

Farmers' Advocate Office  
farmers.advocate@gov.ab.ca  
[www.farmersadvocate.gov.ab.ca](http://www.farmersadvocate.gov.ab.ca)  
310-FARM (3276)

# **Agricultural Operation Practices Act**

## **PRACTICE REVIEW COMMITTEE**

### **Practices and Procedures**

Revised  
**JANUARY 2017**

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# I. DEFINITIONS

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**AOPA** - the *Agricultural Operation Practices Act*. Revised Statutes of Alberta 2000 Chapter A-7.

**Applicant** - the person or entity who has made an application to the Minister for a PRC review. Generally an applicant is a person who is aggrieved by or the owners or operators who are aware that a person is aggrieved by an agricultural operation disturbance or the NRCB.

**Board** - the Natural Resources Conservation Board.

**Chair** - the Chair of the PRC.

**Directly affected party** - is a person or group of people who were not originally parties to an application or referral but are directly affected by the issue. They come into a case in order to protect their rights.

**FAO** – the Farmers’ Advocate Office, Alberta Agriculture and Forestry.

**Generally accepted agricultural practice** - a practice that is conducted in a manner consistent with appropriate and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances and includes the use of innovative technology with advanced management practices.

**NRCB** - the Natural Resources Conservation Board.

**Nuisance** –an activity that: (i) arises from unreasonable, unwarranted or unlawful use by a person of the person’s own property that causes obstruction or injury to the right of another person or to the public and produces such material annoyance, inconvenience and discomfort that damage will result; (ii) creates smoke, odour, noise or vibration that interferes with the reasonable and comfortable use of a person’s property, or (iii) is found to be a nuisance at common law.

**Party or parties** - means the Applicant, the Respondent and directly affected parties, if applicable.

**Physical evidence** - means information not in written form, e.g., videotapes or maps.

**PIA** – the *Public Inquiries Act*.

**PRC** - the Practice Review Committee created under Section 5(1) of the AOPA.

**Respondent** – means the person or company to which the complaint is against.

**Secretary** - the FAO shall act as the Secretary for the PRC unless another agency is appointed by the Minister.

**Site visit** – when the PRC and the parties attend the location of the proposed agricultural operation disturbance.

## II. INTRODUCTION

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A Practice Review Committee (PRC) is established under Section 5(1) of the *Agricultural Operation Practices Act* (AOPA). A PRC deals with individual requests or Ministerial referrals to consider whether a nuisance disturbance from an agricultural operation results from a generally accepted agricultural practice.

The PRC consists of three members appointed by the Minister. Two members must have experience in the type of farming operation to which the application or referral relates.

### 1) Development of the Procedures Manual

The AOPA allows the PRC to establish the procedures for the reviews, however some procedural rules cannot be varied, such as:

- the parties must be notified of the application or referral,
- the parties must be given the opportunity to present information and make recommendations,
- the PRC must provide a written copy of any agreement of the parties or any recommendations of the PRC to the Minister, to each of the parties and any person or organization the Minister directs,
- legal counsel is allowed, and
- each party appearing before the PRC is responsible for its own costs.

The Farmers' Advocate Office (FAO) developed this procedures manual to guide PRCs through the review process so all parties receive a fair review and to provide consistency from one review to another.

For the most part, the PRC should follow the procedures set out in this procedures manual, but there may be times when the PRC will vary the procedures outlined to ensure a fair review for all parties. For instance, if the PRC decides to gather submissions solely through a written format, changes to the procedures will be required but procedural fairness must still be ensured. Another example is that procedural changes would be necessary if the PRC assisted in mediating the grievance.

### 2) Set up of the Procedures Manual

The procedures dealing with reviews are outlined in the four sections following this introduction, i.e., PRCs, Evidence and Review Attendance, Procedures During the Review and Post-Review Procedures. The manual also includes templates and legislation.

## III. PRACTICE REVIEW COMMITTEES

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### A. PURPOSE OF THE PRACTICE REVIEW COMMITTEE

- 1) The purpose of the PRC is to hear and resolve applications from:
  - people who are aggrieved by,
  - an owner or operator who is aware that a person is aggrieved by, or
  - referrals by the NRCBregarding nuisance claims from odour, noise, dust, smoke or other disturbances resulting from an agricultural operation.
- 2) The PRC may act as a mediator or may inquire into and assist the parties in reaching their own mutually acceptable settlement.
- 3) If the matter is not resolved, the PRC will determine whether the disturbance results from a generally accepted agricultural practice and will make a recommendation to the Minister.

### B. COMPOSITION AND STRUCTURE OF THE PRACTICE REVIEW COMMITTEE

- 1) The PRC consists of three members appointed by the Minister.
- 2) Two members must have experience in the type of farming operation to which the application or referral relates.
- 3) The Farmers' Advocate Office (FAO) develops and maintains a list of potential PRC members. Administrative tribunal experience and understanding, and agricultural experience are necessary attributes to the makeup of the PRC. Based on the type of application received, the FAO will make recommendations to the Minister as to the composition of the PRC.
- 4) More than one PRC may exist at any one time.

### C. AUTHORITY OF THE PRACTICE REVIEW COMMITTEE

The authority of the PRC comes from the AOPA and the *Public Inquiries Act* (PIA).

- 1) The AOPA provides the PRC with the authority to:
  - consider whether a disturbance (odour, noise, dust, smoke or other disturbance resulting from an agricultural operation) results from a generally accepted agricultural practice;
  - inquire into and assist the parties in resolving the dispute; and
  - recommend to the Minister what should constitute a generally accepted agricultural practice in respect to the agricultural operation under review.
  
- 2) The PIA provides the PRC with the same powers and privileges as a commissioner. This includes the power to:
  - Engage the services of counsel, clerks, reporters and assistants.
  - Engage the services of experts, people having special technical or other knowledge or any other qualified person to assist them.
  - Authorize an expert, people having special technical or other knowledge or any other qualified person to inquire into any matter within the scope of the review and report the evidence and findings to the PRC.
  - Summon witnesses and require them to give evidence under oath.
  - Summon people to produce any documents, papers and things the PRC considers to be required for the full investigation of the matter.
  - Make copies of original documents and to accept copies of documents to be admitted into evidence.
  - Admit evidence it determines appropriate.
  - Appoint a person, sworn before a justice of the peace, to take evidence of a witness and report those findings to the PRC.
  - Allow a person (or their legal counsel) to give evidence, provide witnesses and cross-examine witnesses if it is determined that the person's interests may be adversely affected by the evidence given.

## **D. OBLIGATIONS OF THE PRACTICE REVIEW COMMITTEE**

- 1) The PRC shall not report any allegation of misconduct to the Minister until reasonable notice of the allegation has been given to the party and that party has had the

opportunity to give evidence (either orally or written). The PRC may provide more than one opportunity for the party (or their legal counsel) to call and examine witnesses.

2) The PRC has a duty to ensure procedural fairness in the review process. Procedural fairness includes:

- Adequate notice and sufficient time to prepare for the review.
- Disclosure of information the PRC will consider.
- Providing a forum to share information and make presentations on the matter (either orally or written).
- The right to legal counsel.
- The right to cross-examine witnesses.
- Treating the parties equally in the process.
- The right to have the case decided on the evidence heard or seen during the review and/or site visit.
- The right to have the people who make the recommendation hear the case.
- The right to unbiased decision-makers.

## **E. HOW REVIEWS ARE INITIATED**

1) Reviews are initiated by:

- people who are aggrieved by odour, noise, dust, smoke or other disturbances resulting from an agricultural operation, or
- an owner or operator who is aware that a person is aggrieved by odour, noise, dust, smoke or other disturbances resulting from an agricultural operation, or
- by referral from the NRCB to the Minister.

