

## **FREQUENTLY ASKED QUESTIONS**

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**Q1:** *Can the NWT SRB go back and review/reconsider a previous Order?*

**A:** The NWT SRB may review/reconsider a previous Order in 2 circumstances:

- 1) Where there has been a material change in the facts or circumstances relating to the Order; and
- 2) Pursuant to a 5 Year Review of the Order.

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**Q2:** *Can the NWT SRB refer a question or an issue to the courts?*

**A:** Section 34 of the *Northwest Territories Surface Rights Board Act* provides that the Board may at any stage of its proceedings refer questions of law or jurisdiction (but not facts) to the Supreme Court of the Northwest Territories.

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**Q3:** *What is meant by the requirement of ‘good faith negotiations’?*

**A:** Section 29 (1) of the *Northwest Territories Surface Rights Board Act* provides that for the NWT SRB to acquire jurisdiction to consider an application for an Order, the applicant must have attempted to resolve the dispute through good faith negotiations.

Rule 8.4 of the NWT SRB *Rules of Procedure* provides the following guidance with respect to determining whether an applicant has attempted through good faith negotiations to resolve a matter in dispute involving Non-Tliche lands:

“8.4 When determining whether an Applicant has attempted in good faith to resolve a matter in dispute by negotiation within a reasonable period, the NWT SRB may take account of activities of the Applicant which include (but are not limited to):

- a) In-person meeting(s) between an Applicant and other parties to a matter in dispute for the purpose of resolving the dispute.
- b) Telephone discussion(s) between an Applicant and other parties to a matter in dispute for the purpose of resolving the dispute.
- c) Correspondence between an Applicant and other parties to a matter in dispute for the purpose of resolving the dispute.
- d) Formal offer(s) of settlement between an Applicant and other parties to a matter in dispute.”

Rule 9.1 of the NWT SRB *Rules of Procedure* provides the following guidance with respect to determining whether an applicant has attempted through good faith mediation to resolve a matter in dispute involving Tliche lands:

“9.1 The NWT SRB is not authorized to consider an Application for an Order involving Tliche lands unless the Applicant has attempted in good faith to resolve the matter in dispute by mediation in accordance with Part 6 of the Tliche Agreement and is unable to bring about a resolution of the dispute.”

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*Q4: Can the NWT SRB deny access to surface or sub-surface land or water to a person with a legally valid right of access?*

*A:* The short answer is ‘no’. The NWT SRB does not have the legislative authority to deny access to land or water to a person with a legally valid right of access. The general rule is that a person with a legal right to surface or to subsurface land can not be denied access to that land. However, the NWT SRB is empowered to balance the rights of surface and subsurface rights holders through the imposition of terms and conditions of access.

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*Q5: Does the NWT SRB have the jurisdiction to resolve an access or compensation dispute with respect to land or water which is located within a municipal boundary?*

*A:* While the land administration regime in the NWT is both complicated and evolving, the NWT SRB currently has the jurisdiction to resolve an access or compensation dispute with respect to land or water which is located within a municipal boundary as non-designated land pursuant to section 8 of the *Northwest Territories Surface Rights Board Act*.

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*Q6: Can a person wishing to resolve a dispute involving access to land or water by-pass the NWT SRB and enter into an arbitration process to resolve a dispute?*

*A:* Pursuant to section 97 of the *Northwest Territories Surface Rights Board Act*, the *Act* does not apply to any matter submitted to arbitration pursuant to a land claims agreement prior to Section 6 of the *Act* coming into force on April 1, 2016 pursuant to the order of the Commissioner in Executive Council.

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**Q7:** *Is the NWT SRB required to safeguard the right to privacy by persons participating in NWT SRB processes such as Applications for Access or Applications for Compensation, and if so, how does it accomplish this obligation?*

**A:** The NWT SRB recognizes that Parties to its proceedings may from time to time wish to protect the confidentiality of information provided to the NWT SRB. Any Party to a proceeding before the NWT SRB may, at any time, request to the NWT SRB that information of a personal, business or Aboriginal Traditional Knowledge nature be treated as confidential. Upon receiving such a request, the NWT SRB will consider the request and will advise the Parties by way of *Practice Directions* (see Rule 5.0) on a case-by-case basis as to what if any steps will be taken to protect the confidentiality of the information.”

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**Q8:** *What are ‘Practice Directions’ referred to in the NWT SRB Rules of Procedure?*

**A:** For the purpose of carrying out its responsibilities pursuant to the NWT *Surface Rights Board Act* and facilitating its processes and procedures the NWT SRB may, from time to time, issue ‘*Practice Directions*’ for the purpose of addressing procedural issues either with respect to NWT SRB proceedings generally (on a short-term basis until the *Rules of Procedure* may be formally amended) or pertaining to individual proceedings which occur within a case specific context, which *Practice Directions* are to be read in conjunction with the NWT SRB *Rules of Procedure*.

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**Q9:** *Can a person wishing to resolve a dispute involving access to land or water by-pass the NWT SRB and apply to the NWT Supreme Court to resolve a dispute?*

**A:** A person wishing to resolve a dispute involving access to land or water can not by-pass the Northwest Territories Surface Rights Board and apply to the Supreme Court of the Northwest Territories to resolve a dispute.

The legislature has expressly delegated to the NWT SRB the power and authority to resolve disputes involving surface and sub-surface rights. The Supreme Court has not been delegated this power and authority.

