



## **Assessment Review Board**

# **Practice Direction on How to Interpret the Schedule of Events for the General Proceedings**

**Effective April 1, 2021**

Board Requirements for:

- Compliance with Due Dates;
- Preparation of Statement of Issues, Response and Reply and
- Exchange of Disclosure

## **Introduction**

The purpose of this Guideline is to provide direction and guidance respecting the implementation of the Schedule of Events in an appeal heard by way of General Proceeding.

## **Compliance with Due Dates**

Parties are expected to comply with the due dates in the Schedule of Events. The Board recognizes that there may be times that a party requires a short extension of a due date. As long as all parties agree that an extension will not interfere with their ability to complete their work prior to the due date for completion of the mandatory settlement meeting, and the due date for filing documents, all parties may agree to an extension amongst themselves.

Consent alterations of due dates do not require Board approval, *except for the due date for completion of the mandatory meeting, and for filing an Acknowledgement of Expert Duty, as well as the due date for filing document to be relied on at the hearing.*

## **Statements of Issues, Response, and Reply**

Statements of Issues, Response, and Reply must comply with Rule 43. This Guideline provides clarification of the Board's requirements for these documents in identifying the issues that are in dispute.

## **Statement of Issues**

The Statement of Issues is prepared by an appellant and sets out:

- its position on the statutory grounds for appeal (for example, in an appeal under s.40 of the *Assessment Act*, the two statutory grounds for appeal are correct current value and whether the Board should make an equitable adjustment to reduce the current value);
- a detailed description setting out the facts, opinions conclusions, and any legal authority, on which the appellant relies in support of its position;
- any disagreement with MPAC's conclusions set out in MPAC's initial disclosure; and
- a request for any documents that are not listed in the Disclosure Schedule (described below), which the appellant asserts are relevant.

## **Statement of Response**

A responding party may choose to respond to an appellant's Statement of Issues, by providing a Statement of Response setting out:

- the responding party's position on the statutory grounds for appeal;
- the responding party's agreement or disagreement with each of the specific facts, opinions, and conclusions set out in the appellant's Statement of Issues;
- a detailed description setting out the facts, opinions conclusions, and any legal authority, on which the responding party relies in support of its position; and
- a request for any additional relevant documents which have not already been disclosed by the appellant.

## **Statement of Reply**

The appellant may, in turn, respond to a Statement of Response by filing a Statement of Reply setting out:

- the appellant's agreement or disagreement with each of the specific facts, opinions and conclusions set out the responding parties' Statements of Response.
- a detailed description of how the appellant supports its disagreement with the Statements of Response.

## **Disclosure**

### Disclosure Guideline and Disclosure Schedule

A description of disclosure is provided in the Board's Disclosure Guideline which is posted on the Board's website. That Guideline includes a Disclosure Schedule, which sets out the documents to be disclosed respecting the most common issues indispute that may arise in a General Proceeding appeal under s. 40 of the *Assessment Act*.

Under Rule 45, a party is required to disclose a *relevant* document. The term "relevant" means the document must relate to something. In an appeal proceeding, this means that it must relate to *an issue that is in dispute*. Those issues are identified through the parties' Statements of Issue, Response and Reply, as described above.

### **Summary**

What a party must disclose is all documents that are relevant to an issue in dispute. When a party must provide the disclosure is discussed below.

### **Distinction Between Disclosure, Documents to Be Relied On at a Hearing, and Evidence Adduced at a Hearing**

Disclosure refers to the documents that are relevant to the issues in dispute.

Documents to be relied on at a hearing are a sub-set of the relevant documents that have been disclosed. Typically, a party will review the relevant documents and select only a number of them which the party concludes will be necessary to present at the hearing.

Evidence adduced at the hearing will include the documents to be relied on at the hearing, but it also includes oral testimony (both examination-in-chief and cross examination) as well.

### **Initial Disclosure as Required in the Schedule of Events**

As noted above, the requirement to disclose a document is based on whether it relates to an issue in dispute, and issues in dispute may not be fully identified until responding parties have served their Statements of Response. This poses a challenge for an appellant who is required to "go first" in preparing and serving a Statement of Issues. If

the appellant only knows MPAC's assessed value of the property, this may hamper the appellant's ability to provide a comprehensive summary of the appellant's assessment analysis in its Statement of Issues.

Therefore, MPAC has agreed that, before the issues in dispute have been identified, MPAC will produce sufficient disclosure for an appellant to submit a clear and concise Statement of Issues. Initial disclosure is not based on a determination that the documents provided necessarily relate to issues in dispute, because the issues in dispute have not yet been identified.

The Board has consulted with representatives from the Board's stakeholder community respecting the development of the Schedule of Events and the provision of disclosure. There is consensus that MPAC's has provided comprehensive initial disclosure in its "About My Property" online database system. This initial disclosure has three main components:

- Methodology Guides which explain assessment methodologies;
- Analytics, which are Market Valuation Reports that explain how an assessment methodology is applied to value property; and
- Property Specific Valuation Information.

