



# **Rules of Practice and Practice Directions of The Environmental Review Tribunal**

**November 15, 2007**

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# Rules of Practice of the Environmental Review Tribunal

## PREAMBLE

These Rules have been adopted by the Environmental Review Tribunal pursuant to section 25.1 of the *Statutory Powers Procedure Act* on November 15, 2007. The Rules pertaining to Costs (Rules 204 to 212 and 217 to 223) have been adopted by the Environmental Review Tribunal pursuant to section 17.1(4) of the *Statutory Powers Procedure Act*. These Rules replace the Rules of the Environmental Review Tribunal adopted on September 18, 2006.

The Tribunal hears applications and appeals under a number of environmental statutes in its role as the Environmental Review Tribunal. It also hears appeals of development permit applications and conducts Niagara Escarpment Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act* in its role as the Niagara Escarpment Hearing Office. The Tribunal also conducts Oak Ridges Moraine Conservation Plan amendment proceedings, municipal official plan and zoning by-law amendment proceedings to bring these documents into conformity with the Oak Ridges Moraine Conservation Plan, and proceedings in regard to matters that have been appealed to the Ontario Municipal Board and stayed by the Minister under the *Oak Ridges Moraine Conservation Act, 2001*. In addition, the Tribunal also conducts Greenbelt Plan amendment proceedings and proceedings in regard to matters that have been appealed to the Ontario Municipal Board and stayed by the Minister under the *Greenbelt Act, 2005*. As the Office of Consolidated Hearings, the Tribunal provides administrative support to Joint Boards hearing matters under the *Consolidated Hearings Act*.

The Tribunal also provides Guides that provide a general overview of the procedures to be followed in proceedings held under the legislation administered by the Tribunal. These Guides are available from the Tribunal or its website ([www.ert.gov.on.ca](http://www.ert.gov.on.ca)).

The Forms contained in the Appendices to these Rules are also available from the Tribunal's website ([www.ert.gov.on.ca](http://www.ert.gov.on.ca)).

## GENERAL

### Purposes of the Rules

1. The purposes of these Rules are: to provide a fair, open, accessible and understandable process for Parties and other interested persons; to facilitate and enhance access and public participation; to encourage co-operation among Parties; to assure the efficiency and timeliness of proceedings; and to assist the Tribunal in fulfilling its statutory mandate.

### Application of the Rules

2. These Rules apply to appeals brought under the *Clean Water Act, 2006*, *Environmental Protection Act*, the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Safe Drinking Water Act, 2002*, and to appeals of development permit applications and Niagara Escarpment Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act*.

These Rules also apply to proceedings under the *Oak Ridges Moraine Conservation Act, 2001* where the Tribunal is appointed the Hearing Officer regarding: Oak Ridges Moraine Conservation Plan amendment proceedings under section 12(9)(b) of that Act, municipal

official plan and zoning by-law amendment proceedings under section 10(8)(b) of that Act, and proceedings in regard to matters that have been appealed to the Ontario Municipal Board and stayed by the Minister under section 18(5) of that Act. These rules apply to proceedings under the *Greenbelt Act, 2005* where the Tribunal is appointed as the hearing officer regarding Greenbelt Plan amendment proceedings under subsection 18(5) of that Act and proceedings in regard to matters that have been appealed to the Ontario Municipal Board and stayed by the Minister under clause 12 (1)(b) of that Act. The *Statutory Powers Procedure Act* applies to most proceedings before the Tribunal but does not apply to Niagara Escarpment Plan amendment proceedings, proceedings under the *Oak Ridges Moraine Conservation Act, 2001*, or proceedings under the *Greenbelt Act, 2005*. When Niagara Escarpment Plan amendments, *Oak Ridges Moraine Conservation Act, 2001* or *Greenbelt Act, 2005* matters are referred to the Tribunal, these Rules will be employed by the Tribunal with necessary modifications. These Rules also apply to applications under the *Environmental Assessment Act*, the *Environmental Bill of Rights, 1993*, the *Environmental Protection Act*, and the *Ontario Water Resources Act*. These Rules also apply to matters referred to the Tribunal by a Minister and to Hearings of Joint Boards under the *Consolidated Hearings Act* where the Joint Board has adopted these Rules.

## Definitions

3. These definitions apply to these Rules, Practice Directions, and Forms, unless the context requires otherwise,

“Appellant” means a person who has filed a Notice of Appeal requiring a Hearing;

“Applicant” includes a person who brings an application for Leave to Appeal under section 38 of the *Environmental Bill of Rights, 1993* or a person who has applied for a development permit that is the subject of a proceeding under the *Niagara Escarpment Planning and Development Act*;

“Approval” includes a Certificate of Approval;

“Case Manager” means the Tribunal staff member responsible for co-ordinating all the procedural matters of a proceeding;

“Chair” means the Chair of the Environmental Review Tribunal;

“Director” means the Director referred to in sections 1(1) and 31.1 of the *Environmental Assessment Act*, sections 1(2) and 5(1) of the *Environmental Protection Act*, sections 2 and 3(1) of the *Nutrient Management Act, 2002*, sections 1(1) and 5(1) of the *Ontario Water Resources Act*, sections 1(2) and 3(1) of the *Pesticides Act*, and sections 2(2), 6(1) and 126 of the *Safe Drinking Water Act, 2002*;

“Document” includes:

- (a) Notices, forms, correspondence, memoranda, files, books of account, agreements, reports, charts, graphs, and any other written or pictorial communication;
- (b) a sound recording, videotape, photograph, map, plan, survey, or like thing;
- (c) information recorded or stored by means of any device, including computer files; and
- (d) facsimiles or copies of documents;

“Electronic Hearing” means a Hearing held by conference telephone call or some other form of electronic technology allowing persons to hear or hear and see one another;

“Fax” means electronic transmission of a facsimile of a document;

“File” means to send or deliver a document to the Tribunal;

“Hearing” means a written, oral or electronic procedure held by the Tribunal where a person has the opportunity to present one’s case and includes motions, Pre-Hearing Conferences, Preliminary Hearings, main Hearings and review Hearings, but does not include mediation;

“Instrument-holder” means the person to whom the Director has issued an instrument as defined in the *Environmental Bill of Rights, 1993*, where an application has been made under section 38 of that Act;

“Joint Board” means a Joint Board established under the *Consolidated Hearings Act*;

“Mediation” means mediation as described in these Rules and Practice Directions;

“Motion” means a request for the Tribunal’s ruling or decision on a particular issue at any stage within a proceeding, and includes an application for a stay or an interim stay of a decision or order;

“Notice of Hearing” means Notice of the main Hearing;

“Panel” means the member or members of the Tribunal conducting a Hearing;

“Particulars” include clarification of the remedy, decision or order requested; clarification of the reasons given for requesting the remedy, decision or order; and a statement or clarification of the material facts upon which a Party relies in support of any allegation;

“Participant” means a person who is named as a Participant under Rule 57;

“Party” means a person who is named as a Party under Rule 53;

“Person” includes a corporation and in accordance with the legislation applicable to a proceeding, a person as defined in section 1 of the *Consolidated Hearings Act*, section 1(1) of the *Environmental Assessment Act*, section 1(1) of the *Environmental Protection Act*, section 1(1) of the *Ontario Water Resources Act*, section 1(1) of the *Pesticides Act*, section 2(1) of the *Safe Drinking Water Act, 2002*, and section 1(2) of the *Statutory Powers Procedure Act*, a public body as defined in section 1(1) of the *Oak Ridges Moraine Conservation Act, 2001* and section 1(1) of the *Greenbelt Act, 2005*; but does not include an unincorporated association except as permitted under section 1 of the *Consolidated Hearings Act*, section 1(1) of the *Environmental Assessment Act* and section 1(2) of the *Statutory Powers Procedure Act*;

“Presenter” means a person who is named as a Presenter under Rule 60;

“Proceeding” includes a Hearing and refers to all matters before the Tribunal in respect of an appeal, application or referral;

“Proponent” means a person as defined in section 1 of the *Consolidated Hearings Act* or a person who has applied for approval under the *Environmental Assessment Act*, the *Environmental Protection Act*, or the *Ontario Water Resources Act*;

“Public Record” includes an application or Notice of Appeal, the decision appealed or referred to the Tribunal, any Notice, all documents filed with the Tribunal, any correspondence to and from the Tribunal, transcripts, orders of the Tribunal, and the

Tribunal's final decision, recommendation or report, but does not include those documents that are marked confidential by order of the Tribunal under Rule 203, or members' notes or members' recordings of Tribunal proceedings;

"Representative" means, in respect of a proceeding to which these Rules apply, a person authorized under the *Law Society Act* or its by-laws, to represent a person in that proceeding.

"Risk Management Inspector" means a Risk Management Inspector appointed under Part IV of the *Clean Water Act, 2006*;

"Risk Management Official" means the Risk Management Official appointed under Part IV of the *Clean Water Act, 2006*;

"Rules" mean these Rules and includes Practice Directions issued by the Tribunal;

"Serve" means to send or deliver a document to a person;

"Tribunal" includes, where applicable, the Environmental Review Tribunal, the Niagara Escarpment Hearing Office, the Office of Consolidated Hearings or a Joint Board constituted under the *Consolidated Hearings Act* that has adopted these Rules and includes a Panel or individual member of the Tribunal.

## **Interpretation**

4. These Rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.
5. The Tribunal may depart from these Rules or waive any provision of these Rules if it considers it appropriate in the particular circumstances.
6. The Tribunal may issue procedural orders for a proceeding that, if in conflict with these Rules, prevail over these Rules.
7. During any proceeding, the Tribunal may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate the matter before it.
8. The Tribunal may exercise any of its powers under these Rules or applicable laws on its own initiative or at the request of any person.
9. Where any of these Rules or orders issued by the Tribunal conflict with any statute, the provisions of the statute shall prevail.
10. No proceeding is invalid by reason only of a defect or other irregularity in form.

## **Signing of Documents**

11. A document to be signed on behalf of the Tribunal may be signed by the Chair or his or her designate, a member of the Tribunal, the Tribunal Secretary or by a Case Manager.

## **Documents Provided to the Tribunal**

12. All documents provided to the Tribunal prior to the commencement of a Hearing, except originating documents and correspondence, shall be provided in duplicate.