2) People who are aggrieved by or owners or operators who are aware that a person is aggrieved by an agricultural operation disturbance can make an application to the Minister under Section 3 of the AOPA to determine whether the disturbance results from a generally accepted agricultural practice.

3) The application must be in writing and include:

- a statement of the nature of the disturbance,
- the name and address of the applicant,
- the location of the agricultural operation,
- the name and address of the owner or operator, if known,
- the name and address of the person who is aggrieved, and
- the steps taken by the applicant, if any, to resolve the disturbance.

4) Under Section 38.1 of the AOPA, if the NRCB believes a person may be creating an inappropriate disturbance the NRCB may request the Minister establish a PRC.

- 5) The PRC will try to hold the review within 90 days after receiving a written application or referral or as soon after as is reasonably possible.

## **F. PRE-REVIEW PROCESS**

- 1) When the FAO receives an application or referral, the FAO will forward the names of potential PRC members to participate in the review, to the Minister for approval.
- 2) After consultation with the parties and the PRC members, the Secretary arranges the date, time and location of the review and site visit (if required).
- 3) Once finalized, the Secretary advises the parties and the PRC members of the date, time and location of the site visit and review.

At that time, the Secretary also advises the parties that:

- each has the right to be represented by a lawyer.
- they must provide the names and a brief background of any people who will attend the review on their behalf to the Secretary at least 14 calendar days before the date of the review.
- they should provide to the Secretary, at least 14 calendar days before the date of the review, any written or physical evidence that will help the PRC understand their point of view. A party has the responsibility for ensuring the Secretary receives a sufficient number of copies of the written or physical evidence they intend to use so the Secretary can distribute the evidence to the other parties and the PRC.
- upon the request of the PRC and prior to the date of the review, the Secretary may request either party to answer written questions designed to discover key facts about the case.
- any written or physical evidence received by the Secretary later than 14 calendar days before the date of the review can only be admitted as evidence on the day of the review and with the approval of the PRC.
- if the parties have any questions about the process they contact the Secretary.

The Secretary also discusses how the agenda for the review is set up and asks each party for an estimate of the amount of time they will need on the agenda to present their information.

The Secretary will send the above information in written form to the parties.

- 4) The Secretary sends the names of those attending and any written or physical evidence received, to the opposing party and to the PRC members no later than 7 calendar days before the review date. At this time, the Secretary also provides the review agenda and written confirmation of the date, time and location of the review and site visit.



- 5) The PRC may vary any time limits referred to in this section if requested by the parties, the Secretary or a PRC member.

## **G. MEDIATION**

- 1) During the initial phase of the review process, mediation can occur between the parties. The mediator can be:
  - One or more of the PRC members;
  - The Chair of the PRC; or
  - The Farmers' Advocate Office with the consent of all parties.
- 2) During the mediation process, the PRC must take concerted effort to remain, and appear to remain, unbiased. Section 8(1) of the AOPA states that the PRC must assist the parties by "structuring negotiations, facilitating communication, and identifying the issues and interest of the parties." Care should be taken during the mediation to restrict the PRC's involvement to the specific activities mentioned above.
- 3) Any agreement between the parties reached during mediation must be documented, signed by the parties and witnessed. An original signed copy of the agreement should be provided to each of the parties, and an original signed copy should be kept on the file, and provided to the Minister and any other person or organization the Minister directs, as outlined in section 9(1) of the AOPA.

## **H. WITHDRAWING THE REVIEW**

The applicant or NRCB can elect to withdraw the review or referral request at any stage of the review proceedings.

## **I. DIRECTLY AFFECTED PARTIES**

- 1) A directly affected party is a person or group of people who were not originally parties to an application or referral but are directly affected by the issue. They come into a case in order to protect their rights.
- 2) A person or group of people who feel they are a directly affected party must give a request to participate in the review to the Secretary at least 21 calendar days before the date of the review. Reasons for their involvement must also be given to the Secretary within this timeframe.
- 3) The Secretary will contact the PRC members for a decision on whether the person or group of people making the attendance request are directly affected parties.

- 4) If the PRC decides the person or group of people making the attendance request are directly affected parties the Secretary will notify the directly affected parties and the applicant and respondent.
- 5) If the PRC decides that the person or group of people making the attendance request are not directly affected parties, the Secretary will inform those people of the PRC's decision.
- 6) Directly affected parties have the same procedural and participation rights and obligations as the applicant and respondent.

## **J. CONFLICT OF INTEREST, BIAS AND CONFIDENTIALITY**

- 1) PRC members must, as soon as possible, disclose to the Secretary any situation which is, or may be, a conflict of interest or which may be perceived as leading to a reasonable apprehension of bias to ensure the PRC is fair and impartial.
- 2) Before the review date, the FAO may replace any member on the PRC who has disclosed to the Secretary a situation which is, or could be, reasonably viewed as a conflict of interest or apprehension of bias.
- 3) A conflict of interest is any situation where the private interests of an individual member may interfere with that member's responsibility to carry out the member's duties honestly and objectively. Such situations may involve the individual member directly or indirectly through a family member, business partner or involvement with a corporation. Conflicts of interest may involve financial interests or personal relationships whether they are favourable or unfavourable.
- 4) Bias is a broader concept, which can include conflict of interest or any situation where a member's personal views or beliefs could interfere with his or her objectivity. Each member has the duty to deal with the issues and make recommendations fairly and objectively. Even if the member believes he or she can set aside any bias, the test is whether a "reasonable bystander" would have a concern that the member may be biased for or against either party.
- 5) Before sending any review information to the PRC members, the Secretary sends the PRC members an Undertaking to Participate form (Schedule A) to fill in, sign and return. In signing this form, the PRC member states his or her belief that no conflict of interest or bias exists related to the Applicant or Respondent (or directly affected party, if applicable) and agrees to disclose any conflict or bias as soon as it becomes known.
- 6) The parties are not informed as to who is sitting on the PRC until the day of the review. There is an opportunity at the beginning of the review to object to the PRC membership should a conflict of interest or bias become known at that time.
- 7) Even if there is a conflict of interest or reasonable apprehension of bias for a PRC member, the member can continue to sit on the PRC if the parties agree to this, following full disclosure of the conflict of interest or reasonable apprehension of bias.

- 8) The PRC rules on any objection raised by either party based on an alleged conflict of interest or reasonable apprehension of bias.
- 9) PRC members cannot discuss, make statements, or disclose written or physical evidence related to the review or site visit to anyone other than the PRC members, the parties and their representatives, the Secretary or other individuals the PRC considers to have a legitimate interest in the proceedings.

## **K. RESPONSIBILITIES AND DUTIES OF THE CHAIR**

- 1) The Chair has the responsibilities and duties stated in the Responsibilities and Duties of the PRC members, Section M.
- 2) In consultation with the Secretary, determines the time and location of the review.
- 3) After consultation with other PRC members, outlines the procedures and conduct to be followed at the review.
- 4) Presides over the review and leads the review process.

## **L. RESPONSIBILITIES AND DUTIES OF THE SECRETARY**

The FAO shall act as the Secretary for the PRC unless another agency is appointed by the Minister.

- 1) When contacting potential PRC members, asks if the prospective member is or may be in a conflict of interest with any of the parties or is aware of anything which may be perceived as leading to a reasonable apprehension of bias.
- 2) Coordinates the agenda, review time and location and is responsible for the distribution of the Undertaking to Participate forms, agendas and relevant information.
- 3) Makes the necessary meeting room reservations and arranges visual aid requirements and room set up.
- 4) If applicable, arranges site visits.
- 5) The Secretary will arrange for the involvement of the PRC lawyer, if deemed necessary by the PRC.
- 6) The Secretary will arrange for a Court Reporter to attend the review, if deemed necessary by the PRC.
- 7) If the Secretary is notified that a person or group of people request permission to attend the review the Secretary will contact the PRC members for a decision on whether the person or group of people making the attendance request are directly affected parties.

