

NOVA SCOTIA UTILITY AND REVIEW BOARD
RULES OF PRACTICE AND PROCEDURE
RESPECTING PROCEEDINGS UNDER THE
LIQUOR CONTROL ACT

1 These Rules are made pursuant to Section 12 of the *Utility and Review Board Act* and apply to proceedings under the *Liquor Control Act*.

SHORT TITLE AND OBJECT

2 (1) These Rules may be cited as the *Liquor Procedural Rules*.

(2) The object of these Rules is to secure the just, speedy and economic determination of every appeal, application or other proceeding.

DEFINITIONS

3 In these Rules:

- (a) "agent" means a person who has been lawfully authorized to act on behalf of an Applicant;
- (b) "application" includes any proceeding, request, referral, matter or thing that the Board has jurisdiction to hear or determine under the *Liquor Control Act*;
- (c) "Board" means the Nova Scotia Utility and Review Board;
- (d) "Clerk" means the Clerk of the Board;
- (e) "conversion" means the operation of that part of the licensed premises covered by an eating establishment license under the lounge license, or the reverse thereof;
- (f) "decision" includes a refusal, failure or neglect to make the decision sought;

- (g) "entertainment" means one or more of amplified entertainment, live entertainment and adult entertainment, unless the context requires otherwise;
- (h) "fire official" means a fire official as defined in the *Fire Safety Act*, acting as authorized under the *Fire Safety Act*;
- (i) "holiday" means Saturday or a holiday as defined in the *Interpretation Act*, s. 7 (1)(j);
- (j) "Minister" means the member of the Executive Council to whom functions or duties are assigned pursuant to the *Liquor Control Act* or such person or agency authorized to act on the Minister's behalf;
- (k) "person" includes an unincorporated organization, a corporation and the heirs, executors, administrators or other legal representatives of a person;
- (l) "Personal History Report" means a form prescribed by the Board which sets out information respecting the applicant, its officers, directors, shareholders, executive members and manager;
- (m) "written evidence" includes reports, documents, letters, appraisals, hard copies of overhead projection sheets, calculations and other data which a party intends to present as evidence at the hearing or preliminary hearing;
- (n) "visual evidence" includes photographs, maps, audio tapes, videos, charts, models, overlays and computer generated images which a party intends to present as evidence at the hearing or preliminary hearing.

GENERAL

4 (1) Where procedures are not provided for in these Rules or in an enactment, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

(2) The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of these Rules at any time by making a procedural order, if it is satisfied that the special circumstances of the application so require, or it is in the public interest to do so.

(3) The Board may make directions on procedure and procedural orders which shall govern the conduct of a specific application.

(4) The Board may extend or abridge the time fixed by these Rules or otherwise fixed by the Board, and may do so of its own initiative or in response to a motion by any party whether or not the motion to extend or abridge the time is made after the time so fixed has expired.

(5) Unless otherwise specified, where these Rules or a Board order make reference to the number of days between two events, not expressed to be clear days, the number of days shall be calculated by excluding the day on which the first event happens and including the day on which the second event happens. If the last day falls on a day the Board offices are closed, the time shall automatically be extended to the next business day.

(6) No application before the Board shall be defeated or affected by any technical objection or by any objection based upon defects in form or procedure.

FILING OF APPLICATION OR OTHER DOCUMENTS

5 (1) Any application or other document to be filed with the Board shall be filed with the Clerk.

(2) An application shall be in writing and shall be signed by the Applicant, or the agent or solicitor acting on their behalf.

(3) Any document to be filed with the Board, including an application, shall be filed with the Clerk by any of the following methods:

- (a) delivering a copy to the Clerk at the Board's office;
- (b) mailing a copy to the Clerk;
- (c) transmitting a copy to the Clerk via fax or e-mail; or
- (d) such other manner as the Board may determine.

(4) All documents filed shall be date stamped by the Board and any document, other than a document the filing of which is required by the Liquor Control Act, or the regulations thereunder, filed with the Board after 2:00 p.m. or on a holiday shall be considered to have been filed on the next working day.

(5) In all cases where documentary evidence is offered, the Board, in lieu of requiring the originals thereof to be filed, may accept true copies of such evidence or such parts of the same as may be relevant, or may require such evidence to be transcribed as part of the record.

(6) When a document is filed with or served on the Board by e-mail transmission, a hard copy or fax of the document shall be provided to the Board within one day thereafter.

