

## **Preparing for an Oral Hearing: Taxi, TNS, Limousine or other PDV Applications**

This Reference Sheet will help you prepare for an oral hearing before the Passenger Transportation Board. You should also read:

- Reference Sheet 11: General Information about Oral Hearings: Taxi, TNS, Limousine or Other PDV Applications
- The Board's Rules of Practice & Procedure. Part "C" of these Rules is specific to oral hearings.

This Reference Sheet gives you general information. It is not offered as legal advice. Each hearing is unique. The information in this Reference Sheet may not apply to every hearing.

### ***Oral Hearings: Overview***

Oral hearings allow the Board to assess whether the evidence is credible and reliable. At a hearing, the Board hears evidence from applicants, submitters and their witnesses. Hearing participants can bring witnesses to support their case. These witnesses can be questioned by other participants as well as Board members. Witnesses may also be questioned on documentary or media evidence they have introduced.

Hearings are structured and proceed in an orderly fashion. Witness lists and documentary evidence is submitted to participants and the Board before the hearing starts.

The general public may observe oral hearings. They may not participate in the hearing unless a participant has listed them as a witness.

One or more members of the Passenger Transportation Board conduct the hearing. These are called "hearing panels". They are appointed by the Chair of the Passenger Transportation Board. One person member of the hearing panel will be

appointed as hearing Chair. The hearing Chair manages the hearing and makes procedural decisions.

The hearing panel makes a decision on the application.

### ***Participants at Oral Hearings***

The term “*participant*” refers to:

- *applicants* who are applying to:
  - obtain a passenger transportation licence
  - amend their current licence
  - add vehicles
  - transfer their licence
  - change a rate
  
- *submitters* who support or oppose the application. (Most often, submitters oppose the application.)

### ***Representation***

Participants may be represented by a lawyer, agent or other person. This is not required. It is a decision for each participant to make. The Board does not recommend lawyers or agents to participants.

At a hearing, participants may:

- give evidence
- call witnesses
- present documents and other evidence
- make submissions to the Board

Submitters can limit their involvement in the hearing to (a) asking the applicant’s witness questions; and (b) making final submissions. If this happens, the Board will be careful to stop submitters from giving evidence during either process.

For example, the Board will not let submitters give evidence before they ask a witness a question. If a submitter wants to give oral evidence, he or she must be a witness.

If no submitters are going to present evidence at a hearing, the Board may decide it is not necessary to hold an oral hearing.

Hearings may not be recorded without the permission of the Hearing Chair. Requests to record a hearing must be made to the Hearing Chair before the hearing begins.

The Hearing Chair may permit journalists to tape or audio record the hearing only to verify their notes. The journalists must sign an undertaking that the recording will not be used for any other purpose, such as a broadcast.

### ***Communications among Participants & the Board***

It is important that hearing participants know what is going on. They must know about any decisions or rulings that the Board makes before the hearing.

Applicants or submitters may want to ask the Board a question or make a request of the Board before the hearing starts. The answers or Board rulings may affect other hearing participants. Therefore, the Board asks:

- to receive questions in writing via e-mail, and
- that all hearing participants are copied on e-mails.

***E.g. Applicant wants to add a witness***

- *Applicant e-mails the Board & asks to add a witness –submitters copied on e-mail.*
- *Board e-mails submitters & asks them to comment on the request – applicant copied on e-mail.*
- *Each submitter responds to the Board by e-mail – applicant and other submitters copied on response*
- *Board e-mails its decision to applicant and submitters*

## ***Pre-Hearing Conferences***

The Board holds often has a telephone conference with hearing participants before a hearing. These are called “pre-hearing conferences”. The Notice of Oral Hearing gives a date for a pre-hearing conference.

Participants should advise the Board right away if they cannot attend a pre-hearing conference. The Board may proceed with the pre-hearing conference even if a participant is unable to attend.

