



# ENVIRONMENTAL REVIEW TRIBUNAL

*2003-2006  
Business Plan*

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## *Message from the Chair*

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I am pleased to present the Business Plan of the Environmental Review Tribunal for 2003 – 2006.

The total number of hearings before the Tribunal increased by 25% over the past two years and the complexity of those hearings has increased substantially.

The new and innovative case management and public information system the Tribunal developed for the large number of water appeals it handled will serve as a model for future hearings where there might be significant public interest.

The Tribunal is also assuming new responsibilities under the *Safe Drinking Water Act, 2002*, and the *Nutrient Management Act, 2002*.

Specialized tribunals, such as the Environmental Review Tribunal, play an important role in the justice system. Successful tribunals provide accessibility for the public, develop expertise in their fields, and provide results more quickly and cost-effectively than our over-burdened court system.

The Environmental Review Tribunal has handled an expanded workload while still maintaining enviable performance measures. Our goal is to continue to improve our performance in providing thoughtful and fair decisions.

**Ian McPhail, Q.C.**  
*Chair*

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## *Tribunal Mandate*

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The Environmental Review Tribunal is committed to conducting timely, fair, efficient and impartial hearings which protect the environment and are consistent with the governing legislation.

The Tribunal functions as a quasi-judicial body, subject to the rules of natural justice and the requirements of the *Statutory Powers Procedure Act*. The Tribunal's primary role is adjudicating applications and appeals under various environmental and planning statutes. The Tribunal hears applications and appeals under the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, and the *Pesticides Act*, and leave to appeal applications under the *Environmental Bill of Rights, 1993*. The Environmental Review Tribunal also functions as the Office of Consolidated Hearings to hear applications made under the *Consolidated Hearings Act* and as the Niagara Escarpment Hearing Office to hear development permit appeals and Niagara Escarpment Plan amendment applications under the *Niagara Escarpment Planning and Development Act*.

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# *Core Businesses*

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The Environmental Review Tribunal has four core businesses which are:

- 1. Outreach**
- 2. Alternative Dispute Resolution**
- 3. Staff Processing of Hearings**
- 4. Hearings and Decision Making**

## **1. OUTREACH**

### *Passive Component:*

The passive component of the Tribunal's outreach core business consists of a number of initiatives. The Tribunal has created guides explaining its role and procedures to be distributed to clients upon request. Also, the Tribunal has created and maintained a website which provides a wide variety of material on an ongoing basis. Website users have 24-hour access to current information regarding the Tribunal and its hearings, including its decisions, forms, relevant statutes, and Rules of Practice. Website users may also view the information presentation on the Tribunal's website.

### *Active Component:*

The active component of the Tribunal's outreach core business includes a number of initiatives. These include staff responses to questions from clients, public information and education sessions delivered by senior staff or Tribunal members, and stakeholder consultation. The public information sessions are held by the Tribunal to inform the public of the hearing process prior to complex hearings. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters. The Tribunal has a Client Advisory Committee of stakeholders to assist in providing feedback regarding new policies, procedures and general operational issues. The public can also provide feedback to the Tribunal by using the form created on the website for that purpose.

## **2. ALTERNATIVE DISPUTE RESOLUTION**

The use of mediation in the hearing process encourages parties to narrow or settle their differences. It often removes the need to proceed to a hearing or reduces the number of issues to be adjudicated.

The Tribunal's senior staff and most of its members have received certified training in

Alternative Dispute Resolution (ADR) and are experienced mediators. Mediation, generally conducted 30 days before the commencement of a hearing, will be offered in appeal hearings before the Tribunal, and before the Niagara Escarpment Hearing Office. In all other cases, the Tribunal will provide mediation upon request.

### **3. STAFF PROCESSING OF HEARINGS**

This core business includes all administrative steps necessary to process an appeal/application from the date of first filing to the beginning of the hearing. The Tribunal hears appeals/applications pursuant to seven different statutes. When an appeal/application is received, it is dealt with through one of five different administrative processes. Each process includes:

- screening the appeal/application to assess its compliance with the Act under which it was filed;
- assigning it to the appropriate hearing process;
- scheduling the hearing;
- monitoring and administering the process through to the rendering of the written decision.

