



Dispute Advisory Panel – Rules of Practice

1.0 Purpose

1.1 The purpose of these Rules is to provide a process for the fair and equitable consideration of applications for review.

2.0 Effective Date

2.1 These Rules may be cited as the Dispute Advisory Panel – Rules of Practice and will come into effect on February 11, 2011, superseding all Rules made before that date.

2.2 Unless otherwise ordered, these Rules apply to all requests for review before the Advisory Panel whether commenced before or after February 11, 2011.

3.0 Definitions

3.1 In these rules:

“Act” – means the Payments in Lieu of Taxes Act, R.S., 1985, c. M-13, s.1; 2000, c.8, s.2

“Advisory Panel” – The panel is made up of members appointed by the Governor in Council under the provisions of the Act, to provide advice to a Federal Organization concerning payments made under the provisions of the Act.

“Assessment Authority” – An authority as defined in the Act.

“Chair” - The chairperson of the Advisory Panel.

“Federal Organization” - An authority, authorized under the Act or the Crown Corporation Payments Regulations (the “Regulations”), to make payments with respect to “federal property” or “corporation property” as defined in the Act and the Regulations to an eligible Taxing Authority.

“Hearing Panel” – A panel, drawn from the appointed members of the Advisory Panel for hearing a request made by a Taxing Authority. A Hearing Panel Chair will be appointed by the Chairperson of the Dispute Advisory Panel to manage the hearing process.

“Taxing Authority” – A taxing authority, as defined in the Act.

4.0 Application

4.1 Every application for a review by the Advisory Panel shall be made by a Taxing Authority in writing in one of the following ways:

- a) by registered mail;
- b) by courier;
- c) by fax; or
- d) by E-Mail

to the Advisory Panel National Office.

4.2 The application for review shall specify:

- a) the property or properties to be reviewed;
- b) the tax year requested; and
- c) the specific grounds for the review.

4.3 The application for review from the Taxing Authority must also indicate:

- a) the taxation and assessment roll number;
- b) a description and location address of the subject property;
- c) the particulars of the assessment value, tax rates and interest rate used;
- d) the amount of payment or payment supplement claimed by the taxing authority;
and
- e) the payment amount received from the Federal Organization and the dates thereof.

4.4 Proof of service to the Federal Organization, such as an affidavit, a proof of service made by a Process Server or a notice of receipt from Canada Post guaranteed delivery, must be sent to the Advisory Panel National Office within thirty (30) days of the filing of the application.

4.5 Only a disagreement by a Taxing Authority as to the property value, the property dimensions, the effective rate including the method of application of any tax mitigation measures such as capping and claw back provisions, rebates and discounts applicable to any federal or corporation property, or a claim that a payment should be supplemented under subsection 3 (1.1) of the Act is admissible as an application to the Advisory Panel. Issues dealing with the eligibility of a property, improvement or structure or decisions arising from the interpretation of the Act and its Regulations are outside the mandate of the Advisory Panel and should be addressed directly to the Federal Organization.

5.0 Time limit

5.1 The application must be made to the Advisory Panel within ninety (90) days from the date the Taxing Authority receives the final tax year payment from the Federal Organization.

5.2 If a Taxing Authority is unable to respect the time limit mentioned above as a result of exceptional circumstances outside its control, such Taxing Authority may ask in writing to the Chair to extend the time limit mentioned. This request for an extension of the limit must be made at least ten (10) days before the 90 day time limit expires.

5.3 Only exceptional circumstances outside the control of a Taxing Authority may give rise to an extension of the time limit.

6.0 Acknowledgement of receipt

6.1 The secretariat of the Advisory Panel shall, within fifteen (15) days of receipt of an application, acknowledge receipt of such application by sending an acknowledgement of receipt to the Taxing Authority. A copy of the acknowledgement will also be sent to Federal Organization.

7.0 Acceptation or rejection

7.1 The Chair within forty five (45) days of the receipt of an application made by a Taxing Authority shall:

- a) accept or reject the application for review; or
- b) accept the application for review subject to any conditions precedent.

7.2 The grounds for which an application for review is rejected by the Chair shall be given to the Taxing Authority and the Federal Organisation.

8.0 Consolidation of Request for Review

8.1 On the application of a party or at the Chair's own initiative, the Chair may consolidate all or part of request for review with any other request for review

- a) involving the same property whether for the same year or another year; or
- b) involving another property within the jurisdiction of the taxing authority with the same or similar issues.