- 13. All documents provided to the Tribunal during the course of a Hearing shall be provided in sufficient copies such that there is a copy for each Panel member and the record file.
- 14. Each document provided to the Tribunal shall be double sided and have all pages consecutively numbered or sections tabbed with pages within each section numbered consecutively. The Tribunal may also require a document to be filed in electronic form. Visual and graphic documents larger than 8½" x 14" shall be reduced in size to 8½" x 14" or 8½" x 11" for each Panel member and for the record file.

**Computing Time**

- 15. In computing time periods under an Act, a regulation, these Rules, or an order or decision of the Tribunal, “days” shall be calendar days. Where the time for doing anything under an Act, these Rules, or an order of the Tribunal expires on a Holiday, or on a day when the Tribunal is not open during its regular hours of business as set out in the table below, the time is extended to include the next day the Tribunal is open during its regular hours of business. A reference to a number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens. A period of time described as beginning or ending on, at or with a specified day includes that day. A period of time described as beginning before or after a specified day excludes that day.

**Holidays and other days the Tribunal is not open**

Saturday		
Sunday		
New Year’s Day	January 1 <sup>st</sup>	Where New Year’s Day falls on a Saturday or Sunday, the Tribunal is not open on the following Monday
Family Day	The third Monday in February	
Good Friday		
Easter Monday		
Victoria Day	The Monday preceding May 25 <sup>th</sup>	
Canada Day	July 1 <sup>st</sup>	Where Canada Day falls on a Saturday or Sunday, the Tribunal is not open on the following Monday
Civic Holiday	The first Monday in August	
Labour Day	The first Monday in September	
Thanksgiving Day	The second Monday in October	
Remembrance Day	November 11 <sup>th</sup>	Where Remembrance Day falls on a Saturday or Sunday, the Tribunal is not open on the following Monday
Christmas Day	December 25 <sup>th</sup>	Where Christmas Day falls on a Saturday or Sunday, the Tribunal is not open on the following Monday and Tuesday
Boxing Day	December 26 <sup>th</sup>	Where Boxing Day falls on a Saturday, the Tribunal is not open on the following Monday
Any day fixed as a holiday by proclamation of the Governor General or Lieutenant Governor		

## **Non-compliance**

16. If a Party or Participant, its representative or its consultant fails to comply with these Rules, orders, undertakings or written requests from the Tribunal or causes undue delay, the Tribunal may issue procedural orders to ensure compliance. If the non-compliance continues, the Tribunal may, after giving the Party or Participant the opportunity to make submissions:
  - (a) dismiss the proceeding; and/or
  - (b) limit or revoke the participation rights of any Parties or Participants, other than the Appellant, the Proponent, the Director and persons otherwise entitled by law to be Parties to the proceeding;
17. Rule 16 is not applicable to proceedings under the *Oak Ridges Moraine Conservation Act 2001*, *Greenbelt Act, 2005* or Niagara Escarpment Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act* unless the Niagara Escarpment Plan amendment proceeding is brought under the *Consolidated Hearings Act*.

## **Tribunal Counsel**

18. The Tribunal may appoint and direct its own counsel to advise the Tribunal.

## **Language**

19. The Tribunal may conduct proceedings in English or French or partly in English or partly in French. A person who wishes a proceeding to be conducted wholly or partly in French or who wishes to give evidence or make submissions in French must make such a request to the assigned Case Manager as soon as possible and, in any event, no later than fourteen days before the Hearing. Where French language services are being provided by the Tribunal in a proceeding, the Tribunal will provide all of its correspondence, orders and decisions in French, but will not translate documents that are filed by parties or their representatives from French to English, nor from English to French. Where written evidence or a submission is provided in either English or French, the Tribunal may order that the person also provide it in the other language translated by a qualified translator at the person's expense if the Tribunal considers it necessary for the fair determination of the matter. If an interpreter is required in a language other than French or English, the Party, Participant or Presenter requiring an interpreter shall notify the assigned Case Manager in advance of the Hearing and shall provide a qualified interpreter at his or her own expense.

## **Communication with the Tribunal**

20. General written communication to the Tribunal prior to a Case Manager being assigned shall occur only through the Tribunal Secretary and shall be copied to all Parties or their representatives.
21. Written communication to a Panel of the Tribunal shall occur only through the assigned Case Manager and shall be copied to all Parties or their representatives.
22. Oral communication with a Panel of the Tribunal about a current proceeding shall occur only in the presence, or with the consent, of all Parties.

## **Representatives**

23. Where a Party, Participant or Presenter has a representative, all communication to them from either the Tribunal or the other Parties, Participants and Presenters shall be through the representative, unless the Party, Participant or Presenter agrees otherwise.
24. The Tribunal may require that a representative file, in a form satisfactory to the Tribunal, a written acknowledgement of his or her authorization to represent a Party, Participant or Presenter. If a representative ceases to represent a Party, Participant or Presenter, the representative or the Party, Participant or Presenter shall promptly notify the Tribunal and the other Parties, Participants and Presenters in writing.

## **Accommodation**

25. Parties, Participants and Presenters shall notify the assigned Case Manager in advance of the Hearing of any special needs that must be accommodated with respect to the Hearing before the Tribunal.

## **COMMENCEMENT OF APPEALS**

26. A Notice of Appeal filed under the *Clean Water Act, 2006*, *Environmental Protection Act*, the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, or the *Safe Drinking Water Act, 2002*, shall include:
  - (a) the Appellant's name, address, and telephone number, facsimile number and/or e-mail address and the name and contact information of anyone representing the Appellant;
  - (b) a copy of the decision being appealed and, where applicable, a copy of the Provincial Officer's order, report and any attachments;
  - (c) the portions of the decision that the Appellant is appealing;
  - (d) the grounds for appeal;
  - (e) a description of the relief requested; and
  - (f) an indication of whether the Appellant will seek a stay of the decision.

A Notice of Appeal is accepted by the Tribunal when it meets all the statutory requirements for filing an appeal under the *Clean Water Act, 2006*, *Environmental Protection Act*, the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, or the *Safe Drinking Water Act, 2002*.

27. Following receipt of the Notice of Appeal, the Tribunal shall send the Appellant a letter specifying that, within 14 days of the date of the letter, the Appellant shall provide the Tribunal with:
  - (a) a list of names and addresses of all owners of property within 120 metres of the boundary of the property that is the subject of the decision;
  - (b) a list of names and addresses of any other persons who should be notified of the proceeding because they may have an interest in the outcome;
  - (c) an indication that the Appellant requires French language services, if applicable; and
  - (d) an indication that the Appellant has special needs that must be accommodated, if applicable.

28. Upon receiving service of the Notice of Appeal, the information that accompanies the Notice of Appeal, and the information sent as a result of a request by the Tribunal, the Director or the Risk Management Inspector or Official shall, within ten days, file with the Tribunal a list of the names and addresses of any other persons whom the Director or the Risk Management Inspector or Official considers should be notified of the proceeding because they may have an interest in the outcome.
29. A Notice of Appeal filed under the *Niagara Escarpment Planning and Development Act*, shall include:
  - (a) the Appellant's name, address, and telephone number, facsimile number and/or e-mail address and the name and contact information of anyone representing the Appellant;
  - (b) the Niagara Escarpment Commission's file number for the decision being appealed;
  - (c) the grounds for the appeal; and
  - (d) a description of the relief requested.

A Notice of Appeal is accepted by the Tribunal when it meets all the requirements for filing an appeal under the *Niagara Escarpment Planning and Development Act*.

30. Following the receipt of the Notice of Appeal, the Niagara Escarpment Commission shall provide the Tribunal with a copy of the Notice of Decision and a list of names and addresses of all those to whom the Notice of Decision was sent.

## **COMMENCEMENT OF APPLICATIONS**

31. When the Director requires the Tribunal to hold a Hearing under the *Environmental Protection Act* or the *Ontario Water Resources Act* to consider an application for a Certificate of Approval or to determine whether or not a by-law should apply, the Director shall provide to the Tribunal:
  - (a) notice in writing of the Director's requirement that the Tribunal hold a Hearing;
  - (b) a copy of the application for a Certificate of Approval or by-law which is to be the subject of the Hearing; and
  - (c) a list of names and addresses of any other persons who should be notified of the proceeding because they have an interest in the outcome.
32. When the Director requires the Tribunal to hold a Hearing under the *Environmental Protection Act* or the *Ontario Water Resources Act* to consider an application for a Certificate of Approval or to determine whether or not a by-law should apply, the Proponent shall provide the Tribunal with:
  - (a) the Proponent's name, address, and telephone number, facsimile number and/or email address and the contact information of anyone representing the Proponent;
  - (b) a list of the names and addresses of all owners of property within 120 metres of the boundary of the property that is the subject of the application or decision; and
  - (c) a list of the names and addresses of any other persons who should be notified of the proceeding because they may have an interest in the outcome.
33. When the Minister refers all or part of an application for an undertaking to the Tribunal pursuant to the *Environmental Assessment Act*, the Proponent shall provide the Tribunal with:

- (a) the Proponent's name, address, and telephone number, facsimile number and/or email address and the contact information of anyone representing the Proponent;
  - (b) the approved Terms of Reference for the environmental assessment;
  - (c) the environmental assessment;
  - (d) the Ministry review of the environmental assessment;
  - (e) any portion of a mediator's report given to the Minister that has been made public; and
  - (f) any public comments submitted to the Ministry.
34. Where the Niagara Escarpment Commission appoints one or more Hearing Officers pursuant to section 10(3) of the *Niagara Escarpment Planning and Development Act* for the purposes of receiving representations respecting a proposed Niagara Escarpment Plan amendment, the Niagara Escarpment Commission shall provide the Niagara Escarpment Hearing Office with a copy of the proposed amendment and all relevant documents.
35. The Minister of Municipal Affairs and Housing shall provide the Tribunal with all relevant documents and a list of names and addresses of the persons identified in Ontario Regulation 369/06 made under the *Oak Ridges Moraine Conservation Act, 2001* where the Minister:
- (a) proposes to amend the Oak Ridges Moraine Conservation Plan and to appoint a Hearing Officer pursuant to section 12(9)(b) of the *Oak Ridges Moraine Conservation Act, 2001*;
  - (b) appoints a Hearing Officer to conduct a hearing and make recommendations with respect to a municipal official plan amendment and zoning by-law amendment pursuant to section 10(8)(b) of the *Oak Ridges Moraine Conservation Act, 2001*; or
  - (c) stays a matter that has been appealed to the Ontario Municipal Board and appoints a Hearing Officer pursuant to section 18(5) of the *Oak Ridges Moraine Conservation Act, 2001*.
36. The Minister of Municipal Affairs and Housing shall provide the Tribunal with all relevant documents and a list of names and addresses of the persons identified in Ontario Regulation 348/07 made under the *Greenbelt Act, 2005* where the Minister:
- (a) proposes to amend the Greenbelt Plan and to appoint a Hearing Officer pursuant to section 12(1)(b) of the *Greenbelt Act, 2005*; or
  - (b) stays a matter that has been appealed to the Ontario Municipal Board and appoints a Hearing Officer pursuant to section 18(5) of the *Greenbelt Act, 2005*.

