on public water or sewage service areas under the Ontario Water Resources Act (Section 6 and Section 43, respectively), and on waste disposal systems under the Environmental Protection Act (Section 33). It may also undertake special hearings authorized by Order-in-Council. (The Board, in addition, conducts hearings in conjunction with the Ontario Municipal Board under the Consolidated Hearings Act. Reference should be made to that Act for details concerning those proceedings and the procedures which are followed).

In proceedings under the Ontario Water Resources Act and

the Environmental Protection Act, the Board makes a recommendation, rather than a decision, with respect to the subject matter of the hearing. Under these two Acts, the Board holds hearings at the request of the Ministry of the Environment and, following the hearings, it forwards its report, containing its conclusions and recommendations, to that Ministry. The Ministry then considers the Board's report before issuing its decision with respect to the proposal which was the subject of the hearing.

In proceedings conducted by the Board under the Environmental Assessment Act, the Board performs a decision-making function. Direction to hold the hearing comes from the Minister of the Environment. Following the hearing, the Board issues its decision, together with written reasons therefor, to the Minister, to the parties to the hearing and to other specified persons. Further details concerning the role of the Board in the approvals process follow.

This guide is intended to assist the public - including the applicant, those opposing or those supporting the application, members of the legal profession, government ministries, boards or agencies, members of the general public - who may wish to take part in the Board's hearings. It should be remembered, however, that these guidelines are not formal procedures and that, in this regard, procedures contained in Part II of the Public Inquiries Act 1971, insofar as the Ontario Water Resources Act and the Environmental Protection

Act are concerned, and those contained in the Statutory Powers Procedures Act 1971, insofar as the Environmental Assessment Act is concerned, govern.

THE ROLE OF THE BOARD IN THE APPROVALS PROCESS

Under the Ontario Water Resources Act and the Environmental Protection Act

A person seeking approval of a sewage works or a waste disposal facility is required to submit an Application to the Director of the Environmental Approvals and Project Engineering Branch of the Ministry of the Environment. If the Director decides that, in conformity with the legislation, a hearing is necessary, he directs the Environmental Assessment Board to hold the hearing. The Board then gives Notice of the hearing, or gives direction for the giving of notice of the hearing, in accordance with the statutes and its own practices.

After the Board has set a time and date for a hearing, the Board Secretary's office prepares an Official Record of the proceedings. This contains the application and supporting documents, the Notice requiring the Board to hold the hearing and any other directions received from the Minister or the Director, and the Notice of the hearing. At least fifteen days prior to the hearing, copies of the documents then in the Official Record are placed in the office of the clerk of the municipality in which the proposed project is to be located. This material can be inspected by anyone prior to the hearing

in the clerk's office or in the office of the Environmental Assessment Board in Toronto.

As the hearing progresses, all documentary evidence filed with the Board, and the transcript, if any, of the oral evidence given at the hearing, are inserted in the Board's copy of the Official Record. After the Board has made its report to the Director, a copy of the report is also inserted.

Some participants may wish to file written briefs with the Environmental Assessment Board. If a brief is filed before the hearing, the person filing it should attend the hearing to present it in person. This is to allow the Board or other participants an opportunity to question that person regarding the brief. Briefs to be presented at a hearing should, if possible, be prepared in multiple copies for distribution among the main parties and participants.

After the conclusion of the hearing, the members of the Board who conducted the hearing prepare a draft report which is submitted for consideration by the full Board. The Board then makes a report on the hearing, together with its recommendations, to the Director who requested it. The Director uses the Board's report in making his decision as to whether or not to approve the project.

Where the hearing is long or complex, the Board may have a hearing reporter in attendance to record the proceedings.

Under the Environmental Assessment Act

Hearings under the Environmental Assessment Act take place in situations when the Minister of the Environment has required the Board to hold a hearing on an undertaking for which the proponent has prepared an environmental assessment document. The purpose of the hearing is to determine whether the acceptance or amendment and acceptance of the environmental assessment should be given; whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and whether the approval should be given subject to terms and conditions and, if so, the provisions of such terms and conditions.

