

Nova Scotia Insurance Review Board Practice and Procedural Guidelines

PREAMBLE

These are Guidelines for practice before the Nova Scotia Insurance Review Board (the Board) and may be varied by the Board at any time if considered appropriate.

Definitions

1 In these Guidelines:

“application” means any application before the Board under its statutory jurisdiction;

“party” means a person who makes an application or any other person whom the Board determines has a sufficiently relevant interest in the matter to warrant party status, and so orders; and

“proceeding” means any matter before the Board in which it has authority to make a report or issue a ruling or decision.

General

- 2 (1) The Board may give such directions on the procedure to govern the conduct of any proceeding as it deems fit having regard to the principles of fairness and natural justice and its statutory jurisdiction.
- (2) The Board may, in its absolute discretion, dispense with or vary these Guidelines when it considers it appropriate to do so, having regard to the circumstances of the proceeding.

Applications

- 3 (1) Every application must be in writing and shall conform with any Disclosure Requirements issued by the Board from time to time.
- (2) The following information is considered to constitute the record of the applicant:
- (a) the information contained in the application;
 - (b) any information which was unavailable at the time of filing of the application and which is subsequently filed by the applicant;
 - (c) any response by the applicant to an information request;

(d) any additional information provided by the applicant as required under Section 8; and

(e) any written evidence filed by the applicant pursuant to Section 18.

(3) The applicant shall not, except with leave of the Board, file any information in addition to that listed in subsection (2).

(4) Subject to Section 6, an applicant shall keep available at the applicant's business address, for public inspection during regular working hours, a copy of the applicant's record as described in subsection (2).

Service

4 (1) Service of any document may be effected by hand delivery, mail, courier, telex, facsimile or other means of written or electronic communication, if the person being served has the facilities for receiving a document in such manner, or in such other manner as the Board may determine.

(2) Any document that must be served shall set out the name of each person or group of persons on whom it is to be served, the Board's file number and hearing order number and a short phrase summarizing the nature of the proceeding.

(3) Subject to subsection (4), the date of service of a document is the date on which the person being served or the person's authorized representative receives the document.

(4) A document that is received by the person being served or the person's authorized representative after four o'clock in the afternoon at the place of service shall be considered to be served on the next business day.

(5) Service of a document may be proved by affidavit, oral testimony or both.

(6) Where a person serves a document by electronic means, the person shall provide an original hard copy of the document to the person served within a reasonable period after the document is served.

Filing of Documents

5 (1) The filing of any document with the Executive Officer of the Board by hand delivery, mail, courier, telex, facsimile or other means of written or electronic communication, if the Board has the facilities for receiving a document in such manner, shall constitute filing with the Board.

(2) A document that is received by the Board after 4:00 p.m. shall be considered to be filed on the next business day.

- (3) Every document that is filed with the Board in respect of a proceeding shall set out the Board's file number and hearing order number and a short phrase summarizing the proceeding.
- (4) Where a person files a document with the Board by electronic means, the person shall provide an original hard copy of the document to the Board within a reasonable period after the document is filed.
- (5) All documents filed with the Board in a proceeding shall form part of the record.
- (6) In any proceeding where there is no applicant, the documents related to the proceeding shall be available for public inspection at a place designated by the Board.

Confidentiality

- 6 (1) A party may request that all or any part of the document be held in confidence by the Board.
- (2) 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 an abridged version of the document being made public, and the reasons for such an objection; and
 - (c) be filed with the Board and served on the parties.
- (3) A request under subsection (2) shall be made public.
- (4) Where a party has made a request under subsection (2), the document shall be held in confidence unless the Board decides, with or without a hearing, that the document should be made public.
- (5) Where the Board holds a hearing under subsection (4), the Board may direct that the hearing be held in the absence of the public.
- (6) A person 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) After giving the party claiming confidentiality an opportunity to reply to an objection, if any, the Board may:
- (a) order that the document be made public;
 - (b) order that the document be held in confidence by the Board;
 - (c) order that an abridged version of the document be made public;
 - (d) order that the document be made available to a party to the proceeding on such terms as the Board considers appropriate;
 - (e) make any other order the Board may deem to be in the public interest.
- (9) In ruling on a request for confidentiality with or without a hearing, the Board shall consider:
- (a) 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
 - (b) such other matters as the Board deems appropriate.
- (10) The burden of satisfying the Board that a document should be held in confidence is on the party claiming confidentiality.

Amending of Documents

- 7 (1) In a proceeding, a party may amend any document filed with the Board, with leave of the Board.
- (2) In a proceeding, where the Board finds that a document or any part of a document may prejudice, embarrass or delay the fair conduct of the proceeding, the Board shall so notify the parties and may order that, unless the document or part of the document, is amended within the time limit set out in the notice, the document or part of the document shall be struck out.
- (3) Where a party, in accordance with this Section, amends any document or part of

a document:

(d) each amended page shall indicate;

(i) the date of the amendment, and

(ii) the portion of the page amended by means of a vertical line, an asterisk or other similar marking, in the margin opposite to the amendment; and

(b) each amendment shall be accompanied by a statement explaining the nature of the amendment.