(7) When a document is filed with or served on the Board by e-mail transmission or fax, the sender shall obtain an acknowledgement from the Clerk of its receipt.

SERVICE OF DOCUMENTS

6 (1) Where any document is required to be served on another person, service shall be effected by any of the following methods:

- (a) personal service upon the person;
- (b) delivering a copy to the person's proper address;
- (c) sending a copy by ordinary mail addressed to the person at his or her proper address;
- (d) transmitting a copy to the person via fax or e-mail, where the person has provided a fax number or e-mail address; or
- (e) such other manner as the Board may determine.

(2) Where a person has indicated that he or she shall be represented by an agent or counsel, service of a document shall be effected upon that person's agent or counsel by any of the methods listed in subsection (1).

(3) Service of any document, including an application, may be proved by affidavit, oral testimony, or both.

(4) When a document is served on a person by e-mail transmission, a hard copy or fax of the document shall be provided within a reasonable period thereafter if requested by the recipient.

CONFIDENTIAL DOCUMENTS

7 (1) Subject to subsection (2), all documents filed in respect of an application shall be placed on the public record.

(2) A party may request that all or any part of the document be held in confidence by the Board, which request shall be placed on the public record.

(3) The burden of satisfying the Board that a document should be held in confidence is on the party claiming confidentiality.

(4) Any request for confidentiality shall:

(a) include a summary of the nature of the information in the document;

(b) state:

(i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed, and

(ii) any objection to placing an abridged version of the document on the public record, and the reasons for such an objection; and

(c) be filed with the Board and served on the parties.

(5) Where a party has made a request under subsection (2), the document shall be held in confidence unless the Board orders otherwise.

(6) A party may object to a request for confidentiality by filing an objection and serving the objection on the parties.

(7) An objection shall state the reasons:

(a) why the party requires disclosure of the document; and

(b) why disclosure would be in the public interest.

(8) The party claiming confidentiality will have an opportunity to reply to any objection.

(9) The Board may decide the issue with or without a hearing. Where the Board holds a hearing, the Board may direct that the hearing be held in the absence of the public.

- (10) In ruling on a request for confidentiality the Board shall consider:
- (a) whether the document may disclose matters involving public security;
 - (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or
 - (c) such other matters as the Board deems appropriate.

(11) The Board may:

- (a) order that the document be held in confidence by the Board;
- (b) order that the document be placed on the public record;
- (c) order that an abridged version of the document be placed on the public record;
- (d) order that the document be made available to a party to the proceeding, who has a good faith interest in accessing the confidential information and who would not otherwise be in conflict of interest, on such terms as the Board considers appropriate, including the signing of a confidentiality undertaking in a form approved by the Board;
- (e) order that the document be withdrawn; and
- (f) make any other order the Board may deem to be in the public interest.

(12) Where the Board rejects a claim for confidentiality, the party claiming confidentiality may, within seven (7) days of receiving the Board's ruling, or such other time as the Board may allow, notify the Board in writing that:

- (a) if the party has filed an application, the application is withdrawn; or
- (b) if the party is an intervenor, the intervention is withdrawn.

(13) Where a party provides written notice to the Board pursuant to subsection (12), if the document is on file with the Board, the Board shall immediately return the documents for which confidentiality was claimed.

8 Notwithstanding Rule 7 above, any financial evidence filed in respect of an application under the *Liquor Licensing Regulations* shall be held in confidence.

AMENDMENT OF DOCUMENTS

9 A document received by the Board may be amended at any time with leave of the Board.

ADMISSION OF FACTS

10 (1) The parties to any proceeding before the Board may, by admission in writing filed with the Board, agree upon the facts or any of the facts involved therein, which admission, if filed, shall be regarded and used as evidence at the hearing.

(2) The Board may require such additional evidence as it may deem necessary.

PRELIMINARY HEARINGS

11 (1) In any application, the Board may, on its own initiative or at the request of any party, hold a preliminary hearing to deal with any matter that may aid in the disposition of the hearing, including to:

- (a) consider any preliminary motion for an order dismissing the application on the grounds that the Board lacks jurisdiction to hear the application, or for other reasons that may appear;
- (b) determine any question as to the admissibility of any evidence;
- (c) clarify or simplify the issues;
- (d) consider the necessity or desirability of an amendment to the application, or any other document;
- (e) consider the participation by interested persons;
- (f) consider a request for access to information in the custody or control of any party;

- (g) consider the possibility of obtaining agreements to facts and to documents that will avoid unnecessary proof;
- (h) fix dates for the hearing and for any procedural steps to be completed by the parties;
- (i) make any directions for the pre-filing of witness lists or expert witness statements and reports (except as otherwise provided for in these Rules), or direct further disclosure where necessary;
- (j) determine issues of confidentiality, including any need to hold a part of the hearing in the absence of the public, or to seal documents.