If the PRC decides the person or group of people making the attendance request are directly affected parties the Secretary will notify the directly affected parties and the applicant and respondent. If the PRC decides that the person or group of people making the attendance request are not directly affected parties, the Secretary will inform those people of the PRC's decision.

- 8) Records the minutes of the review and the PRC recommendation.
- 9) Compiles, revises and distributes the review minutes, the PRC recommendation and the record of the review.
- 10) Assists the PRC in preparing any written agreement or report.
- 11) Acts as a liaison between the parties and the PRC for administrative purposes.
- 12) Acts as a liaison between the PRC and the PRC lawyer.
- 13) All communication with the parties, the PRC lawyer and the PRC prior to and after the review must be facilitated through the Secretary.
- 14) Submits expense claims of PRC members to the FAO, Alberta Agriculture and Forestry, Edmonton.

## **M. RESPONSIBILITIES AND DUTIES OF PRACTICE REVIEW COMMITTEE MEMBERS**

- 1) In consultation with other PRC members, helps make decisions on:
  - variations on pre-review time limits for delivery and exchange of information.
  - giving direction concerning any procedural matters related to the review. The PRC may vary normal procedures, or adopt new ones for the review, subject to the AOPA or Regulation, after the parties have had an opportunity to make representations on the issue. The PRC will not vary procedures if it will cause significant unfairness to any party.
  - whether a person or group of people making an attendance request are directly affected parties.
  - imposing conditions on any person's continued participation in the review and the exclusion of any person for failure to abide by those conditions.
  - making recommendations concerning any objections or requests made by the parties or the PRC, including any alleged conflict of interest or reasonable apprehension of bias.
  - determining if a site visit is required.

- the admissibility or weight of evidence.
- variations of agenda time limits.
- requests for adjournment.
- reaching a recommendation (preferably by consensus) on the review.

2) As an individual PRC member:

- immediately discloses to the Secretary, any situation which is, or may be perceived as a conflict of interest with any of the parties (including legal counsel and witnesses) or which may be perceived as leading to a reasonable apprehension of bias.
- if in agreement, completes, signs and returns the Undertaking to Participate form to the Secretary before receiving any review information.
- in advance of the review date, reviews and becomes familiar with the application, agenda and any other information provided by the Secretary.
- advises the Secretary as soon as possible if he or she cannot attend a scheduled review.
- keeps an open mind during the review and does not make any conclusions on the review until all the evidence and submissions are received or heard.
- remains completely neutral during the review with no arguing or debating with the parties.
- during the review, keeps comments unbiased and to a minimum.
- asks for further information or asks relevant questions at appropriate times during the review.
- remains in attendance throughout the entire review.
- avoids private conversations or discussions (even casual ones) with parties before the review or during adjournments to prevent allegations of possible bias.
- attends any site visits.
- keeps notes to assist in reaching a recommendation.
- participates in the decision-making process.
- reviews and edits the draft recommendation and minutes within a reasonable amount of time as determined by the Secretary.
- once in agreement with the written recommendation, signs the written recommendation within a reasonable amount of time as determined by the Secretary.

- does not disclose the final recommendation and reasons of the PRC to anyone before the signed, written recommendation is released.
- does not discuss, make statements, or disclose written or physical evidence related to the review to anyone other than the PRC members, the parties and their representatives, the Secretary or other individuals the PRC considers to have a legitimate interest in the proceedings.
- keeps any private PRC deliberations private, with only the final recommendation and reasons of the PRC being disclosed to the parties.

## **N. PRE-REVIEW INQUIRIES OR REQUESTS FOR ASSISTANCE**

- 1) After receiving the pre-review information from the Secretary and before the day of the review, members of the PRC may request additional information from the parties. The procedure is:
  - the PRC member sends their written question(s) to the Secretary,
  - the Secretary sends the request to the party it is intended for and notifies the other PRC members of the question(s),
  - the party responding sends the information to the Secretary, and
  - the Secretary provides the request and response to all members of the PRC and to the other party.
- 2) As there will only be a few days between the time the PRC members receive the pre-review information and the day of the review, it is imperative that any questions be sent to the Secretary in a timely manner.

## **O. PRE-REVIEW PROCEDURAL OBJECTIONS AND QUESTIONS**

- 1) All procedural objections and questions will be communicated through the Secretary.
- 2) The Secretary will answer the procedural question if it is outlined in the PRC Practices and Procedures manual.
- 3) If the Secretary is unable to answer the question or there is an objection to a practice or procedure, the Secretary will contact the Chair and if applicable, all PRC members, to make a decision on the matter.
- 4) The Secretary will inform all parties and the PRC if any changes to the procedures and practices will occur for a particular review.

## IV. EVIDENCE AND REVIEW ATTENDANCE

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### A. REVIEW AGENDA

The following is used as an outline for the review agenda. The times listed beside each agenda item are suggested time limits. Before developing the agenda, the Secretary asks the parties to estimate how much time they need to make their presentation. The times include all evidence given on behalf of the party (e.g., witnesses). If directly affected parties are not in attendance the following agenda would be revised.

The PRC has the discretion to reduce or extend the times. While it is important to ensure that both parties have full opportunity to make their presentations, including all of the evidence they wish to present, the PRC has the discretion to ensure the information presented is relevant to the review and non-repetitive.

- 1) Opening remarks – Chair/Secretary - 10 minutes
- 2) Applicant opening statement – 2 minutes
- 3) Respondent opening statement (if different from applicant) – 2 minutes
- 4) Directly Affected Party opening statement - 2 minutes
- 5) Evidence of the Applicant – 1 hour
- 6) Cross-examination of Applicant by Respondent – 5 minutes
- 7) Cross-examination of Applicant by Directly Affected Party – 5 minutes
- 8) Questions by the PRC – 10 minutes
- 9) Evidence of the Respondent – 1 hour
- 10) Cross-examination of the Respondent by Applicant – 5 minutes
- 11) Cross-examination of the Respondent by the Directly Affected Party – 5 minutes
- 12) Questions by the PRC – 10 minutes
- 13) Evidence of the Directly Affected Party – 1 hour
- 14) Cross-examination of Directly Affected Party by Applicant – 5 minutes

- 15) Cross-examination of Directly Affected Party by Respondent – 5 minutes
- 16) Questions by the PRC – 10 minutes
- 17) Applicant Rebuttal and Summary – 10 minutes
- 18) Questions by the PRC – 10 minutes
- 19) Respondent Rebuttal and Summary – 10 minutes
- 20) Questions by the PRC – 10 minutes
- 21) Directly Affected Party Rebuttal and Summary – 10 minutes
- 22) Questions by the PRC – 10 minutes
- 23) Hearing Chairman Closing Remarks – 5 minutes
- 24) Decision – in camera with only the PRC members, the Secretary and the PRC lawyer,  
if deemed necessary by the PRC

## **B. EVIDENCE**

- 1) After the Secretary finalizes the date of the review and/or site visit, the Secretary informs the parties that any written or physical evidence they wish to present to the PRC should be sent to the Secretary at least 14 calendar days before the date of the review.

The Secretary also informs the parties that any written or physical evidence received by the Secretary later than 14 calendar days before the date of the review can only be admitted as evidence on the day of the review and with the approval of the PRC.

