

# **Rules for Reviews Conducted by Panels of the Yukon Environmental and Socio-economic Assessment Board**

## **Introduction**

Pursuant to its authority under the *Yukon Environmental and Socio-economic Assessment Act*, the Yukon Environmental and Socio-economic Assessment Board has made these rules of practice and procedure for the conduct of reviews of projects by panels of the Board.

## **Part 1**

### **Definitions and Interpretation**

#### **Citation**

- 1 These Rules may be referred to as the “*Panel Review Rules*”.

#### **Terms defined in the Act**

- 2 Any word or term defined in the Act has the same meaning when used in these Rules.

#### **Headings**

- 3 The headings preceding each section of these Rules are included for convenience only and do not form part of the Rules.

#### **Definitions**

- 4 In these Rules,

“Act” means the *Yukon Environmental and Socio-economic Assessment Act*;

“day” means calendar day;

“document” has an extended meaning and includes a printed record and a record fixed in a magnetic or digital form;

“electronic transmission” means transmitting the contents of a document by email or an online connection;

“ESE Statement” means an *Environmental and Socio-economic Effects Statement* prepared by a proponent according to the ESE Statement Guidelines;

“ESE Statement Guidelines” means the *Environmental and Socio-economic Effects Statement Guidelines* issued by the Executive Committee to a proponent setting out the requirements for preparing an ESE Statement;

“Executive Committee” means the executive committee of the Board established by section 8 of the Act;

“holiday” means New Year’s Day, Heritage Day, Good Friday, Easter Monday, Victoria Day, National Aboriginal Day (being June 21), Canada Day, Discovery Day (being the third Monday in August), Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, December 26, and whenever a holiday other than National Aboriginal Day or Remembrance Day falls on a Saturday or Sunday the expression “holiday” includes the next day that is not a Saturday or Sunday;

“intervenor” means a person having an interest in the outcome of the review that is granted permission by a Panel under Part 5 to participate in the review as an intervenor;

“member of the public” means a person other than an intervenor having an interest in the outcome of the review;

“Panel” means a panel of the Board established under the Act to conduct a review of a project;

“party” means the proponent, an intervenor, or any of them;

“person” includes a body that is not a legal person.

**Authorized representative**

- 5 In these Rules a reference to a proponent or intervenor includes the authorized representative of the proponent or intervenor.

**Computing time**

- 6 In these Rules,
  - (a) if the time for doing an act falls or expires on a Saturday, Sunday or holiday, the time is extended to the next day that is not a Saturday, Sunday or holiday;
  - (b) if a period of time is expressed as a number of “days”, the first day is excluded and the last day included; and
  - (c) if the period for doing an act is less than 10 days, Saturdays, Sundays and holidays shall not be included in the computation of time.

## **Part 2**

### **ESE Statement Guidelines and ESE Statement**

#### **Draft ESE Statement Guidelines**

- 7 The Executive Committee shall issue draft ESE Statement Guidelines for public review and comment within 60 days after the date it becomes required under subsection 65(1) or (2) of the Act to establish a panel of the Board.

#### **Extending time**

- 8 The Executive Committee may extend the 60-day period referred to in section 7 for a further period of up to 60 days.

#### **Previous screening**

- 9 In preparing the draft ESE Statement Guidelines the Executive Committee shall take into account any information on the public register from an earlier screening of the project and, where applicable, any information about the project included in a request made under section 60 of the Act.

#### **Technical or advisory committees**

- 10 The Executive Committee may convene technical or advisory committees to seek views on the requirements to be included in the ESE Statement Guidelines and may determine the terms of reference and composition of such committees, provided that the proponent shall be invited to participate in any such committees.

#### **Notice of draft Guidelines**

- 11 At the time it issues the draft ESE Statement Guidelines referred to in section 7, the Executive Committee shall publish a notice that describes how to view or obtain copies of the draft ESE Statement Guidelines, and invites persons interested in commenting on the draft ESE Statement Guidelines to submit their views in writing to the Executive Committee within 45 days.

#### **Issuing Guidelines**

- 12 Within 30 days after the expiry of the 45-day period referred to in section 11, the Executive Committee shall issue ESE Statement Guidelines to the proponent and publish a notice describing how to view or obtain copies of the ESE Statement Guidelines.

