Passenger Transportation Board
MOVING FORWARD, TOGETHER

Board investigations - Section 27

Context

The Board may conduct investigations under section 7 or section 27 of the Act. The Policy Manual contains a separate policy regarding Board investigations under section 7 of the Act.

- Section 7 investigations typically pertain to general matters relating to the passenger transportation industry.
- Section 27 Board investigations are related to an application before the Board.

This policy specifically relates to Board initiated investigations under section 27(3)(b) of the Act, which remain with the Board, although other experts or Board staff may be involved. This policy does not apply to situations where the Board has directed the Registrar to conduct an audit or investigation in respect of any matter related to an application, under section 27(3)(c) of the Act.

Applicability

This policy applies to:

- All special authorization applications forwarded by the Registrar under section 26(1) of the Act.
- All special authorization applicants when their application is before the Board.
- All submitters on a special authorization application under section 27(2) of the Act.
- Others who may have relevant information related to a special authorization application.

Policy

Section 27 Board investigations

Section 27(3)(b) of the Act authorizes the Board to conduct an investigation in respect of any matter related to a special authorization application.

The Board has the power to control its own investigative processes.

Proceeding powers

A section 27 Board investigation is part of the application “proceeding” under section 11 of the Act.

The Board has various proceeding powers, including:

- The authority to make an order requiring a person to give evidence or produce a document or thing in the person’s possession or control, under section 12(2) of the Act, and
- The authority to adjourn a proceeding under section 13 of the Act and other powers, such as combining or staying proceedings, under section 14 of the Act.

Use of experts

The Board has authority to seek assistance as necessary in conducting its investigations:

- The Board may retain consultants, investigators, expert witnesses, or other persons under section 7(4) of the Act to assist the Board in discharging its investigatory function under section 27(3)(b) of the Act, and/or
- The Board may seek assistance from Board staff, appointed under section 7(3) of the Act, when conducting a section 27(3)(b) investigation.

Commencing a section 27 Board investigation

A section 27(3)(b) investigation may be commenced by the Board with respect to a special authorization application before the Board, or more than one special authorization application before the Board.

Section 27 Board investigation reports

The results of section 27(3)(b) investigations will typically be reduced to a written report.

If the Board has requested that an expert provide an investigation report in the course of a section 27(3)(b) investigation, the expert is expected to complete their report as the expert determines necessary and in accordance with the instructions given by the Board.

Following receipt of an investigation report, the Board may provide the report to submitters for submissions, on a case-by-case basis.

Board consideration after receiving investigation report

After receiving an investigation report prepared by an expert, if the Board decides it needs additional information, the Board may seek that information by providing written instructions to the expert seeking additional information.

Any report clarification response or additional information added to a section 27 Board investigation report by the expert will be provided to the applicant and the applicant will be provided with an opportunity to make submissions.

Upon receipt of the section 27 Board investigation report and any additional information, the Board has the option of conducting additional investigations if necessary. The Board retains the authority whether to investigate, what to investigate, and when the investigation is concluded.

Use of section 27 Board investigation reports

The Board may consider an investigative report, or other information and records, if produced during the course of a section 27 Board investigation, when:

- Deciding on applications for a new or amended special authorization licence;
- Making a systemic decision; or,
- Creating rules, policies, guidelines, procedures, or other informational or consultation documents.

Any reports or written materials produced from a section 27(3)(b) investigation will be evaluated and weighed like any other evidence. The Board may accept all or none of a section 27(3)(b) investigation report, and give it whatever weight it considers appropriate, after hearing any submissions from the applicant.

Disclosure of reports

Since section 27(3)(b) investigation reports pertain to the facts of a particular application and may contain sensitive information, the Board will determine whether to disclose each investigation report to anyone other than the applicant on a case-by-case basis.

If the Board chooses to release a section 27 Board investigation report, the mode of disclosure is discretionary; however, investigation reports will typically be released by posting it on the Board's website.

Section 27 information requests

There is a difference between requesting additional information from an applicant to complete a file and undertaking a section 27(3)(b) investigation.

In the past, the Board utilized Board Investigation (BI) letters to gather additional information from the applicants or, occasionally, submitters. However, going forward:

- The Board may request further information from an applicant under section 27(1)(b).

- The Board may request further information from a submitter or third party under section 27(3)(b).

If the Board panel has not been assigned to an application file, the Director of Operations or Executive Director of the Board may determine, after an application file is reviewed for administrative completeness, the need for additional information to be gathered from an applicant for the purpose of completing the application file. In this case, an incomplete letter will be sent to the applicant requesting outstanding documentation.

After the Board panel has been assigned to an application file, the panel may direct that a section 27 information request be sent to the applicant under section 27(1)(b) by informing the Director of Operations or Executive Director of the relevant application and providing details of the information being requested.

Legislation

7 … (4) The board may retain consultants, investigators, expert witnesses or other persons as may be necessary for the board to discharge its functions under this Act and may establish remuneration and other terms and conditions of their retainers.

11 In this Division, "proceeding" means an investigation conducted under section 7 (1) (b), any application made or forwarded to the board, any reconsideration, appeal or other hearing conducted by the board.

12 (1) The board has the power to control its own process.

(2) At any time during a proceeding, but before its decision, the board may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in a proceeding, or

(b) to produce for the board a document or other thing in the person's possession or control, as specified by the board, that is admissible and relevant to an issue in a proceeding…

(4.1) The board may, on its own initiative, consider any records, information and reports that the board considers relevant to a proceeding.

(4.2) The records, information and reports referred to in subsection (4.1) include records, information and reports obtained or produced by or for the board…

13 (1) The board may adjourn any proceeding

(a) on its own motion, or

(b) if it is shown to the satisfaction of the board that an adjournment is required…

14 If 2 or more proceedings involve the same or similar questions of fact, law or policy, the board may

(a) combine those proceedings or any part of them,

(b) conduct those proceedings at the same time,

(c) conduct those proceedings one immediately after the other, or

(d) stay one or more of those proceedings until after the determination of another one of them.

15 (1) Subject to this section, the board may receive and accept evidence and information, on oath, by affidavit or otherwise, that the board considers relevant, necessary and appropriate to a proceeding, whether or not the evidence or information would be admissible in a court of law, but the board may exclude anything it considers unduly repetitious….

27 (1) If an application is forwarded to it under section 26 (1), the board…

(b) may require further information from the applicant, including written or oral submissions.

(2) Any person may, within the time period specified by the board and on payment of the prescribed fee, make a written submission to the board respecting the application forwarded to it under section 26 (1).

(3) At any time after the expiry of the 7-day period referred to in subsection (1), the board may do one or more of the following:

(a) convene and conduct a hearing of the application;

(b) conduct an investigation in respect of any matter related to the application…