



REPRESENTATIONS

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Definitions

The following definitions apply for the purposes of this Policy:

“Appointed Board” means the appointed members of the Forest Practices Board and includes the Chair, the Vice-Chair and Board Members.

“Appointed Board members” means individual members of the Appointed Board.

“Board staff” means staff employed by the Forest Practices Board.

“Board” means the Forest Practices Board organization as a whole, and includes Appointed Board members and Board staff.

“Board or Board’s mandate” means the purpose and duties of the Forest Practices Board as specified in the following legislation:

- *Forest and Range Practices Act*
- *Wildfire Act*
- Forest Practices Board Regulation

“Chair” means Chair of the Forest Practices Board.

“Panel” means subset of the Appointed Board assigned by the Chair under section 137 of the *Forest and Range Practices Act*.

“Party” means government, or the holder of a licence under the *Forest Act* or the *Range Act*.

1. Purpose

This policy describes the Board's approach to determining who is eligible to make representations under section 128 of the *Forest and Range Practices Act* and the form of such representations.

2. Objectives

- a) Ensure that representation decisions and procedures are current and consistent with legislation, regulations and the Board's Strategic Plan, mission and values.
- b) Ensure consistency in the application of discretionary decisions.
- c) Increase transparency in the conduct of Board activities.

3. Legislation and Regulations

Forest and Range Practices Act

Opportunity to make representations

128 If it appears to the board that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect a party or person, the board must inform the party or person of the grounds and must give the party or person the opportunity to make representations, either orally or in writing at the discretion of the board, before it decides the matter.

Panels of the Board

- 137**(1) The board may organize itself into panels, each comprised of one or more members.
- (2) The members of the board may sit as a board or as a panel of the board, and 2 or more panels may sit at the same time.
 - (3) A panel of the board has the jurisdiction of the board and may exercise the powers and perform the duties and functions of the board.
 - (4) A report, a recommendation or an action of a panel of the board is a report, recommendation or action of the board.

4. Application

This policy applies to the Appointed Board, Panels of the Board and Board staff.

5. Policy

This policy is based on the following general interpretation of section 128 of FRPA:

- A party or person has a right to make representations if directly and materially adversely affected by a Board report.
- Representation is not a privilege conveyed by the Board; the Board only decides who meets the criteria.
- Once the Board decides a party may be adversely affected, the Board must provide that party with the opportunity to make representations.

- The legislation provides the Board the discretion to decide whether the form of representations is oral or written.
 - To ensure consistency in exercising its discretion about whether representations are oral or written, the Board has established criteria based in part on principles of administrative law.

5.1 Deciding Who Gets Representations

- a) The Panel Chair¹ decides if a party or person may be adversely affected by a report or recommendation and the form of representations.
- b) The Panel Chair also has the discretion to extend the opportunity to make representations to other parties or persons beyond those who are adversely affected.
- c) In interpreting section 128, the Board interprets “adversely affected” as “directly and materially adversely affected,” although mitigating or aggravating circumstances are also considered.
- d) If the Panel amends a report or recommendation in response to representations, the Panel Chair must consider whether the amended report or recommendations newly adversely affects a person or party, and offer representations accordingly.

5.2 Form of Representations

- a) The Panel Chair will normally provide the person or party the opportunity to make representations in writing, unless, in the opinion of the Panel Chair, the following factors support an oral hearing:
 - i) If a Board report will have serious consequences for a person or party’s reputation, an oral hearing may be more justified than if the report finds minor problems. Situations warranting the consideration of an oral proceeding would include those where the report:
 - contains a number of major findings of non-compliance on substantive issues;
 - becomes a second or third negative report against the same person or party;
 - seriously impacts a company’s market position; or
 - could otherwise significantly impact the person or party.
 - ii) In situations where the credibility of an important witness is in question, the Panel Chair should consider an oral hearing.
 - iii) If there is contradictory evidence, complex legal/policy issues, physical evidence that require discussion between parties and the panel, or if significant new information is likely to become available through oral hearings that would otherwise not become available, an oral hearing may be warranted.
 - iv) Whether a written proceeding would save time and money for the adversely affected parties and the Board members.

