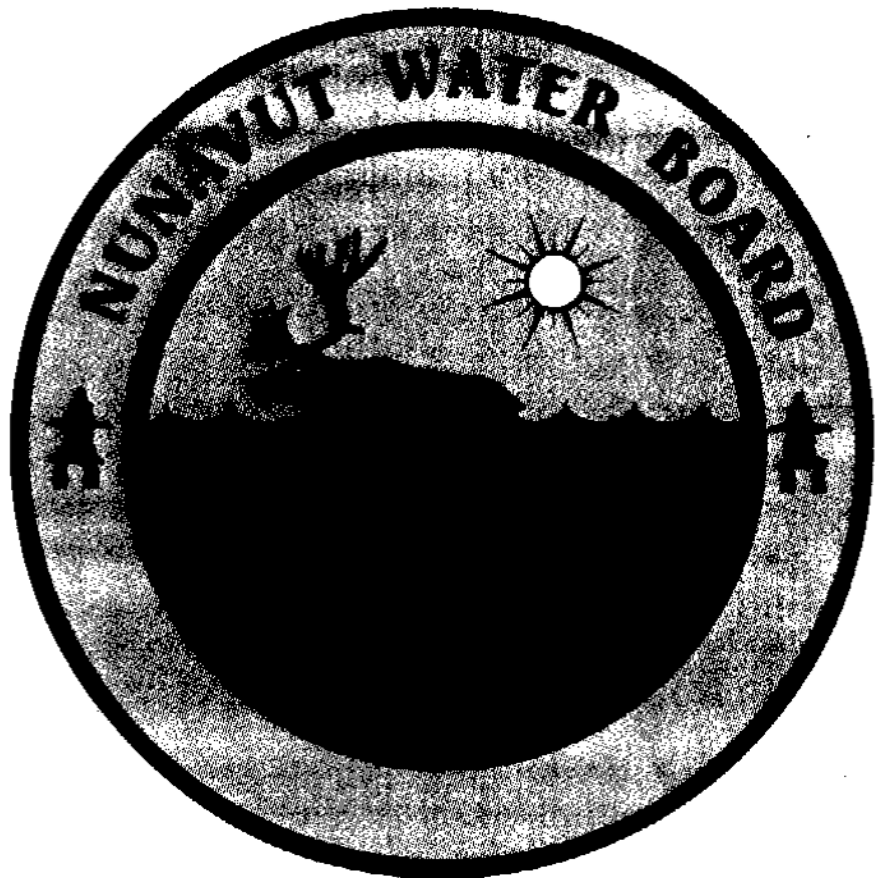


NUNAVUT WATER BOARD



RULES OF PRACTICE AND PROCEDURE FOR PUBLIC HEARING MAY 11, 2005

**NUNAVUT WATER BOARD
OFFICE DES EAUX DU NUNAVUT
NUNAVUT IMALIRIYIN KATIMAYINGI
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**RULES OF PRACTICE AND PROCEDURE
FOR PUBLIC HEARINGS
MAY 11, 2005**



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INTRODUCTION AND PURPOSE

The Nunavut Water Board was established in accordance with the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (the "Act"), which was assented to on April 30, 2002. This Act implements obligations under the Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada, which came into effect on July 9, 1993 by virtue of the *Nunavut Land Claims Agreement Act*. The Nunavut Water Board makes these Rules of Practice and Procedure for the conduct of Hearings (the "Rules") pursuant to section 33 (1) of the Act.

This document outlines the rules of practice and procedure for use during public hearings. These Rules are based upon the authority provided in the Act and are intended to ensure that Hearing procedures meet the requirements of fairness and natural justice. These Rules are also intended to ensure the Hearings are efficient, focused, and meet the needs of all Parties. The Board may amend these Rules from time to time and may make Rules applicable on a case-by-case basis for specific Hearings including joint hearings with other Institutions of Public Government as necessary.

PART I - GENERAL

1. Citation

- 1.1 These Rules may be cited as the *NWB Rules of Practice and Procedure*.