**Proponent's schedule**

- 13 Within 60 days of the ESE Statement Guidelines being issued under section 12, the proponent shall provide the Executive Committee with a written schedule of the time it will take to prepare and submit its ESE Statement. The Executive Committee shall publish a notice of the schedule.

**Filing ESE Statement**

- 14 The proponent shall prepare its ESE Statement in accordance with the ESE Statement Guidelines and file it with the Executive Committee according to the schedule referred to in section 13 or 16, as the case may be.

**Previously submitted information**

- 15 The proponent may include in its ESE Statement any relevant information previously submitted to the Executive Committee as part of a screening of the project.

**Revising schedule**

- 16 If a proponent will be deviating from the schedule referred to in section 13, it shall notify the Executive Committee in writing a minimum of 21 days prior to date scheduled for filing the ESE Statement and provide the Executive Committee with a revised schedule in writing. The Executive Committee shall publish a notice of the revised schedule.

**Sufficient information**

- 17 Within 60 days of the ESE Statement being filed, the Executive Committee shall determine whether, in its opinion, the ESE Statement contains sufficient information for a Panel to proceed with the technical analysis described in Part 6, or whether supplementary information is required from the proponent, and shall notify the proponent and the decision bodies in writing accordingly.

**Period extended**

- 18 The Executive Committee may extend the period for making the determination referred to in section 17 for a further period of up to 60 days.

#### **Additional supplementary information**

19 If the Executive Committee determines under section 17 that the ESE Statement does not contain sufficient information, the notice referred to in section 17 shall specify what supplementary information is required from the proponent.

#### **Sections 17 to 19 continue to apply**

20 Sections 17 to 19 apply, with the necessary changes, to supplementary information filed by the proponent to address the information requirements specified by the Executive Committee under section 19.

### **Part 3**

#### **Establishing the Panel and its Terms of Reference**

##### **Select panel members, etc.**

21 Within 60 days after notifying the proponent that the ESE Statement contains sufficient information for a Panel to proceed with the technical analysis described in Part 6, the Executive Committee shall:

- (a) select the members of the Panel and designate a chairperson;
- (b) establish the terms of reference for the Panel and provide them to the Panel, together with the proponent's ESE Statement; and
- (c) as required by paragraph 66(2)(a) of the Act, publish a notice of the establishment of the Panel and the manner in which the public may obtain copies of the Panel's terms of reference.

##### **Seek views on location of effects**

22 Before establishing the Panel, the Executive Committee shall seek views from

- (a) the proponent,
- (b) any first nation consulted under subsection 50(3) of the Act or identified pursuant to subsection 66(3) of the Act, and

- (c) any government agency, independent regulatory agency or first nation that has notified the Executive Committee of its interest in the project or in projects of this kind,

on whether the project is likely to have significant adverse environmental or socio-economic effects primarily on settlement land or on non-settlement land.

**Terms of reference**

23 The terms of reference shall:

- (a) describe the scope of the project for the purposes of the review;
- (b) require the Panel to take into account the matters described in section 42 of the Act; and
- (c) include any other matter that the Executive Committee considers should be included.

**Section 60 request**

24 Where the review is being conducted pursuant to a request under section 60 of the Act, and the form of the review specified in the request is other than a public review, the terms of reference shall specify such modifications to these Rules as are necessary for the Rules to conform with the terms of the request.

**Information from previous screening**

25 If the Executive Committee has previously commenced or completed a screening of the project being reviewed, it shall take into account the information on the public register relating to that screening in developing the terms of reference and in determining whether the project is likely to have significant adverse environmental or socio-economic effects primarily on settlement land or on non-settlement land.

**Seek views on proposed terms of reference**

26 The Executive Committee shall seek views on the proposed terms of reference from the proponent, any first nation consulted under subsection 50(3) of the Act or identified pursuant to subsection 66(3) of the Act, and any government agency, independent regulatory agency or first nation that has notified the Executive Committee of its interest in the project or in projects of this kind.

#### **Information from previous screening**

- 27 If the Executive Committee has previously commenced or completed a screening of the project, it shall, at the time the Panel is established, make available to the Panel copies of all documentation on the public register relating to that screening.

#### **Notice**

- 28 Within 14 days of receiving its terms of reference, the Panel shall publish a notice of its establishment, a brief description of the project and the contact information for communicating with the Panel. The Panel and the Executive Committee may agree to combine the notice required under this section with the notice to be given by the Executive Committee under paragraph 21(c).