**COMMENCEMENT AND PROCESSING OF LEAVE TO APPEAL APPLICATIONS UNDER THE *ENVIRONMENTAL BILL OF RIGHTS, 1993***

37. Despite the provisions of the *Statutory Powers Procedure Act* and in accordance with section 17(1) of Ontario Regulation 73/94 made under the *Environmental Bill of Rights, 1993*, an application for Leave to Appeal under Part II of the *Environmental Bill of Rights, 1993* shall be made and disposed of wholly in writing, except to the extent that the Tribunal directs otherwise.

## **Contents of Application for Leave to Appeal**

38. When filing an application, the Applicant shall include:
- (a) a copy of the instrument issued by the Director that is the subject of the application;
  - (b) a copy of all documents and a statement of all facts and evidence upon which the Applicant relies in support of the application;
  - (c) a statement describing the Applicant's interest in the Director's decision to issue the instrument and any facts that the Applicant wants taken into account in deciding whether he or she has an interest in the decision;
  - (d) the portions of the instrument in respect of which Leave to Appeal is sought;
  - (e) the grounds for granting Leave to Appeal on which the Applicant intends to rely;
  - (f) the reason(s) why it appears that there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
  - (g) the reason(s) why it appears that the decision could result in significant harm to the environment; and
  - (h) the Applicant's name, address, and telephone number, facsimile number and/or email address where he or she can be contacted during business hours.
39. If the Applicant is unable to submit all the information required by Rule 38 within the statutory time frame for filing an application for Leave to Appeal:
- (a) when filing the application, the Applicant shall state this fact, and shall state when the additional information will be filed; and
  - (b) the date for filing all additional information shall be no later than five days after the application is filed, unless the Applicant explains in writing why this is impossible and obtains the Tribunal's consent.

## **Serving and Filing Application for Leave to Appeal**

40. Parties and any Participants shall send correspondence and materials needed to process an application for Leave to Appeal to the Tribunal and to each other by fax or e-mail or, if this is not feasible, by courier, and shall cooperate with each other to allow exchange of documents by fax or e-mail.
41. The Applicant for Leave to Appeal shall serve the Environmental Commissioner, the Director who issued the instrument that is the subject of the leave application, and the Instrument-holder with a copy of the leave application. The Environmental Commissioner shall be served at:
- Environmental Commissioner of Ontario  
1075 Bay Street, Suite 605  
Toronto, Ontario  
M5S 2B1  
Fax: (416) 325-3370
42. Service of a document under Rule 40 shall be made on or before the day on which the application is filed with the Tribunal. An affidavit of service shall be filed at the same time that the application is filed. Service by e-mail shall be in accordance with Rules 78, 79, 81 and Rule 82.

## **Evidence on Applications for Leave to Appeal**

43. Unless the Tribunal otherwise orders, written evidence upon which any of the Parties or Participants in an application for Leave to Appeal intend to rely need not be given under oath, affirmation or declaration, or provided in the form of an affidavit.
44. Where the written evidence reveals factual disputes or raises questions about the credibility of a witness, the Tribunal may direct that the witness be cross-examined on his or her evidence under oath, affirmation or declaration before the member conducting the Hearing.

## **Response by Director and Instrument-holder**

45. The Director or Instrument-holder may serve and file a response within 15 days after the Leave to Appeal application is filed. If an Applicant receives an extension for filing additional material beyond the five days referred to in Rule 38, the Director and Instrument-holder shall be given an extension equal to the time granted to the Applicant. The Director or Instrument-holder may also file a written request to file late and state the reason for the request. If the Director or Instrument-holder files after 15 days due to a decision of the Tribunal under Rule 39, or if the Tribunal grants a request to file late under this Rule, the late filing will be deemed to make it impossible for the Tribunal to make its decision within 30 days after the application was filed.
46. The Director shall include in his or her response a copy of any government policy developed to guide decisions regarding the type of instrument that is the subject of the application.

## **Reply by Applicant**

47. An Applicant may file a reply to the response of the Director or Instrument-holder no later than three days from the date the response is filed.

## **Deadline for Tribunal's Decision**

48. The Tribunal shall make its decision 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.
49. If the Tribunal determines that a longer period is needed than the 30 days referred to in Rule 48, it shall give notice of that determination to the Applicant, the Director, the Instrument-holder, the Environmental Commissioner and any other person whom the Tribunal considers should receive the notice.
50. Notice pursuant to Rule 49 shall state when the Tribunal expects that it will make a decision on the application.

## **Where Tribunal Grants Leave**

51. The Tribunal may grant Leave to Appeal the decision regarding an instrument in whole or part.
52. If the Applicant wishes to file a Notice of Appeal, the Notice of Appeal shall be filed no later than 15 days from the date the Applicant receives the decision granting Leave to Appeal.

## **PARTIES, PARTICIPANTS AND PRESENTERS**

### **Naming of a Party**

53. The following persons are Parties for the purpose of the Rules:
- (a) persons specified as Parties by or under the statute under which the proceeding arises;
  - (b) persons otherwise entitled by law to be Parties to the proceeding; and
  - (c) persons who request Party status and are so specified by the Tribunal as Parties for all or part of the proceeding, and on such conditions as the Tribunal considers appropriate.
54. In deciding whether to name a person as a Party to the proceeding, the Tribunal may consider relevant matters including whether:
- (a) a person's interests may be directly and substantially affected by the Hearing or its result;
  - (b) a person has a genuine interest, whether public or private, in the subject matter of the proceeding; and
  - (c) a person is likely to make a relevant contribution to the Tribunal's understanding of the issues in the proceeding.

### **Role of a Party**

55. A Party to the proceeding before the Tribunal may:
- (a) bring motions;
  - (b) be a witness at the Hearing;
  - (c) be questioned by the Tribunal and the Parties;
  - (d) call witnesses at the Hearing;
  - (e) cross-examine witnesses;
  - (f) make submissions to the Tribunal, including final argument;
  - (g) receive copies of all documents exchanged or filed by the Parties;
  - (h) attend site visits; and
  - (i) claim costs or be liable to pay costs where permitted by law.

### **Co-operation of Parties**

56. Parties shall co-operate with each other in matters such as scheduling, disclosure, procedure and agreements on uncontested facts to the fullest extent that is compatible with their interests.

### **Naming of a Participant**

57. The Tribunal may name persons to be Participants in all or part of a proceeding on such conditions as the Tribunal considers appropriate. A Participant to a proceeding is not a Party to the proceeding and may not raise grounds not already raised by a Party. In deciding whether to name a person as a 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 would be. A person who may otherwise qualify as a Party may request Participant status.

## **Role of a Participant**

58. A Participant in a Hearing may:
- (a) be a witness at the Hearing;
  - (b) be questioned by the Tribunal and the Parties;
  - (c) make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;
  - (d) upon request, receive a copy of documents exchanged by the Parties that are relevant to the Participant's interests; and
  - (e) attend site visits.
59. A Participant in a Hearing may not:
- (a) call witnesses;
  - (b) cross-examine witnesses;
  - (c) bring motions; and
  - (d) claim costs or be liable for costs.

## **Naming of a Presenter**

60. The Tribunal may name persons to be Presenters in all or part of a proceeding on such conditions as the Tribunal considers appropriate. A Presenter to a proceeding is not a Party to the proceeding and may not raise grounds not already raised by a Party. In deciding whether to name a person as a Presenter, 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.

## **Role of a Presenter**

61. A Presenter in a Hearing may:
- (a) be a witness and present his or her relevant evidence at a pre-arranged time, either during a Hearing's regular day-time session or at a special evening session;
  - (b) be questioned by the Tribunal and the Parties;
  - (c) provide the Tribunal with a written statement as a supplement to oral testimony; and
  - (d) upon request, receive a copy of documents exchanged by the Parties that are relevant to the Presenter's interests.
62. A Presenter in a Hearing may not:
- (a) call witnesses;
  - (b) cross-examine witnesses;
  - (c) bring motions;
  - (d) make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;
  - (e) claim costs or be liable for costs; and
  - (f) attend site visits unless a request to attend is made to the Tribunal and the Tribunal grants the request.

## **Similar Interests**

63. The Tribunal may direct persons who have similar interests to designate one person to act as their representative or to co-ordinate their participation in the proceeding.

## **CONSTITUTIONAL QUESTIONS**

64. A Party, Participant or Presenter who intends to request a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Ontario or the Government of Canada or raise a question as to the constitutional validity or constitutional applicability of an Act applied by the Tribunal or a regulation or by-law made under the Act shall serve a Notice of a Constitutional Question on the Attorney-General of Canada and the Attorney-General of Ontario.
65. A Notice of a Constitutional Question to the Attorneys-General shall be given in accordance with Form 1 found in Appendix A.
66. The Form shall include the names and addresses of all Parties, Participants and Presenters.
67. The Notice shall be served on the Attorneys-General and provided to the other Parties, Participants and Presenters and the Tribunal as soon as the circumstances requiring the Notice of a Constitutional Question become known and, in any event, no later than 15 days prior to the commencement of the Hearing, unless otherwise ordered by the Tribunal.
68. Proof that the Notice was served on the Attorneys-General must be filed with the Tribunal when the Tribunal is provided with the Notice of a Constitutional Question.
69. When a copy of any response is received from the Attorneys-General it shall be immediately provided to the Tribunal by the person who received the response.
70. The Attorneys-General are entitled to file material, adduce evidence and make submissions at the Hearing in respect of the constitutional question and are deemed to be Parties for the purpose of any appeal in respect of the constitutional question.
71. The Tribunal will not consider granting the remedy requested unless the Notice has been given.
72. The Tribunal may choose to hear the arguments as preliminary matters before beginning to hear evidence, particularly if the constitutional question deals with the Tribunal's jurisdiction.
73. If the Tribunal determines that making a decision on the constitutional question will require it to have an extensive factual basis that will be provided by the evidence at the Hearing, the Tribunal may direct that the arguments regarding the constitutional question be heard later in the Hearing and that the Tribunal will make a decision later in the Hearing or at the end of the Hearing.
74. After hearing arguments at the beginning of the Hearing, the Tribunal may choose to reserve its decision until later in the Hearing or at the end of the Hearing if it appears to the Tribunal that this delay is advisable.