9.0 Review Management Procedures

9.1 At any time after receiving a request for review, on the written application of a party or on the Chair's own initiative, the Chair may require the parties to

- a) provide information on the specific issues and the property under review;
- b) prepare and produce statements of issues, evidence and analysis,
- c) attend a review management conference.

10.0 Review Management Conferences

10.1 The Chair may direct that a request for review management conference be held in person, by telephone conference or by some other method and be conducted by the Chair or an Advisory Panel member.

10.2 The Chair or Advisory Panel Member presiding at a review management conference may make any order considered appropriate for the efficient conduct of the review and, without limitation, may

- a) canvass the issues and any steps taken to reach agreement on the issues;
- b) assist the parties to clarify the issues;
- c) consolidate all or part of the review with another review;
- d) require a party to produce or allow the Advisory Panel or another party access to, any documents or other information which may be material and relevant to an issue in the review;
- e) require a party to prepare and produce to the Advisory Panel and the other parties a list of witnesses and a written summary of a witness's evidence;
- f) require a party to prepare and produce to the Advisory Panel and the other parties notice of an expert witness and a written summary of the evidence to be given by an expert witness;
- g) require a party to produce to the Advisory Panel and the other parties, or allow the Advisory Panel or another party access to, any documentary evidence that will be submitted as evidence at a hearing;
- h) before the commencement of a hearing, require a party or a proposed witness to answer, under oath or affirmation by way of oral examination or affidavit, questions of the Panel or another party;
- i) require the parties to prepare and produce an agreed statement of facts;
- j) require the parties to prepare and produce written submissions;
- k) require the parties to prepare and produce statements of issues, evidence and analysis;
- l) impose time limitations and terms and conditions on the production of documents, expert reports, agreed statements of facts, written submissions or any other process necessary for the fair and efficient management of the review;

- m) require a party to prepare written summaries of a witness's evidence, expert reports or written submissions, or to produce documents, in advance to the other party or parties;
- n) schedule or reschedule dates for a hearing;
- o) require the attendance of a witness at a hearing;
- p) report the results of the review management conference including a summary of the issues and any orders, directions or rulings of the Advisory Panel.

10.3 The Advisory Panel member presiding at a review management conference will not be designated as a panel member for the hearing of the review without the consent of all parties.

11.0 Statements of Issues, Evidence and Analysis

11.1 The Chair may make directions with respect to the information to be included in a statement of issues, evidence and analysis, and may contain all or some of the following

- a) details and particulars of all of the party's issues in a review;
- b) a "without prejudice" summary of evidence that may be relied on in support of a party's position on each issue;
- c) a "without prejudice" summary analysis of the evidence;
- d) a "without prejudice" summary analysis of legal principles, if any.

11.2 The copy of the statement delivered to the other parties must be accompanied by copies of any documents relating to the property that is the subject of the review that are relevant to an issue identified in the statement of issues unless:

- a) the documents have been previously produced to the other parties;
- b) the documents originated from the other party;
- c) the documents are not in the party's possession or control; or
- d) the Chair otherwise orders.

11.3 The Chair may make directions requiring responses to the statement to be prepared and produced to the Chair and to the other parties within a specified time.

11.4 A party may not add issues to a review after statements are filed by all parties without leave of the Chair.

12.0 Timing of hearing

12.1 After consultation with the members of the Hearing Panel, the Chair shall submit to the Taxing Authority and the Federal Organization possible dates for the hearing.

12.2 If the parties are unable to agree on a date of a hearing, the Chair may unilaterally set the date for the hearing.

12.3 Unless otherwise agreed by the parties, notice of the hearing shall be given to both parties at least 60 days prior to the date of the hearing.

12.4 No adjournment of hearing shall be granted unless there are special circumstances or unless the Chair or the Hearing Panel otherwise orders.

12.5 If any party fails to appear on the day and at the time fixed for the hearing, the Hearing Panel may hear the party present and may dispose of the application without hearing the party so failing to appear.

13.0 Composition of the Hearing Panel

13.1 The composition of the Hearing Panel is to be fixed by the Chair.

13.2 The Hearing Panel is composed of a minimum of one (1) and a maximum of three (3) members.

13.3 At least one (1) member of the Hearing Panel must be a member appointed in the province or the territory where the application to the Advisory Panel originates.

13.4 If the condition of section 13(3) cannot be met, the Chair may with the agreement of both parties, appoint Advisory Panel members outside the provincial or territorial jurisdiction to hear the application for review made by the Taxing Authority.