Additional Information

- 8 (1) At any time in a proceeding, the Board may require a party to provide such further information, particulars or documents as may be necessary to enable the Board to obtain a full and satisfactory understanding of the subject matter of the proceeding.

Failure to Comply

- 9 (1) Where a party does not comply with these Guidelines or any directions issued by the Board, the Board may stay the proceeding until the Board is satisfied that the Guidelines or directions have been complied with or may take such other steps as are just and reasonable in order to conduct a fair proceeding.

Hearings

- 10 (1) The Board may determine that a proceeding be disposed of by hearing and may invite submissions from interested persons in order to make that determination.
- (2) Hearings may be conducted in an informal manner and need not follow the strict rules of practice and procedure usual in a court of law.

Hearing Order

- 11 (1) Where the Board, in its discretion, has elected to hold a hearing, the Board shall issue a notice of hearing and hearing order containing the procedural details applicable to the hearing.
- (2) Where the Board issues a notice of hearing related to an application filed under Section 3, the applicant shall, within the time limit as the Board may direct;
- (a) publish the notice in such publications as the Board may direct; and
- (b) serve a copy of the notice on such persons as the Board may direct.

- (3) An applicant referred to in subsection (2) shall file with the Board an affidavit that sets out the title and date of each publication in which the notice of public hearing was published pursuant to subsection (2)(a) and the means taken to effect service pursuant to subsection (2)(b).

Formulation of Issues

- 12 (1) The Board may formulate issues to be considered in a proceeding and shall notify parties in respect thereof.
- (2) To assist the Board in formulating issues in accordance with subsection (1), the Board may invite parties to propose issues or to suggest amendments to any formulated issues.
- (3) Any party who proposes an issue pursuant to subsection (2) shall explain the issue's relevance and the justification for considering it in the proceeding.

Interventions and Written Submissions

- 13 (1) Where a hearing order has been issued in an application made under Section 3, any interested person may apply to intervene in the proceeding by filing with the Board and serving on the applicant on or before the date set out in the hearing order, a written intervention that:
 - (a) states whether the person intends to appear at the hearing;
 - (b) sets out the full name, telephone and facsimile numbers and electronic access identification and mailing address of the person and any authorized representative of the person;
 - (c) establishes that the person's interest justifies intervenor status in the proceeding; and
 - (d) states the issues that the person intends to address at the hearing or, where the person does not intend to participate actively at the hearing, states the reasons why the person's interest justifies intervenor status in the proceeding.
- (2) The Board may accept or disallow an application to intervene and shall notify the applicant, and the proposed intervenor of its decision. The Board may limit the scope of the intervenor's participation in the proceeding.
- (3) An intervenor, on being advised by the Board of the name and mailing address, facsimile or electronic access identification of any other intervenor, shall serve a copy of the written intervention and any supplement thereto on every other intervenor.

- (4) Any interested person who is not an intervenor in a proceeding but who wishes to make submissions to the Board regarding a proceeding, shall file with the Board and serve on the applicant, if any, on or before the date set out in the order, a written submission that:
- (a) comments on the application or subject matter in the proceeding;
 - (b) describes the nature of the person's interest in the proceeding;
 - (c) provides any relevant information that the person considers will explain or support the person's comments; and
 - (d) sets out the information required under subsection 13 (1) (b).
- (5) An applicant may, within 10 days after the date of service of a written intervention or submission, serve an objection or reply to the intervention or submission, on the person who has filed the intervention or submission, and shall file with the Board and serve on all other parties, a copy of the objection or reply.
- (6) A person who files a written submission pursuant to subsection (4);
- (a) does not thereby acquire status as an intervenor or party; and
 - (b) subject to subsection (5), is not entitled to any further notice in the proceeding.

Service on Intervenors

- 14 Unless the Board otherwise directs, an applicant who is notified that an intervention has been accepted by the Board in accordance with subsection 13 (2) shall, within such time limit as the Board may fix, serve on the intervenor, subject to Section 6, a copy of the application and any information, particulars or documents relevant to the application that have been filed with the Board.

Information Requests

- 15 (1) The Board may provide directions for information requests by parties necessary to:
- (a) clarify evidence filed by a party;
 - (b) simplify the issues;
 - (c) permit a full and satisfactory understanding of the matters to be considered;
- or

(d) expedite the proceeding.

Prehearing Conference

- 16 (1) In any proceeding, the Board may itself, or on the application of any party, request the parties to appear before it for a prehearing conference regarding any procedural matters or preliminary matters, including without limitation, admissibility of evidence, consideration of dismissing the application on the grounds that no application lies to the Board, clarification or simplification of the issues, matters relating to information requests and exchange of documents, or any other matter as the Board may determine.
- (2) The Board may conduct a prehearing conference by telephone or other electronic means.
- (3) A member of the Board who presides at a prehearing conference or a preliminary hearing shall not necessarily be required to hear the merits of the application.