The purpose of the pre-hearing conference is to discuss hearing procedures and processes. The Board will ask hearing participants to give an overview of the evidence that each will give at the hearing. This includes evidence from witnesses and documentary or media evidence. The Board will want to know how many witnesses you are going to have and what type of documents or other evidence that you will bring to the hearing.

At the pre-hearing conference, the Board will set dates for exchanging witness lists and documentary or other evidence. The Board may also make rulings on matters of procedure raised by participants.

Reference Sheet 12: Preparing for an Oral Hearing

### *Preparing for a Pre-Hearing Conference*

The Board will send out an agenda before the pre-hearing conference. Agenda items usually include:

- overview of hearing
- witness documents
- procedural matters

*Before a pre-hearing conference, you should:*

- ▲ *estimate how many witnesses you will have, including*
  - *how many witnesses will be support witnesses. These may be people who use taxis or limousines. Or, they may be people who book taxis or limousines for other people.*
  - *how many witnesses will be speaking about your business operations*
- ▲ *know what types of documentary or other evidence you will be presenting*
- ▲ *identify any procedural matters that you wish to raise with the Board – e.g. confidential information, adjournments, location of the hearing, etc.*
- ▲ *review relevant legislation – e.g. the Passenger Transportation Act, the Administrative Tribunals Act and the Board’s Rules of Practice & Procedure and Operational Policies.*

### *At the Pre-Hearing Conference*

The Hearing Chair usually leads the pre-hearing conferences. Other panel members may be at the pre-hearing conference. A staff person attends the pre-hearing conference. Participants are asked to identify themselves and who is in the room with them.

The Board issues “Pre-Hearing Conference Outcomes” after the call. These outline the highlights of the call and include any rulings that the Board makes about hearing procedures.

### ***Disclosure of Documents and Witness Lists Before the Hearing***

At the pre-hearing conference, the Board sets dates for disclosure of documents and witness lists. Usually, these are disclosed at least 2 - 3 weeks before the hearing. There are two exceptions:

1. *expert evidence*, which is to be disclosed sooner, and
2. *confidential information*, which may not be required to be disclosed.

Both exceptions are discussed below.

Documents and witness lists must be sent to the Board and **all** hearing participants.

#### *Witness Lists*

The following information should be included for each witness:

Name

Organization and position in the organization, if applicable

Telephone number and, if possible, email address and fax numbers

A brief statement of the kind of evidence that the witness will give

Witness lists may include potential, unconfirmed witnesses. They should be realistic and reasonable.

Other hearing participants may contact you before the hearing. The witness is not required to talk to anyone else about their testimony.

### *Documents and Other Evidence*

The Board makes its decision on information presented at the hearing. You must make copies for all participants of any written or media presentations you will introduce as evidence at the hearing.

***Applicant's exhibit books*** should contain information it submitted with its application package. This includes:

- *application forms*
- *public need indicators*
- *business plans*
- *financial projections, excluding personal net worth statements or current financial statements*
- *budgets*

*Some of this information may be updated for the hearing.*

### Exhibit Books

You should organize documents into a binder. This binder is called an 'exhibit book' or a 'book of documents'. The binder has all documents that a participant wants to give to the panel at oral hearing. The binder may include written material, photographs, maps, discs or other physical evidence. If the Board agrees to receive evidence in confidence, it is not included in exhibit books that are shared with other participants but it is given an exhibit number.

#### ***Exhibit books:***

- have a "Table of Contents", with page numbers
- are divided by tabs
- have **all** pages numbered in sequence
- are bound or put in a binder

All exhibit books must have the same documents in the same order with the same page number and tabs.

The number of books that must be made is follows is as follows:

- 1 for each panel member
- 1 for the hearing officer
- 1 for each submitter and applicant

The exhibit book with original copies of documents should be given to the Board. Exhibit books are received in “hard copy” form. If the Board accepts electronic versions of exhibit books, the format outlined above would still apply. There should be a table of contents, pages must be numbered and divisions should be tabbed.

