



Environmental Appeals Board



PUBLIC LANDS
APPEAL BOARD

Mediation

Mediation – What is it?

Mediation is a term used to describe the process of dispute resolution used by the Environmental Appeals Board (EAB) and the Public Lands Appeal Board (PLAB) (collectively the Boards) in mediating disputes between participants of appeals. The following outlines the mediation process as it is used by the Boards.

When conflict occurs between participants to an appeal, there are many reasons why an attempt to properly manage conflict by mediation is preferred over the hearing process. They are:

- airs and resolves problems in a private setting;
- prevents more serious conflict;
- stimulates a search for new information and solution to problems;
- increases group cohesion and performance;
- meets new standards or expectations;
- results in change whether on a personal, environmental, economic, political or legal basis; and
- considerably less costly than a hearing of the appeal.

In order to resolve conflict, negotiation has to occur at some point. Negotiation is a way to settle differences. It is back - and - forth communication designed to reach an agreement when participants have interests that are shared or opposed.

We negotiate to resolve issues that are important to us. People do not always readily accept decisions dictated by someone else. People differ and they use negotiations to handle their differences. Whether in business, government, or in the family, people reach most decisions through negotiation. Even when people go to court, they most always negotiate a settlement before trial.

Mediation – Why Use It?

Mediation is problem-solving by consensus in that it involves a neutral third party (a mediator). Mediation is used for the following reasons:

- Mediation is fast. It can take place as soon as the parties and the mediator are available and typically after the Boards receive the records of the decision being appealed from Alberta Environment and Parks.

- Mediation is provided without fee to the participants.
- Mediation, if successful, produces an agreement in which all participants have participated - it is the participants' solution and not a solution imposed by the Board, the Minister of Alberta Environment and Parks or the Court.
- Mediation is more likely to preserve a good relationship, and in some cases may restore a relationship to the benefit of all participants.
- Mediation is flexible and informal and can be tailored to the circumstances and needs of the participants.
- Mediation provides a neutral person (mediator) who helps the participants work through their differences by encouraging effective communication and clear explanations, while keeping emotions under control.
- Mediation is cost-effective. It is less costly to resolve appeals via mediation than it is to proceed with a full hearing of the appeal, which involves the preparation of written submissions, and may include having to deal with preliminary matters before the hearing can take place.

The Mediator – Role of the Mediator

The mediator, usually a Board Member, has been appointed by the Boards to assist the participants in reaching a mutually acceptable resolution of the appeal, based on full and frank disclosure between them.

The mediator is not serving in the role of a judge or decision-maker and will not sit on any appeal panel should the appeal proceed to a preliminary motions hearing or a hearing.

The mediator is a neutral facilitator who can facilitate communication between the participants by encouraging dialogue and ensuring productive conversations, assisting the participants in understanding one another's interests, considering options for resolution, and reaching an acceptable resolution of the appeal.

The mediator will maintain impartiality toward all participants during the mediation. Impartiality means freedom from favouritism or bias either by word or by action, and a commitment to serve all participants as opposed to a single participant.

A mediator facilitates communication by listening effectively, clarifying perceptions, and unmasking assumptions. The goal of the mediator is to develop respect throughout the process, building trust.

A mediator, while exploring positions, summarizes and integrates differing views, and confirms the interest identified by the participants.

The mediator helps participants generate creative solutions for a win/win outcome that works, helping all participants save face.

A mediator tests assumptions, manages the emotional climate, examines all positions, and helps to develop understanding and empathy.

General

The Boards may, on their own initiative or at the request of any of the participants to the appeal, schedule one or more mediation meetings prior to the hearing of the appeal. The purpose of a mediation meeting is to facilitate the resolution of the appeal. Participants should come to the mediation fully prepared for a useful discussion of all issues involved in the appeal, and authorized to negotiate and make decisions regarding these issues. Mediations always take place without prejudice to the ability of the participants or the Boards to address preliminary motions.

Facilitation

Reasonable notice of the date, time, and place of the mediation is given in writing to the participants. A mediation meeting is held in person unless the Boards conclude that personal attendance is unwarranted or impractical. In this instance, the mediation may be held by telephone or other appropriate means at the discretion of the Boards.

The Boards' Regulation contemplate that one purpose of a mediation is to facilitate the resolution of the appeal. Board members have mediation training and will attempt to facilitate a resolution of the appeal at a mediation meeting.

The Board member who facilitates the mediation will not be a member of the panel that hears the appeal, should the mediation be unsuccessful.

Confidentiality

The Boards' mediations are confidential proceedings. In order to facilitate open and frank discussion and enhance communication during the mediation, mediations are not open to the general public and all participants are required to sign the "Participants' Agreement to Mediate." This agreement covers, among other things, the confidentiality of the mediation and the ground rules for the participants. It should be noted any resolutions reached in mediation are subject to the *Freedom of Information and Protection of Privacy Act*.

Resolution

If a resolution is reached between the participants, the terms of the resolution are included in a written document that the participants sign. There are two types of clauses that can be included in the resolution:

- Regulatory Clauses

Regulatory clauses result in a change to the conditions included in the regulatory document (usually the approval or enforcement documents). Only certain clauses fall into this category and can actually become a part of the regulatory document. An example of a regulatory clause is when the participants agree that an additional monitoring requirement is added to the approval. If the Minister approves the clause, Alberta Environment and Parks can enforce it just like any other clause in the regulatory document.

- **Contractual Clauses**

Contractual clauses are solely between the participants and do not become part of the regulatory document. The Boards or Alberta Environment and Parks cannot enforce these clauses. These clauses result in a contract between the participants that can be enforced through court action or a private arbitrator or mediator.

Resolutions that include regulatory changes (approval or enforcement documents) are subject to the approval of the Minister of Alberta Environment and Parks pursuant to section 100(1) of the *Environmental Protection and Enhancement Act* and section 124 of the *Public Lands Act*.

Contact

For more information on mediation, you can view the Environmental Appeals Board's website, which contains information on mediation and a short video about mediation entitled "More Ice Time – The Power of Mediation." The Environmental Appeals Board's website is <http://www.eab.gov.ab.ca/>. To view the video, select "About Mediation" at the left side of the Board's home page, and under the heading "Mediation Video" select "Part 1 of More Ice Time (wmv)" followed by "Part 2 of More Ice Time (wmv)." If you would prefer a DVD, the Board can provide you with a DVD upon request.

For further information contact:

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