## **ALLEGATIONS AGAINST PERSONS WHO ARE NOT PARTIES**

75. A Party who requests that the Tribunal vary, revoke or provide other relief from the decision under appeal because of the alleged acts or omissions of a person who is not a Party to the appeal shall, if the acts or omissions of that person are known to the Party at the commencement of the proceeding, prepare a notice of allegation including the facts that the Party relies on in support of the allegation, the relief requested, and the address and telephone and fax numbers of the person against whom the allegation is made. The notice of allegation shall be served on that person and the Parties and shall be filed with the Tribunal together with proof of service with the first document the Party files with the Tribunal.
76. A Party who, during the course of a proceeding, requests that the Tribunal vary, revoke or provide other relief from the decision under appeal because of the alleged acts or omissions of a person who is not a Party to the appeal shall, within 5 days of learning of the person's acts or omissions, serve that person and the Parties with a notice of allegation and file the notice with the Tribunal together with proof of service. The notice of allegation shall include the facts that the Party relies on in support of the allegation, the relief requested, and the address and telephone and fax numbers of the person against whom the allegation is made.

## **SERVICE AND FILING OF DOCUMENTS**

### **Methods of Service and Filing**

77. A document may be served or filed in one of the following ways:
- (a) by personal delivery;
  - (b) by regular, certified or registered mail;
  - (c) by courier service;
  - (d) by fax, but only if the document, including any cover sheet, does not exceed 25 pages, or where longer, if the receiving Party gives prior consent;
  - (e) by e-mail; or
  - (f) by any other method that the Tribunal may direct.
78. The e-mail message to which a document is attached shall include:
- (a) the sender's name, address, telephone number, fax number and e-mail address;
  - (b) the date and time of the transmission; and
  - (c) the name and phone number of a person to contact in the event of transmission problems.
79. All documents served or filed by e-mail shall be in Portable Document Format (PDF).
80. A document sent by fax shall include a cover page or a notation on the first page indicating:
- (a) the sender's name, address and, fax number;
  - (b) the name and fax number of the person to whom the notice is given;
  - (c) the date and time the document is transmitted;
  - (d) the total number of pages transmitted including the cover page, if any; and
  - (e) the name and telephone number of a person to contact in the event a problem arises with the transmission.

## **When Service and Filing of Document is Effective**

81. Service by e-mail is effective only if the person served by e-mail provides to the serving Party and the Tribunal by e-mail an acceptance of service. If the serving Party does not receive an acceptance, service must be made by a method other than e-mail.
82. Proof of service shall be demonstrated by filing an affidavit of service or a Statement of Service in Form 2 found in Appendix B. For service by e-mail, service is proven by the acceptance described in Rule 81.
83. Service or filing of a document, other than an originating document, shall be considered to be effective when delivered:
  - (a) by personal delivery before 4:00 p.m., on the day of delivery, and if delivered between 4:00 p.m. and midnight, on the next day;
  - (b) by registered, certified or regular mail, on receipt or on the fifth day after the day of mailing, whichever is sooner;
  - (c) by courier, including Priority Post, on receipt, or on the second day after the document is given to the courier by the Party giving notice, whichever is sooner;
  - (d) by fax, if received before 4.00 p.m., on the same day as the transmission, and if received between 4:00 p.m. and midnight, on the next day;
  - (e) by e-mail, if acceptance is received before 4:00 p.m., on the same day as transmission, and if acceptance is received between 4:00 p.m. and midnight, on the next day; or
  - (f) if by any other means directed by the Tribunal, notice is effective as specified by the Tribunal.

An originating document received before midnight shall be deemed to be filed on that calendar day.

84. Where permitted by law, the Tribunal may extend the date for the serving or filing of a document.

## **MOTIONS**

### **Notice of Motion**

85. A motion shall be made by a written Notice of Motion, unless the Tribunal in its discretion otherwise permits.
86. Every Notice of Motion shall:
  - (a) state the precise relief sought;
  - (b) state the grounds to be argued, including a reference to any statutory provision or Rule to be relied on; and
  - (c) list the documentary evidence to be relied upon.

### **Hearing Date for Motions**

87. If a motion is made before the Hearing commences, and the motion will be heard by way of an oral Hearing, a Hearing date shall be obtained from the assigned Case Manager or, if there is no assigned Case Manager, from the Tribunal Secretary, before the Notice of Motion is served.

88. The Tribunal may hear a motion made at the Hearing in accordance with any procedural orders of the Tribunal.

### **Service and Filing of Notice of Motion**

89. Unless the Tribunal in its discretion otherwise permits, a Party making a motion shall:
- (a) if the motion will be heard by way of an oral Hearing, serve upon all other Parties and file with the Tribunal the Notice of Motion and supporting materials at least five days before the motion is to be heard;
  - (b) if the motion will be heard by way of a written Hearing, serve upon all other Parties and file with the Tribunal the Notice of Motion and supporting materials by the date permitted by the Tribunal; and
  - (c) file with the Tribunal proof of service within one day from the service of the Notice of Motion.

### **Response to Notice of Motion**

90. If the motion will be heard by way of an oral Hearing, unless the Tribunal otherwise orders, any Party responding to the motion shall serve upon all other Parties and file with the Tribunal any materials intended to be relied upon at least two days before the motion is to be heard.
91. If the motion will be heard by way of a written Hearing, any Party responding to the motion shall serve upon all other Parties and file with the Tribunal any materials intended to be relied upon by the date permitted by the Tribunal.

### **Reply**

92. If the motion will be heard by way of a written Hearing, the Party making the motion may reply to the response to the Notice of Motion by the date permitted by the Tribunal.
93. If the motion will be heard by way of an oral Hearing, the Tribunal may permit a reply to the response to the Notice of Motion, on request of the Party making the motion or on its own initiative.

### **Evidence for Use on Motions**

94. Unless the Tribunal permits oral evidence, the evidence in motion Hearings shall be in the form of affidavits and transcripts of cross-examination of witnesses on their affidavits.

### **Motions for Adjournment**

95. A Party seeking an adjournment shall provide evidence and submissions in support of the motion respecting:
- (a) whether the other Parties consent to the request and the date suggested for the commencement or continuation of the Hearing;
  - (b) detailed reasons for the request, including, if appropriate, affidavit evidence;
  - (c) evidence that the Party made all reasonable efforts to avoid the need for the adjournment request;
  - (d) any urgency for the request because of the public interest;
  - (e) any inconvenience to Participants and Presenters due to the adjournment; and
  - (f) any other factors relating to the considerations listed in Rule 96.

96. In deciding whether or not to grant a request for an adjournment, the Tribunal may consider:
- (a) the interests of the Parties in a full and fair Hearing;
  - (b) the interests of others potentially affected by the matters before the Tribunal who, after notification of the Hearing, may have arranged their affairs in the expectation of observing or participating in the Hearing;
  - (c) the integrity of the Tribunal's process;
  - (d) the circumstances giving rise to the need for an adjournment;
  - (e) the timeliness of the request for the adjournment;
  - (f) the position of the other Parties on the adjournment request;
  - (g) whether an adjournment will cause or contribute to any existing or potential risk of environmental harm;
  - (h) the consequences of an adjournment, including expenses to other Parties;
  - (i) the effect of an adjournment on Participants and Presenters; and
  - (j) the public interest in the delivery of the Tribunal's services in a just, timely and cost effective manner.
97. If the request for an adjournment is based upon the need for environmental testing or other similar events, the adjournment order, if it is granted, shall be to a set date and may include a requirement for periodic progress reports to the Tribunal.
98. In granting an adjournment, the Tribunal may impose such conditions as it considers appropriate.

### **Motion Seeking an Interim Stay/Stay or a Removal of a Stay of a Director's Decision**

99. A Party seeking a stay or a removal of a stay until a specified date or until the disposition of the proceeding shall arrange through the assigned Case Manager a teleconference call with the Chair or his or her designate and all Parties to seek directions as to:
- (a) the form and content of the motion;
  - (b) the necessary supporting materials, including affidavit materials;
  - (c) the scheduling of dates for cross-examination of witnesses, if required; and
  - (d) the scheduling of the Hearing of the motion.
100. A Party seeking an interim stay or an interim removal of a stay pending the disposition of a motion seeking a stay or a removal of an interim stay shall arrange through the assigned Case Manager a teleconference call with the Chair or his or her designate and all Parties to seek directions as to:
- (a) the form and content of the motion;
  - (b) any necessary supporting materials, including affidavit materials; and
  - (c) the scheduling of the Hearing of the motion.
101. The Party shall provide evidence and submissions in support of its motion respecting:
- (a) how the relevant statutory tests that are applicable to the granting or removal of a stay are met;
  - (b) whether there is a serious issue to be decided by the Tribunal;
  - (c) whether irreparable harm will ensue if the relief is not granted; and

- (d) whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

### **Motions for Dismissal**

102. A Party bringing a motion to dismiss a proceeding shall specify the basis for the motion, which may include that:
- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
  - (b) the proceeding relates to matters that are outside the jurisdiction of the Tribunal;
  - (c) some aspect of the statutory requirements for bringing the proceeding has not been met; or
  - (d) another Party has caused undue delay or has not complied with orders, undertakings, written requests from the Tribunal or these Rules.
103. Rule 102 is not applicable to appeals of development permits under the *Niagara Escarpment Planning and Development Act*, proceedings under the *Oak Ridges Moraine Conservation Act, 2001* or the *Greenbelt Act, 2005*, or Niagara Escarpment Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act* unless the Niagara Escarpment Plan amendment proceeding is brought under the *Consolidated Hearings Act*.