(2) Unless otherwise ordered by the Board, it shall not be necessary to give notice of a preliminary hearing by advertisement in a newspaper.

(3) Following the preliminary hearing, the Board may make an order giving such directions as the Board deems advisable.

(4) The Board member who presides at a preliminary hearing shall not be deemed to be seized of the application, and any subsequent hearing related to the application may be heard by that member or any other member.

(5) Where a party intends to request dismissal of an application pursuant to subsection (1)(a) herein, the party shall seek a preliminary hearing to deal with the issue.

(6) Where a party requests a preliminary hearing to seek an order, including an order relating to subsection (1)(a), and intends to present written or visual evidence at that preliminary hearing in support of the granting of that order, the party shall provide a copy of such evidence to any other party and to the Board, not less than five business days before the preliminary hearing. Any other party, who intends to present written or visual evidence at the preliminary hearing, shall provide a copy of such evidence to all other parties, and to the Board, not less than one business day prior to the preliminary hearing.

DISCLOSURE OF EVIDENCE BEFORE HEARING

12 Subject to Rule 13,

(1) Unless the Board directs otherwise, an Applicant who intends to present written or visual evidence at a hearing shall provide a copy of such evidence to all other parties and to the Board, as directed by the Hearing Order referred to in Rule 14(4).

(2) Unless the Board directs otherwise, any other party who intends to present written or visual evidence at a hearing shall provide a copy of such evidence to all other parties and to the Board, as directed by the Hearing Order referred to in Rule 14(4) or as required under s. 49(8) of the *Liquor Control Act*.

(3) Evidence so disclosed will be considered to be evidence before the Board, unless a party objects.

DISCLOSURE OF EXPERT REPORTS

13 Notwithstanding Rule 12,

(1) Unless a copy of a report containing the full opinion of an expert, including the essential facts on which the opinion is based, a summary of the expert's qualifications, and a summary of the grounds for each opinion expressed, has been served on each party and filed with the Board, as directed by the Hearing Order referred to in Rule 14(4), the evidence of the expert shall not be admissible at the hearing without leave of the Board.

(2) If the report of an expert does not comply with the requirements of subsection (1), the Board may, on the application of another party, make an order requiring the party providing the report to comply with that subsection.

(3) Where a copy of the report has been filed and delivered as provided in subsection (1), the expert shall be required to attend at the hearing unless all other parties give notice that they do not require the attendance of the expert at the hearing, which notice shall be given as soon as is reasonably possible.

HEARING DATE

14 (1) The Clerk, in consultation with the parties, shall attempt to set a date for the hearing of the application.

(2) Where the parties cannot reach agreement as to a date, the Chair shall set a date for the hearing.

(3) The Clerk shall notify the parties of the date of the hearing.

(4) The Board may issue a Hearing Order setting the date for the hearing and containing directions on disclosure and procedure.

(5) Unless a public hearing is warranted or required under the *Liquor Control Act*, an application under the *Liquor Licensing Regulations* may proceed directly to a hearing before the Board provided all requirements under the *Liquor Control Act*, the *Liquor Licensing Regulations* and these *Rules* have been satisfied.

HEARINGS

15 (1) Hearings may be conducted in an informal manner and need not follow the strict rules of practice and procedure required in a court of law.

(2) The Board may, at its discretion, conduct a hearing or preliminary hearing in person, in writing or by teleconference, video conference or by any other electronic means.

(2A) Notwithstanding Rule 15(2), a public hearing under s. 49(8) of the *Liquor Control Act* shall be held in the licensing area.

(3) At the hearing of an application, the Applicant shall present its evidence first, and after the evidence of all other parties is given, shall have the right to reply.

(4) A party may call and examine witnesses, cross-examine opposing witnesses and present arguments and submissions.

(5) The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.

(6) A party may be represented before the Board by counsel or an agent.

(7) A hearing may be adjourned from time to time by the Board on reasonable grounds on its own motion or at the request of any party.

(8) The Board, whenever it deems it desirable, may require briefs to be filed by the parties within such time as the Board may prescribe.