2. Definitions

- 2.1 In these Rules

"Act" means the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, R.S.C. 2002.

"Agreement" means the Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada, signed in Iqaluit, Northwest Territories, on May 25, 1993, as amended.

"Applicant" means a Party who has filed an Application with the Board.

"Application" means a written request to the Board to exercise its power under the Act.

"Board" means the Nunavut Water Board established pursuant to Section 14 of the Act.

"Document" includes anything in printed form, and telecommunication or electronic transmission capable of being reduced to a printed format, and video or audio tapes.

"Elder" means any member of a community recognized as such in accordance with local culture, customs and traditions or someone recognized for their experience in Inuit culture, customs and knowledge.

"Hearing" includes a hearing on an application, the hearing of a motion, and a written hearing.

"Information Request" means a written request for information or particulars made by the Board, and from one party to another.

"Intervener" means a person or an organization which intends to participate in a Board hearing and intends to play a role regarding any issues raised by the application, either by questioning other parties or by bringing forward their own evidence.

"Inuktitut" means all forms of the Inuit language in current usage in Nunavut, including Inuinnaqtun.

"Motion" means a request by an interested party for a ruling or order in a proceeding or in a pending proceeding or a motion of the Board.

3. Application of Rules

- 3.1 These Rules apply to all hearings held by the Board

4. Interpretation

- 4.1 These Rules shall be liberally construed in order to result in the just, expeditious and fair hearing of every matter properly before the Board.
- 4.2 Where any matter of procedure is not provided for by these Rules, the Board may at any time issue procedural directions to govern the conduct of the hearing.

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- 4.3 The Board may waive or vary any of these Rules at any time in order to achieve a just, expeditious and fair hearing.
- 4.4 Where there is a conflict between the Rules and specific directions given by the Board on procedure under 4.2 above, the specific directions prevail over the general Rules.
5. Farms
- 5.1 Unless the Board has prescribed a form, any motion or procedural step such as interlocutory motions or any notice of legal or constitutional issues to be dealt with in advance of a hearing shall be dealt with in writing.
6. Non-compliance with the Rules
- 6.1 Where a party to a hearing fails to comply with these Rules or any procedural directions issued by the Board, the Board may:
- (a) adjourn the proceeding until satisfied that the requirement has been complied with; or
 - (b) take such other steps as it considers just and reasonable.
- 6.2 The Board may, in order to secure a just determination of any matter, dispense with compliance to any Rule of any time.
- 6.3 In case of conflict between these Rules and the Act, the latter shall prevail.
7. Parties and interveners
- 7.1 The following persons are parties for the purpose of these Rules:
- (a) persons otherwise entitled by a specific law to be parties to the proceeding; and
 - (b) persons who in the opinion of the Board should be added as parties.
- 7.2 The Board may add a party under clause (b) of Rule 7.1 for all or part of the proceeding, and may make any other order as seems just to minimize prejudice or delay to other parties.
- 7.3 Any person may, with leave of the Board or at the Board's invitation, intervene in all or part of a proceeding on such conditions as the Board considers appropriate.
- 7.4 In deciding whether to allow a person to intervene under Rule 7, the Board may consider:
- (a) the nature of the application;
 - (b) the issues;
 - (c) whether the person is directly affected by the application;
 - (d) whether the person has a genuine interest in the issues;
 - (e) the likelihood of the person being able to make a useful and different contribution to the Board's understanding of the issues;
 - (f) any delay or prejudice to the parties; and
 - (g) any other matter it considers relevant.
- 7.5 Pursuant to Section 50 of the Act, the Board shall accord full standing to the following:
- (a) Tunngavik, or any other Organization designated by Tunngavik, to make representations on behalf of the Inuit of Nunavut;
 - (b) Makivik to make representations respecting the interests of the Inuit of northern Quebec in relation to islands and marine areas of the Nunavut Settlement Area traditionally used and occupied by those Inuit;
 - (c) the councils of the Fort Churchill Indian Band and Northlands Indian Band to make representations respecting their interests in relation to the areas that those bands have traditionally used and continue to use; and
 - (d) the councils of the Black Lake Indian Band, Hatched Lake Indian Band and Fond du Lac Indian Band to make representations respecting their interests in relation to the areas that those bands have traditionally used and continue to use.
- 7.6 The Board may require persons who have similar interests to designate one person to act as their spokesperson or to co-ordinate their submissions.
8. Funding
- 8.1 The Board, with the financial assistance of the government, may provide funding to any party or intervenor to prepare a submission or a reply on an application.