On receiving a requirement from the Minister to hold the hearing, the Board gives notice of the hearing or gives directions for the giving of notice of the hearing. The procedures followed by the Board in setting up the Official Record, the acceptance of written briefs, and the general conduct of the hearing are similar to those outlined above with respect to hearings being held under the Ontario Water Resources Act and the Environmental Protection Act.

After the conclusion of the hearing, the panel of the Board which conducted the hearing prepares its Decision and, as indicated above, this is forwarded, together with written reasons therefor, to the Minister, to the parties to the

hearing and to other specified persons.

GENERAL PROCEDURES FOLLOWED BY THE BOARD

1. Hearings Open to the Public

The Board's hearings are kept informal to the greatest extent possible, consistent with good order, in the interests of encouraging participation by the public.

The Board follows the general principle that all of its hearings shall be open to the public. Exceptions to this principle occur only where, having regard to the circumstances, those members of the Board conducting the hearing are of the opinion that matters may be disclosed at the hearing which are of such a nature that the desirability of avoiding disclosure of same (either in the interests of any person affected or in the public interest) outweighs the desirability of adhering to the principle of open hearings. In such cases, the Board members conducting the hearing may hold that portion of the hearing in camera.

2. Notice

Fundamental to the concept of a fair hearing is the question of Notice. Notice provisions must satisfy not only legislative requirements and principles of natural justice but

should address the practical consideration of ensuring that as many persons as possible who are interested in the proposed undertaking actually receive notice of the proceedings and in sufficient time to respond fairly to all of its implications. The Board itself gives notice unless some party is directed by the Board to do so. (For form of Notice see Appendix "A").

3. Parties and Participants

The Board has made a distinction between two kinds of interested persons - a party and a participant. A party, as defined in the Environmental Assessment Act, includes the proponent, the person requiring the hearing, and such other persons as the Board may specify. In matters where parties are not defined, the Statutory Powers Procedure Act provides that parties shall include all persons who are entitled by law to be parties to the proceedings. The Act also provides that parties have the right to examine and cross-examine witnesses, tender documentary evidence, present argument and submissions, and be present at the hearing. Parties may be invited by the Board to make submissions with regard to the procedures to be followed for the expeditious conduct of the hearing. All other persons who are not parties, but who wish to take part in the proceedings in some way, are designated participants by the Board.

A participant takes part in the proceedings in a more informal manner and is usually not in a position to attend the hearing on a continuous basis for any length of time. Often, sittings of the Board are scheduled during the evenings to provide a convenient time for the participants to attend. A participant may be excused from filing a witness statement prior to giving testimony at the hearing, although the option to do so is available. The opportunity to cross-examine witnesses and present final argument and other rights of parties may be granted to a participant by the Board.

4. Preliminary Hearings

At the discretion of the Board, preliminary hearings may be held, with full notice being provided. The preliminary hearing is not necessarily attended by the full panel appointed to hear the application but at least one member of the panel must be in attendance. Decisions of an interlocutory nature may be made. As many preliminary hearings as necessary may be held for the following purposes: to define the issues in dispute with particularity; to arrange for the exchange among parties of all documents relevant to the issues; to consider the advantages of filing witness statements and interrogatories and, if this is felt to be desirable, establish a procedure for their filing; to identify the witnesses to be called, and, generally, the nature of their evidence; to estimate the length

of the hearing and, if possible, to set a date for the commencement of the hearing.

In complex hearings where a lengthy planning period may be involved, the consideration of the total application may be more appropriately dealt with in stages, rather than making a final determination of the matter in one comprehensive decision. The preliminary hearing provides an opportunity to consider all aspects of the phasing of the hearing.

If the issues are determined at the preliminary hearing, no other issues may be raised without leave of the Board, and only evidence relevant to those issues will be admitted.