### *Expert Evidence*

“Experts” are people who have special education, training or experience in a subject. Their qualifications allow them to give evidence based on opinions rather than facts.

There are special rules for introducing expert evidence at a hearing.

1. Participants must give the Board and all hearing participants’ **notice** of an intention to submit expert evidence.
2. This notice must be given not more than **21 days after** the Notice of Oral Hearing is published in the *Bulletin*.
3. Copies of any expert reports or a written statement of the expert must be provided to the Board and all hearing participants at least **21 days before** the first date of the hearing.
4. The qualifications of the expert must be provided to the Board and all hearing participants at least **21 days before** the first date of the hearing.

The hearing chair may vary these deadlines.

***It is Important to Meet Disclosure Deadlines***

The Board expects participants to meet disclosure deadlines. The Board may:

- refuse to hear from witnesses or
- accept documents in evidence

that are not disclosed before the hearing.

### *Confidential Information*

#### 1. Information from Applicants

The Board keeps the following types of information confidential:

- private financial information (e.g. personal net worth statements)
- private business details (e.g. customer account information)

The Board will not usually require applicants to disclose this information to submitters. At a hearing, the Board may review this evidence privately or “*in camera*” with the applicant. Submitters will be asked to leave the hearing room for a period of time.

#### 2. Information from Submitters

Submitters who want to give evidence in confidence must make a written request to the Board and copy the applicant. The request:

- should include a summary of the type of information the submitter is asking the Board to accept in confidence and
- explain why the proper administration of justice requires that the evidence be accepted in confidence.

An applicant will have an opportunity to comment on written requests from participants to submit confidential information.

The Board will decide if it will accept some or all of the evidence in confidence. The Board will be mindful of the administrative fairness principle that the applicant is entitled to know the case against it. It will also consider submitters reasons for their request.

## ***Records, Information and Reports from the Board***

The Board has authority to review, obtain or produce records, information and reports. The Board will advise participants, usually at a pre-hearing conference, if it intends to produce any of these at an oral hearing and give the dates on which any records, information or reports will be provided to participants.

## ***Guests of the Board***

The Board may invite a person to attend the hearing and speak to a matter relevant to the application. Such persons are referred to as “Guests of the Board”. For example, the Board may invite a Mayor or Councillor to the hearing to provide information on the community.

Participants are notified in advance if the Board is inviting a guest. Guests are asked questions by Board staff. The Board may allow some or all participants to ask questions of the invited guest. Questions are at the discretion of the hearing chair.

## ***Transcripts or Recordings***

The Board does not have official transcripts from hearings.

Participants who want transcripts must make their own arrangements. This includes paying for the transcription service. They must notify the Board of this at least 2 weeks before the hearing. The notification must tell the Board:

- what type of transcription will be used,
- who will be providing the transcription services and
- at what other hearings the service has been used.

## ***At the Oral Hearing***

### *Starting the Hearing*

The hearing chair will:

- call the hearing to order and introduce himself or herself, other panel members and the hearing officer
- ask participants to introduce themselves and their representatives, if any
- confirm the application
- enter the application summary that was published in the *Bulletin* as Exhibit #1
- enter the hearing notice as Exhibit #2
- enter any other Board exhibits, such as preliminary rulings
- make comments on the purpose of the hearing and hearing procedures

### *Preliminary Matters*

The hearing chair will review any preliminary rulings made by the Board.

The hearing chair will also ask whether any participant wants to raise an issue of procedure. If there is an issue, the person will tell the Board how and why the

issue should be resolved. This is called making a submission to the Board. Then other participants will make submissions on the issue.

Participants should be familiar with these rules.

After hearing the submissions, the hearing chair may:

- rule on the matter immediately; or
- defer a decision until later in the hearing or after the hearing ends.