### **Motions for Dismissal of Appeals of Development Permits under the *Niagara Escarpment Planning and Development Act***

104. A Party bringing a motion to dismiss an appeal of a development permit shall specify the basis for the motion, which may include that:
- (a) the appeal does not disclose a planning justification for the appeal, is not in the public interest, is without merit, is frivolous or vexatious or is made only for the purpose of delay;
  - (b) the notice of appeal did not specify the reasons for the appeal;
  - (c) the person who appealed the decision has not responded to a request by the Tribunal for further information within the time specified by the Tribunal; or
  - (d) the proceeding relates to matters that are outside the jurisdiction of the Tribunal.

### **DECISION NOT TO PROCESS COMMENCEMENT OF PROCEEDING**

105. Unless an extension of time is granted in accordance with the relevant statute, the Tribunal cannot process the documents relating to the commencement of a proceeding if the documents are received after the statutory time period for commencing the proceeding has elapsed.
106. Upon receiving documents relating to the commencement of a proceeding, the Tribunal may decide not to process the documents relating to the commencement of the proceeding if:
- (a) the documents are incomplete; or
  - (b) there is some other technical defect in the commencement of the proceeding.
107. The Tribunal or Case Manager shall give a person who seeks to commence a proceeding, within five days of the Tribunal's decision under Rule 106, notice of the decision not to

process the documents relating to the commencement of the proceeding and shall set out in the notice the reasons for the decision and the requirements for resuming the processing of the documents.

108. The process for commencing a proceeding shall only be resumed by:
- (a) completing the documents; or
  - (b) correcting any technical defect in the commencement of the proceeding.
109. Rules 105 to 108 are not applicable to proceedings under the *Oak Ridges Moraine Conservation Act, 2001*, the *Greenbelt Act, 2005* or Niagara Escarpment Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act*.

## **DISMISSAL OF PROCEEDING WITHOUT A HEARING**

110. The Tribunal may, on its own initiative, dismiss a proceeding without a Hearing if:
- (a) the proceeding relates to matters outside the jurisdiction of the Tribunal; or
  - (b) some aspect of the statutory requirements for bringing the proceeding has not been met.
111. Before dismissing a proceeding on its own initiative, the Tribunal shall give notice of its intention to dismiss the proceeding to:
- (a) all Parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (a) of Rule 110; or
  - (b) the Party who commences the proceeding if the proceeding is being dismissed for any other reason.
112. The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the Parties of their right to make written submissions to the Tribunal with respect to the dismissal. A Party may make submissions within ten days from the date of the notice of intention to dismiss a proceeding.
113. The Tribunal shall not dismiss a proceeding under this section until it has given notice under Rule 111 and considered any submissions made under Rule 112.
114. Notwithstanding these Rules, the Tribunal may dismiss a proceeding in accordance with the provisions of any relevant legislation.
115. A Niagara Escarpment Plan amendment proceeding under the *Niagara Escarpment Planning and Development Act* can only be dismissed by the Tribunal if the proceeding is under the *Consolidated Hearings Act*.
116. Rules 110 to 115 are not applicable to proceedings under the *Oak Ridges Moraine Conservation Act, 2001* or the *Greenbelt Act, 2005*.

## **NOTICE OF HEARING AND PRELIMINARY HEARING**

117. The following persons shall receive a Notice of Hearing or a Notice of Preliminary Hearing:
- (a) those persons identified as Parties in the relevant statute;
  - (b) the persons identified in the lists provided to the Tribunal by the Appellant pursuant to Rule 27 (a) and (b), where applicable;

- (c) the persons identified in the list provided to the Tribunal by the Director or the Risk Management Inspector or Official pursuant to Rule 31(c) or Rule 28, where applicable;
- (d) the persons identified in the lists provided to the Tribunal by the Proponent pursuant to Rule 32 (b) and (c), where applicable;
- (e) clerks of the upper and lower tier municipalities or single tier municipality in which the property is situated; and
- (f) such other persons as determined by the Tribunal.

## **Form and Content of Notice**

118. A Notice of Hearing and a Notice of a Preliminary Hearing shall include the following information:

- (a) identification of the person initiating the proceeding;
- (b) the address, telephone number, fax number and e-mail address of the Tribunal;
- (c) the file number assigned to the proceeding by the Tribunal;
- (d) a reference to the statutory provision under which the proceeding is being held;
- (e) a statement of the purpose of the proceeding;
- (f) for oral proceedings,
  - (i) a statement of the time and place of the proceeding; and
  - (ii) a statement that if the person notified does not attend and identify herself or himself to the Tribunal, the Tribunal may proceed in that person's absence and the person is not entitled to any further notice of the Hearing;
- (g) for Preliminary Hearings,
  - (i) a statement that a person who is not a Party to the proceeding and who wishes to participate should notify the Tribunal no later than seven days prior to the Preliminary Hearing and that a request to participate may also be made at the Hearing provided that the proceeding has not been terminated in the interim;
  - (ii) a statement that if a person other than a Party does not attend the Preliminary Hearing and identify himself or herself to the Tribunal or file written notice of his or her interest in the proceeding, the Tribunal may proceed in the person's absence and the person will not be entitled to any further notice in the proceeding, including Notice of the Hearing; and
  - (iii) a statement that the Tribunal conducting the Preliminary Hearing may make orders with respect to the conduct of the proceeding which will be binding on all present and future Parties; and
- (h) a statement that a person requiring French language services at the Hearing or Preliminary Hearing should make the request to the Case Manager as soon as possible and no later than fourteen days before the Hearing or Preliminary Hearing.

119. In addition to notice to Parties or other persons to whom notice must be given under these Rules, if the Tribunal considers it appropriate that the public be informed of the proceeding, the Tribunal may require that notice be given to the public:

- (a) by publication on at least one occasion in a newspaper having general circulation in the locality of the property or facility that is the subject-matter of the Hearing; or
- (b) in any other manner the Tribunal considers appropriate in the circumstances.

120. The public notice referred to in Rule 119 shall be published both in English and French in the areas of the province designated as bilingual in the *French Language Services Act*.

### **Giving Notice**

121. Unless otherwise directed by the Tribunal:

- (a) a Notice of Hearing shall be given at least 60 days before the main Hearing is to commence; and
- (b) a Notice of Preliminary Hearing shall be given at least 30 days before the Preliminary Hearing is to commence.

122. The Tribunal may require an appropriate Party to give notice at its own or another Party's expense, and may:

- (a) provide directions for giving notice;
- (b) approve the form and content of the notice; or
- (c) prepare the notice itself.

### **CONDUCT OF PRELIMINARY HEARINGS**

123. A Preliminary Hearing may be held to deal with issues such as the following:

- (a) identifying Parties, Participants and Presenters, and the scope of their participation in the Hearing;
- (b) determining the length, schedule and location of the Hearing;
- (c) determining whether the Hearing will be conducted orally, electronically or in writing;
- (d) hearing preliminary motions, including motions to dismiss for non-compliance;
- (e) identifying, defining, scoping and simplifying issues;
- (f) establishing dates for the exchange among Parties and with the Tribunal of all documents relevant to the proceeding, witness lists, witness statements and resumes of any expert witnesses;
- (g) where applicable, establishing dates for the exchange among all Parties and with the Tribunal of a common document book and a list of all documents in the possession, power and control of the Parties;
- (h) establishing facts or evidence that may be agreed on;
- (i) the settlement or withdrawal of any or all of the issues; and
- (j) any other matters that may assist in the just and expeditious disposition of the proceeding.

124. Any representative attending a Preliminary Hearing must have the authority to make agreements and give undertakings respecting the issues to be addressed.

125. The Chair may designate a member or members of the Tribunal to preside at the Preliminary Hearing.

126. A member who presides at a Preliminary Hearing may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding.

127. A member who presides at a Preliminary Hearing may preside at the main Hearing unless he or she considers it inappropriate to do so. A member who presides at a Preliminary

Hearing at which the Parties attempt to settle issues shall not preside at the main Hearing unless the Parties consent.

128. Rules 117 to 127 are not applicable to proceedings under the *Niagara Escarpment Planning and Development Act*, the *Oak Ridges Moraine Conservation Act, 2001* or the *Greenbelt Act, 2005*.

**NOTICE OF HEARING AND PRE-HEARING CONFERENCE REGARDING DEVELOPMENT PERMIT HEARINGS UNDER SECTION 25(8) OF THE NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT**

129. The following persons shall receive a Notice of Hearing and Pre-Hearing Conference:
- (a) the Applicant, the Appellant if different than the Applicant, and the Niagara Escarpment Commission;
  - (b) the persons identified in the list provided to the Tribunal by the Niagara Escarpment Commission pursuant to Rule 30; and
  - (c) such other persons as determined by the Tribunal.

**Form and Content of Notice**

130. A Notice of Hearing and Pre-Hearing Conference shall include the following information:
- (a) identification of the Applicant, the Appellant if different than the Applicant, and the Niagara Escarpment Commission representative;
  - (b) the address, telephone number, fax number and e-mail address of the Tribunal;
  - (c) the file number assigned to the proceeding by the Tribunal;
  - (d) a reference to the statutory provision under which the proceeding is being held;
  - (e) a statement of the purpose of the proceeding;
  - (f) a statement of the time and place of the proceeding;
  - (g) a statement that a person who is not a Party to the proceeding and who wishes to participate should notify the Tribunal no later than seven days prior to the Pre-Hearing Conference and that a request to participate may also be made at the Hearing provided that the proceeding has not been terminated in the interim;
  - (h) a statement that if the person notified does not attend and identify herself or himself to the Tribunal, the Tribunal may proceed in that person's absence;
  - (i) a statement that a person requiring French language services at the Pre-Hearing Conference or Hearing should make the request to the Case Manager as soon as possible and no later than fourteen days before the Pre-Hearing Conference or Hearing.