All of the matters raised at the preliminary hearing may be finalized by the Board, either by accepting an undertaking from the parties, by minutes of agreement or by a Board Order.

In appropriate circumstances, information centers may be established prior to the hearing, either by the Board or by the proponent when directed by the Board. The purpose of the information centre is to provide a convenient location where interested persons may attend to obtain information on the general nature of the hearing and the procedures to be followed.

5. Witness Statements

The Board may require the preparation and exchange of witness statements. A witness statement is a concise but complete written statement of the evidence of a witness and

serves to inform other parties about the case that is being presented (a function which is performed, in part, by the exchange of pleadings in a court action). At the present time, the Board's practice is that only parties, and witnesses called on their behalf, may be required to file such witness statements and the Board may rule that only certain designated parties need to file statements. Participants may find the witness statement procedure convenient and may, therefore, also follow this procedure.

A written statement of each witness's evidence must be prepared in a concise form. It is intended that the statement be complete in the sense that the witness under examination-in-chief would not be allowed, without leave, to add anything new to the evidence, although such person would be entitled to explain more fully anything contained in the statement. The witness statement must contain the following:

- a) the name, address and telephone number of the witness (qualifications, curriculum vitae, if appropriate);
- b) whether or not he has an interest in the application and, if so, the nature of his general or special interest;
- c) whether the evidence will be factual evidence or, if the witness is qualified, opinion evidence; (the witness should set out the special skills which he possesses by reason of experience or study which qualifies him to give such evidence in respect of a particular subject).
- d) a full but concise statement of the evidence of the witness;

- e) reference and identification of exhibits which are part of the witness's evidence, e.g. supporting documents, plans, reports, technical memoranda, etc. (A separate sheet shall be attached to the statement listing the exhibits, and these exhibits, or a copy of thereof, shall be filed with the Board);
- f) an acknowledgement that the witness will attend before the Board and be subject to examination and cross-examination if required to do so;
- g) the date of the statement;
- h) signature of the witness.

Any witness statement which is not in compliance with these provisions will not be accepted by the Board for filing but will be returned for revision, amendment or correction, as the case may be. Copies of witness statements must be submitted to all other identified parties and a copy filed with the Board by the date specified.

The introduction of the witness statement into the Record as evidence is a matter to be determined by the Board and may be dealt with in a number of ways. On non-controversial evidence, there may be consent from the parties, and the statement would be marked as an exhibit and received as an agreement of fact. Parties are encouraged to adopt this approach whenever possible. In other situations, a party may introduce the witness statement during the presentation of the case, usually at the commencement of the examination-in-chief of the witness to whom the statement applies, and have it marked as an exhibit. The witness, however, must be available

for cross-examination by other parties. Any party may request the Board's permission to read out the statement or any portion thereof. In some situations, usually involving technical evidence, the witness may be required to explain more fully matters contained in the witness statement or, where leave of the Board is granted, testimony in new areas may be given.

The parties should also be aware that a witness statement may be received as evidence without calling the witness or without having the witness available for cross-examination. A more complete discussion on this point is given later under the topic of the introduction of hearsay evidence. Objection to any aspect of the witness statement should be raised prior to the hearing for a ruling.

6. Interrogatories

The Board expects the parties to make use of its procedure for the exchange of interrogatories in order to obtain information and answers to questions in advance of the hearing. (One party sends a list of questions, numbered consecutively, to an opposing party; the answers are given by first repeating the question and its number, then stating the answer. In each case, a copy of the questions and answers must be filed with the Board). Interrogatories meet some of the objectives of an Examination for Discovery. Failure to use this procedure, where its advantages are apparent, may result in the Board's

refusal to allow questioning at the hearing on a particular point.

Interrogatories serve two main functions: they enable a party to obtain information in preparation of the case being presented; and they speed up the introduction of that evidence as part of the Hearing Record. Any objections as to admissibility should be made in advance of the hearing and may be the subject of a motion to the Board for directions. If no objection is taken, all interrogatories are filed in a package as an exhibit at the outset of the hearing or individual interrogatories may be filed as an exhibit as each witness is presented and these form part of the evidentiary record of the hearing. As an alternative, an interrogatory may be proven by the witness at the time the witness is sworn and testifies at the hearing.