- 8.2 Costs incurred by any party or participant to attend a hearing shall be borne by that party, unless the Board has secured funding under Rule 8.1 which was allocated to that party.
- 8.3 The Board may arrange for citizens from a community close to the location or affected by an application to attend a hearing when, in the Board's opinion, it is necessary to give due regard and weight to the tradition of Inuit oral communication and decision-making.

PART II - PRE-HEARING PROCEDURE

9. Application to the Board

- 9.1 Procedures for filing an application for licence, licence renewal, licence cancellation, and licence assignment, are outlined in a separate Board document entitled "Procedures and Information Guide for Applicants."
- 9.2 Pursuant to Subsection 55(1) of the Act, the Board shall give notice of every application in relation to a licence to the council of each municipality in the area affected by the application and shall publish the notice in a newspaper of general circulation in the area affected or, if there is no such newspaper, in any other manner the Board considers appropriate.

10. Type of Hearing to be Held

- 10.1 On receipt of an Application, in deciding which type of hearing is appropriate, the Board shall consider:
- (a) whether, according to applicable legislation, the application is of a class that is exempt from a public hearing, and
 - (b) what course of action best serves the public interest.
- 10.2 Pursuant to Subsection 51(1) of the Act, applications for which no public hearing is required shall be dealt with summarily by the Board.
- 10.3 The Board may, pursuant to Subsection 51(2) of the Act, where satisfied that it would be in the public interest to do so, hold a public hearing in connection with any matter relating to its objects.

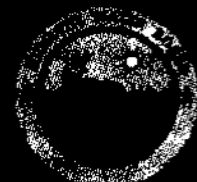
11. Pre-Hearing Information Review

- 11.1 When a hearing is held in relation to an application, the information provided to the Board in relation to the application shall be made available to the public within a reasonable period of time before the commencement of the hearing, pursuant to Subsection 55(3) of the Act. The Board may direct the applicant to make available to parties and interveners all information and documents filed by the applicant.
- 11.2 All correspondence, technical data and other material received with regard to an application, including submissions by interveners, shall be filed on the Public Register at the Board's head office and may be reviewed by any member of the public.
- 11.3 The Board may direct an information request to the applicant on any issues relevant to the hearing and the Board shall provide copies of this request and any answers to all parties and interveners.
- 11.4 Subsequent to receipt of the Board's information request, any party or intervener may direct their own information request to the applicant on any issue relevant to the hearing and shall provide a copy of the question and subsequent answer to the Board, parties and interveners.
- 11.5 The Chair of the Board may, in response to a motion or on its own, disallow any information request that is frivolous or vexatious.

12. Filing Documents on the Public Register

- 12.1 In these Rules, "filing" means the effective delivery to, and receipt by, the Board of any document in accordance with these Rules.
- 12.2 Documents may be filed with the Board in person, by mail, by electronic transmission, or otherwise as the Board may direct from time to time.
- 12.3 Documents to be filed with the Board in advance of a hearing or at a hearing are deemed to have been delivered on the day of actual receipt by the Board.
- 12.4 Any party or intervener who intends to rely on a document in a hearing shall file the document on the Public Register at least fifteen (15) days before the date of the hearing in order that it may be distributed to other parties and interveners.
- 12.5 A document to be filed on the Public Register shall contain an Inuktitut translation of the executive summary. This translation shall be undertaken by the party filing the document and shall be filed with the Board within the time period set out in Rule 12.4. This requirement does not apply to individual interveners appearing at hearings on their own behalf.