#### **Modifying terms of reference**

- 29 The Panel may request in writing a clarification or modification of its terms of reference and the Executive Committee has the authority to provide a clarification or to make a modification. The procedure for requesting a clarification or modification of the terms of reference is through a letter from the Panel chairperson to the Executive Committee. If a clarification or modification is requested, the Executive Committee shall provide a response in writing within 14 days. The Panel shall continue with the review to the extent practicable pending the response from the Executive Committee.

#### **Publish notice of modification**

- 30 If the Executive Committee modifies the terms of reference it shall, as soon as practical, publish notice of the modification in accordance with paragraph 66(2)(b) of the Act and provide copies of the modification to the proponent and others as required by subsection 66(4) of the Act.

## **Part 4**

### **General**

#### **Requirement to file documents**

- 31 Where, at any time in the review of a project, a person intends to rely on a document, other than a document released or issued by the Panel, the person shall
- (a) file the document with the Panel; or

(b) file a statement identifying the document if the document is already in the possession of the Panel.

**Serving documents**

32 A party filing a document with the Panel shall also serve a copy of the document on all other parties.

**Opportunity to respond**

33 Where the Panel receives a document from a person who is not a party, the Panel shall provide a copy of the document to the parties and provide the parties with an opportunity to respond.

**Exceptions**

34 Sections 31 to 33 do not apply to an application to intervene made under Part 5 or an application to designate information confidential made under Part 12.

**Filing documents**

35 Subject to section 36 and directions of the Panel issued under section 47, a document may be filed with the Panel by means of hand delivery, mail, fax, or electronic transmission.

**Limits on fax transmissions**

36 A document that exceeds 20 pages in length shall not be submitted by fax unless the Panel staff authorizes its submission by fax.

**Receiving a fax**

37 A document filed by fax with the Panel shall be considered to have been received only if the sender confirms by telephone with Panel staff that the document was received, or the sender receives from Panel staff an email or fax confirming that the document was received.

**Receiving an electronic transmission**

38 A document filed by electronic transmission with the Panel shall be considered to have been received only if the sender confirms by telephone with Panel staff that the document was received, or the sender receives an electronic transmission from Panel staff confirming that the document was received.

**Date fax or electronic transmission received**

39 A document filed with the Panel by fax or electronic transmission shall be deemed to have been received as of the date it is confirmed received under section 37 or 38.

**Date hand delivery or mail received**

40 A document filed with the Panel by hand delivery or mail shall be deemed to have been received as of the date it is stamped received by Panel staff.

**Service**

41 Subject to directions of the Panel issued under section 47, a document may be served by hand delivery, or by fax or electronic transmission if the person being served has the facilities for receiving a document in such a manner.

**Naming persons served**

42 Any document being served shall set out the name of every person on whom it is being served and a description of the Panel review to which it applies.

**Date received**

43 The date of service of a document is the date on which the person being served or the person's authorized representative receives the document.

**Affidavit**

44 Where a person serves a document, the person shall, at the request of the Panel, file an affidavit with the Panel that sets out on whom the document was served, the means used to effect service, and the date of service.

**Filing and service to occur on same date**

45 Where a person is required to file a document with the Panel and serve the document on another person, the filing and the service shall, to the extent practicable, be done on the same day.

**Service at a hearing**

46 Notwithstanding any other provision in this Part, a document may be served at a hearing by making copies of the document available at the hearing.

**Directions on procedure**

47 The Panel may issue directions on procedure respecting:

- (a) the means by which certain types or sizes of documents shall be filed or served, including motions under Part 10;
- (b) the time for filing or serving documents to be relied on in the review;
- (c) the number of copies of a document that must be filed;
- (d) software and storage media requirements for documents filed in a digital form;
- (e) dimensions for particular types of documents;
- (f) the form of an application for the purposes of Parts 5 and 12; and
- (g) the fees payable, if any, for printing or reproducing documents.

**Additional directions on procedure**

48 The Panel may issue directions on procedure on any matter the Panel considers necessary for the efficient conduct of the review or to ensure procedural fairness in the review.

**Admissibility of evidence**

49 In conducting a review, the Panel may accept information that would not be admissible as evidence in a court of law.

**Failing to disclose information**

50 Failure to disclose or provide evidence or information as required by these Rules, or by a direction on procedure issued by the Panel, may result in the Panel ruling that the evidence or information is inadmissible in the review.