### **4. HEARINGS AND DECISION MAKING**

This component is entirely in the hands of the Tribunal members, all of whom are Order-in-Council appointees, and includes hearings held by members and their written decisions.

All recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on permit development applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered not more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal determines that, because of unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal Members will endeavor to render their decision within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

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# *Annual Report on Key Achievements for 2002-2003*

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The Tribunal releases its report on its annual achievements in its Annual Report, which is presented to the Minister of the Environment within 90 days following the end of the fiscal year.

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# *Key Commitments and Strategies for 2003-2004*

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The Tribunal has set the following goals as priorities for the fiscal year 2003-2004:

## **1. OUTREACH**

The Tribunal will continue to improve its communication with stakeholders, parties and members of the public. The Tribunal will also continue to provide information to the public via its website, guides, and through public information and education sessions.

### *Commitment #1: Public Information and Education Sessions:*

The Tribunal will continue to conduct public information sessions to inform the public of the hearing process prior to the commencement of complex hearings. The Tribunal also provides educational presentations to interested groups, including municipal governments, local service groups, professional groups such as planners or engineers, and educational institutes, which explain the Tribunal's mandate and its hearing processes. The Tribunal will continue to offer this service, upon request, and will provide this presentation on its website.

### *Risk Assessment:*

The Tribunal will continue to provide public information sessions prior to the commencement of complex hearings. It is anticipated that the Tribunal will conduct a large number of these sessions due to the increase in the number of appeals filed, their complexity and the increase in public interest in environmental matters. Conducting these sessions will increase the Tribunal's travel and advertising expenditures. In addition, the Tribunal will promote its public information sessions to groups with an interest in the Tribunal's mandate and hearing process. The Tribunal has no control over the number of requests it may receive to present to these groups. If a large number of requests is made, the Tribunal will strategically assess and use its resources in responding to these requests.

Commitment #2: *Website Access:*

The Tribunal considers its website to be its number one communication channel. The public has embraced the website as the primary way to access information about the Tribunal and its processes. In the fiscal year (April 1, 2002 to March 31, 2003), the Tribunal had a total of 16,680 visitors to its site and a total of 465,350 hits on specific pages in the site. 15 decisions or orders of the Tribunal were downloaded over 1,000 times. During the year there were over 90,795- separate downloads of documents from our website. The Tribunal will continue to use its website to provide copies of decisions, the Tribunal's Rules of Practice and relevant statutes; receive stakeholder feedback, and notify the public of the status of ongoing hearings. The Tribunal's website will continue to be updated daily with hearing-related information.

The Tribunal will continue its review of its website this fiscal year in order to assess its ease of use and ability of the public to readily access information.

Risk Assessment:

There are very few risk factors related to the updating of information on the website since the Tribunal has a systems officer as well as other trained support staff who can accomplish this task. The Tribunal receives its connection through the gateway from another agency, the Ontario Energy Board, free of cost. To date, the website has cost the Tribunal very little due to in-house information technology support. However, if the Tribunal were to lose the use of free access to the gateway from the Ontario Energy Board, the cost of operating the site would increase substantially.

Commitment #3: *Guides:*

The Tribunal will undertake to update its guides immediately following changes to any Act, regulation or the Tribunal's Rules of Practice. These guides will be available in downloadable format or in paper form, upon request.

Risk Assessment:

There are limited risk factors relating to the production of these updated documents. The Tribunal has reformatted these guides in a word format that allows ease of update of the documents. This format does not require any

additional financial resources for production, but the Tribunal will have to make a commitment to set aside staff time for the production and proofreading of the documents.

## **2. ALTERNATIVE DISPUTE RESOLUTION**

Alternative Dispute Resolution (ADR) is available to all parties in proceedings before the Tribunal. The senior staff of the Tribunal and several of the Tribunal Members have been certified through accredited ADR courses, and are experienced mediators. Mediation will be offered, in a timely manner, to all parties and their representatives and is generally held 30 days prior to the commencement of a hearing. The use of mediation in the hearing process encourages parties to narrow or settle their differences. It often removes the need to proceed to a hearing or reduces the number of issues to be adjudicated, thereby, reducing costs for the parties and for taxpayers.