14.0 Hearings

14.1 The Chair may direct that a hearing be conducted

- a) by way of an in person hearing;
- b) by way of telephone conference;
- c) by way of written materials and submissions delivered to the Hearing Panel;
- d) any combination of (a), (b) or (c);
- e) by any other means the Chair deems appropriate.

14.2 Although hearings are normally held within the boundaries of the applicant taxing authority, the Chair has discretion to determine the location for a hearing with consideration to the convenience and cost to the taxing authority, any witnesses, and the Hearing Panel, and the need, if any, to view the property.

14.3 A party may be self represented or be represented by counsel or an agent.

14.4 The Hearing Panel has discretion in the manner in which the hearing will be conducted and, without limitation, may

- a) determine the order of proceeding;
- b) make determinations on the admissibility of evidence;
- c) require the production of evidence;
- d) request the attendance of witnesses;
- e) proceed in a party's absence or in the absence of any submissions from a party where the party has had notice of the proceeding;
- f) ask questions to clarify issues or facts;
- g) ask questions of a witness in the nature of direct examination or cross-examination;
- h) place time limitations on any part of the hearing including presentation of evidence, the examination or cross-examination of witnesses, or presentation of opening or closing submissions;
- i) require parties to present written submissions;
- j) adjourn a hearing;

14.5 If a party intends to refer to legal authorities in a submission to the Hearing Panel at a hearing, the party must produce, for each member of the Hearing Panel and the other parties, copies of the legal authorities, and must highlight those passages of the authorities intended to be referred to.

14.6 In-person hearings may be recorded by an employee, member, or contractor of the Advisory Panel at the discretion of the Hearing Panel.

14.7 A transcript of such a recording shall be at the expense of the party requesting it, who shall make copies available without cost, to the other party and to the Hearing Panel.

15.0 Evidence

15.1 A Hearing Panel is not bound by the legal or technical rules of evidence and may, at its discretion, accept and act on evidence

- a) by oral or written statement;
- b) by affidavit;
- c) from other independent and creditable sources,

15.2 The Hearing Panel may require testimony to be given under oath or affirmation.

15.3 Unless the Hearing Panel otherwise orders, a party may not present evidence except in accordance with these Rules.

15.4 At least twenty-one (21) days before the first day of the hearing, the parties must produce one copy to each other party, each member of the Hearing Panel and one for exhibit record, of any reports which will be submitted as evidence at the hearing. If a party intends to call a witness without a report, the party must produce a written statement of the opinion to be given, the facts upon which the opinion is based and the qualifications of the witness.

15.5 Unless the Hearing Panel otherwise orders, if a party intends to present documentary evidence at a hearing, at least twenty-one (21) days before the first day of the hearing, the party must produce one copy of each document to each party, each member of the Hearing Panel and one for exhibit record.

15.6 If a hearing is conducted by way of written submissions, the parties must produce one copy of any submission and supporting documents to each party, each member of the Hearing Panel and one for exhibit record, by the date ordered by the Hearing Panel.

15.7 Unless the Hearing Panel otherwise orders, if a party presents argument in writing at an in-person hearing, the party must provide one copy of the written argument for each Hearing Panel member, and one copy for each other party, and one for the exhibit record.

16.0 Withdrawals

16.1 A taxing authority may apply to the Chair in writing to withdraw a request for review.

16.2 An taxing authority may withdraw anytime after the filing of a request for review, but if the review is scheduled for hearing, the request should be made not less than fourteen (14) days before the date set for hearing.

17.0 Costs

17.1 Each party is responsible for its own costs.

18.0 Advice

18.1 Unless the Chair agrees otherwise, the Hearing Panel shall give its advice within ninety (90) days following the end of hearing.

18.2 Advice must be sent by the Chair to the head of the Federal Organization and the Taxing Authority at the same time.

18.3 Unless the Chair otherwise orders, the Hearing Panel may amend its advice to correct any of the following:

- a) a clerical or typographical error;
- b) an accidental or inadvertent error, omission or other similar mistake;
- c) an arithmetic error made in computation not more than thirty (30) days after all parties have received the advice.

19.0 Delegation of power

19.1 The Chair may delegate any of his powers as defined in the Rules of Practice to a member of the Advisory Panel.

20.0 Variance

20.1 The rules of practice of the Advisory Panel shall be construed so as to ensure the fair and simple operation of the review procedure and to eliminate unjustified expenses and delays. Unless there is declaration to the contrary, the Rules of Practice may be relaxed or set aside by the Chair or the Chair of the Hearing Panel where compliance with them might create an injustice.