**Public register**

51 Documents produced, collected or received by the Panel in the course of a review shall be placed on the public register established and maintained under paragraph 118(a) of the Act, except for information that is designated or deemed to be confidential information under Part 12.

### **Non-compliance**

- 52 Where a party has not complied with a Rule or a direction on procedure, the Panel may
- (a) adjourn or stay the review until satisfied that the Rule or direction on procedure has been complied with; or
  - (b) take such other steps as it considers just and reasonable, including withdrawing the status of the party in the review.

### **Extending or abridging time**

- 53 Where considerations of procedural fairness so require, the Panel may, by order, extend or abridge the time fixed by these Rules or by a direction on procedure, and may do so of its own volition or in response to a motion by any party, whether or not the motion to extend or abridge the time is made after the time so fixed has expired.

### **Notice if time extended or abridged**

- 54 Where the Panel extends or abridges the time under section 53, the Panel shall notify all parties accordingly.

## **Part 5**

### **Intervenors**

#### **Time for application to intervene**

- 55 The Panel shall issue and publish a direction on procedure fixing the time for filing an application to intervene.

#### **Application to intervene**

- 56 A person seeking to participate in a review as an intervenor shall file an application to intervene with the Panel within the time fixed under section 55.

#### **Application requirements**

- 57 An application to intervene shall:
- (a) clearly state the reason for the proposed intervention;
  - (b) set out the issues that the applicant intends to address in the review;

- (c) establish that the applicant's interest justifies becoming an intervenor in the review;
- (d) set out the applicant's contact information, and the name and contact information of any authorized representative; and
- (e) include such other information as is required by the Panel under paragraph 47(f).

**Request additional information**

58 The Panel may request additional information or clarification from an applicant before determining whether to accept or deny an application to intervene.

**Notice**

59 Before determining whether to accept or deny an application to intervene, the Panel shall publish a notice that describes how to view or obtain a copy of the application and invites persons interested in commenting on the application to submit their views in writing to the Panel within such time limit as is fixed by the Panel.

**May accept or deny**

60 The Panel may accept or deny an application to intervene depending on whether, in its opinion, the requirements set out in section 57 have been met.

**Joint interventions**

61 The Panel may direct intervenors with similar interests to present a joint intervention.

**Documentation to intervenor**

62 Unless the Panel otherwise directs, a party who is notified that an application to intervene has been accepted shall, within such time limit as the Panel may fix, serve on the intervenor a copy of any documents that the party has filed with the Panel.

## **Part 6**

### **Technical Analysis of the ESE Statement and Information Request Process**

#### **Notice**

63 The Panel shall commence the technical analysis of the ESE Statement within 90 days of the Panel being established and shall notify the parties in writing and publish a notice of the technical analysis at least 30 days prior to the start of the technical analysis.

#### **Conducted by information requests**

64 The technical analysis of the ESE Statement shall be conducted by way of an information request process managed and supervised by the Panel in accordance with this Part, and the Panel may issue directions on procedure respecting the process.

#### **Period for technical analysis**

65 The technical analysis under this Part shall be completed within 90 days, unless the Panel issues a direction on procedure fixing a different time.

#### **Purpose**

66 The purpose of the technical analysis is to secure clarification or explanation of the ESE Statement and, where applicable, obtain supplementary information from the proponent for inclusion in the ESE Statement.

#### **Making an information request**

67 During the technical analysis a party may request information from another party by filing a written information request with the Panel within such time period as is fixed by the Panel.

#### **Panel to transmit information request**

68 An information request filed with the Panel will be transmitted by the Panel to the party from whom information is being requested. A copy of the information request will also be placed on the public register and provided to all other parties.

**Party to provide a full response**

69 Subject to sections 70 and 71, a party to whom an information request is directed shall, within the time fixed by the Panel for responding, file with the Panel and serve on the party requesting the information a full and adequate response in writing to the request.

**Objection**

70 A party that objects to filing the information requested shall, within the time fixed by the Panel for responding, file with the Panel and serve on the party requesting the information a statement setting out the objection and the grounds therefore.

**Information not available**

71 A party that contends the information necessary to provide a response is not available shall, within the time fixed by the Panel for responding, file with the Panel and serve on the party requesting the information a statement setting out the reasons for the unavailability of the information, accompanied by any alternative information that the party considers would be of assistance to the party making the request.