Interrogatories are particularly useful in putting background or non-controversial information on the record quickly, and are helpful in situations where a witness is required to perform a calculation or research an answer. Considerable time may be lost when a person, in the witness box, is confronted for the first time with the task of performing a calculation or looking up information in some document.

7. Introduction of Evidence

The Board may order that evidence of a particular fact shall be given at the hearing in such manner as may be specified in the order. In particular, evidence of any fact may be given by:

- a) a statement on oath of information or belief;
- b) the production of documents, interrogatories, reports, witness statements;
- c) by facts that may be judicially noticed.

Unless the Board otherwise permits, no evidence-in-chief of a witness shall be received at the hearing in respect of any issue unless a full statement of the proposed evidence-in-chief of the witness has been set out in writing, the original of which has been filed and a copy of which has been served on all other parties within the time determined by the Board, and the witness is available at the hearing for cross-examination. Evidence-in-chief of a witness may be tendered at the hearing by the introduction of the witness statement and such elaboration and explanation thereof as is necessary for the Board to fully understand the evidence of the witness.

8. Hearsay Evidence

The fair hearing concept, as it relates to the introduction of evidence, can be accomplished by following the technical rules of evidence as nearly as possible, with certain modifications. Due to the nature of the subject matters coming before the Board, the application of the hearsay rule is often raised. The Board is not bound to observe strictly the technical hearsay rule but may admit in evidence (whether or not proven under oath or affirmation) documents, testimony or other things relevant to the subject matter of the proceedings and may act on such evidence. The test to be applied at common law

is whether or not the hearsay evidence being considered has some probative value so that a reasonable person might make decisions or otherwise act on such material. The overriding consideration is that the introduction of the hearsay evidence must not detract from the obligation of maintaining a fair hearing.

If a challenge to the admissibility of hearsay evidence is raised, it should be made on the grounds that it is not fair to receive the evidence without an opportunity for cross-examination of the person who made the statement. In reaching any conclusion on admissibility, the Board has regard to the nature of the evidence, whether it is relevant to a corollary issue or goes to the very root of the subject matter under consideration, and whether or not the party challenging the admissibility had requested, during the preliminary procedures, that the author of the hearsay statement be made available for cross-examination. If this type of challenge is unsuccessful, then it becomes not a matter of admissibility but of weight. The Board gives less weight to any evidence which has been introduced without the opportunity for testing by cross-examination.

9. Motion for Directions

A motion for directions may be brought before the Board prior to the hearing date. The subject matter of the motion may cover a wide variety of matters but motions for adjournment or motions for directions for the production of documents are

examples which illustrate situations where the hearing process can be expedited.

10. Class Representation

As a further aid to speeding up the introduction of evidence, it is anticipated that more use will be made of the power by the Board to appoint a class representative. To achieve this, there must be some common interest identified among the class of parties in the proceedings. It is noted that the statutory authority is limited to parties and does not include what the Board has artificially termed "participants". However, in appropriate cases, the Board may designate any person, who falls within a particular class having a common interest, as a party in order to take advantage of the class representation.

11. Conducting the Hearing

While the Board has absolute discretion over the conduct of its own proceedings, as a general rule the proponent or applicant should present its case first. This is done through the evidence of witnesses who would be examined-in-chief by the proponent's counsel or agent, and by any other party of a like interest. The witness would then be available to any party of an opposing interest for cross-examination, and, finally, would be available to answer any of the questions posed by members of the Board.

Re-examination would then follow. The opportunity for

re-examination is restricted to the party calling the witness and the questions are limited to those matters raised in cross-examination. Re-examination may only be used to fully answer the questions asked in cross-examination. With leave of the Board, other parties of a like interest to the party calling the witness may be permitted to ask supplementary questions in re-examination.