- 2) Written and Physical Evidence Received before the 14-Calendar Day Deadline
  - a. When the Secretary receives the written and physical evidence from the parties within the 14-calendar day deadline, the Secretary sends a copy of the written and physical evidence to the opposing party and the PRC no later than 7 calendar days before the date of the review.
  - b. Some written and physical evidence is not easily copied for pre-review distribution to the other parties and the PRC members (e.g., large maps). In these situations, the submitting party should inform the Secretary of the circumstance and their wish to have the information admitted into evidence at the review.

The Secretary will inform the PRC members and the other parties about the submission. On the day of the review, time must be allowed to permit the other parties and the PRC members to review the information.

- 3) Submission of Written and Physical Evidence after the 14-Calendar Day Deadline



- After the 14-calendar day deadline, any request to submit written or physical evidence must be done at the review.
- If a party makes a request to introduce written or physical evidence during the review, the Secretary collects the information and gives it to the opposing party to review.  
Once the opposing party reviews the information, the Chair asks the opposing party if they object to having the new information entered as evidence.

If the opposing party does not object to having the new information entered as evidence, the PRC accepts or rejects the new information into evidence.

If the opposing party objects to entering the new information into evidence, the PRC hears from both parties and decides whether the new information is entered as evidence.

- If the new written or physical information is accepted into evidence, the party has the responsibility for ensuring there are a sufficient number copies of the new submission(s) to distribute to the PRC, the other party and the Secretary at the review.

#### 4) Submission of Answers to Written Questions from the PRC Prior to the Day of the Review

- After the 14-calendar day deadline and before the day of the review, the PRC, through the Secretary, may make written requests of the Applicant, the Respondent or the directly affected party to discover key facts about the case.

Once the Secretary receives the answer to the PRC member's question both the question and answer will be forwarded to all parties and PRC members.

## C. REVIEW ATTENDANCE

### 1) Under Section 3(3) of the AOPA the parties to an application for review are:

- the applicant,
- the owner or operator, or
- the person aggrieved, and
- any other person the Minister considers appropriate.

### 2) Under Section 4 of the AOPA, the parties to a referral for review are:

- the NRCB,
- the owner or operator of the agricultural operation about whom the referral is made, and
- any other person the PRC considers to be directly affected.

### 3) Other people expected to attend the review are:

- the PRC members and the Secretary
- any legal representative of the applicant, the owner or operator, or the person aggrieved
- directly affected parties
- the Court Reporter, if deemed necessary by the PRC
- experts, when required to give evidence (after giving evidence, experts may remain at the discretion of the PRC)
- witnesses approved by the PRC, when required to give evidence (after giving evidence, witnesses may remain at the discretion of the PRC)
- lawyer advising the PRC
- observers, as permitted by the PRC

## **D. LEGAL REPRESENTATION AT THE REVIEW**

- 1) The parties and the PRC are allowed legal representation at the review.
- 2) A party must give the Secretary notice of their intent to be represented by a lawyer at the review at least 14 calendar days before the date of the review. The Secretary provides the information to the other party and to the PRC. The other party and the PRC are then given the opportunity to be represented at the review by their own lawyer. This may mean rescheduling the review, if the PRC feels that they or the other party have not had sufficient notice to make these arrangements.
- 3) The PRC may decide to retain a lawyer to advise the PRC at the review even if the parties do not intend to be represented by a lawyer. If the PRC intends to retain a lawyer for the review, the Secretary will notify the parties at least 14 calendar days before the date of the review. The parties are then given the opportunity to also be represented at the review by their own lawyer. This may mean rescheduling the review, if the PRC feels that the parties have not had sufficient notice to make these arrangements.
- 4) Any costs associated with legal representation are at the expense of the party retaining the lawyer.

## **E. OTHER REPRESENTATION AT THE REVIEW**

- 1) If a party wishes to have someone other than a lawyer represent him or her at the review (e.g., feedlot specialist), that representation must be approved by the PRC to ensure the legitimacy of that person's role in the review process. For example, if a party intends to be represented by someone from the media, the legitimacy of that representative's role may be questionable.
- 2) A party must give the Secretary notice of their intent to use a representative at least 14 calendar days before the date of the review. The party must provide the Secretary with a brief background or reason for using the representative.

- 3) If the PRC approves the proposed representation, the Secretary will notify all parties of the representative's attendance.
- 4) If the PRC does not approve the proposed representation, the Secretary will inform the party of the PRC's decision and their reasons for that decision.
- 5) Even if the Secretary has advised a party that a proposed representative may attend the review, the PRC has the final right to determine if that representative may attend the review.
- 6) Any cost associated with the use of a representative is at the expense of the party using the representative.

## **F. EXPERTS**

- 1) Either party may use experts.
- 2) A party must give the Secretary notice of their intent to use an expert at least 14 calendar days before the date of the review. The Secretary provides the information to the other party. The other party is then given the opportunity to bring their own expert. This may mean rescheduling the review if the PRC feels the other party has not had sufficient notice to make these arrangements.
- 3) Unless otherwise agreed to by the PRC, experts may only be present at the review while they are giving evidence.
- 4) Any cost associated with the use of an expert is at the expense of the party using the expert.

## **G. OTHER WITNESSES**

- 1) If a party wishes to use a witness at the review other than for the purpose of providing expert evidence, that witness must be approved by the PRC to ensure the relevancy and appropriateness of the witness's testimony in the review process. For example, the appropriateness of the role of a MLA who wants to attend the review but who has no relevant testimony to present to the PRC may be questionable.
- 2) A party must give the Secretary notice of their intent to use a witness at least 14 calendar days before the date of the review. The party must provide the Secretary with a brief background or reason for using the witness.
- 3) If the PRC approves the use of the proposed witness, the Secretary will notify all parties of the witness's attendance.
- 4) If the PRC does not approve the proposed witness's attendance, the Secretary will inform the party of the PRC's decision and the reasons for that decision.

- 5) Even if the Secretary has advised a party that a witness may attend the review, the PRC has the final right to determine if that witness may attend the review and what evidence that witness may give at the review.
- 6) Unless otherwise agreed to by the PRC, witnesses may only be present at the review while they are giving evidence.
- 7) Any cost associated with the use of a witness is at the expense of the party using the witness.

## **H. DIRECTLY AFFECTED PARTIES**

- 1) A request to participate in a review from a person or group of people who feel they are a directly affected party must give this request to the Secretary at least 21 calendar days before the date of the review. Reasons for their involvement must also be given to the Secretary within this timeframe.
- 2) The Secretary will contact the PRC members for a decision on whether the person or group of people making the attendance request are directly affected parties.
- 3) If the PRC decides the person or group of people making the attendance request are directly affected parties the Secretary will notify the directly affected parties and the applicant and respondent.

## **I. ROLE OF LAWYER ADVISING THE PRACTICE REVIEW COMMITTEE**

- 1) The lawyer advising the PRC is not a member of the PRC and sits apart from the PRC members.
- 2) The lawyer advising the PRC remains neutral. If he or she is perceived as being aligned with one of the parties it could create a reasonable apprehension of bias.
- 3) When asked by the PRC, the lawyer gives advice to the PRC without making, or appearing to make, the recommendation. The lawyer does not address the parties of the review unless asked to do so by the PRC.
- 4) The lawyer may meet privately with the PRC during the review but if a new issue arises while the PRC is considering the matter in private, the review will be reconvened and the parties will be asked to speak to the new issue.

## **J. OBSERVERS**

- 1) There may be rare occasions when observers are allowed to attend a review. Examples of observers include: Alberta Agriculture and Forestry staff as part of their training, new PRC members as part of their orientation, and family members of the parties who are not immediate family.
- 2) For an observer to attend an review:
  - the PRC or party makes a request at the beginning of the review for the person to attend as an observer.
  - the PRC must be satisfied that the proposed observer has a direct interest in the review and the attendance is reasonably justified.
  - the parties to the review do not have any reasonable objection to the presence of the observer.
- 3) An observer does not take part or interfere with the review in any way. If this happens, the PRC can direct the observer to leave the review.