**Giving Notice**

131. Unless otherwise directed by the Tribunal, a Notice of Hearing and Pre-Hearing Conference shall be given at least 30 days before the Pre-Hearing Conference is to commence and 60 days before the main Hearing is to commence.

**CONDUCT OF PRE-HEARING CONFERENCES REGARDING DEVELOPMENT PERMIT HEARINGS UNDER SECTION 25(8) OF THE *NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT***

132. A Pre-Hearing Conference may be held to deal with issues such as the following:
- (a) identifying Parties, Participants and Presenters, and the scope of their participation in the Hearing;
  - (b) hearing preliminary motions, including motions to dismiss for non-compliance;
  - (c) identifying, defining, scoping and simplifying issues;
  - (d) establishing dates for the exchange among Parties and with the Tribunal of all documents relevant to the proceeding, witness lists, witness statements and resumes of any expert witnesses;
  - (e) establishing facts or evidence that may be agreed on;
  - (f) the estimated duration of the Hearing;
  - (g) the settlement or withdrawal of any or all of the issues; and
  - (h) any other matter that may assist in the just and expeditious disposition of the proceeding.
133. The Chair may designate a member of the Tribunal to preside at the Pre-Hearing Conference.
134. A member who presides at a Pre-Hearing Conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding.
135. A member who presides at a Pre-Hearing Conference may preside at the main Hearing unless he or she considers it inappropriate to do so. A member who presides at a Pre-Hearing Conference at which the Parties attempt to settle issues shall not preside at the main Hearing unless the Parties consent.
136. If a settlement of all issues occurs at a Pre-Hearing Conference and the Parties agree to all the terms and conditions that should be included in a revised development permit, the Tribunal may confirm the decision of the Niagara Escarpment Commission pursuant to section 25(12.1) of the *Niagara Escarpment Planning and Development Act* and shall include the terms and conditions in its report.

**NOTICE OF NIAGARA ESCARPMENT PLAN AMENDMENT PROCEEDINGS UNDER SECTION 10(3) OF THE *NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT***

137. Where the Tribunal conducts a Hearing in regard to a Niagara Escarpment Plan amendment, it shall publish notice in those newspapers having general circulation in the Niagara Escarpment Planning Area as it considers appropriate.
138. The Tribunal may direct how a Notice of Hearing is to be provided and may direct:
- (a) the mailing of the Notice of Hearing and a location map or plan of the subject lands; and
  - (b) the publishing of the Notice of Hearing in a particular form with a location map or plan of the subject lands.

## **NOTICE OF HEARING AND PRE-HEARING CONFERENCE UNDER THE *OAK RIDGES MORAINÉ CONSERVATION ACT, 2001***

139. The persons identified in the list provided under Rule 35 shall receive a Notice of Hearing and Pre-Hearing Conference.

### **Form and Content of Notice**

140. A Notice of Hearing and Pre-Hearing Conference shall include the following information:

- (a) the address, telephone number, fax number and e-mail address of the Tribunal;
- (b) the file number assigned to the proceeding by the Tribunal;
- (c) a reference to the statutory provision under which the proceeding is being held;
- (d) a statement of the purpose of the proceeding;
- (e) a statement of the time and place of the proceeding;
- (f) a statement that a person who is not a Party to the proceeding and who wishes to participate should notify the Tribunal no later than seven days prior to the Pre-Hearing Conference and that a request to participate may also be made at the Hearing provided that the proceeding has not been terminated in the interim;
- (g) a statement that if the person notified does not attend and identify herself or himself to the Tribunal, the Tribunal may proceed in that person's absence;
- (h) a statement that a person requiring French language services at the Pre-Hearing Conference or Hearing should make the request to the Case Manager as soon as possible and no later than fourteen days before the Pre-Hearing Conference or Hearing.

### **Giving Notice**

141. In accordance with Ontario Regulation 369/06 made under the *Oak Ridges Moraine Conservation Act, 2001*, a Notice of Hearing and Pre-Hearing Conference must be given by personal service, ordinary mail or fax, and may also be given by publication in a newspaper that, in the opinion of the Hearing Officer, is of sufficiently general circulation in the affected area that it would give the public reasonable notice of the Hearing and Pre-Hearing Conference.

## **CONDUCT OF PRE-HEARING CONFERENCES UNDER THE *OAK RIDGES MORAINÉ CONSERVATION ACT, 2001***

142. A Pre-Hearing Conference may be held to deal with issues such as the following:

- (a) identifying Parties, Participants and Presenters, and the scope of their participation in the Hearing;
- (b) hearing preliminary motions;
- (c) identifying, defining, scoping and simplifying issues;
- (d) establishing dates for the exchange among Parties and with the Tribunal of all documents relevant to the proceeding, witness lists, witness statements and resumes of any expert witnesses;
- (e) establishing facts or evidence that may be agreed on;
- (f) the estimated duration of the Hearing; and

- (g) any other matter that may assist in the just and expeditious disposition of the proceeding.
- 143. The Chair may designate a member of the Tribunal to preside at the Pre-Hearing Conference.
- 144. A member who presides at a Pre-Hearing Conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding.
- 145. A member who presides at a Pre-Hearing Conference may preside at the main Hearing unless he or she considers it inappropriate to do so.

## **NOTICE OF HEARING AND PRE-HEARING CONFERENCE UNDER THE *GREENBELT ACT, 2005***

- 146. The persons identified in the list provided under Rule 36 shall receive a Notice of Hearing and Pre-Hearing Conference.

### **Form and Content of Notice**

- 147. A Notice of Hearing and Pre-Hearing Conference shall include the following information:
  - (a) the address, telephone number, fax number and e-mail address of the Tribunal;
  - (b) the file number assigned to the proceeding by the Tribunal;
  - (c) a reference to the statutory provision under which the proceeding is being held;
  - (d) a statement of the purpose of the proceeding;
  - (e) a statement of the time and place of the proceeding;
  - (f) a statement that a person who is not a Party to the proceeding and who wishes to participate should notify the Tribunal no later than seven days prior to the Pre-Hearing Conference and that a request to participate may also be made at the Hearing provided that the proceeding has not been terminated in the interim;
  - (g) a statement that if the person notified does not attend and identify herself or himself to the Tribunal, the Tribunal may proceed in that person's absence;
  - (i) a statement that a person requiring French language services at the Pre-Hearing Conference or Hearing should make the request to the Case Manager as soon as possible and no later than fourteen days before the Pre-Hearing Conference or Hearing.

### **Giving Notice**

- 148. In accordance with Ontario Regulation 348/07 made under the *Greenbelt Act, 2005*, a Notice of Hearing and Pre-Hearing Conference must be given by personal service, ordinary mail or fax, and may also be given by publication in a newspaper that, in the opinion of the Hearing Officer, is of sufficiently general circulation in the affected area that it would give the public reasonable notice of the Hearing and Pre-Hearing Conference.

## **CONDUCT OF PRE-HEARING CONFERENCES UNDER THE *GREENBELT ACT, 2005***

- 149. A Pre-Hearing Conference may be held to deal with issues such as the following:
  - (b) identifying Parties, Participants and Presenters, and the scope of their participation in the Hearing;

- (b) hearing preliminary motions;
  - (c) identifying, defining, scoping and simplifying issues;
  - (d) establishing dates for the exchange among Parties and with the Tribunal of all documents relevant to the proceeding, witness lists, witness statements and resumes of any expert witnesses;
  - (e) establishing facts or evidence that may be agreed on;
  - (f) the estimated duration of the Hearing; and
  - (g) any other matter that may assist in the just and expeditious disposition of the proceeding.
150. The Chair may designate a member of the Tribunal to preside at the Pre-Hearing Conference.
151. A member who presides at a Pre-Hearing Conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding.
152. A member who presides at a Pre-Hearing Conference may preside at the main Hearing unless he or she considers it inappropriate to do so.

## **CONSEQUENCES OF NON-ATTENDANCE**

153. Where Notice of a Pre-Hearing Conference, a Preliminary Hearing or a Hearing has been served and a person served with notice does not attend, the Tribunal may proceed in that person's absence.

## **MEDIATION**

### **General**

154. Mediation, as further detailed in the Tribunal's Practice Direction for Tribunal Appointed Mediators, may be held for the purpose of attempting to reach a settlement or simplification of the issues. The Tribunal will offer to provide mediation services after the Preliminary Hearing. A member of the Tribunal who conducts the mediation shall not preside at the Hearing unless all Parties consent.

### **Confidentiality**

155. The mediator may exclude everyone but the Parties from the mediation, and
- (a) all documents submitted and all statements made at the mediation are confidential and without prejudice; and
  - (b) any confidential documents shall not be accessible to the public, shall be returned to the Party who filed the documents or be destroyed after the mediation, shall not be considered to be filed in the proceeding, and are not part of the record.

### **Mediator's Report**

156. If the Parties do not settle the matter in its entirety, the mediator shall prepare a Mediator's Report listing the issues that remain outstanding and setting out any agreed upon dates or steps to set dates for the resumption of the Hearing and shall send a copy to the Parties and to the Tribunal.

## **Settlement at Mediation**

157. If the Parties do not settle a matter in its entirety, the Hearing will take place without reference to the information disclosed during mediation, except with the prior consent of all Parties.
158. Where a proposed settlement, withdrawal or revocation results from a mediation, Rules 190 to 194 apply with all references to “the Tribunal” being read as “the Tribunal member who has conducted the mediation”.

## **Non-application of Mediation Rules**

159. Rules 154 to 158 are not applicable to proceedings under the *Niagara Escarpment Planning and Development Act*, *Oak Ridges Moraine Conservation Act, 2001* or the *Greenbelt Act, 2005*.

## **HEARING PROCEDURE**

### **Location of the Hearing**

160. The Tribunal will schedule the Hearing as close as possible to the site that is the subject of the proceeding. The Parties may agree that the Hearing be scheduled at the Tribunal Hearing Room in Toronto or at another location.

### **Disclosure Ordered by Tribunal**

161. The Tribunal may, at any stage of the proceeding, make orders for:
  - (a) the exchange of documents;
  - (b) the oral and written examination of a Party;
  - (c) the exchange of witness statements and reports of expert witnesses;
  - (d) the provision of particulars;
  - (e) the provision of a common document book; and
  - (f) any other form of disclosure.
162. The Tribunal’s power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding.
163. Rule 161 does not authorize the making of an order requiring disclosure of privileged information.