Parties or participants who are not represented by legal counsel may utilize Board counsel, if present, to assist in questioning a witness. However, if anyone wishes to cross-examine a witness called by an opposing interest, the Board should grant such a request, but the Board should insist that the questions are relevant and properly framed. This latter point is emphasized since persons unfamiliar with the area of cross-examination tend to give evidence rather than ask questions. After all witnesses and evidence have been called on behalf of the proponent, the proponent's case is closed and any parties with an interest similar to the proponent's would be given an opportunity to present evidence. The order of presenting each party's case in this category would be determined either by the Board or through agreement by the parties.

In a similar fashion, the case of each party opposing the particular application or undertaking would be introduced in evidence in the manner previously described. For those parties or participants not represented by legal counsel, the party or participant may give evidence or, in some cases, call witnesses to testify on their behalf in support of their

position. Usually, some specified time and date has been set aside for this purpose, but in matters which are not particularly lengthy or complicated, it merely follows the completion of the last case presented on behalf of a party or counsel. The order of appearance should be left to the discretion of the Board and, while in most cases it may be settled merely by a raised hand, where large numbers of parties or participants are involved, the order may be settled by having various parties or participants record their names with Board staff.

After all parties and participants have completed their cases, Board counsel, if in attendance, is then given an opportunity to introduce evidence if desired. In most situations, it will not be necessary to call evidence but the opportunity is available, nevertheless, in the interests of properly safeguarding the public interest. It is designed to ensure that all relevant information and issues are properly presented before the Board so that an informed determination may be made. After all cases are closed, the proponent would then be entitled to introduce reply evidence which is strictly limited to evidence to answer, rebut or modify the evidence introduced by the opposing parties and participants and which could not have been reasonably foreseen or anticipated at the time the proponent presented its case in the first instance.

Following the completion of the presentation, including reply evidence, argument is then presented. The purpose of argument is to develop a particular position or theme based on the evidence admitted, taking advantage of any reasonable

inferences which can be drawn therefrom. Matters which may be judicially noticed may also be used in argument. This is not the time to introduce new evidence into the proceedings. It should be noted that additional evidence can only be introduced by a party after his case is closed with leave of the Board. The proponent would present his argument first, again followed by any parties of a like interest. The opposing parties would then give their explanation of the evidence presented as well as answering the argument of the proponent and any others taking a position similar to the proponent. The proponent would then be permitted to reply to the argument made by parties opposing the proponent's position.

12. Addressing the Board

All persons addressing the Board should be identified by name if that person is not known to the court reporter and to the Board. Such persons, whether members of the legal profession or not, should stand while addressing the Board or questioning a witness. In the case of a witness giving evidence before the Board, slightly different considerations prevail, however. Due to the length of time that a witness may be required to give evidence and the physical demands placed upon the witness in that capacity, the witness should have the option of giving his evidence either while standing or seated in a chair at a designated location.

13. Opinion Evidence

The Board will only receive opinion evidence of a witness where it is indicated that the witness possesses a special skill by reason of experience or study with respect to the particular subject on which he intends to express an opinion.

14. Summons to Witnesses

The Board has power to summon witnesses to attend the hearing to give evidence and to bring with them relevant documents and material. The summons may be issued by the Board on its own behalf or at the request of any of the parties. (See Appendix "B")

15. Evidence under Oath or Affirmation (See Appendix "C").

Generally, all evidence received by the Board should be received under oath or affirmation. (For a possible exception see item #8 - Hearsay Evidence). It is noted that a special rule applies to children of tender years, but the number of occasions where this situation would arise does not warrant further discussion. Although, as a matter of law, the oath or affirmation is administered by the Board, the oath or statement of affirmation may be read out to the witness by a member of the staff.

At the outset of the hearing, a witness shall be handed a copy of the "Notice to Witness" advising him of his rights under Section 5 of the Canada Evidence Act.

