



Environmental Review Tribunal Oak Ridges Moraine Hearings

A Guide to Hearings under sections 10, 12 or 18
of the *Oak Ridges Moraine Conservation Act, 2001*

www.ert.gov.on.ca

November 30, 2007

This Guide provides a general overview of Hearings before the Environmental Review Tribunal, as the Hearing Officer appointed under sections 10(8)(b), 12(9)(b), or 18(5) of the *Oak Ridges Moraine Conservation Act, 2001* and should not be relied upon as an authoritative text. The statutes, regulations, and Rules of Practice and Practice Directions of the Environmental Review Tribunal that apply to Hearings under the *Oak Ridges Moraine Conservation Act, 2001* prevail.

Information about specific Hearings is available from:

The Environmental Review Tribunal
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The Environmental Review Tribunal accepts collect calls.

Overview

On July 31, 2006, the Environmental Review Tribunal was appointed by the Minister of Municipal Affairs and Housing to act as the Hearing Officer whenever the Minister exercises his authority under sections 10(8)(b), 12(9)(b), or 18(5) of the *Oak Ridges Moraine Conservation Act, 2001 (ORMCA)*. The Tribunal will conduct hearings and provide written recommendations to the Minister with respect to the following matters:

- Municipal official plans and zoning by-law conformity amendments proposed to implement the Oak Ridges Moraine Conservation Plan, under section 10 of the *ORMCA*;
- Proposed amendments to the Oak Ridges Moraine Conservation Plan, under section 12 of the *ORMCA*; and
- Matters appealed to the Ontario Municipal Board and stayed by the Minister under section 18 of the *ORMCA*.

The Tribunal is an independent and impartial Tribunal established by provincial legislation. The Members of the Tribunal are appointed by the Lieutenant Governor-in-Council for the Province of Ontario. The Members have a variety of experience. Members' biographies are included in the Tribunal's Annual Report.

What is the purpose of the *Oak Ridges Moraine Conservation Act, 2001*?

The purpose of the *Oak Ridges Moraine Conservation Act, 2001* is to integrate environmental and land use planning in order to maintain, and where possible improve or restore, the ecological integrity of the Oak Ridges Moraine Conservation Plan area.

What is the Oak Ridges Moraine?

The Oak Ridges Moraine is an irregular ridge of sandy hills stretching 160 kilometres from the Trent River in the east to the Niagara Escarpment in the west and is part of the Golden Horseshoe Greenbelt. The Greenbelt includes the 800,000 acres of land protected by the Niagara Escarpment Plan (NEP) and the Oak Ridges Moraine Conservation Plan (ORMCP), and one million newly protected acres known as the Protected Countryside.

Located north of, and parallel to Lake Ontario, the Moraine divides the watersheds draining south into western Lake Ontario from those draining north into Georgian Bay, Lake Simcoe and the Trent River system. The Moraine contains the largest concentration of headwater streams in the Greater Toronto Area.

The Tribunal has been appointed by the Minister of Municipal Affairs and Housing to act as the Hearing Officer for the Protected Countryside Area of the Greenbelt Plan whenever the Minister exercises his/her authority under sections 12(1)(b) or 18(5) of the *Greenbelt Act, 2005* (see the Tribunal's Guide to *Greenbelt Act, 2005* Hearings).

The Tribunal has also been appointed by the Minister of Natural Resources to act as the Hearing Officer to hear appeals of decisions of the Niagara Escarpment Commission on development permit applications or to evaluate the merits of proposed amendments to the NEP under the *Niagara Escarpment Planning and Development Act* (see the Tribunal's Guide to *Niagara Escarpment Planning and Development Act*)

What is the Oak Ridges Moraine Conservation Plan?

Established under the authority of the *Oak Ridges Moraine Conservation Act, 2001*, the Oak Ridges Moraine Conservation Plan provides land use and resource management direction for the 190,000 hectares of land and water within the Oak Ridges Moraine.

The Plan includes policies and mapping which:

- protect key natural heritage and hydrologically sensitive features (ie. wetlands, woodlots, kettle lakes, etc);
- provide restrictions on the types of land uses that may be permitted within each land use designation;
- include specific design and development standards for development related to water and servicing, landform conservation, and stormwater management.
- provide direction for new transportation, utility or infrastructure projects.

What is the role of the Environmental Review Tribunal?

The Tribunal will conduct a public Hearing to hear evidence from all Parties, Participants, and Presenters concerning the matter being heard. Under sections 10, 12, or 18 of the *Oak Ridges Moraine Conservation Act, 2001*, the Tribunal, after the Hearing, will provide its recommendations to the Minister of Municipal Affairs and Housing. The Minister will consider the recommendations and may make a final decision for matters under sections 10 or 12. The Minister's decision is final and not subject to appeal.

In the case of a Hearing for a matter that was stayed at the Ontario Municipal Board under section 18 of the *Oak Ridges Moraine Conservation Act, 2001*, the Minister may make a decision with the final approval of the Lieutenant Governor-in-Council. The decision is final and not subject to appeal.

Who will be notified of a Hearing?