### **Disclosure of Documents**

164. All Parties shall provide without charge to all other Parties within the time directed by the Tribunal, which is usually no later than 15 days before the commencement of the main Hearing, a copy of every relevant document in the possession, control or power of a Party, except for those documents that are privileged. Documents may be exchanged electronically in Portable Document Format (PDF) if all Parties agree.
165. A Party shall provide all the documents that the Party intends to rely on at the main Hearing to the Tribunal and to all other Parties within the time ordered by the Tribunal.
166. A document produced for the first time during the course of the main Hearing shall be provided to the Tribunal in accordance with Rule 13.

167. All Parties shall provide without charge to all other Parties a copy of every relevant document discovered during the course of the proceeding.

### **Witness Statements**

168. If the Tribunal requires the production of witness statements, the Parties and Participants shall serve those statements on each other and file them with the Tribunal within the time directed by the Tribunal, which is usually no later than 15 days before the commencement of the Hearing. Each witness statement shall include, where applicable:

- (a) the name, address and telephone number of the witness;
- (b) whether the evidence will be factual evidence or, if the witness is qualified, opinion evidence;
- (c) the qualifications of the witness, where the witness is to give opinion evidence;
- (d) whether or not the witness has an interest in the application or appeal and, if so, the nature of the interest;
- (e) a summary of the opinions, conclusions and recommendations of the witness;
- (f) reference to those portions of other documents which form an important part of the opinions, conclusions and recommendations of the witness;
- (g) a summary of answers to any interrogatories to or from other Parties that will be relied upon at the Hearing;
- (h) where applicable, a discussion of proposed conditions of approval that are in controversy among the Parties or agreed upon conditions that may be related to issues in dispute;
- (i) the date of the statement; and
- (j) the signature of the witness.

169. All documents referred to in the witness statement shall be provided to the Parties and the Tribunal at the same time the witness statement is served and filed.

### **Written Questions and Answers (Interrogatories)**

170. The Tribunal may direct that the pre-Hearing examination of a witness be conducted through written questions and answers, and may specify the dates by which the questions are to be asked and answered, and may direct that:

- (a) the Parties shall engage in the interrogatory process in an expeditious and cooperative manner, in order to ensure full and timely disclosure with the minimum amount of effort and cost;
- (b) the subject matter of interrogatories shall be restricted to those issues which the Tribunal has identified for consideration at the Hearing;
- (c) the scope of interrogatories shall be confined to information relevant and necessary to assist the inquiring Party to be reasonably informed about the issue under consideration;
- (d) Parties shall provide detailed, responsive and complete answers to interrogatories, along with copies of all related documentation;
- (e) where a receiving Party is unable to answer an interrogatory without further clarification or direction from the inquiring Party, it shall promptly communicate with the inquiring Party in order to resolve the difficulty;

- (f) in a dispute involving interrogatories, or the answers to interrogatories, the Parties shall promptly communicate with each other in order to resolve the dispute in a cooperative and efficient manner;
- (g) if such disputes cannot be resolved by the Parties, the Tribunal will determine the matter in a summary fashion. Upon finding that a Party has failed or refused to deal with the interrogatory process in a manner which is responsible and reasonable the Tribunal may:
  - (i) adjourn the date for the commencement of the Hearing until the interrogatory process has been completed;
  - (ii) order the Party or its witnesses to submit to examination on oath, affirmation or declaration before a reporter or the Tribunal;
  - (iii) where permitted by law, order the Party to forthwith pay costs; and/or
  - (iv) make such other order as may seem just;
- (h) the Tribunal may order the Parties to meet and exchange information in order to satisfy any outstanding interrogatories; and
- (i) to the extent possible, the interrogatory process should be completed prior to the commencement of the hearing of evidence.

### **Combining Proceedings or Hearing Proceedings Together**

171. If two or more proceedings before a Tribunal involve the same or similar questions of fact, law or policy, the Tribunal may:
- (a) combine the proceedings or any part of them, with the consent of the Parties;
  - (b) hear the proceedings at the same time, with the consent of the Parties;
  - (c) hear the proceedings one immediately after the other; or
  - (d) stay one or more of the proceedings until after the determination of another one of them.
172. Rule 171 is not applicable to proceedings under the *Consolidated Hearings Act*.
173. Clauses (a) and (b) in Rule 171 do not apply to a proceeding if:
- (a) any other Act or regulation that applies to the proceeding requires that it be heard in private; or
  - (b) the Tribunal makes an order under Rule 199.
174. The consent requirements of clauses (a) and (b) in Rule 171 do not apply if an Act or a regulation that applies to the proceedings allows the Tribunal to combine them or hear them at the same time without the consent of the Parties.
175. If the Parties to the joined proceedings consent, the Tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (b) in Rule 171.

### **Verbatim Reporters and Transcripts**

176. Any Party may arrange for the attendance of a qualified verbatim reporter at his or her own expense, provided that the first Party to order a transcript shall also provide, at their expense, an electronic copy to the Tribunal as part of the record.

## **Opening Statements**

177. At the beginning of the Hearing, each Party and Participant may give a brief opening statement that describes the issues that they will address at the Hearing.

## **Site Visits and Inspections**

178. The Tribunal may make one or more site visits or inspections to better understand the evidence given at the Hearing, and may issue directions for the procedures to be followed during the site visit or inspection, in accordance with the Tribunal's Practice Direction for Site Visits. The Tribunal shall make the site visit in the presence of any Parties and Participants or their representatives interested in attending and in the presence of any Presenters granted permission by the Tribunal to attend.

## **Evening Sessions**

179. The Tribunal may conduct one or more evening sessions during the course of the Hearing.

## **Final Submissions**

180. After the Parties have had an opportunity to present evidence, the Tribunal shall give all Parties and Participants an opportunity to make a final submission in support of the decision or order they wish the Tribunal to make.

## **WRITTEN AND ELECTRONIC PROCEEDINGS**

181. Where permitted by law, the Tribunal may decide to conduct any part of the proceeding in person or by way of a written or electronic Hearing, and in coming to its decision, may consider any relevant factors, including:

- (a) the suitability of a written or electronic Hearing format considering the subject matter of the Hearing;
- (b) whether the nature of evidence is appropriate for a written or electronic Hearing;
- (c) the extent to which the matters in dispute are questions of law;
- (d) the convenience of the Parties, including any anticipated prejudice to a Party;
- (e) the cost, efficiency and timeliness of the proceeding;
- (f) ensuring a fair and understandable process;
- (g) the desirability or necessity of public participation or public access to the Tribunal's process; and
- (h) the fulfillment of the Tribunal's statutory mandate.

## **WITNESSES**

### **Witness Panels**

182. The Tribunal may receive evidence from panels of witnesses composed of two or more persons if all Parties have had an opportunity to make submissions in that regard.

### **Summons to Witness**

183. A Party who wishes to summon a person to give testimony or to produce documents at a Hearing shall prepare and complete a Summons to Witness in Form 3 (Oral Hearings) found in Appendix C or Form 4 (Electronic Hearings) found in Appendix D. The

summons is to be submitted to the Case Manager for consideration by the Chair, if a Panel has yet to be constituted, or, if the Hearing has commenced, to the Panel.

184. The Party shall request a summons as early as possible before the Hearing so that it can be served on the witness in time to allow him or her to arrange to attend the Hearing, and shall include in their written request the following information:
  - (a) the name of the witness and his or her address for service;
  - (b) a brief summary of the evidence to be given by the witness;
  - (c) an explanation of why the evidence of the witness would be relevant and necessary;
  - (d) details of any documents or things which the witness should be required to bring to the Hearing; and
  - (e) why the summons is required.
185. After considering the requesting Party's explanation, the Chair may choose not to issue a summons and refer the matter to the Panel conducting the Hearing for consideration. Where a summons has been issued before the Hearing, the Panel conducting the Hearing may decide that the summons should be cancelled or varied, or, if the witness is present, that they may be excused from the remainder of the Hearing.
186. A Summons to Witness shall be served on the witness by the Party requesting the summons personally. The witness summoned is entitled to receive the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Superior Court.
187. A witness who is subject to a summons may object to the summons by applying to the Tribunal to have it cancelled or varied. The application may be made to the Chair prior to the Hearing or to the Panel during the Hearing. If the Tribunal is satisfied that the evidence sought from the witness is not relevant or is protected by privilege at law or if the witness is not able to supply the evidence sought, the Tribunal may cancel or vary the summons.
188. Rules 183 to 187 are not applicable to proceedings under the *Oak Ridges Moraine Conservation Act, 2001* or the *Greenbelt Act, 2005*.

### **Technical and Opinion Witnesses Appointed by the Tribunal**

189. At the request of a Party or on its own initiative, the Tribunal may retain any person having professional, technical or other specialized knowledge and expertise to give evidence in respect of any matter before it. The witness shall conform to the requirements of the Tribunal's Practice Direction for Technical and Opinion Evidence.

### **TERMINATION OF PROCEEDINGS**

190. A Proponent or Applicant who proposes to withdraw his or her application, an Appellant who proposes to withdraw his or her appeal, or a Director or a Risk Management Inspector or Official who proposes to revoke the decision that is the subject of the appeal shall notify the Tribunal, other Parties, Participants and Presenters by letter. Any Party, Participant or Presenter who objects to the proposed withdrawal of an appeal or revocation, with the exception of the revocation of an order made under section 74 of the *Ontario Water Resources Act*, shall notify the Tribunal and the other Parties, Participants and Presenters within ten days of the date of the letter.