In order to provide protection to witnesses under the provisions of the Canada Evidence Act, the following procedure will be followed:

The witness shall be asked:

- 1) "Have you read the Notice to Witness handed to you or your counsel at the outset of this hearing?", and
- 2) "Do you wish to avail yourself of the protection set out in Section 5 (Sub-section 2) of the Canada Evidence Act with respect to your testimony to be given to this Board?".

16. Recording of Board's Proceedings

Recording of the Board's proceedings is limited to taking of notes, or by a Board-appointed reporter. Electronic devices are not permitted while the hearing is in progress except as allowed by the Board under the discussion on media coverage. These comments do not apply to equipment where the sole function is to amplify the sound of voices, thereby assisting persons in attendance at the hearing to follow the proceedings.

17. Media Coverage

As a matter of general policy, radio and television recording of Board proceedings may be permitted at the discretion of the hearing panel, subject to any terms and conditions the panel may impose.

Prior to the commencement of the hearing, radio and television reporters or others may write to the Board requesting permission to videotape, film or tape record part or all of the proceedings.

July, 1983.

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IN THE MATTER OF Section 33(1) of the Environmental Protection Act (R.S.O. 1980, c.141)

- and -

IN THE MATTER OF an application by the Township of Brant for a Certificate of Approval for the enlargement of an existing waste disposal site (landfilling) located on part of Lot 33, Concession 8, Township of Brant

NOTICE OF PUBLIC HEARING

ENLARGEMENT OF EXISTING WASTE DISPOSAL SITE
(LANDFILLING)
TOWNSHIP OF BRANT

TAKE NOTICE THAT the Environmental Assessment Board has appointed TUESDAY, the 21ST day of JUNE, 1983, at 10:00 o'clock in the forenoon, for a public hearing to be held in the

Auditorium,
Town Hall,
111 Jackson Street,
WALKERTON, Ontario.

The purpose of this hearing is to obtain information and to hear the views of the public, so that the Board can make recommendations to the Ministry of the Environment with respect to the proposed undertaking. Written and oral submissions may be made to the Board at the hearing. The Board will not consider any submission regarding the proposal after the hearing has been closed.

cont'd...../2.

Documents regarding this proposal will be made available for examination and inspection during normal business hours in the office of the Clerk of the Township of Brant, R.R.#1, Elmwood, Ontario, in the office of the Environmental Approvals and Project Engineering Branch of the Ministry of the Environment, 5th Floor, 40 St. Clair Avenue West, Toronto, Ontario, and in the office of the Environmental Assessment Board, 5th Floor, 1 St. Clair Avenue West, Toronto, Ontario.

EXPLANATORY NOTE

The Corporation of the Township of Brant has made application for a Certificate of Approval for a 3.4 hectare enlargement of an existing landfilling site to be located within a 10.4 hectare enlarged plot of land in Part Lot 33, Concession 8, Township of Brant. The site would be operated by the Township of Brant and would serve that Township. The site would be open two days per week (104 days per year) and would receive approximately 17 tonnes of domestic waste per week.

DATED at TORONTO this 25th day of MAY, 1983.

M. J. Cathcart,
Board Secretary.

MJC/kr.

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SUMMONS TO WITNESS

RE:

TO:

You are hereby summoned and required to attend before the Environmental Assessment Board at an inquiry conducted by the said tribunal to be held at _____ in the _____ of _____ on _____ day, the _____ day of _____, 19____ at the hour of _____ o'clock in the _____ noon (local time) and so from day to day until the inquiry is concluded or the tribunal otherwise orders, to give evidence on oath touching the matters in question in the inquiry and to bring with you and produce at such time and place

Dated this _____ day of _____ 19____

ENVIRONMENTAL ASSESSMENT BOARD

Commissioner

NOTE:

You are entitled to be paid the same personal allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Supreme Court.

If you fail to attend and give evidence at the inquiry, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Supreme Court of Ontario in the same manner as if for contempt of that Court for disobedience to a subpoena.