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13. Public Access to Documents

- 13.1 The Public Register will contain all documents filed by an applicant in support of an application, at least thirty (30) days prior to the commencement of the hearing on the application.
- 13.2 The Board shall ensure that a copy of the Public Register is available for review by any person in a public location in the community or communities most convenient to the parties, and where possible, close to the location of the project proposal in question, as required by Section 7B of the Act.
- 13.3 During a hearing, documents contained in the Public Register are available to the public.

14. Formulation of Issues and Pre-Hearing Conferences

- 14.1 In order to facilitate the hearing process, the Board may, through its staff or in conjunction with staff, hold a pre-hearing conference with the parties, either in writing, by teleconference, or in person, in order to deal with any of the following matters:
 - (a) To set a timetable for the pre-hearing exchange of information;
 - (b) To finalize the list of issues to be dealt with at the hearing;
 - (c) To identify interested parties;
 - (d) To consider the desirability of amending an application for the purposes of clarification;
 - (e) To finalize procedures to be followed in a hearing; and
 - (f) To consider any other matters that may aid in the simplification and disposition of the application at the hearing.
 - 14.2 The Board may request information from any party before deciding which issues should be included in the hearing.
- ### 15. Alternative Dispute Resolution
- 15.1 The Board, when it deems appropriate, may employ alternative dispute resolution mechanisms to assist in the resolution of any proceedings, or any issues foundational to the proceedings.

PART III - HEARINGS

16. Public Access to Hearings

- 16.1 A hearing, whether written, electronic or oral, shall be open to the public except where the Board is of the opinion that:
 - (a) matters involving public security may be disclosed, or
 - (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interests of any person affected or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public.

17. Notice

- 17.1 The Board, as required by Subsection 55(2) of the Act, shall give notice of a hearing at least 60 days before the scheduled date of the hearing.

18. Venue and Schedule

- 18.1 In order to provide fairness to parties and promote public awareness and participation, hearings will take place in the community or communities within Nunavut most affected by the application before the Board, as required by Section 53 of the Act.
- 18.2 The Board will issue a hearing order outlining the timetable for the exchange of written questions and the filing of evidence at the time that it orders a hearing and sets a date and place for the hearing.
- 18.3 In communicating with the parties regarding the location and schedule of hearings, the Board may use different methods to distribute information to the parties, participants and residents, having regard for the nature, location and size of the project, and the affected community.

19. Transcripts, Translation and the Record

- 19.1 The Board may make arrangements to prepare transcripts of its hearings. In such case, the Board may provide a copy to parties as soon as copies are reasonably available.
- 19.2 The Board shall conduct its hearings in Canada's official languages as required by Subsection 25(2) of the Act and, upon request of any member of the Board, the parties or any intervenor, also in Inuktitut.
- 19.3 The Board shall make available a copy of the record of its proceedings for consultation in the Public Register.

20. Order of Events at a Hearing

- 20.1 The order of events that will be followed at a hearing is as follows:
- (a) Opening prayer;
 - (b) Opening remarks by the Chairperson, which shall include the purpose of the hearing and the scope of matters which will be considered by the Board;
 - (c) Introduction of the Board Members and staff;
 - (d) Identification and introduction of the parties;
 - (e) Introduction of the Elders and their role in the hearing;
 - (f) Introduction and identification of the persons, associations, agencies, etc., who have not submitted interventions but who have expressed a desire to speak at the hearing;
 - (g) Identification of any motions or any objections;
 - (h) Presentation by the applicant:
 - (i) Questioning of the applicant by parties respecting the applicant's presentation;
 - (j) Presentation by intervenors;
 - (k) Questioning of intervenors by parties;
 - (l) Presentation by any other persons, associations, agencies, etc. who have advised the Chairperson that they wish to speak;
 - (m) Questioning of other persons, associations, agencies, etc. by parties;
 - (n) Upon completion of presentations by all parties and intervenors, the Board will give the applicant the opportunity to reply. Then all parties will have the opportunity to make final closing statements taking into account matters raised at the hearing;
 - (o) Closing remarks by the Chairperson; and
 - (p) Closing prayer.