AUDIO AND VIDEO RECORDING OF HEARINGS

16 (1) Audio and video recording of an oral or electronic hearing which is open to the public may be permitted on conditions the Board considers appropriate.

(2) The Board may refuse to permit the recording of all or any part of an oral or electronic hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the proceeding in any way.

(3) Where recording is allowed, the following shall apply unless otherwise directed by the Board:

- (a) only equipment which does not produce distracting sound or light shall be used;
- (b) where possible, existing audio systems present in the hearing room shall be used;
- (c) media personnel shall not move about while the hearing is in progress; and
- (d) equipment shall be positioned unobtrusively before the hearing begins and shall not be relocated while the hearing is in progress.

SUBPOENAS

17 (1) At the request of a party, the Board may issue a subpoena, which shall be signed by the Clerk and sealed with the Board's seal.

(2) A subpoena issued pursuant to subsection (1) shall be issued in the form prescribed by the Board and may set out the names of any number of persons required to appear before the Board.

(3) No person served with a subpoena is required to appear before the Board pursuant to the subpoena unless the person has been paid or tendered conduct money in an amount sufficient to cover the person's reasonable fees and traveling expenses as fixed by the Board from time to time.

(4) A subpoena shall be served personally on the person to whom it is directed at least two clear business days before the date on which the person is to appear.

DESTRUCTION OF EXHIBITS

18 (1) A person who has submitted exhibits to the Board may request that the Board return the exhibits.

(2) The Board, at the end of six months from the date of the final order in the proceedings, provided no appeal or judicial review has been commenced within that time, may return requested exhibits and may destroy any remaining exhibits.

COSTS

19 Any application for costs shall be governed by the Board's *Cost Rules*.

GRANT OF PERMANENT LICENSE

20 (1) Pursuant to the provisions of s. 48 of the *Liquor Control Act* and s. 4(4)(l) of the *Liquor Licensing Regulations*, an application for a permanent license shall include:

- (a) where the applicant is an individual, a Personal History Report and three letters of reference for that individual;
- (b) where the applicant is a partnership, a Personal History Report and three letters of reference for each partner;
- (c) where the applicant is a for-profit corporation, a Personal History Report and three letters of reference for each officer and director, and unless otherwise directed by the Board, a Personal History Report and three letters of reference for each shareholder;
- (d) where the applicant is a club or association, a Personal History Report and three letters of reference for each executive member; and

- (e) where the applicant is a tenant and the lease does not expressly permit the operation of the permanent license being requested, a letter from the landlord consenting to the application.

(2) Where an applicant intends to apply for a special premises license, the applicant shall first seek a preliminary ruling from the Board by submitting a brief description of the proposed licensing activities to be carried out by the applicant.

TRANSFER OF PERMANENT LICENSE

21 Pursuant to the provisions of s. 48 of the *Liquor Control Act* and s. 4(4)(l) of the *Liquor Licensing Regulations*, an application for a transfer of permanent license shall include:

- (a) where the applicant is an individual, a Personal History Report and three letters of reference for that individual;
- (b) where the applicant is a partnership, a Personal History Report and three letters of reference for each partner; and
- (c) where the applicant is a for-profit corporation, a Personal History Report and three letters of reference for each officer and director, and unless otherwise directed by the Board, a Personal History Report and three letters of reference for each shareholder.

ENTERTAINMENT

22 An application for a permanent license, an application for a change in entertainment, or an application to present entertainment (where the applicant does not hold an entertainment permit), shall include:

- (a) an application in the form prescribed by the Board;
- (b) a letter from the municipal council or the clerk for the municipality in which the premises is located confirming that the proposed entertainment will not contravene municipal land use by-laws;
- (c) a copy of any municipal development agreement in effect for the premises;

- (d) where the applicant is a tenant and the lease does not expressly permit the type of entertainment being requested, a letter from the landlord consenting to the application; and
- (e) a floor plan, drawn to scale and including any patio or outdoor space to be licensed.

RENEWAL OF A PERMANENT LICENSE

23 In the event an application for renewal of a permanent license is referred to the Board under the *Liquor Licensing Regulations*, such application shall, pursuant to the provisions of s. 48 of the *Liquor Control Act* and s. 4(4)(l) of the *Liquor Licensing Regulations*, include:

- (a) where the Minister has received notice of a change in the directors of the club or association,
 - (i) a Personal History Report and three letters of reference for each new director; and
- (b) where the permanent licensee is a class A club licensee, and the Minister has received notice of a change in the memorandum of association or by-laws of the club or association, in a manner that affects how a person becomes a member,
 - (i) a copy of the change in the memorandum of association or by-laws.