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OATH TO WITNESS

STATE YOUR FULL NAME PLEASE.

DO YOU SOLEMNLY SWEAR THAT THE EVIDENCE TO BE GIVEN BY YOU TO THIS BOARD SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH. SO HELP YOU GOD.

I AM DIRECTED TO HAND YOU THIS NOTICE AS TO YOUR RIGHTS UNDER THE CANADA EVIDENCE ACT.

AFFIRMATION

STATE YOUR FULL NAME PLEASE.

DO YOU SOLEMNLY AFFIRM THAT THE EVIDENCE TO BE GIVEN BY YOU TO THIS BOARD SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH.

I AM DIRECTED TO HAND YOU THIS NOTICE AS TO YOUR RIGHTS UNDER THE CANADA EVIDENCE ACT.

NOTICE TO WITNESS

THE PUBLIC INQUIRIES ACT, 1971, PROVIDES THAT A WITNESS SHALL BE INFORMED OF HIS RIGHT, TO OBJECT, TO ANSWER ANY QUESTION UNDER SECTION 5, OF THE CANADA EVIDENCE ACT.

SECTION 5, OF THE CANADA EVIDENCE ACT PROVIDES:

(1) NO WITNESS SHALL BE EXCUSED FROM ANSWERING ANY QUESTION UPON THE GROUND THAT THE ANSWER TO SUCH QUESTION MAY TEND TO CRIMINATE HIM, OR MAY TEND TO ESTABLISH HIS LIABILITY TO A CIVIL PROCEEDING AT THE INSTANCE OF THE CROWN OR OF ANY PERSON.

(2) WHERE WITH RESPECT TO ANY QUESTION A WITNESS OBJECTS TO ANSWER UPON THE GROUND THAT HIS ANSWER MAY TEND TO CRIMINATE HIM, OR MAY TEND TO ESTABLISH HIS LIABILITY TO A CIVIL PROCEEDING AT THE INSTANCE OF THE CROWN OR OF ANY PERSON, AND IF BUT FOR THIS ACT, OR THE ACT OF ANY PROVINCIAL LEGISLATURE, THE WITNESS WOULD THEREFORE HAVE BEEN EXCUSED FROM ANSWERING SUCH QUESTION, THEN ALTHOUGH THE WITNESS IS BY REASON OF THIS ACT, OR BY REASON OF SUCH PROVINCIAL ACT, COMPELLED TO ANSWER, THE ANSWER SO GIVEN SHALL NOT BE USED OR RECEIVABLE IN EVIDENCE AGAINST HIM IN ANY CRIMINAL TRIAL, OR OTHER CRIMINAL PROCEEDING AGAINST HIM THEREAFTER TAKING PLACE, OTHER THAN A PROSECUTION FOR PERJURY IN THE GIVING OF SUCH EVIDENCE.

UNDER THE PROVISIONS OF THE ACT GOVERNING THE PROCEDURE OF THE BOARD RELATING TO THIS HEARING, THE BOARD IS REQUIRED TO INFORM YOU OF YOUR RIGHTS UNDER S.5 OF THE CANADA EVIDENCE ACT.

AS A WITNESS TO THIS HEARING you are required to answer the questions put to you at this hearing. However, if you request the protection of the Canada Evidence Act, your evidence may not be used against you in any subsequent criminal trial, or other criminal proceeding other than a prosecution for perjury in the giving of such evidence.

THE FULL TEXT OF S.5 OF THE CANADA EVIDENCE ACT IS AS FOLLOWS:

S.5

- 1) No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

NOTICE TO WITNESS - continued.

- 2) Where with respect to any question a witness objects to answer upon the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or any person, and if but for this Act, or the Act of any Provincial legislature, the witness would therefore have been excused from answering such question, then although the witness is by reason of this Act, or by reason of such Provincial Act, compelled to answer, the answer so given shall not be used or receivable in evidence against him in any criminal trial, or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence.

