

Mediation

*and*

Arbitration

Board



BRITISH  
COLUMBIA

Mediation and  
Arbitration Board

## *Surface/ Sub-surface Rights*

Landowners in B.C. generally hold title to the surface of their land, but they do not usually hold title to the sub-surface minerals, including petroleum and natural gas. The Crown usually retains these rights, and has the power to dispose of them to companies that may subsequently wish to remove the resources.

Companies must compensate landowners for entering and using their land to access mineral resources. The Mediation and Arbitration Board's role is to help resolve disputes that occur when a landowner and a company are unable to reach an agreement on right-of-entry or compensation.

## What Is the Mediation and Arbitration Board?

The Mediation and Arbitration Board exists under the *Petroleum and Natural Gas Act*, the *Mineral Tenure Act*, the *Coal Act* and the *Mining Right of Way Act*. The Board consists of a chair, vice-chair and up to five members and is responsible for mediating and, when necessary, arbitrating disputes between landowners and oil companies or free miners.\*

## When is an Application Made to the Mediation and Arbitration Board?

If a company or free miner needs to enter privately owned land to access mineral resources to which it holds the rights, it will generally employ a land agent to notify the landowner of the company's intentions. The land agent should provide the landowner with:

- ✓ the name and address of the company he or she represents, as well as the name of a company official who can be contacted directly by the landowner;
- ✓ details of the company's requirements and the compensation the company is prepared to offer for the use of the land;
- ✓ a sketch of the site of the proposed well or mine, access road and campsite, as well as details of the planned exploration; and
- ✓ a standard surface lease and a form that allows the company to register the lease in the land registry.

If an agreement is reached, the surface lease and land title act documents are signed by the landowner and the company's representative. However the landowner may refuse any offer of compensation or disagree with the wellsite location or the access route. If the parties are unable to reach an agreement, an application can be made to the Board for assistance in resolving the dispute.

## How is an Application Made to the Mediation and Arbitration Board?

An application to the Board must include:

- ✓ a completed application form (available from the Board office);
- ✓ the name and address of the landowner(s) and affected parties;
- ✓ proof of the right to sub-surface resources, such as a lease;
- ✓ a legal description of the land to be entered;
- ✓ details of the negotiations that have taken place, including compensation offers and any counteroffers;
- ✓ an affidavit stating that notice of the application has been served by registered mail on the landowner and any affected parties; and
- ✓ in some instances, a plan of survey of the proposed well by a British Columbia land surveyor.

Upon receiving a complete application involving a dispute between a landowner and an oil company, the Board Administrator will hold preliminary discussions with both parties. The Board Administrator is not a member of the Board and is responsible for reviewing applications and encouraging the parties to reach a settlement before proceeding with mediation. If the Administrator is unable to facilitate an agreement, a date will be arranged for a mediation hearing.

In the case of a dispute between a free miner and a landowner, preliminary negotiations will be conducted by the Gold Commissioner. If an agreement is not reached, the Gold Commissioner will report to the Board and the mediation and arbitration procedures will be followed as outlined below.

## What Happens in a Mediation Hearing?

At a mediation hearing, the Board Chair or an assigned Board member will hear representations by the company and the landowner. While a mediation hearing is less formal than an arbitration hearing, both parties should bring any information that might help the mediator reach a decision. The mediator may also wish to visit the site of the proposed well or mine.

Following the hearing, the mediator may issue an order permitting entry on to the land and detailing the amount of compensation and any other matters considered necessary. When the amounts specified in the order have been paid and the landowner has been served with a certified copy of the order, the company may enter, occupy and use the land according to the *Petroleum and Natural Gas Act* or the *Mineral Tenure Act*.

\* A free miner is defined as a person or company holding a valid and subsisting Free Miner Certificate.

If the mediator concludes that the company should be allowed access to the land, but no agreement is reached on details of compensation or other matters, he or she must order the company to place a security deposit with the Board and make a partial payment to the landowner before entering the land. Unresolved issues may continue to be negotiated by the parties. If a satisfactory resolution is not reached, either party may request an arbitration hearing.

### **What Happens in an Arbitration Hearing?**

Before an arbitration hearing, all written material to be presented during the hearing should be sent to the Board and any other parties involved. The Board should also be provided with the names of any witnesses who will attend and be informed if either party will be represented by counsel. Additional material may be brought to the hearing, but this may result in an adjournment so the new material can be reviewed. Copies of all material must be provided for all parties involved in the hearing.

An arbitration panel, consisting of at least two Board members, must be present to hear an arbitration. A taped record of the proceedings will be taken and each person giving evidence will be under oath. Following the hearing, the arbitration panel will review the taped record and the information presented, and issue a Board Order awarding compensation according to the *Petroleum and Natural Gas Act* or the *Mineral Tenure Act*. Orders of the Board are binding.

### **Renegotiation of Rental Provisions**

Rental provisions of the surface lease or Board Order may be renegotiated every fifth year.

Renegotiations are initiated by one party sending the prescribed form by registered mail to the other party. If an agreement is not reached, either party may apply to the Mediation and Arbitration Board for an arbitration hearing. Rental renegotiation agreements may be retroactive.

### **Further Information**

If you require further information or have questions about the provisions of the *Petroleum and Natural Gas Act* or the *Mineral Tenure Act* and your rights related to the mediation and arbitration process, contact:

Board Administrator  
10142-101st Avenue  
Fort St. John, B.C. V1J 2B3  
phone: (250) 787-3403  
fax: (250) 787-3228

You are urged to direct all inquiries to the Board Administrator and not to individual Board members who may be called upon to carry out a mediation or arbitration hearing.

Where the information in this pamphlet differs from the provisions of the *Petroleum and Natural Gas Act* or the *Mineral Tenure Act*, the acts apply.



**Mediation and Arbitration Board**