### *Commitment #4: Alternative Dispute Resolution Services:*

The Tribunal will continue to offer these services in every appeal and, upon request, in all applications it receives in order to encourage parties to resolve their issues. In addition, after the completion of the ADR Session, the Tribunal issues Questionnaires to the parties to ascertain how performance standards have been met. The Questionnaires are designed to request comments regarding the parties' level of satisfaction with the process and the Tribunal's involvement. The Tribunal will monitor the success rate of the number of cases in which mediation sessions were held, where evidence was heard and subsequently, did not proceed to a hearing. In some development permit appeals under the *Niagara Escarpment Planning and Development Act*, the Hearing Officer may issue a final decision based upon a resolution derived by the parties as a result of mediation.

### *Risk Assessment:*

The Tribunal is willing to assist all parties in mediating their case before or during the hearing stage. However, in the past, not all sides wished to participate in the mediation process even though other parties to the case had requested ADR services. This is a factor outside the Tribunal's control, which may adversely impact on the public's perception of the Tribunal's performance should clients feel that they are not receiving a service which may provide cost saving measures (both public and private),

and which eliminates the need for or reduces the length of a hearing. Mediation should be done in a timely manner.

The Tribunal will need to assess, on a case-by-case basis, whether to assign resources for mediations that last longer than one day.

Questionnaires completed by parties at the conclusion of an ADR meeting provide the Tribunal with valuable input into the ADR process. In the past, some completed questionnaires contained comments about the process prior to the commencement of the Tribunal's involvement or comments of a nature which are beyond the mandate of the Tribunal. The questionnaires are submitted anonymously in order to encourage frankness and ensure fairness for those people who may appear before the Tribunal again in the future. Therefore, it is impossible to address the concerns or clarify the Tribunal's role directly with the concerned party.

### **3. STAFF PROCESSING OF HEARINGS**

This phase includes all administrative steps necessary to process an appeal/application from the date of first filing to the rendering of the written decision.

#### *Commitment #5: Timeliness in scheduling hearings:*

The staff is committed to ensure that every appeal/application is processed through the appropriate administrative mechanism to provide timely scheduling of all matters before the Tribunal. Staff will adhere to timeliness standards to ensure, on average, cases heard are scheduled within 30 calendar days from the date the appeal/application is received by the Tribunal. On average, cases will be scheduled within seven calendar days from the date the Tribunal receives all the necessary information/documentation from the parties to the proceedings.

#### **Risk Assessment:**

In the scheduling of complex hearings, it may be difficult for the staff to adhere to the scheduling standards. In multi-party applications, it may be difficult to coordinate the receipt of information from all parties in a timely manner. The staff will endeavor to ensure that all parties receive the same standard of excellence in scheduling all cases.

The Tribunal has no control over the size or complexity of its workload. The

number of cases filed with the Tribunal is dependent, in a large part, on the number of Orders or Certificates of Approval issued by Directors under the Ministry of the Environment and on the number of development permit applications issued or refused by the Niagara Escarpment Commission. The increase of the issuance of these instruments by the Ministry or the Commission will impact on the number of appeals/applications filed with the Tribunal. Given the Tribunal's small staff complement, a large number of new applications will impact on the staff's workload and its ability to comply with these scheduling standards.

The Tribunal also has no control over the increase of responsibilities to meet its mandate if changes or amendments are made to its governing legislation. This may also impact the staff's ability to meet its scheduling standards.

#### **4. HEARING AND DECISION MAKING**

This phase includes the conducting of motions, preliminary hearings and hearings and the writing of orders and decisions.

##### *Commitment #6: Courtesy and Respect at Hearings:*

Tribunal Members are committed to ensuring that all parties are treated with courtesy and respect when appearing before the Tribunal at a hearing. The Tribunal has developed a Complaints Policy to deal with concerns about the conduct of its members. The Tribunal treats all such complaints very seriously and will comply by investigating any complaints brought forward in accordance with the Complaints Policy.

##### *Risk Assessment:*

If a complaint concerning the conduct of a Member at a hearing is investigated and determined to be well founded, the Chair will report the incident to the appropriate Minister and the Public Appointments Secretariat.

##### *Commitment #7: Timelines of Decision Rendering:*

Tribunal members will comply with all legislated requirements. For those decisions without legislative requirements, Tribunal members will endeavour to render 90% of decisions within thirty days following completion of the hearing or the filing of final written submissions (if so ordered by the hearing panel).