## **K. MEMBERS OF THE PUBLIC OR MEDIA**

- 1) The review is not open to the public or media, even if the parties have no objections.
- 2) If someone shows up the day of the review without having previous approval from the PRC to attend (e.g., witnesses or representatives) that person must leave the review if asked to do so by the PRC.
- 3) If there is a request from the public or media to attend the review (or they show up on the day of the review), the Secretary tells the person the review is not open to members of the public (or media) as the review relates to the financial or business matters of the Respondent. If anyone questions this or any other procedural rule, the matter is referred to the PRC.

## **L. SITE VISITS**

- 1) The parties may request a site visit or the PRC, on its own accord, may decide to have a site visit.
- 2) A site visit request is sent to the Secretary. The Secretary contacts the PRC and if the PRC approves the site visit, the Secretary will immediately notify both parties of the site visit.
- 3) The Secretary will make the necessary arrangements for the site visit.
- 4) After consulting with the PRC members, the Secretary will make the necessary adjustments to the agenda.



## V. PROCEDURES DURING THE REVIEW

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### A. REVIEW ROOM SETUP – see Schedule B

- 1) To ensure all participants are able to see and hear the proceedings, the PRC members sit at one table at the front of the room facing the Applicant and their representatives on one side and the Respondent and their representatives on the other side. Directly affected parties will be seated to the back of the Applicants and Respondents. The Secretary sits immediately beside the Chair.
- 2) Witnesses may sit at a small table placed between the Applicant's table and the Respondent's table.
- 3) The lawyer advising the PRC does not sit at the same table as the PRC.

### B. QUORUM

- 1) A quorum is three members of the PRC.
- 2) If a PRC member becomes incapacitated (e.g., illness) during the review, or if a member cannot continue because of a conflict of interest or reasonable apprehension of bias, quorum is not attained.

If there is not a quorum and the member cannot continue because of incapacitation, the review is reconvened to a later date, which will be within a reasonable amount of time from the date of the original review.

If the member cannot continue because of a conflict of interest or reasonable apprehension of bias or is totally incapacitated and unable to sit at the review in the future, a new review with a new PRC is arranged.

### C. ADJOURNMENTS

- 1) Once the review has begun, it must not be concluded until both parties have had full opportunity to make their presentations, including all of the relevant evidence they wish to present. However, there may be reasons to have a break or adjournment of the proceedings. Such breaks may be only for a few minutes or may last for a period of days, if permitted by the PRC. It is expected that a review will normally be concluded within one day or less, so most adjournments should be short.
- 2) Some examples of situations where an adjournment would be used:

- if there is an objection by one of the parties to something in the proceedings and the PRC needs time to decide how to respond to the objection.
  - breaks for lunch or coffee.
  - a break requested by one of the parties, PRC members or Secretary and approved by the PRC.
  - if a site visit is required. If so, the review is adjourned at the meeting room, reconvened at the site, then adjourned at the site when the inspection is done and reconvened at the meeting room.
  - if a party, a PRC member or the Secretary becomes ill or incapacitated during the review. If a PRC member becomes incapacitated or ill and quorum exists without that member, the review may proceed.
- 3) If a party leaves the review and an adjournment is not requested or granted, the review can continue in that party's absence. The PRC will consider the circumstances and decide whether to continue the review. For example, if a party leaves the room, the PRC should adjourn the review to see if, and when, the party will return to the review.

If the party does not intend to return to the review, the PRC must decide whether to continue the review or adjourn the review to another day. The PRC should keep in mind that one component of a fair review is that a party has the right to know the case against them. If the review is adjourned to another day, the current review is reconvened and the Chair states for the record, the reason for the adjournment.

## **D. MINUTES**

Minutes are kept by the Secretary in the format of Schedule C and must include:

- Issue being reviewed.
- Date, time and place of the review.
- Names of all parties present, including the PRC members, the Applicant, the Respondent, the person being aggrieved, any representatives, any directly affected parties, and permitted observers.
- Times and names of late arrivals and early departures.
- Evidence presented at the review.
- Arguments presented by the parties.
- Requests, objections and rulings made by the PRC.
- Times of commencement, lunch break, adjournments, site visits and the end of the review.



## E. OPENING REMARKS FOR REVIEWS

### 1) Notification of Review

Before the review begins, the Secretary informs the Chair if there was any problem notifying the parties about the review.

If a party does not show up at the review but received proper notice of the review, the PRC will decide whether to continue in their absence or reschedule the hearing.

The PRC should consider any extenuating circumstances, such as weather or a family emergency. However, if a party knows in advance that they are not able to attend on the date set, they should contact the Secretary. Failure to do so could result in the review proceeding without them.

### 2) Chair

- Declares the review open.
- Reports the PRC's rulings on any objections or requests.
- Determines if there is quorum, and if there is, declares that there is quorum (if there is not quorum, the review is adjourned to a future time and place).
- Declares that all necessary parties have received proper notice of the review.

OR

- Asks the party who did not receive proper notice of the review if they have any objection to the review continuing or if they waive their right to proper notice of the review.

#### **Use if there was Proper Notice of the Review**

**Statement:** "As Chair of the PRC I now declare open the review requested by \_\_\_\_\_ against \_\_\_\_\_. I also declare that there is quorum of the PRC present to hear the review, and that all necessary parties have received proper notice, so this review may proceed. Mr. or Ms. Secretary, would you now introduce the review."

#### **Use if there was not Proper Notice of the Review**

**Statement:** “As Chair of the PRC I now declare open the review requested by \_\_\_\_\_ against \_\_\_\_\_. I also declare that there is quorum of the PRC present to hear the review, however, it is my understanding that \_\_\_\_\_ did not receive proper notice of this review. Do you have any objection to the review continuing?”

The Chair pauses for a moment to allow for a reply.

If there are any objections, the Chair ensures all parties receive the opportunity to comment on the objections. Once all comments about the objections have been heard, the PRC makes a ruling.

If the PRC finds the reason behind the objection valid (e.g., insufficient time to properly prepare for the review), the PRC should reschedule the review.

If the review continues, the Chair says . . .

**Statement:** “Mr. or Ms. Secretary, would you now introduce the review.”

3) Secretary

- Introduces the nature of the review.
- Introduces the Applicant, the Respondent, the aggrieved person, representatives, experts, and witnesses present.
- Introduces the PRC members.
- Introduces any directly affected parties.
- Introduces any observers.
- Asks if there are any objections by either of the parties:
  - to any of the PRC members.
  - to the review proceeding.
- States that evidence of all witnesses is given under oath.
- Outlines the procedure to submit written or physical evidence.

**Statement:** “This is a review by \_\_\_\_\_ against \_\_\_\_\_ because \_\_\_\_\_ (brief description of grievance).”

“Present today is the Applicant, Mr. or Ms. \_\_\_\_\_ (Applicant). The people representing or witnesses for the Applicant are \_\_\_\_\_ (name the representatives or witnesses for the Applicant).”

“The people representing or witnesses for the Respondent at the review are \_\_\_\_\_ (name the representatives and witnesses for the Respondent).”

“The PRC members are the Chair, Mr. or Ms. \_\_\_\_\_, (then identify the rest of the PRC by name).”

“Also in attendance is \_\_\_\_\_ (name the other people in attendance).”

“Are there any objections by the Applicant or the Respondent to any of the PRC members presiding at this review, or to anything else about this review?”

The Secretary pauses for a moment to allow for a reply.