Consequently, the Board does not anticipate receiving many, if any, disputes respecting initial disclosure.

An appellant should contact MPAC if the appellant is unable to access the online 'About My Property' system or cannot locate information in this system for the property under appeal.

## **Timing of Disclosure**

The timing of MPAC's initial disclosure is discussed above. This section addresses the timing of the exchange of other disclosure.

Timing of disclosure and the order in which parties provide disclosure presents a challenge for both Courts and administrative tribunals. Different approaches are used. For example, the Superior Court of Ontario requires that the parties meet among themselves to develop a "Discovery Plan" which sets out, among other things, the timing for exchange of disclosure.

The Board, in consultation with its stakeholders, has structured the timing and order of disclosure to align with the exchange of the Statements of Issue, Response, and Reply.

As noted above, the underlying rationale for this approach is that the issues in dispute must first be identified, before the parties can determine whether a document is relevant, and, therefore, subject to the requirement to disclose.

The Schedule of Events provides due dates for the completion of exchange of disclosure.

As noted in the Disclosure Guideline, the obligation to provide disclosure remains on-going throughout the duration of the appeal proceeding. This means that, if a party identifies additional relevant documents after the relevant due dates for providing disclosure, these additional documents must be disclosed.

Where the parties elect to obtain additional expert reports, and an expert report includes new evidence, or raises valuation issues that have not been included in the Statement of Issues, Statement of Response, or Reply, then each party is required to disclose any additional documents that are relevant to such new evidence or valuation issues.

Upon receipt of a request for disclosure, the party who receives the request should respond quickly to confirm whether the party agrees or disagrees with the request. Disputes regarding disclosure should be identified as soon as possible, so that, if a motion for disclosure is necessary, it can be adjudicated on a timely basis. While the Board has not indicated a specific timeline for a response to a disclosure request, parties are expected to respond within one to two weeks of the receipt of the request. Where a party agrees to a disclosure request, the party should also advise when the disclosure can be provided.

## **Avoiding Disclosure Disputes**

The Board adjudicates a disclosure dispute by way of a written motion. These motions are often time consuming and costly for all concerned. Therefore, the goal is to avoid such disputes. The Board requires that the parties should first discuss such disputes among themselves to attempt to resolve the dispute. In this regard, the parties should review the following considerations before bringing a motion before the Board.

### **Provision of a document is not an admission of relevance or admissibility**

Rule 46 provides that the disclosure of a document is not an admission of its relevance or admissibility. This means that a party may disclose a document and still object to its relevance and admissibility at the main hearing, if the appeal is not otherwise resolved. As the vast majority of appeals do settle, the dispute regarding disclosure becomes

moot. Therefore, it may often be more efficient to provide the disclosure, rather than engage in a costly motion which ultimately proves to be unnecessary.

### **Proportionality**

Rule 5 of the Board's Rules of Practice the Rules shall be applied in a manner proportionate to the importance and complexity of the issues in a proceeding and with a view to resolving appeals within the four-year cycle. Therefore, where a document is relevant to an issue in dispute, the Board may not require its disclosure if the Board finds that it is not proportionate to the importance and complexity of the issues in dispute. In applying this test, the Board will consider the following factors which are applied by the Superior Court of Ontario in civil court proceedings (Rule of the Rules of Civil Procedure), namely:

- whether the expense of providing the disclosure would be unjustified;
- whether provision of the disclosure would cause the disclosing party undue prejudice;
- whether requiring the disclosure would unduly interfere with the orderly progress of the appeal proceeding;
- whether the document is readily available to the party requesting it from another source; and
- whether providing the disclosure would require the delivery of an excessive volume of documents.

### **Probative Evidence**

A document may be both relevant and proportional to disclose. However, it may not have much probative value when weighed as evidence at a hearing. Parties should consider how important or necessary a document will be in adjudicating an issue in dispute. If a document is only of limited probative value, the Board may not require that it be disclosed.

### **Use the Disclosure Guideline and Disclosure Schedule**

The Disclosure Schedule outlines stakeholder consensus on the documents that should be disclosed in respect of the issues shown in the Schedule. There is consensus that the Disclosure Schedule adequately addresses most of the disclosure requirements for these issues. Consequently, absent any exceptional circumstances, the Board expects that such disclosure as set out in the Disclosure Schedule will be provided. Therefore, all parties must refer to the Disclosure Schedule when considering whether a document must be disclosed.

## **Representative's role in providing and requesting disclosure**

Rule 45 provides that a party is required to provide only those documents that are in the party's possession, control, or power. A party's representative must obtain all relevant documents from their client. A representative should not request disclosure of a document from another party that is in the possession, power or control of their own client. Furthermore, it is not acceptable for the representative to request such a disclosure from another party, solely on the basis that the representative has requested, but not received, the document from their client.

## **Written Questions**

An alternative to seeking the delivery of documents is for a party to submit written questions to which another party can respond. In some cases, this may be a more efficient, concise, and precise method to provide a party with the information that the party is seeking. Where all parties agree, responses can be confirmed by written correspondence. Otherwise, responses should be provided in a sworn affidavit.