##### *Risk Assessment:*

The Tribunal has no control over the size and complexity of its workload. The number and complexity of cases heard by the Tribunal is dependent on the number and complexity of applications and appeals filed. An increased number of applications and appeals may prevent Tribunal members from meeting this target.

*Commitment #8: Training for Tribunal Members:*

All newly appointed members receive training before sitting hearings on their own. Members are expected to review the various Acts and relevant decisions of the Tribunal. Members will observe hearings before attending hearings as panel members. Once members are comfortable as panel members, they will then chair hearings with other members and write decisions. After the completion of this cycle, members are then assigned to conduct hearings on their own.

All members participate in the Tribunal's learning program, which is held in five to six sessions throughout the year. Members also attend courses and conferences held by the Council of Canadian Administrative Tribunals, the Society of Ontario Adjudicators and Regulators and the Law Society of Upper Canada. Members also attend courses on alternative dispute resolution.

*Risk Assessment:*

It takes significant training and time for new members to become comfortable sitting hearings on their own and to acquire full caseloads of hearings. This could impair the Tribunal's ability to resolve issues and schedule cases in a timely manner.

*Commitment #9: Report on appeals and judicial review of Tribunal Decisions:*

The Tribunal will report on decisions on appeals of its decisions to the Minister of the Environment, Cabinet or the courts. The Tribunal will report on any court decisions arising from a judicial review of a decision of the Tribunal. The Tribunal will review and analyze its own practices to take into account the results of any such appeals.

*Risk Assessment:*

The Tribunal will have to receive a copy of the court decision in order to report on it. The Minister of the Environment is required in accordance with the Memorandum of Understanding to provide a copy of his or her decision to the Tribunal.

There is no requirement for appellants to advise the Tribunal that they are appealing

its decision. The Tribunal can only report on decisions that it becomes aware of.

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## *Future Challenges 2004-2006*

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The workload of the Tribunal is dictated by legislation and the various decisions, orders and permits issued by the Ministry of the Environment and the Niagara Escarpment Commission. Amendments to legislation or new legislation have an impact on the volume and complexity of hearings before the Tribunal.

It is anticipated that the Ontario Government intends to proclaim the *Nutrient Management Act, 2002* and the *Safe Drinking Water Act, 2002* during this period. These Acts designate the Environmental Review Tribunal as the appellant body for appeals from orders, certificates of approval, licences and permits issued under certain legislation.

The Tribunal anticipates increased workload resulting from the government's response to the Walkerton Inquiry. This may involve new legislation, regulations, increased enforcement and/or monitoring by the Ministry of the Environment.

The Government of Ontario issued a report entitled "Managing the Environment, A Review of Best Practices". The implementation of this report may have an affect on the Tribunal's workload.

It is anticipated that controversial issues may arise from aggregate resource amendment applications filed to expand existing or create new quarries in the Plan Area under the *Niagara Escarpment Planning and Development Act*. As the Niagara Escarpment Hearing Office, the Tribunal may be faced with conducting lengthy and complex hearings. Senior staff of the Niagara Escarpment Commission have advised the Tribunal that the number of wineries within the Plan Area is likely to double or triple within the next three to five years. This may affect the number of plan amendment applications and permit development appeals filed with the Tribunal.

With increased workload and new responsibilities, the Tribunal will face the challenge of establishing additional administrative processes and/or policies. Training staff and members will be a priority in order to handle the increase in responsibility. An increase in appeals will have an impact on Tribunal expenditures, which may include the hiring of new Tribunal members and/or staff, increased travel and direct hearing related costs. In respect to an anticipated and significant increase in the caseload, the Tribunal will continue to strive to maintain its high standard of meeting its performance measures.

As with all quasi-judicial tribunals, new members require considerable training, and experience has shown that a new member normally takes at least one year before being able to handle a full caseload.