If there are any objections, the Chair ensures both parties receive the opportunity to comment on the objections. Once all comments about the objections have been heard, the PRC makes a ruling.

The Secretary continues . . .

**Statement:** “Please state your name before you speak as this hearing is being audio recorded and it will be difficult for me to know who is speaking on the tape if you do not state your name. As well, do not interrupt or speak over another person as again this makes my job very difficult.”

“Each party has received a copy of the agenda for the review and was made aware of the time they have available to them to make their presentation.”

“Throughout the review, there may be unscheduled breaks with the approval of the PRC. The PRC requests that any person wishing to leave the room during the review ask for a brief adjournment. The PRC feels it is important that the parties be present throughout the entire review. As well, revisions to the agenda may occur throughout the review at the discretion of the PRC.”

“Are there any questions about how the review will proceed?”

The Secretary pauses for any questions, which would be answered through the Chair.

The Secretary continues . . .

**Statement:** “All accepted written or physical evidence that has been provided to me before this review within the allowed time period forms part of the evidence on this review. Any additional written or physical evidence that either party wants to place before the PRC for consideration in making its recommendation can be provided only if it is referred to in your presentation and if it is allowed by the PRC. Any new written or physical submission must be given to me and not to the PRC members. “

“Does either party have any requests that they wish to make at this time?”

If a party makes a request, the information is handled as outlined in the Evidence section on page 14.

4) Chair

- If a lawyer does not represent the parties or a lawyer represents only one party, the Chair confirms that the parties were aware of their right to have legal counsel present but chose not to exercise that right.
- Reports the PRC's rulings on any objections or requests.
- States that the review will proceed.
- States that all necessary parties are present and instructs the Secretary to record the names of all parties present in the minutes.
- Enters the accepted written and physical evidence.
- Asks the Secretary to swear in or affirm the witnesses.

**Statement:** "It is my understanding that all parties were informed they had the right to have legal counsel present and chose not to exercise that right (or \_\_\_\_\_ chose not to exercise that right). Is that correct?"

The Chair pauses for a moment to allow for a reply.

If there are any objections, the Chair ensures both parties receive the opportunity to comment on the objections. Once all comments about the objections have been heard, the PRC makes a ruling.

The Chair continues . . .

**Statement:** "Does anyone have any objections to anything about this review?"

The Chair pauses for a moment to allow for a reply.

If there are any objections, the Chair ensures both parties receive the opportunity to comment on the objections. Once all comments about the objections have been heard, the PRC makes a ruling.

The Chair continues . . .

**Statement:** "There being no objections (or that any objections have been dealt with) and no requests (or that any requests have been dealt with), the review will now proceed. All of the necessary parties are present, which the Secretary will record in the minutes."

"The \_\_\_\_\_ (name of evidence) received from \_\_\_\_\_ (party entering evidence) is entered as Exhibit \_\_ (Use capital letters in alphabetical order and repeat until all accepted written or physical evidence is entered)."

“Would the Secretary please swear in or affirm \_\_\_\_\_ (name the people who need to be sworn in or affirmed).”

5) Secretary, a Commissioner of Oaths

- The Secretary swears in or affirms the witnesses.

**Statement:** (Ask if the parties are comfortable swearing on the bible.)

**Swearing In:** “Please hold the bible in your right hand. Please state your full name. Do you swear that the evidence you are about to give will be the truth and nothing but the truth, so help you God?”

**Affirmation:** “Please state your full name. Do you affirm that the evidence you are about to give will be the truth and nothing but the truth?”

6) Chair

- Asks the Applicant to begin his or her presentation.

**Statement:** “Mr./Ms. \_\_\_\_\_ (Applicant) you may begin with your opening statement.”

## VI. POST – REVIEW PROCEDURES

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### A. TIMING OF THE DECISION

- 1) After the Chair has closed the review, the PRC must continue in private to make a recommendation. If possible, this recommendation should be made the same day, however, the PRC may adjourn to make the recommendation at a later date if necessary. When the PRC reconvenes, the same committee members must attend.
- 2) The PRC should try to have the signed recommendation distributed to the parties within one month of the review.

### B. ATTENDANCE AT THE DECISION MAKING SESSION

- 1) The only people allowed at the decision-making session are the PRC members, the Secretary, and the lawyer advising the PRC.
- 2) Neither the Secretary nor the lawyer advising the PRC takes part in the decision-making.

The Secretary's role is to record the PRC's recommendation and reasons for their recommendation.

The lawyer advising the PRC attends the decision-making session only as a resource to advise the PRC on any legal issues.

### C. CONSENSUS VERSUS VOTING

When making the recommendation, the PRC should try to arrive at its recommendation through consensus. However, if consensus cannot be reached, voting is used.

### D. MAKING THE RECOMMENDATION

- 1) The PRC must determine:
  - the relevant facts of the review
  - the merits of the case
  - compliance with the *Agricultural Operation Practices Act*

- compliance with the Agricultural Operation Practices Act Regulations
  - compliance with the *Public Inquiries Act*
- 2) In making the recommendation, the PRC deals with the significant points raised in the evidence or arguments.
  - 3) The PRC may take notice of facts not brought up in the written or oral evidence that may be judicially noticed, i.e. are beyond dispute by reasonable people or can be immediately and accurately proven by referring to readily available sources which are undisputedly accurate. For example, the fact that the sun rises in the East and sets in the West, or that Canada Day is July 1.

Even though the PRC can take judicial notice of certain types of facts, if the PRC believes that any fact it intends to take judicial notice of may be inappropriate or controversial in any way, it must inform the parties of its intention to do so before relying on that fact. The parties must then be allowed to make submissions about the appropriateness of the judicially noticed fact in the circumstances under review.

- 4) The PRC can make a recommendation to allow the review completely, allow the review in part, or dismiss the review. If the review is allowed in part, the PRC must specify which part is allowed. If the review is allowed completely or allowed in part, a timeframe for any action should be specified.
- 5) Once the recommendation is made, the Secretary records the PRC's recommendation and its reasons for the recommendation.

## **E. WRITING THE RECOMMENDATION**

- 1) The recommendation of the PRC must be in writing, with no verbal announcement of the recommendation allowed.
- 2) The PRC's recommendation must state the relevant information or evidence presented at the review and the reasons why the PRC decided what they did. The reasons must be those of the PRC and not of the Secretary or lawyer advising the PRC.
- 3) The Secretary prepares a draft of the written recommendation in the format set out in Schedule D.
- 4) The PRC members review and edit the draft recommendation for accuracy. Once the Secretary makes the necessary revisions, the PRC members sign the recommendation.
- 5) To shorten the time required to have the signature page returned from the PRC members, each member can sign a separate signature page. All signature pages are attached to the original recommendation.

## **F. COMPILING THE MINUTES**

- 1) The Secretary prepares a draft of the minutes in the format set out in Schedule C.
- 2) The PRC members review and edit the draft minutes for accuracy and the Secretary makes any necessary revisions.

## **G. DISTRIBUTION OF THE RECOMMENDATION**

- 1) Once the minutes are complete and the PRC members sign the recommendation, the Secretary provides a copy of the recommendation to the parties, to the Minister and to any other person or organization the Minister directs.
- 2) The minutes are not distributed. They are kept on file at the FAO.

## **H. RETRIEVING REVIEW INFORMATION FROM PRACTICE REVIEW COMMITTEE MEMBERS**

- 1) Before leaving the decision-making session, the Secretary collects all review material from the PRC members unless the PRC members feel they need the information during their review and editing of the minutes and recommendation.
- 2) If the PRC members keep the review information for reviewing and editing the minutes and recommendation, they will destroy the information, including any personal notes created during the review, once all of the PRC members have signed the recommendation.