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**Q10:** *Can the NWT SRB refuse to consider an Application for Access or related Application for Compensation if the Application Form is properly completed, filed and served?*

**A:** The NWT SRB can not refuse to consider an Application for Access or related Application for Compensation if the Application for Access Form has been properly completed, served and filed by a person who has standing before the NWT SRB.

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**Q11:** *What areas of compensation does the NWT SRB have the jurisdiction to award in respect of an Access Order?*

**A:** When adjudicating a dispute with respect to access to land or water which parties have been unable to resolve themselves, the Northwest Territories Surface Rights Board will determine the nature and amount of compensation to be paid, taking account of all relevant factors, as set out in section 70 (1) of the *NWT SRB Act*, including:

- 1) the market value of the land in question on the day on which the application for an order is received by the Board;
- 2) any loss of use of the land to its owner or occupant;
- 3) any damage that may be caused to the land;
- 4) any nuisance or inconvenience, including noise;
- 5) any adverse effect on other lands belonging to the owner of the land or occupied by the occupant of the land; and
- 6) any reasonable expenses that may be incurred by the owner or occupant of the land on account of the costs of an inspection

In addition, section 70(2) of the *NWT SRB Act* goes on to stipulate three additional heads of compensation that the SRB must consider when making an award with respect to an Access Order involving lands falling within the Gwich'in Agreement or the Sahtu Agreement:

- 7) any effect on wildlife harvesting;
- 8) the cultural attachment to the land of Gwich'in participants or Sahtu participants, as the case may be; and
- 9) the peculiar or special value of the land to Gwich'in participants or Sahtu participants, as the case may be."

It is important to note that this list is not exhaustive, and as such the NWT SRB may opt to consider additional relevant factors.

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*Q12: Are there any areas of compensation that the NWT SRB is prohibited from imposing in respect of an Access Order?*

**A:** The Northwest Territories *Surface Rights Board Act* prohibits the Surface Rights Board from awarding compensation in the form of the ‘reversionary value of land’. In the NWT the term reversionary value of land generally means the value of the fee simple (ownership) component of land once a lease has expired and ownership of the land reverts back to the fee simple owner.

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*Q13: What terms and conditions of access does the NWT SRB have the jurisdiction to impose in granting an Access Order?*

**A:** When adjudicating a dispute with respect to access to land or water which parties have been unable to resolve themselves, the Northwest Territories Surface Rights Board may in its discretion include a variety of terms and conditions in an Access Order, including:

- 1) the times when the right of access may be exercised,
- 2) the giving of notice,
- 3) the location in which the right of access may be exercised and the routes of access,
- 4) the number of individuals who may exercise the right of access, (v) the activities that may be carried on and the equipment that may be used,
- 5) abandonment and restoration work, and
- 6) the right of the owner or occupant of the land to verify, by inspection or otherwise, whether the other terms and conditions of the access order have been complied with; and
- 7) any other terms and conditions that the Board considers appropriate to minimize any damage to the land or interference with the use and peaceful enjoyment of the land by the owner or occupant of the land

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*Q14: Are there any terms and conditions of access that the NWT SRB is prohibited from imposing in granting an Access Order?*

**A:** The NWT SRB is expressly prohibited from imposing a requirement of the posting of security in granting an Access Order.

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**Q15:** *What can be done if the NWT SRB issues an Order for Access and subsequently there is a change to the facts or circumstances relating to the Order?*

**A:** If there is a change in the facts or circumstances relating to an Access Order, one or more of the Parties to the Access Order may make an Application for Review of an NWT SRB Access Order. In order for the NWT SRB to have jurisdiction to consider the Application for Review, the applicant must establish:

- 1) that there has been a material change in the facts or circumstances relating to the Order, and
- 2) that the material change justifies making an amendment.

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**Q16:** *What can be done if the NWT SRB issues an Order for Access and the Party obtaining the right of access ceases to use it, or the Party obtaining the right of access no longer requires the Order for the purpose of obtaining access?*

**A:** If one or more of the Parties to a NWT SRB Access Order makes an Application for Termination of an Access Order, the SRB acquires the jurisdiction to consider the issue in one of two contexts:

- 1) where the holder of a right of access from an NWT SRB Access Order is no longer exercising that right for the purpose for which the order was made, or,
- 2) where conditions which permit the holder of the right of access to exercise that right of access without the NWT SRB Access Order are now met.,

If the answer to either of these questions is “yes” then the NWT SRB will terminate the Access Order.

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**Q17:** *What can be done if the NWT SRB issues an Order for Access under terms and conditions and the Parties to the Order subsequently are able to reach agreement and no longer want the SRB Order to apply?*

**A:** If Parties (or their successors) to a NWT SRB Access Order make an Application for Termination of an Access Order on the basis that the Parties have subsequently reached an agreement and no longer wish to be governed by a SRB Order for Access, the SRB will consider the request upon being satisfied that the Parties have in fact satisfied the condition precedent of entering into an agreement governing the terms and conditions of access to the lands in question and waters overlying those lands, as well as the compensation to be paid in respect of that access.

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**Q18:** *What options are available if a person refuses or otherwise fails to follow an NWT SRB Order?*

**A:** In circumstances where an Order of the NWT SRB has been filed with the Clerk of the Supreme Court of the Northwest Territories (as per Rule 21.1 of the NWT SRB *Rules of Procedure* and thus becomes an Order of the Supreme Court as per section 84 of the NWT *SRB Act*), a person wishing to have the Order of the NWT SRB enforced by the Supreme Court of the NWT must make an application to obtain leave of the Court to commence enforcement procedures. Once leave has been obtained, the Order can be enforced in the same manner as a judgment or order of the Court.

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