### *Hearing Order and Procedures*

The hearing usually proceeds in the following order:

- (a) Opening statements: applicant followed by submitters
  - (b) Guests of the Board (if any)
  - (c) Applicant's Case: Witnesses and documentary evidence
  - (d) Submitters' Case: Witnesses and documentary evidence
  - (e) Closing statements: submitters followed by applicants
- ***Opening statement by applicant*** – up to 10 minutes.
  - ***Opening statement by each submitter*** – up to 10 minutes

***The purpose of the opening statement is to:***

- *describe your case briefly;*
- *tell the hearing panel what decision or outcome you are seeking;*
- *outline the main points of your case; and*
- *summarize your evidence for the panel.*

- ***Applicant Witnesses and Evidence*** – The applicant presents its witnesses and physical evidence. Witnesses may be questioned by submitters. Panel members may ask witnesses questions.

- ***Submitter Witnesses and Evidence*** – Each submitter presents its witnesses and physical evidence. A submitter’s witnesses may be questioned by the applicant. Panel members may ask witnesses questions.

Generally, submitters are not permitted to question other submitters’ witnesses.

***Evidence is***

*(a) an actual physical object – such as a document – that you bring to the tribunal hearing to prove your case; or*

*(b) what you or your witnesses have to say about the facts of your case.*

*A hearing panel makes findings of fact based on evidence presented at a hearing.*

***Documents***

***Entering or Marking Exhibits at the hearing***

*Documents or other physical evidence provided to the hearing panel and other participants must be formally “entered” or “marked” at the hearing.*

*Sometimes exhibit books are entered at the start of the hearing. At other times, exhibit books are entered throughout the hearing.*

*The hearing officer will give each exhibit book an exhibit number. You should keep track of the number of an exhibit book. For example, you may want to write the number on the front of the book or inside the front page of the book. The hearing officer keeps a list of exhibits.*

*You should ask witnesses to testify about the contents of important documents in your exhibit books. If the documents have company details, then you should call a witness who can give evidence about these details.*

*Exhibits are public documents unless the Board accepts them in confidence.*

## Witnesses

Witnesses are affirmed by the hearing officer. The affirmation is as follows:

*Do you solemnly affirm that the facts or information that you are about to give this Board is the truth, the whole truth and nothing but the truth?*

### ***Direct Evidence versus “Hearsay”***

*You can call witnesses to give evidence that supports your case. Sometimes, witnesses cannot be in the hearing room until it is time for them to give evidence. The Hearing Chair will make a decision on excluding witnesses at the beginning of the hearing.*

*Your witnesses should be able to provide the hearing panel with direct evidence about your case. They should have first-hand knowledge of the facts they are telling the panel. If the evidence is not direct, it is “hearsay”. The panel may or may not accept hearsay evidence. If it accepts it, it may not be given as much weight as direct evidence.*

*E.g. You should not bring a witness to give evidence that he heard Mrs. Jones had a bad experience with a limousine. Instead, Mrs. Jones herself should come to the hearing to tell the panel about her experience.*

***How your witness gives evidence (“Evidence in Chief” or “Direct”)***

*You start by introducing the witness. At this time you may “lead” the witness, but asking such questions as:*

*Q: Mr. Brown, you are an electrician and you live at 123 Main Street in Vancouver. Is that correct?*

*A: Yes.*

*After introducing your witness, you should not ask your witness “leading questions”. These are questions that give the answer to the witness. For example, you should not say, “You saw me book a limousine on June 1, 2014, didn’t you?” because it suggests to the witness that he or she should agree with you. The panel wants to hear evidence from the witness.*

*Instead, you could say:*

*Q: Have you ever been with me when I booked a limousine?*

*Q: What day was this?*

*Q: What time did I book the limousine?*

*Q: What time did the limousine arrive?*

*These types of questions give the witness an opportunity to answer the questions in his or her own words.*

*When the witness is giving evidence, he or she should speak directly to the panel, not to you. Do not interrupt a witness who is giving evidence, unless the witness is not answering your question or is saying things that are not relevant.*