## **I. CORRECTION OF ERRORS**

- 1) The PRC may, on its own or on the application of a party, and before or after having given its final recommendation:
  - correct a clerical, typographical, or calculation error;
  - rectify an accidental slip or omission in its recommendation; or
  - clarify an ambiguity in its recommendation.
- 2) The Secretary informs the parties of any corrections, rectifications or clarifications made by the PRC.



## **J. RECONSIDERATION OR REQUESTS FOR FURTHER SUBMISSIONS**

- 1) Sometimes a change in circumstances after a review requires the PRC, on its own accord, or at the request of either of the parties to hear further evidence or submissions. The PRC can only reconsider the matter or continue a review if it has not yet issued the final recommendation.
- 2) If the recommendation has not been issued and a party or a PRC member wants the PRC to hear further evidence or submissions, that person contacts the Secretary. The Secretary contacts the original PRC either in person, by telephone or by electronic means.
- 3) If the PRC decides to accept further evidence or submissions from a party, the Secretary will make the necessary arrangements. If the PRC decides not to accept further evidence or submissions from a party, the Secretary will contact the party of the PRC's recommendation.
- 4) If the PRC has finished hearing evidence and submissions from the parties but has not issued a recommendation and it wants further evidence or submissions, the PRC can direct the parties to provide further evidence or submissions.
- 5) The PRC can request that additional information be made orally with both parties present, or in writing. The Secretary will make the necessary arrangements.  
  
If written submissions are used, the Secretary will send the written submissions to the other party who is given the opportunity to respond to the submissions.
- 6) After the PRC has received all of the further evidence or submissions, the PRC must then make its final recommendation.
- 7) The PRC has fulfilled its role once the final recommendation is made known to the parties. Assuming there has been no error, slip, or ambiguity, the PRC has no further authority to consider the matter.

## **K. RECORD OF THE REVIEW**

- 1) The Secretary compiles a record of the review/mediation that may contain the following:
  - application
  - notification of the review sent by the Secretary to the Applicant, Respondent, aggrieved person and PRC members
  - any pre-review orders or rulings of the PRC
  - minutes of the review
  - any orders or rulings made by the PRC during the review
  - any video or audio recording made of the review

- written or physical evidence admitted
- the recommendation
- any notification of the recommendation

and forwards the information to the Farmers' Advocate Office.

- 2) The record does not include the personal notes of the PRC members.
- 3) The information will be held for a minimum of ten (10) years before destruction.

## **L. COSTS OF THE REVIEW**

- 1) Each party appearing before a PRC is responsible for its own costs, regardless of the recommendation of the PRC.
- 2) Alberta Agriculture and Forestry pays the costs of the PRC. This includes honorariums, travel expenses, equipment rentals, photocopying, meeting room charges, mailing charges, the Court Reporter, the PRC lawyer, etc.
- 3) The Secretary submits the expense claims for the PRC members to the FAO, Alberta Agriculture and Forestry, Edmonton.

## SCHEDULE A – UNDERTAKING TO PARTICIPATE

### PRACTICE REVIEW COMMITTEE

#### Undertaking to Participate

1. I agree to serve as a member of the Practice Review Committee for the review by \_\_\_\_\_ (the Applicant) against \_\_\_\_\_ (the Respondent).
2. I am not, nor is any person associated with me, in a conflict of interest with the Applicant or Respondent, and I am not biased in favor of or against either the Applicant or Respondent. If I become aware of any conflict of interest or possible bias, I will immediately inform the Secretary of the situation.
3. Except during the review, I will not discuss or disclose any confidential information related to the review to anyone other than the Practice Review Committee members, the Secretary or lawyer advising the Practice Review Committee.
4. I understand that the Practice Review Committee, in conducting the review, is bound by the *Agricultural Operation Practices Act*, the *Agricultural Operation Practices Act Regulations* and the *Public Inquiries Act*.
5. I will honestly and in good faith carry out my duties as a member of the Practice Review Committee.

Name of Practice Review Committee Member:

\_\_\_\_\_

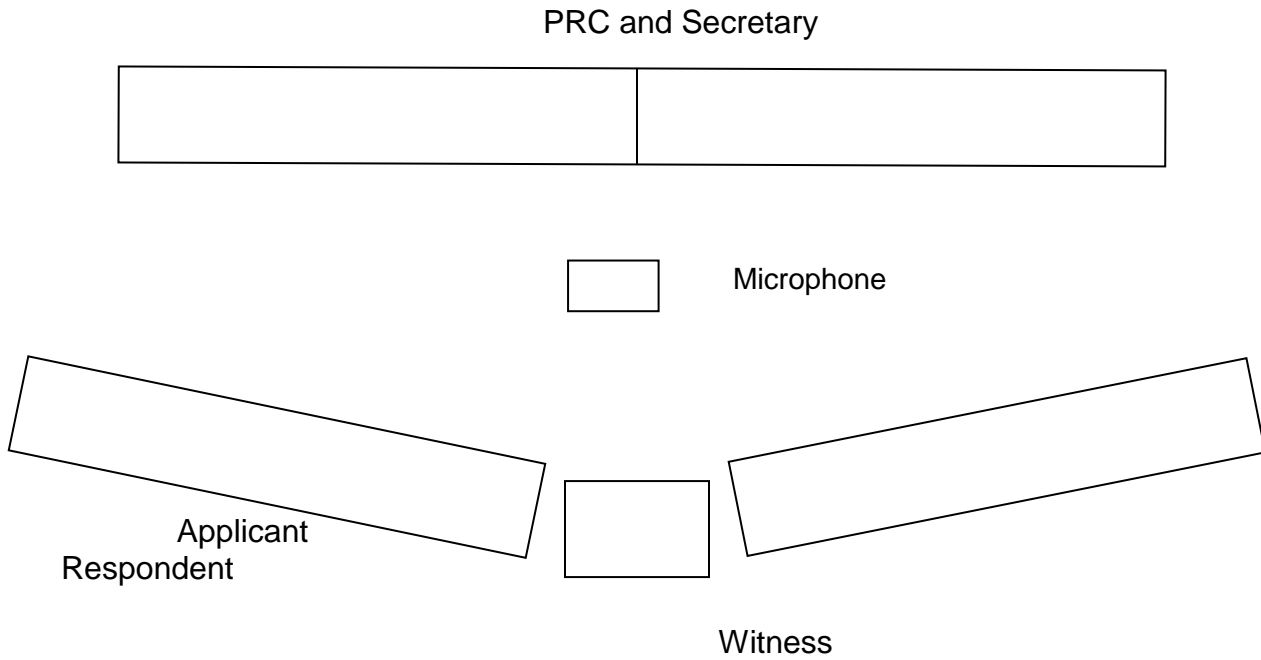
(Print)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

# SCHEDULE B

## Meeting Room Set Up



If there is a lawyer advising the PRC, directly affected parties or observers, appropriate seating arrangements are made.

## SCHEDULE C

### PRACTICE REVIEW COMMITTEE

**APPLICANT:**

**RESPONDENT:**

**BEFORE THE PRC:** Chair:  
Other Committee Members:

#### Minutes

The PRC convened the review on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.  
m./p.m. at \_\_\_\_\_, Alberta.

#### THE MATTER BEFORE THE PRC:

**1. Grievance being reviewed:**

**2. Parties Appearing:**

- a. For the Applicant:
- b. For the Respondent:
- c. Other people in attendance with permission:

**3. Objections, requests or points of order made by the parties - rulings by the PRC:**

**4. Case for the Applicant:**

- a. Witnesses:
- b. Evidence presented:
- c. Arguments made:

**5. Case for the Respondent:**

- a. Witnesses:
- b. Evidence presented:
- c. Arguments made:

**6. Adjournments taken during the review:**

Specify the times, duration and reasons for all adjournments.