A regulation (O. Reg. 369/06) under the *Oak Ridges Moraine Conservation Act, 2001* specifies the persons and public bodies who must be notified of a Hearing. The Notice will be given to specified persons and public bodies by ordinary mail, personal service or by fax, and may also be published in a newspaper.

Is a lawyer, planner or other expert needed?

A Party, Participant or Presenter may represent himself or herself or hire a lawyer, planner or other representative to act on his or her behalf.

How are special needs accommodated?

A person with a disability should inform the assigned Case Manager in advance of the Hearing of any special needs that must be accommodated.

What language services are available?

A person should inform the assigned Case Manager in advance of the Pre-Hearing Conference or Hearing and, in any event, at least 14 days before the Pre-Hearing Conference or Hearing if he or she requires the Pre-Hearing Conference or Hearing to be translated into French.

How can neighbours and other concerned people participate?

Neighbours and other people who feel that they are affected by the matter being heard may apply to the Tribunal for permission to participate in the Hearing.

What is the difference between a Party, Participant, and Presenter?

The Tribunal has established various levels of participation to ensure that all those interested in the Hearing can be involved. The Tribunal encourages participation in its Hearings. A choice of participation levels addresses different needs and interests.

Who can be a Party?

A person may request Party status and the Tribunal may name that person to be a Party after considering relevant matters including: whether the person's interests may be directly and substantially affected by the Hearing or its result; whether the person has a genuine interest, whether public or private, in the subject matter of the proceeding; whether the person is entitled by law; and whether the person is likely to make a relevant contribution to the Tribunal's understanding of the issues in the proceeding.

What is the role of a Party?

Those who request and receive Party status from the Tribunal assume the fullest range of rights and responsibilities. Most Parties are represented by either a lawyer or an agent, but a Party may act on its own behalf. A Party can be either an individual or a group. A Party may:

- be a witness at the Hearing;
- be questioned by the Tribunal and the Parties;
- bring motions;
- cross-examine witnesses called by other Parties;
- make submissions to the Hearing Officer including final argument;
- receive copies of all documents exchanged or filed by the Parties; and
- attend site visits.

Who can be a Participant?

A person who has an interest in the subject matter of the Hearing may be named as a Participant. In deciding whether to name a person as a Participant rather than as a Party, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's would be. A person who may otherwise qualify as a Party may request Participant status.

What is the role of a Participant?

In addition to the right to observe and present his or her views at a Hearing, a Participant may:

- be questioned by the Tribunal and the Parties;
- make submissions to the Tribunal at the commencement and end of the Hearing;
- upon request, receive a copy of the documents exchanged by the Parties that are relevant to the Participant's interests; and
- attend site visits.

However, someone with Participant status cannot:

- cross-examine witnesses; and
- bring motions.

Who can be a Presenter?

A person who has an interest in the subject matter of the Hearing may be named as a Presenter. In deciding whether to name a person as a Presenter rather than as a Party or Participant, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's or Participant's would be. A person who may otherwise qualify as a Party or Participant may request Presenter status.

What is the role of a Presenter?

A Presenter need only attend at the Hearing when he or she is presenting his or her evidence. In addition to the right to observe and present his or her views at a Hearing, a Presenter may:

- be a witness and present his or her views either during the regular daytime sessions or, where there is a large public interest, at a special evening session;
- be questioned by the Tribunal and the Parties;
- provide the Tribunal with a written statement as a supplement to oral testimony; and
- upon request, receive a copy of documents exchanged by the Parties that are relevant to the Presenter's interests.

However, someone with Presenter status cannot:

- cross-examine witnesses;
- bring motions;
- make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing; and
- attend site visits unless a request to attend is made to the Tribunal and the Tribunal grants the request.

What happens after the Minister requests that a matter be heard by the ERT?

Notice of a hearing is given by the Tribunal to prescribed persons and public bodies in accordance with O. Reg 369/06. Approximately 30 days before the Hearing is to take place, the Tribunal will schedule a Pre-Hearing Conference between the Ministry, and those who are requesting Party, Participant, or Presenter status.

A person may contact the Tribunal, in writing, at least seven days before the date of the Pre-Hearing Conference and request to be included in the Pre-Hearing Conference. At that time, he or she can request that the Tribunal add him or her as either: a Party, Participant or Presenter at the Hearing. A person may also attend at the Hearing and request to be added as a Party, Participant or Presenter.

What happens at the Pre-Hearing Conference?

The purpose of the Pre-Hearing Conference is to prepare for the Hearing by:

- identifying Parties, Presenters and Participants and the scope of their participation at the Hearing;
- hearing preliminary motions;
- identifying, defining, scoping and simplifying the issues;
- establishing dates for the exchange among Parties and with the Tribunal of all documents relevant to the proceeding, witness statements;

- establishing facts or evidence that may be agreed on;
- estimating the duration of the Hearing; and
- considering any other matter that may assist in the just and expeditious disposition of the proceeding.

The member who conducts the Pre-Hearing Conference will usually preside at the main Hearing.

What are the disclosure requirements?