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# *Key Performance Measures*

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1. Outreach  
Core Business:

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
<p>Commitment #1: Public education and information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process.</p>	<p>The Tribunal will conduct public information sessions prior to the commencement of its complex hearings. The Tribunal will continue to speak to other interested groups where the Tribunal's profile can be showcased.</p>	<p>Present to a growing number of key audiences.</p>	<p>To review its protocol on when to conduct public information sessions prior to a hearing.</p> <p>The Tribunal will develop an electronic presentation and oral scripts to ensure consistency of information provided by different staff members at all public information sessions.</p>
<p>Commitment #2: Website Access</p> <p>The Tribunal will use its website to communicate with its clients.</p>	<p>The Tribunal will continue its review of its website to improve ease of access and the Tribunal will continue to track the number of visitors to the site to monitor its use.</p>	<p>Continued increase in the use and efficiency of the site.</p>	<p>The information contained on the website will be reviewed and improvements made to ensure ease of use for the public.</p>

			<p>The website will be updated each business day to ensure optimal delivery.</p> <p>Any amendments to the Rules of Practice, Practice Directions and Guidelines, etc. will be posted as approved.</p>
<p>Commitment #3: Guides will be updated electronically and in paper form.</p>	<p>The Tribunal will review its guides in order to update the information to ensure accuracy and consistency of information.</p>	<p>Continued communication of the hearing process to the Tribunal's clients.</p>	<p>To review and revise the guides as changes to governing legislation and policies arise.</p>

2. Alternative Dispute Resolution  
Core Business

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
<p>Commitment #4: ADR Services</p> <p>Offer ADR services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.</p>	<p>When all parties agree to participate, mediation meetings will generally be held at least 30 days prior to the commencement of the hearing.</p>	<p>Increase the number of cases receiving mediation.</p>	<p>Continue to offer mediation services in every appeal and at the request of the parties in applications.</p> <p>Questionnaires will be sent to all parties at the completion of the ADR session to ascertain their level</p>

			<p>of satisfaction with the ADR process and the Tribunal's involvement.</p> <p>The Tribunal will monitor the success of mediation meetings by tracking the cases that are resolved prior to the hearing.</p>
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3. Staff Processing of Hearings  
Core Business

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
Commitment #5: Improve Timeliness in Scheduling Hearings	Hearings will be scheduled within the timeliness standard.	On average, hearing dates will be scheduled within 30 calendar days from the date of the receipt of the application/appeal and 7 calendar days from the date the Tribunal receives all necessary information/documentation from the parties	Staff will adhere to the target.

4. Hearing and  
Decision Making  
Core Business

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
<p>Commitment #6: Tribunal Members will treat all participants in a hearing with courtesy and respect.</p>	<p>The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy.</p> <p>All complaints will be investigated in accordance with the Tribunal's Complaints Policy.</p>	<p>To provide Questionnaires that monitor respect and courtesy accorded to hearing participants by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.</p>	<p>Results of hearing Questionnaires will be reported in the Tribunal's Annual Report.</p> <p>All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.</p>
<p>Commitment #7: Tribunal Members will render timely decisions.</p>	<p>The Tribunal will track the time it takes to render written decisions.</p>	<p>Decisions will be rendered within 30 days of final arguments, excepting hearings with legislated timelines.</p>	<p>In 90% of hearings held, Tribunal members will adhere to the target.</p>
<p>Commitment #8: Training of Members.</p>	<p>Members will receive adequate training to conduct hearings.</p>	<p>Members will be trained in the conduct of hearings, knowledge of legislation and Tribunal rules, decision writing and alternative dispute resolution.</p>	<p>New members are trained to conduct hearings independently within one year of appointment.</p>

<p>Commitment #9: Appeals and judicial review of Tribunal Decisions.</p>	<p>The Tribunal will report the outcome of any appeal of its decisions or judicial review applications.</p>	<p>Review and analyze the outcome of any appeal of its decisions or judicial review applications.</p>	<p>The Tribunal will summarize any decision of appeal or judicial review in its Annual Report and review Tribunal practices in light of any decisions of appeal.</p>

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# *2003-2004 Approved Budget*

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## **Environmental Review Tribunal**

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### **General Account for the Operation of the Tribunal:**

Salaries and Wages*	\$ 972.0
Other Direct Operating Expenditures	455.8
Total	\$1,427.8

### **Funds allocated for Large Waterworks Compliance:**

Other Direct Operating Expenditures	200.0
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### **Funds allocated for the Walkerton Inquiry Report – Part 2:**

Other Direct Operating Expenditures	200.0
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Total Funds allocated to the Tribunal: \$1,827.8

\*As of this fiscal year, benefits are being managed centrally.

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## *Inquiries*

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