*Witnesses may also refer to documents you have entered as exhibits. For example, if a witness has written a letter of support, you may show this letter to the witness and ask the witness to confirm he or she wrote the letter. You may also ask the witness about the contents of the letter. When introducing the letter, you must inform the hearing participants of the **exhibit # and page #** of the document to which you are referring.*

*The hearing Chair may restrict questions if he or she is satisfied that the questioning has been sufficient to disclose fully and fairly all relevant matters, or that your questions are unduly repetitious.*

*If you are providing oral evidence on your behalf, then you should provide the panel with your name, address and employment and speak directly to the panel as you give your*

*evidence. You may also refer to documents that you have entered as exhibits. Refer to the **exhibit #** and **page #** of the document.*

### ***Cross-questioning witnesses***

*After you have completed your direct questioning, other participants will have an opportunity to ask your witness questions. The purpose of cross-questioning or "cross-examination" is:*

- *To get testimony from the other party's witness that supports your own case; and*
- *To discredit the witness (i.e., make the witness's evidence look less believable or reliable).*

*You can ask witnesses questions that are relevant. At all times, you must treat witnesses politely and respectfully. You must not "browbeat" or be rude to the witness. Unlike direct examination of your own witness, you may ask the witness leading questions during your cross.*

*If the witness being cross-questioned has introduced exhibits, you may ask a question about the exhibits. You must inform the panel and hearing participants of the **exhibit #** and **page #** of the document to which you are referring. You should also confirm that the witness has knowledge of the document.*

*The hearing Chair may restrict questions if he or she is satisfied that the questioning has been sufficient to disclose fully and fairly all relevant matters, or that your questions are unduly repetitious.*

*After the witness has provided his or her direct evidence and cross questioning is complete, the hearing panel may ask the witness a question.*

### ***Further Questioning of Witnesses***

*Subject to any ruling from the hearing Chair, you may ask your own witness a further question, if:*

- *the cross questioning or*
  - *a question from the panel*
- raised an issue that you did not deal with in your direct examination.*

### ***Raising an Objection to a Question or a Document***

*If you have an objection to a question asked of your witness or a document entered, raise it immediately with the panel chair. You should briefly state why you are objecting. The hearing chair will allow other participants to comment on the objection.*

*The panel may make an immediate ruling or it may defer its decision on the objection.*

- ***Submitter Closing Statements*** – Each submitter provides a brief closing statement.
- ***Applicant Closing Statements*** – The applicant provides a brief closing statement.

*Your **closing argument** sums up your case and explains it should be decided in your favour. If possible, you should prepare your final submissions in advance, and they should include the following points:*

- *A summary of your evidence and how it supports your case;*
- *A review of the other party's evidence and how it does not support his or her case;*
- *An explanation of the law (i.e., legislation and other tribunal decisions) and how it applies to your case; and*
- *The decision you would like the hearing panel to make.*

**Note:** *You **cannot** submit new evidence in your closing argument.*

Closing submissions may be oral or in writing.

If the Board accepts written closing submissions, the Board will set time lines for receipt of the submissions.

Sometimes participants submit “books of authorities”, which contain case law or previous Board decisions, with closing submissions. Usually, these authorities are used to support or contradict a specific position. Authorities would not be considered "new information". They are not "evidence". They are statements of the law or policies of the Board. If you include any authorities, they should be referred to directly in your closing arguments.

### ***After the Oral Hearing***

#### *Additional Evidence*

Participants should provide all evidence at the hearing. Evidence submitted after the hearing will only be considered in rare cases. The Board will only accept additional evidence if it believes:

- The evidence is necessary for the Board’s decision and
- Accepting the evidence would not unduly prejudice other parties or result in a breach of administrative fairness.

The Board may ask other participants to comment on whether the Board should accept the new evidence.

If the evidence is accepted, other participants will be allowed to make submissions on it.

### ***Decisions***

The Board puts its decisions in writing and sends them out to all participants. Decisions are published in the *Bulletin*. The Bulletin is posted on the Board’s website on Wednesdays.