All Parties must provide, without charge, to all other Parties a copy of every relevant document that is in their possession, control or power, no later than the disclosure date set at the Pre-Hearing Conference. Participants and Presenters may request to receive a copy of all documents relevant to their interests. Privileged documents are excepted.

All documents intended to be relied upon at the hearing must be filed with the Tribunal. Two copies of each document must be provided if the document is filed prior to the commencement of the Hearing. If the document is filed during the course of the Hearing, a sufficient number of copies must be provided so that there is a copy for each Panel member and for the record file.

The obligation to disclose is continuing. That is, all relevant documents discovered during the course of the Hearing must be provided to the other Parties and, if the document is to be relied upon at the Hearing, to the Tribunal.

What principles govern the Hearing and the Tribunal's Recommendations?

The Tribunal shall provide the Minister of Municipal Affairs and Housing with its recommendations with respect to the matter being heard. The Tribunal's recommendations will also be given to the Parties, Participants and Presenters to the Hearing,

Hearings under the *Oak Ridges Moraine Conservation Act, 2001* are also governed by the Rules of Practice and Practice Directions of the Tribunal.

What is a Witness Statement?

Witnesses may be trained professionals, members of the community, academic specialists, or individuals with specific knowledge who can give the Tribunal relevant information.

A witness statement is a concise, but complete, written statement of the evidence a witness intends to present.

A witness statement should be direct and to the point. It is intended that the statement be complete in the sense that the witness should not have to add anything new to the

evidence at the Hearing. However, the witness is entitled to explain more fully anything contained in the statement.

A witness statement should contain the following information:

- the name, address and telephone number of the witness;
- whether the evidence will be factual evidence or, if the witness is a qualified expert, opinion evidence;
- the qualifications of the witness, where the witness is to give opinion evidence;
- whether or not the witness has an interest in the application and, if so, the nature of the interest;
- a summary of the opinions, conclusions and recommendations of the witness;
- reference to those portions of other documents which form an important part of the opinions, conclusions and recommendations of the witness;
- the date of the statement; and
- the signature of the witness.

If the witness statement does not contain all of the above information, Parties may jeopardize their right to have the evidence admitted or may delay the Hearing.

Witnesses will normally attend in person to give oral evidence and be subject to cross-examination.

Witness statements should be exchanged between the Parties and filed with the Tribunal within the time directed by the Tribunal at the Pre-Hearing Conference, which is usually no later than 15 days prior to the commencement of the Hearing.

Can a Hearing be postponed or adjourned?

All Hearing dates are considered preemptory; that is, once a date has been set for a Hearing, the Hearing will proceed on that date except in exceptional circumstances, such as the sudden illness of a Party. If a person has been notified of the time, date and place of a Hearing and fails to attend, the Tribunal may proceed with the Hearing and make its recommendation in the absence of that person.

For information on adjournments, please refer to the Rules of Practice and Practice Directions of the Tribunal.

What is the order of presentation at a Hearing?

The Tribunal can direct the order of the presentation of evidence. Evidence is usually presented orally, although it may be supplemented by written submissions and the use of visual aids. Witnesses give evidence under oath or by affirmation.

All witnesses are subject to cross-examination.

Reply evidence may be permitted at the discretion of the Tribunal.

When all the evidence has been heard, each Party and Participant will be entitled to make a final submission. This submission gives the Parties and Participants a chance to summarize the important facts on which they are relying, to summarize any points of law or policy which they think are relevant for the Tribunal's consideration, and to persuade the Tribunal to accept their argument or position on what they want the Tribunal's recommendation to be.

When will the Tribunal's recommendations be released?

The Tribunal is required to provide its recommendations to the Minister within 30 days after the conclusion of the Hearing unless extended by the Minister. The Tribunal's recommendations will also be given to Parties, Participants and Presenters.

After the Hearing, under sections 10, 12, or 18 of the *Oak Ridges Moraine Conservation Act, 2001*, the Tribunal, will provide its recommendations to the Minister of Municipal Affairs and Housing.

The Minister will consider the recommendations and may make a final decision for matters under sections 10 or 12. The Minister's decision is final and not subject to appeal.

In the case of a Hearing for a matter that was stayed at the Ontario Municipal Board under section 18 of the *Oak Ridges Moraine Conservation Act, 2001*, the Minister may make a decision with the final approval of the Lieutenant Governor-in-Council. The decision is final and not subject to appeal.

Can the recommendations of the Tribunal be appealed?

The *Oak Ridges Moraine Conservation Act, 2001* does not provide for a right of appeal.

Can the decision of the Minister be appealed?

The *Oak Ridges Moraine Conservation Act, 2001* does not provide for a right of appeal.

Can the Tribunal award costs?

Costs awards are not permitted for Hearings under section 10, 12, or 18 of the *Oak Ridges Moraine Conservation Act, 2001*.

For more information:

For further information, please refer to the *Oak Ridges Moraine Conservation Act, 2001*, the Plan, and the Rules of Practice and Practice Directions of the Environmental Review Tribunal. All of these documents are available on the website www.ert.gov.on.ca.