CHANGE TO SIZE, STRUCTURE OR LOCATION OF LICENSED PREMISES

24 (1) An application to change the size of a licensed premises, an application to make a structural change to a licensed premises, or an application to change the location of a licensed premises, shall include:

- (a) an application in the form prescribed by the Board;
- (b) a letter from the municipal council or the clerk for the municipality in which the premises is located confirming that the proposed size, proposed structural change, or the proposed location, meets all municipal zoning requirements and will not contravene municipal land use by-laws;

- (c) a copy of any municipal development agreement in effect for the premises;
- (d) a proposed replacement floor plan, drawn to scale and including any patio or outdoor space to be licensed, for the existing licensed premises or the proposed location, as the case may be;
- (e) where the applicant is a tenant, and the application is to increase the size of the licensed premises, the lease or option to lease for the proposed extended area; and
- (f) a letter from a fire official confirming that the proposed size, proposed structural change, or the proposed location meets the requirements of the *Fire Safety Act* and its regulations.

(2) If an applicant makes application under this Rule and a letter from a fire official is not available, the applicant may file a building permit issued by the municipality pending the receipt of a letter from a fire official.

(3) With respect to an application to change the location of a licensed premises, the application shall also include any other requirements under the *Liquor Licensing Regulations*.

CHANGE OF MANAGER

25 Pursuant to the provisions of s. 48 of the *Liquor Control Act* and s. 4(4)(l) of the *Liquor Licensing Regulations*, an application to change the manager of licensed premises shall include:

- (a) a Personal History Report and three letters of reference for the proposed manager.

CONVERSION

26 An application for conversion of a portion of the licensed premises shall include:

- (a) an application in the form prescribed by the Board; and
- (b) a proposed replacement floor plan, drawn to scale and including any patio or outdoor space to be licensed, for the existing licensed premises or the proposed location, as the case may be.

INFORMATION FROM MINISTER

27 (1) In addition to any information provided by an applicant in an application, the Minister must provide the Board with the following:

- (a) in the case of an application under Rules 21, 22, 23, 24 and 26, a copy of any Orders issued prior to April 11, 2000 by the Alcohol and Gaming Authority and the Liquor License Board, as well as the compliance history respecting the licensed premises;
- (b) in the case of an application under Rules 22, 23 and 24, an inspection report prepared by the Minister which includes the location of neighbouring properties, schools, churches, hospitals, nursing homes or similar institutions; and
- (c) in the case of an application under Rule 23, where the Minister has received an objection to the renewal, copies of any objections received by the Minister with respect to the renewal.

(2) The Minister may submit a recommendation respecting any application before the Board and the Board may, in its discretion, consider such recommendation.

DISCIPLINARY HEARINGS

28 (1) When the Minister notifies the Board that a permanent license holder has committed an alleged infraction of the *Liquor Control Act* or its *Liquor Licensing Regulations*, or has been convicted for an offence under the *Criminal Code* or for a quasi-criminal offence under any statute, the Minister shall set out in such notice the particulars of the alleged infraction or offence in relation to the disciplinary hearing to be held by the Board.

(2) Upon filing such notice of intention with the Board, the Minister shall provide the permanent license holder with full and complete disclosure of the alleged violation or the conviction.

(3) Upon receipt of confirmation from the Minister and the permanent license holder that full and complete disclosure has been provided, the Clerk shall set a date for a hearing respecting the alleged violation or the conviction.

(4) When, following a disciplinary hearing, the Board determines in a decision the number of days that a permanent license shall be suspended, but does not set the specific date(s) that the suspension shall take effect,

- (1) the Minister shall, within seven days of the decision, file with the Board and with the permanent license holder, a written recommendation as to the dates(s) on which the suspension should take effect; and
- (2) the permanent license holder, within seven days of receipt of the Minister's recommendation, shall file with the Board and with the Minister, a written response, if any, to the Minister's recommendation.

(5) With respect to any referral or request under subsection (1), these *Rules* shall apply *mutatis mutandis* as if an application had been filed.

These *Liquor Procedural Rules* were amended by the Nova Scotia Utility and Review Board at a Board meeting held on the 28th day of October, 2010.

Mora Stevens
Clerk of the Board