PART IV - EVIDENCE

21. General

- 21.1 The Board, pursuant to Subsection 33(2)(a) of the Act, is not bound by the technical rules of evidence.
- 21.2 Pursuant to Section 54 of the Act, the Board has the powers of a commissioner appointed under Part I of the *Inquiries Act*.
- 21.3 Any person giving evidence before the Board shall do so under oath or affirmation, such oath to be administered by a person authorized by law to administer oaths.
- 21.4 The Chair shall admit any relevant oral or documentary evidence (such as hearing statements) that is not protected by law from disclosure. Relevant evidence means evidence having any tendency to prove or disprove a fact in issue. The Chair may, however, exclude evidence if any of the following substantially outweigh its value: the danger of unfair prejudice; confusion of the issues; considerations of waste of time; duplication; or presentation of repetitious evidence. The fact that the Board deems evidence admissible does not mean that it will determine any fact in issue.
- 21.5 Consistent with relevant *Evidence Acts*, legislation dealing with privilege and the *Charter of Rights and Freedoms*, the Chair may limit introduction of evidence or issue such protective or other orders that in his/her judgment are required to prevent disclosure of classified, confidential or sensitive matters which include, but are not limited to, matters of national security, business, personal or of a proprietary nature. Where the Chair determines that information in documents containing classified, confidential or sensitive matters should be made available to another Party, the Chair may direct the Party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence into the record.





- 21.6 The Chair may enter into the record a sworn written statement or verified tape recording, rather than by oral presentation at the hearing. A person who has given evidence or presented information by a sworn written statement or verified recording shall be available for cross-examination at the hearing.
- 21.7 The Board may, in appropriate circumstances, accept evidence by telephone or other device from a witness who is unable to be present as long as all parties present at the hearing are able to hear the witness's statements and cross-examination is permitted.
- 22. Inuit Traditional Knowledge**
- 22.1 The Board shall give due regard to Inuit traditional knowledge in all of its proceedings as required by Subsection 33(2)(b) of the Act. The Board may, in a hearing, receive evidence from Elders and other persons who are respected for their knowledge of Inuit culture, customs and knowledge, and shall give these individuals the opportunity to speak at any time during a hearing and to make submissions or repeat submissions at a time convenient to them, with notice of such communication to be placed on the public record.
- 22.2 Any person giving evidence before the Board may be heard in Inuktitut or in either official language as required by Subsection 25(4) of the Act. Choice of language shall in no way disadvantage an individual or impact the evidence provided.
- 23. Burden of Proof**
- 23.1 Any party offering evidence before the Board shall have the burden of introducing sufficient and appropriate evidence to support its position.
- 24. Cross-examination**
- 24.1 The Chair will permit open and direct cross-examination of any party to the extent necessary for full and true disclosure of the facts, provided that the questions posed are relevant and helpful to the Board's deliberations.
- 24.2 If a party or intervener is unable to respond to a question raised at the hearing, the Board may direct that written submissions and replies to those written submissions, be filed with the Board by a specific date.
- 25. Written Hearings**
- 25.1 In the case of a written hearing, a party may file written evidence provided that the evidence:
- (a) clearly identifies the person providing it,
 - (b) is filed in a form acceptable to the Board,
 - (c) unless by an Elder, is sworn by affidavit to be true and complete by a person having personal knowledge of the facts, and
 - (d) is filed within the time permitted by the Board's order.

PART V - DECISIONS

- 26. Form**
- 26.1 The Board shall issue a written final decision with reasons which shall be the official decision of the Board.
- 27. Notice to Parties and Interveners**
- 27.1 The Board shall send to all parties and interveners a copy of its final decision, including the reasons given.
- 28. Effective Date**
- 28.1 A Board decision is effective from the date on which the written decision is issued unless the Board, in the decision, provides otherwise.