Agreed Statement of Facts

- 17 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, which admission, if filed, shall be regarded and used as evidence at such hearing, investigation or other proceeding.

Evidence at a Hearing

- 18 (1) A party who intends to present evidence at a hearing shall, within such time limit as the Board may fix, file with the Board and serve on all other parties, written material containing:
- (a) the position of the party on the issues in the hearing; and
- (b) particulars regarding the name, title, position and other credentials of each witness who will address evidence on behalf of the party and the issues that the witness will address at the hearing.
- (2) All material filed with the Board in a hearing shall be supported by an affidavit of the person who prepared the material or under whose direction or control it was prepared attesting that the material is accurate to the best of that person's knowledge and belief.
- (3) Each witness referred to in subsection (1)(b) shall confirm orally at the hearing or, with leave of the Board, by affidavit, that the written material or part of the material that the witness will address at the hearing, was prepared by the

witness or under the direction and control of the witness and is accurate to the best of the knowledge and belief of the witness.

(4) Written evidence shall be:

(a) in question and answer form, each line of which shall be consecutively numbered; or

(b) in narrative form, each paragraph of which shall be consecutively numbered.

(5) A party may be cross-examined on any response filed by the party in respect of an information request and on any information filed by the party in the course of the proceeding.

(6) Subject to subsection (7), witnesses at a hearing shall be examined orally on oath or solemn affirmation.

(7) The Board may, at any time in a proceeding, order that:

(a) evidence of certain facts shall be given by affidavit;

(b) the affidavit of any witness shall be read at a hearing on such conditions as are necessary for the fair conduct of the hearing; and

(c) any witness shall be examined before a commissioner of oaths or other person who is authorized to administer oaths and who is appointed by the Board for that purpose.

Opening Statements

19 Unless leave of the Board is granted, any opening statement that a witness intends to make shall, at least one clear business day before the attendance of the witness, be filed with the Board by a party on behalf of its witness and served on all other parties.

Argument or Briefs

20 (1) The Board may order parties to submit written argument in addition to or in lieu of oral argument in a proceeding.

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

Return of Evidence

21 (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 proceeding, provided no appeal or judicial review has been commenced within that time, may return requested exhibits and may destroy any remaining exhibits.

Communication with Witnesses

- 22 Except during examination or cross-examination, there shall be no communication between any counsel and a witness under examination or cross-examination in a proceeding from the time that the witness has been sworn or affirmed until that witness has been excused, unless it is necessary to comply with undertakings, deal with procedural matters, prepare for cross-examination of parties adverse in interest, prepare the witness for appearance on a subsequent panel, or for other reasons with leave of the Board .

Appeals

- 23 (1) An appeal pursuant to §155(J) of the Insurance Act shall be effected by filing with the Board and serving upon any other party to the original application a Notice of Appeal which shall contain:

- (a) a concise statement of the facts;
- (b) the grounds upon which the applicant considers the decision to be incorrect, including:
 - (i) any error of law or of jurisdiction,
 - (ii) changed circumstances or new facts that have arisen since the close of the original proceeding; or
 - (iii) facts that were not placed in evidence in the original proceeding and that were then not discoverable by reasonable diligence;
- (c) the nature of the prejudice or damage that has resulted or will result from the decision or order; and
- (d) the nature of the relief sought.

23(2)

- (a) The Appeal shall, subject to paragraph (b) below, be an appeal on the record and not a re-hearing of evidence already presented at the original application, nor a hearing *de novo*.

- (b)(i) Where the Notice of Appeal includes grounds specified in paragraphs (ii) or (iii) of Guideline 23(1)(b), the Board shall determine as a preliminary matter whether it will hear evidence of new or previously unavailable facts.
- (ii) Where the Board decides to hear such further evidence under this section, the provisions of Guideline 18 shall apply to the further evidence. (*N.B.)

(* Please note that Paragraph 24(1) permits the Board to issue directions on procedure. It is anticipated that the process would be that any new evidence would be heard first and then submissions made on the merit of the whole appeal.

24 (1) In hearing an appeal the Board may issue directions on procedure giving interested persons the opportunity to make submissions and indicating the manner of making the submissions:

- (a) on the merits of amending or overturning the Board's decision or order; and
- (b) on the merits of granting the decision or order sought.

(2) The applicant shall serve a copy of the directions on procedure on all parties to the original proceeding.

(3) An interested person who files a submission with the Board shall serve a copy on the applicant and on all parties to the original proceeding.

(4) The applicant shall be given an opportunity to reply to all submissions and shall file with the Board a copy of any reply and shall serve, on the same day, a copy of such reply on all parties to the original proceeding and on any interested person who has filed a submission.