**Disputes**

72 Any dispute over the need for or the relevance of an information request shall be resolved by the Panel.

**Panel may require information**

73 For greater certainty, pursuant to section 43 of the Act, the Panel may require the proponent to provide supplementary information that it considers necessary for the review at any time during the review whether or not a party has made an information request for that information.

**Public comments**

74 During the period the technical analysis is being conducted, the Panel shall make the ESE Statement available for public review and invite comments in writing from members of the public.

### **Proceeding to public hearing**

75 Within 30 days after the expiry of the time for conducting the technical analysis, the Panel shall determine whether it has sufficient information to proceed to the public hearing phase of the review or that it requires supplementary information from the proponent before proceeding to public hearings, and the Panel shall notify the parties accordingly in writing and publish a notice of its determination.

### **If supplementary information required**

76 If the Panel requires supplementary information under section 75, the notice given to the parties under that section shall specify the information required.

### **Notice of public hearings**

77 Where the Panel determines under section 75, or following receipt of the supplementary information specified under section 76, that it has sufficient information to proceed to public hearings it shall publish a notice of the schedule for the hearings.

## **Part 7**

### **Hearings**

*This Part provides additional detail on the public hearings phase of the review.*

### **Pre-hearing Conferences**

78 The Panel may call a pre-hearing conference among the parties to:

- (a) finalize the issues to be discussed at a public hearing;
- (b) request clarification of the information to be presented at the hearing;
- (c) set a timetable for the exchange of information and for preparations for the hearing;
- (d) adopt procedures to be used at the hearing; and
- (e) consider any matter that may aid in the simplification and disposition of the hearing.

### **Period of notice**

79 The Panel shall publish notice of a public hearing at least 30 days before the date of the hearing.

**Notice requirements**

80 Notice of a public hearing shall:

- (a) briefly describe the subject-matter of the hearing;
- (b) state the date, time and place of the hearing;
- (c) briefly describe how a person who is not an intervenor may make representations at the hearing;
- (d) state the date by which documents to be considered in the hearing must be filed; and
- (e) include any other matter that the Panel considers should be included.

**Notice of preliminary matters**

81 Notice of any preliminary matters to be raised in a public hearing, including legal or jurisdictional issues, shall be filed with the Panel at least 14 days before the scheduled hearing date. The Panel shall ensure that all parties are notified of the issue.

**Intervenor participation in public hearings**

82 An intervenor shall file a notice with the Panel of its intention to participate in a public hearing no later than 14 days prior to the hearing.

**Register of intervenors**

83 The Panel shall maintain a list of intervenors registered for a public hearing.

**Members of the public may provide views**

84 Persons who are not intervenors, but who wish to make their views known to the Panel may

- (a) provide their views in writing to the Panel in advance of the public hearing; or
- (b) register with the Panel to make an oral presentation during that portion of a public hearing that is set aside by the Panel to hear the views of members of the public.

**Chairperson to preside**

85 The chairperson of the Panel shall preside at the public hearings.

**Participation by telephone, etc.**

86 Public hearings may be conducted with one or more of the parties participating by means of telephone or other communications facilities, providing that such facilities will enable all persons participating in the hearing to hear each other.

**Persons subject to questioning**

87 Any person presenting information in a public hearing may be subject to questioning by the parties or members of the Panel.

**Opportunity to comment**

88 The Panel shall provide the parties with an opportunity to comment on any views submitted to the Panel in writing under paragraph 84(a).

**Part 8**

**Recommendation and Reasons**

**Time for submitting recommendations**

89 The Panel shall submit its recommendation with reasons to the decision bodies within 90 days after the public hearings conclude.

**Extending time for recommendation**

90 The Panel may extend the 90-day period referred to in section 89 for a further period of up to 60 days, and shall notify the parties and the decision bodies and the proponent in writing accordingly.

**Part 9**

**Referral Back**

**Notice of referral back**

91 Where a recommendation of a Panel is referred back to it under paragraph 76(1)(b) of the Act, the Panel shall, within ten days of the referral, publish a notice of the referral.

**Contents of notice**

92 The notice under section 91 shall

- (a) describe how to view or obtain copies of the Panel’s recommendation and the reasons of the decision body, if any, for making the referral back; and
- (b) invite interested persons and members of the public to submit their views, about the recommendation or the referral, to the Panel in writing within 30 days of the notice given under section 91, unless otherwise provided pursuant to section 93.