¹ Representations are generally made to Panels of the Board; however, references in this policy to ‘Panel Chair’ and ‘Panel’ may also apply to ‘Chair’ (of the Board) and to the Appointed Board as a whole.

- v) Whether oral representations could improve the panels ability to understand the issues and the parties views on the matter, and could improve the quality of the report.
 - vi) The degree of urgency in completing the report, the impact on other Board priorities and workload, and the impact on Board time and resources of holding an oral hearing.
 - vii) Whether the person involved requested an oral or written hearing, and provided sound reasons for it.
 - viii) The ability of the person to prepare and present a written argument.
- b) In all cases, the Panel Chair will choose a representation format that is fair to the adversely affected person or party.
 - c) Oral hearings
 - i) May be in person or by video or telephone conference.
 - ii) Are a forum for parties to speak directly to the Board and do not require legal representation.

5.3 Timelines

- a) Written representations
 - i) Will normally be requested within 3 weeks, depending on the complexity of the issues.
 - ii) If a party requests an extension to the deadline for providing representations, the Panel Chair will decide the matter.
- b) Oral hearings
 - i) Will be scheduled at a mutually agreeable time.
 - ii) Will normally be no more than 1 day in duration.

5.4 Confidentiality of Representations

- a) Parties provided the opportunity for representations will only be provided with the portions of the report that potentially adversely affect them, and no other party or person will see the draft before representations have concluded.²
- b) Representations and draft reports provided for representations are confidential and are not to be shared with anyone.
- c) Representations are excluded from disclosure under the *Freedom of Information and Protection of Privacy Act*.³

² This is to protect the reputation of the person or party and to provide them the opportunity to make representations. Allowing other parties to see the report before the matter is decided by the Board could unfairly impugn the reputation of the adversely affected person or party, especially if the Board decides to change the report as a result of representations.

³ Section 3(1) says the Act does not apply to "(b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi judicial capacity." The Board has legal advice that representations fall under this description.

5.5 Roles and Responsibilities

Panel Chair

- Decide who may be adversely affected by a report or recommendation and the form of representations.
- Decide on any requests for extension of time.

Appointed Board Members

- When sitting on a panel, consider representations received and staff advice and decide on any changes to the report or recommendations.

Executive Director

- Develop procedures to guide the implementation of this policy.

Program Directors

- Advise the Panel Chair on the need for representations and provide persons or parties with the opportunity for representations, as directed by the Panel Chair.
- Review staff analysis of representations and provide recommendations to the Panel on the need for changes to a Board report or recommendation.

Board Staff

- Analyze representations and prepare recommendations on the need for changes to a Board report or recommendations.

6. Procedures

- a) The Program Director will prepare a representations briefing note and recommendation for the Panel Chair.
- b) The Panel Chair decides who will get representations and the form of representations, in accordance with this policy.
- c) Board staff will arrange the opportunity for representations, including oral representations, when directed by the panel chair.
- d) If representations are provided in written form, Board staff and the Program Director will review the representations, prepare an analysis and provide recommendations to the Panel on what changes to the report, if any, are warranted. The panel will decide on changes to the report.
- e) If representations are provided in an oral hearing, the panel will consider the representations, consult with Board staff as needed, and decide what changes to the report, if any, are warranted.
- f) If changes are made, the panel chair will consider whether the revised report newly adversely affects any person or party and if so, will offer representations.

7. References

- Panels Policy
- Audit Policy
- Complaint Policy
- Special Investigations Policy
- Board Policy and Procedures Policy

8. Document Control Information

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Approved by:



Kevin Kriese, Chair
Forest Practices Board