The open portion of the review concluded at \_\_\_\_ a.m./p.m. The PRC deliberated in private to make its recommendation.

## SCHEDULE D

### PRACTICE REVIEW COMMITTEE

LOCATION  
DATE

### RECOMMENDATION

TO: \_\_\_\_\_, Applicant

AND TO: \_\_\_\_\_, Respondent

- I. **Background:** Provide a brief background on how the matter came before the PRC.
- II. **Jurisdiction of the PRC:** Provide a description of the jurisdiction of the PRC.
- III. **Procedural Issues:** Record any procedural issues and how the PRC handled them. Identify whether there were any objections to the jurisdiction and composition of the PRC, etc.
- IV. **Significant Issues on Review:** Outline the significant issues identified by the parties in the review.
- V. **Evidence at the Review:** Outline the written, physical and oral evidence presented at the review.
- VI. **Discussion:** Provide the reasons for the recommendation. Refer to any relevant sections of the AOPA, AOPA Regulations or to any applicable agricultural policy and explain how the facts relate to the significant issues.
- VII. **Recommendation:** For example: As a result of all of the evidence considered by the PRC and the reasoning expressed above, it is recommended that the review of (Applicant) be (allowed completely, allowed in part – specify which part is allowed, dismissed). If the review is allowed completely or allowed in part, a timeframe for any action should be specified.
- VIII. **PRC Member Names and Signatures, Date Signed**

## VII. Legal Authority

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### **AGRICULTURAL OPERATION PRACTICES ACT, RSA 2000, C. A-7**

#### **Part 1 Nuisance**

##### **Nuisance claims**

2(1) A person who carries on an agricultural operation and who, in respect of that operation, does not contravene

- (a) the land use bylaw of the municipality or Metis settlement in which the agricultural operation is carried on,
- (b) the regulations or an approval, registration or authorization, or
- (c) the generally accepted agricultural practice

is not liable to any person in an action in nuisance resulting from the agricultural operation and is not to be prevented by injunction or other order of a court from carrying on the agricultural operation because it causes or creates a nuisance.

(1.1) If subsection (1)(a) is contravened but the contravention is authorized by an approval, authorization or registration; the approval, authorization or registration prevails over the land use bylaw with which it conflicts.

(2) Subsection (1) continues to apply notwithstanding that one or more of the following occur:

- (a) the land use bylaw of the municipality or Metis settlement in which the agricultural operation is carried on changes;
- (b) the ownership of the agricultural land on which the agricultural operation is carried on changes;
- (c) the agricultural operation is carried on by other persons;
- (d) the use of land adjacent to the land on which the agricultural operation is carried on changes.

(3) Where a plaintiff or claimant in a proceeding against a person who carries on an agricultural operation

- (a) claims damages in nuisance resulting from the agricultural operation, or
- (b) applies for an injunction or other order of a court preventing or restricting the carrying on of the agricultural operation because it causes or creates a nuisance,

the onus of proving that the defendant contravened the land use bylaw, regulation, approval, registration, authorization or practice referred to in subsection (1) is on the plaintiff or claimant, as the case may be.

(4) In an action in nuisance against a person who carries on an agricultural operation, a court may

- (a) order the party that commenced the action to furnish security for costs in any amount the court considers proper;
- (b) award costs in the action.

RSA 2000 cA-7 s2;2001 c16 s4;2009 c53 s11

### **Application re disturbance**

3(1) A person who is aggrieved by, or an owner or operator who is aware that a person is aggrieved by, any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation may

apply in writing to the Minister to request consideration of whether the disturbance results from a generally accepted agricultural practice.

(2) An application under subsection (1) must be in writing and must contain a statement of the nature of the disturbance, the name and address of the applicant, the location of the agricultural operation, the name and address of the owner or operator, if known, the name and address of the person who is aggrieved and the steps taken by the applicant, if any, to resolve the disturbance.

(3) The parties to an application are the applicant, the owner or operator or the person aggrieved and any other person the Minister considers appropriate.

(4) A person shall not commence an action in nuisance for any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation unless an application has been made under this section with respect to the disturbance at least 90 working days previously.

2001 c16 s5

### **Referral**

4 The parties to a referral to the Minister under section 38.1 are the Board, the owner or operator about whom the referral is made and any other person the practice review committee considers to be directly affected.

2001 c16 s5;2004 c14 s3

### **Practice review committee**

5(1) On receipt of an application under section 3 or a referral under section 38.1 the Minister may

- (a) refuse to consider the application or referral if, in the Minister's opinion,
  - (i) the subject-matter of the application or referral is without merit, frivolous or vexatious,



- (i.1) the subject-matter of the application or referral has already been considered by a practice review committee,
- (i.2) the subject-matter of the application or referral is the subject-matter of an enforcement order under section 39, a review being held by the Board under section 41 or an emergency order under section 42.1,
- (ii) the application or referral is not made in good faith, or
- (iii) the applicant or person aggrieved does not have a sufficient connection to the subject-matter of the application,

or

- (b) appoint 3 persons as an agricultural practice review committee to consider the application or referral, 2 of whom must have experience in the type of farming operation to which the application or referral relates.

(2) One or more practice review committees may exist and consider applications and referrals and mediate at the same time.

(3) The Minister may appoint from among the members of a practice review committee the chair of the practice review committee.

(4) The members of a practice review committee may be paid remuneration for the performance of their duties as members of the practice review committee and travelling and living expenses while absent from their ordinary places of residence in the course of their duties as members of the practice review committee at the rates prescribed by the Minister.

2001 c16 s5;2004 c14 s4

### **Powers, immunity**

6(1) The members of a practice review committee have the same powers and privileges as a commissioner under the *Public Inquiries Act*.

(2) No action or proceeding may be brought against a member of a practice review committee in respect of any act or thing done in good faith under this Act.

2001 c16 s5

### **Procedure**

7(1) The Minister may determine the practice and procedures of a practice review committee, but a practice review committee must give opportunity to the parties to present information and make representations.

(2) The Regulations Act does not apply to the practices and procedures.

(3) On being assigned consideration of an application or referral, a practice review committee must notify the parties of the assignment and any other matters the practice review committee considers necessary.

### **Investigation, mediation**

8(1) A practice review committee, when acting as a mediator, may assist the parties in reaching their own mutually acceptable settlement by structuring negotiations, facilitating communication and identifying the issues and interests of the parties.

(2) The practice review committee may inquire into and assist the parties in resolving the dispute and, if the matter is not resolved, may recommend to the Minister what should constitute a generally accepted agricultural practice in respect of that agricultural operation.

2001 c16 s5

### **Committee recommendation**

9(1) If the parties enter into an agreement to resolve the dispute or if a practice review committee makes recommendations, the practice review committee must provide a written copy of the agreement or of its recommendations to the Minister, to each of the parties and to any other person or organization the Minister directs.

(2) In any proceeding arising out of a matter giving rise to an application under this Part, a certificate purporting to be signed by a person authorized by the Minister to issue such a certificate stating that the document attached to the certificate is a true copy of an agreement entered into by the parties, or of recommendations issued under subsection (1) by a practice review committee, may be admitted into evidence, in the absence of evidence to the contrary, of the agreement or recommendations without proof of the signature or official character of the person signing it, the parties to the agreement or the practice review committee members and, if admitted into evidence, must be considered in the proceeding.

2001 c16 s5;2004 c145

## **Part 2 Livestock and Manure**

### **Request for committee**

**38.1** If in the opinion of the Board a person may be creating an inappropriate disturbance, the Board may refer the matter to the Minister and request the Minister to establish a practice review committee.

2004 c14 s18