**Extending time for submissions**

93 The Panel may, in the notice referred to in section 91, or at any time before the end of the 30-day period referred to in paragraph 92(b), extend the time for views and information to be submitted for a further period of up to 30 days, and shall notify the parties and decision bodies in writing accordingly.

**Time for new recommendation**

94 The Panel shall make any new recommendation under subsection 77(2) of the Act within 40 days of the expiry of the period referred to in paragraph 92(b) or section 93, as the case may be.

**Public hearings**

95 The Panel may hold public hearings to seek views and information respecting its recommendation and the referral back, provided that such hearings are concluded before the start of the 40-day period referred to in section 94.

**Part 10**

**Motions**

**Motions for rulings from Panel**

96 Any matter that arises during the review that requires a decision from the Panel shall be brought before the Panel by filing a motion with the Panel and serving a copy of the motion on all other parties.

### **Motion requirements**

97 A motion shall be in writing and be signed by the person making the motion or the person's authorized representative, and contain a clear, concise statement of the relevant facts, the decision or order being sought from the Panel and the reasons why the decision or order should be made.

### **Reply to a motion**

98 A party wishing to reply to a motion shall, within 10 days after receipt of the motion, file a written reply with the Panel and serve a copy on all other parties.

### **Answer to a reply**

99 A person making a motion may, within five days after being served with a reply under section 98, file a written answer with the Panel and serve a copy on all parties.

### **Motions made orally at a hearing**

100 Despite sections 96 to 99, a motion may be made orally at a hearing, and where it is so made, the Panel shall consider and determine the matter.

### **Panel may vary time, etc.**

101 The Panel may, in its discretion, vary the time period for filing and hearing a motion or a reply and set the procedures by which it will hear and make a determination on a motion.

## **Part 11**

### **Integrating Scientific Information, Traditional Knowledge and Other Information**

#### **Full and fair consideration of information**

102 The Panel shall, in accordance with section 39 of the Act, give full and fair consideration to scientific information, traditional knowledge and other information provided to it or obtained by it in the course of conducting the review.

**Relevance and weight of information**

103The Panel shall determine the relevance and weight to be given to any information provided or obtained in the course of conducting its review, and there shall be no presumption that scientific information or traditional knowledge, as the case may be, should be accorded greater weight based solely on the fact that the information is, respectively, scientific information or traditional knowledge.

**Part 12**

**Designating and Handling Confidential Information**

**Application to designate information confidential**

104If a person intending to provide information to a Panel wishes some or all of the information to be kept confidential, the person shall

- (a) separate the information to be kept confidential from any other information the person is providing to the Panel; and
- (b) make an application in accordance with this Part to the Panel to have the information designated confidential.

**Must be traditional knowledge or section 121(b) information**

105An application under paragraph 104(b) may only be made in respect of

- (a) traditional knowledge the person believes should be treated as confidential; or
- (b) information referred to in paragraph 121(b) of the Act.

**Application requirements**

106An application under paragraph 104(b) shall

- (a) be in the form directed by the Panel, and the top of each page shall be marked with the word “Confidential”;
- (b) indicate whether the application is in respect of information referred to in paragraph 105(a) or (b), and where a person wishes to submit information referred to in paragraph 105(a) and paragraph 105(b) the person shall make a separate application in respect of each category of information;

- (c) set out a complete statement of the information the person is requesting to be designated as confidential;
- (d) set out the justification for having the information designated confidential; and
- (e) include a non-confidential summary of the information the person is requesting to be designated as confidential with sufficient detail to convey a reasonable understanding of the substance of the information.

**Justification**

107 Where an application is in respect of traditional knowledge, the justification required by paragraph 106(d) shall address the matters referred to in paragraph 109(b), and specify the applicability of subparagraph 109(c)(i) or (ii), as the case may be.

**Specify *Access to Information Act* provisions**

108 Where an application is in respect of information referred to in paragraph 105(b), the justification referred to in paragraph 106(d) shall specify the provisions of the *Access to Information Act* (Canada) that, in the view of the applicant, limit or prohibit disclosure of the information under that Act.

**Designating traditional knowledge confidential**

109 On an application respecting traditional knowledge, the Panel may designate the information confidential where, in its opinion,

- (a) the information is relevant to the review of the project under consideration,
- (b) the information is not generally available from a source which is not confidential,
- (c) disclosure of the information would
  - (i) result in a reasonable expectation of probable harm to a person, place or thing, or
  - (ii) constitute a violation of the cultural value system of the affected first nation, and
- (d) the non-confidential summary referred to in paragraph 106(e) meets the requirements of that paragraph.

**Meaning of “generally available”**

110 For greater certainty, information is not “generally available” under paragraph 109(b) solely because it has been made available collectively or communally to persons within the affected first nation, provided that the Panel is satisfied that such information has consistently been held in confidence within the first nation.

**Section 121(b) information**

111 On an application respecting information referred to in paragraph 105(b), the Panel may designate the information confidential where, in its opinion,

- (a) the information is relevant to the review of the project under consideration,
- (b) it is a type of information referred to in paragraph 121(b) of the Act, and disclosing the information to any other person is prohibited except in accordance with subparagraphs 121(b)(i) and (ii) of the Act, and
- (c) the non-confidential summary referred to in paragraph 106(e) meets the requirements of that paragraph.

**Seeking additional views**

112 Where, in the opinion of the Panel, it may assist the Panel in determining whether to designate information confidential under section 109 or 111, the Panel may provide the parties with an opportunity to submit their views respecting the application, provided that the Panel shall not disclose to any person the information the applicant is requesting to be designated confidential.

**For greater certainty**

113 For greater certainty, when providing the parties with the opportunity referred to in section 112, the Panel may disclose some or all of the information contained in the application except for the information referred to in paragraph 106(c).

**Applicant may comment**

114 Prior to making its determination whether to designate the information confidential, the Panel shall provide the applicant with an opportunity to comment on any views submitted under section 112.

**Information taken into account**

115 If the Panel designates information confidential under section 109 or 111 it shall take that information into account in conducting its review and make the non-confidential summary of that information publicly available.

**No disclosure of traditional knowledge**

116 If information is designated confidential under section 109 it shall not be disclosed by the Panel to any person and at the conclusion of the review it shall be sealed and provided to the Board, to be kept or stored by the Board accordingly.

**Disclosure of certain information subject to consent, etc.**

117 If information is designated confidential under section 111 it shall not be disclosed by the Panel to any person except in the circumstances described in subparagraphs 121(b)(i) and (ii) of the Act, and at the conclusion of the review it shall be sealed and provided to the Board, to be kept or stored by the Board accordingly.

**Sealing the application**

118 If the Panel decides under section 109 or 111 that the information does not qualify to be designated confidential it shall seal the application and the information will not be taken into account by the Panel in its review, unless the applicant resubmits the information to the Panel as non-confidential or it receives the information from a source other than the applicant.

**Information deemed confidential**

119 When an application respecting traditional knowledge is sealed by the Panel under section 118, the information in that application set out pursuant to paragraph 106(c) shall

- (a) be deemed to be confidential for the purposes of paragraph 121(a) of the Act and subsection 24(1) of the *Access to Information Act* (Canada);
- (b) not be disclosed by the Panel to any person; and
- (c) be provided to the Board at the conclusion of the review, to be kept or stored by the Board accordingly.

**Information deemed confidential**

120When an application respecting information described in paragraph 105(b) is sealed by the Panel under section 118, the information in that application set out pursuant to paragraph 106(c) shall not be disclosed to any person unless disclosure is required under the *Access to Information Act* (Canada), and, at the conclusion of the review the information shall be provided to the Board, to be kept or stored by the Board accordingly.

**Application made orally**

121Despite any other provision in this Part, a person who is registered under paragraph 84(b) to make a presentation at a hearing may make an application to the Panel orally requesting that traditional knowledge to be presented by them be designated confidential.

**Panel to consider an application made orally**

122Where a person makes an application under section 121, the Panel shall consider and determine the matter in accordance with this Part, with such changes as are necessary in the circumstances and the Panel may issue a direction on procedure specifying the necessary changes.

**Oral information to be maintained in confidence**

123Information given orally which is designated confidential pursuant to section 122 shall be maintained in confidence by the Panel, and any written record of the information made at the hearing on behalf of the Panel shall, at the conclusion of the review, be provided to the Board to be kept or stored by the Board accordingly.

**Restricting access to confidential information**

124In order to maintain confidentiality of information, the Panel may issue directions on procedure to restrict access to information that is designated or deemed to be confidential information under this Part, including access to such information at public hearings.

**Burden of proof**

125On an application under this Part the burden of proof lies on the applicant to establish that information should be designated confidential.