191. Where there has been a proposed withdrawal of an appeal agreed to by all Parties and the decision under appeal is not altered by a settlement agreement, a proposed withdrawal of an application, or a proposed revocation of an order made under section 74 of the *Ontario Water Resources Act*, the Tribunal shall issue a decision dismissing the proceeding.
192. Where there has been a proposed withdrawal of an appeal not agreed to by all Parties, the Tribunal shall consider whether the proposed withdrawal is consistent with the purpose and provisions of the relevant legislation and whether the proposed withdrawal is in the public interest. The Tribunal shall also consider the interests of Parties, Participants and Presenters. After the consideration of the above factors, the Tribunal may decide to continue with the Hearing or issue a decision dismissing the proceeding.
193. Where there has been a proposed withdrawal of an appeal as part of a settlement agreement reached by all Parties that alters the decision under appeal, the Tribunal shall review the settlement agreement and consider whether the agreement is consistent with the purpose and provisions of the relevant legislation and whether the agreement is in the public interest. The Tribunal shall also consider the interests of Participants and Presenters. After consideration of the above factors, the Tribunal may decide to continue with the Hearing or issue a decision dismissing the proceeding.
194. Where a Director or a Risk Management Inspector or Official proposes to revoke the decision that is the subject of an appeal, the Tribunal shall consider whether the proposed revocation is consistent with the purpose and provisions of the relevant legislation and whether the proposed revocation is in the public interest. The Tribunal shall also consider the interests of Parties, Participants and Presenters. After the consideration of the above factors, the Tribunal may decide to continue with the Hearing or issue a decision dismissing the proceeding.
195. Notwithstanding Rules 191 to 194 and in accordance with section 6 of the *Consolidated Hearings Act*, where a Proponent under the *Consolidated Hearings Act* does not intend to proceed with an undertaking once a Hearing has commenced before the Joint Board, an application for consent to withdraw shall be made to the Joint Board. The Joint Board may by order permit the Proponent to withdraw the notice given under section 3 of the *Consolidated Hearings Act* in respect of the undertaking, subject to such terms and conditions as the Joint Board considers proper in the circumstances. A Proponent may withdraw the notice given under section 3 of the *Consolidated Hearings Act* prior to the commencement of the Joint Board Hearing by giving written notice to the Hearings Registrar.
196. Rules 190 to 195 are not applicable to proceedings under the *Niagara Escarpment Planning and Development Act*, the *Oak Ridges Moraine Conservation Act, 2001* or the *Greenbelt Act, 2005*.

### **Termination of Development Permit Hearings Under the *Niagara Escarpment Planning and Development Act***

197. If the Appellant withdraws his or her appeal of a development permit, the decision of the Niagara Escarpment Commission is automatically confirmed pursuant to section 25(10.2) of the *Niagara Escarpment Planning and Development Act*.

198. Where the Parties agree to all the terms and conditions that should be included in a revised development permit, the Tribunal may confirm the decision of the Niagara Escarpment Commission pursuant to section 25(12.1) of the *Niagara Escarpment Planning and Development Act* and shall include the terms and conditions in its report.

## **PUBLIC ACCESS TO HEARINGS AND DOCUMENTS**

### **Access to Hearings**

199. A Hearing shall be open to the public unless ordered otherwise by the Tribunal in accordance with Rule 201.
200. Electronic Hearings shall be open to the public unless the Tribunal:
- (a) is of the opinion that it is not practical to hold the Hearing in a manner that is open to the public; or
  - (b) makes an order under Rule 201.
201. At the request of a Party or on its own initiative, the Tribunal may order that part of a Hearing be closed to the public if the Tribunal determines that intimate financial or personal matters or other matters may be disclosed at the Hearing of such a nature that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that Hearings be open to the public.

### **Access to Documents and the Tribunal Record**

202. All persons are entitled to have reasonable access to the Tribunal's Public Record unless the Tribunal makes an order under Rule 203.
203. Where appropriate, the Tribunal may order all or part of a document to be marked "confidential", in which case it shall not form part of the Public Record.

## **COSTS**

### **Objectives of Costs Rules**

204. A costs award refers to the reimbursement of reasonable and eligible expenditures incurred by a Party for participation in a proceeding before the Tribunal. The objectives of the Tribunal's costs Rules are to: provide consistency and predictability in the awarding of costs by outlining relevant principles and evaluation criteria; to encourage responsible conduct in proceedings; and to discourage unreasonable conduct.

### **Scope of Costs Awards**

205. A wide authority to award costs applies to proceedings under the *Consolidated Hearings Act* and the *Environmental Assessment Act* and to proceedings under sections 30, 32, and 36 of the *Environmental Protection Act* and sections 54, 55, and 74 of the *Ontario Water Resources Act*. A limited authority to award costs in situations of improper conduct applies to all proceedings before the Tribunal except Niagara Escarpment Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act* and proceedings under the *Oak Ridges Moraine Conservation Act, 2001* and *Greenbelt Act, 2005*.

206. Only Parties are liable to pay costs and eligible to receive costs awards. Participants and Presenters are not liable to pay costs and they are not eligible to receive costs awards.

### **Parties Encouraged to Settle Costs Awards**

207. Negotiated settlements regarding costs do not require Tribunal review or approval. Parties are encouraged to make every effort to negotiate a costs settlement.

### **Procedure for Application for Costs**

208. A costs application may be filed with the Tribunal at any time prior to the conclusion of the Hearing, or no later than within 30 days from the date of the issuance of the reasons for the decision or report. Except in the case of improper conduct in a motion (see Rule 217) and for other procedural matters, the Tribunal will not make an order for costs unless a Party requests that it be awarded costs and the Party against whom an award is sought has been given the opportunity to make submissions on the issue.

209. The Party seeking a costs award bears the burden of proof and must demonstrate that any requested costs are:

- (a) directly and necessarily incurred in relation to the proceeding before the Tribunal;
- (b) reasonable in the circumstances;
- (c) properly documented and verified; and
- (d) consistent with the principles and criteria outlined in these Rules.

210. When filing a costs application with the Tribunal, the Party seeking a costs award shall provide:

- (a) an explanation of how the requirements in Rule 209 (a), (b), and (d) have been met;
- (b) a summary statement of hours and fees for each lawyer and consultant, supported by time dockets, invoices and a detailed description of the activity; and
- (c) a summary statement of disbursements for each lawyer or consultant supported by corresponding invoices or receipts. Where invoices or receipts are not obtainable for good reasons, the Tribunal may accept a written record of individual disbursements and associated dates.

211. In most cases, the Tribunal will not decide issues of costs until the decision on the overall substance of the proceeding is released. If a Party against whom costs are sought objects to another Party's application for costs, the objection and any associated argument must be filed with the Tribunal and the Parties within 14 days after the filing of the costs application or within such time as directed by the Tribunal. The Party seeking a costs award then has five days or within such time frame as directed by the Tribunal to file a reply.

212. The Tribunal may decide the issues of costs based on the written material or the Tribunal may require brief oral submissions. In its costs decision, the Tribunal may order to whom and by whom the costs are to be paid and fix the amount of the costs. The Tribunal may also direct the scale at which the costs are to be assessed and assign the actual assessment, subject to confirmation by the Tribunal, to a designated person.

## **Considerations for Costs Awards Under Section 7 of the *Consolidated Hearings Act*, Section 21 of the *Environmental Assessment Act*, Section 33 of the *Environmental Protection Act* and Section 7 of the *Ontario Water Resources Act***

213. Under section 7 of the *Consolidated Hearings Act*, section 21 of the *Environmental Assessment Act*, section 33 of the *Environmental Protection Act*, and section 7 of the *Ontario Water Resources Act*, the Tribunal may award costs, may order by whom and to whom the costs are to be paid, may fix the amount of costs or direct that the amount be assessed, and may determine the scale according to which they are to be assessed and by whom they are to be assessed. The Tribunal is not limited to the considerations that govern awards of costs in any court.
214. Notwithstanding the Tribunal's broad jurisdiction to award costs, the Tribunal is committed to an approach to awarding costs that does not act as a deterrent to persons contemplating becoming a Party or continuing to be a Party to a proceeding.
215. Costs awards may be ordered to help defray the costs of participation borne by Parties, other than the Proponent, the Director and government decision makers, who make a substantial contribution to the proceeding through responsible participation.
216. In determining an award of costs, the Tribunal may consider, among other things, the conduct of the other Parties as well as whether the Party seeking the award:
  - (a) represented a clear and ascertainable interest;
  - (b) contributed substantially to a meaningful public Hearing process;
  - (c) participated in a responsible and informed manner;
  - (d) helped the Tribunal to understand the matters at issue;
  - (e) demonstrated and delineated the purpose for the expenditure of funds;
  - (f) coordinated a number of common interests and concerns by forming a group or coalition;
  - (g) cooperated with other Parties and shared experts where possible to efficiently address issues and provide evidence;
  - (h) contributed to a more efficient Hearing;
  - (i) complied with the Rules, the Hearing schedule, Hearing deadlines, and any further Tribunal procedural orders;
  - (j) made reasonable and timely efforts to share information with other Parties, resolve or scope issues, discuss potential conditions of approval, and explore alternative methods of dispute resolution; and
  - (k) succeeded in whole or in part at the Hearing.

### **Other Circumstances in which Costs may be Awarded**

217. Under section 17.1 of the *Statutory Powers Procedure Act*, the Tribunal may only order costs to be paid if the conduct or course of conduct of a Party has been unreasonable, frivolous or vexatious or if a Party has acted in bad faith.

However, it is expected that it will only be used in the rare case where a Party's conduct warrants such an award. In determining an award of costs under this Rule, the Tribunal

may consider, among other things, the conduct of the requesting Party as well as whether the Party against whom a costs award is sought:

- (a) failed to attend a Hearing or to send a representative when properly given notice, without contacting the Case Manager;
- (b) failed to give notice or adequate explanation or failed to co-operate during preliminary proceedings, changed a position without notice, or introduced an issue or evidence not previously mentioned;
- (c) failed to act in a timely manner;
- (d) failed to comply with the Tribunal's Rules or procedural orders;
- (e) caused unnecessary adjournments or delays or failed to prepare adequately for Hearings;
- (f) failed to present evidence, continued to deal with irrelevant issues, or asked questions or acted in a manner that the Tribunal determined to be improper;
- (g) failed to make reasonable efforts to combine submissions with Parties of similar interest;
- (h) acted disrespectfully or maligned the character of another Party; and
- (i) knowingly presented false or misleading evidence.

This power applies to all proceedings before the Tribunal except Niagara Escarpment Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act*, proceedings under the *Oak Ridges Moraine Conservation Act, 2001* and proceedings under the *Greenbelt Act, 2005*.

218. The Tribunal is not bound to order costs when any of the examples listed in Rule 217 occurs nor does the Tribunal have to find that one of the examples occurred in order to conclude that the conduct of a Party has been unreasonable, frivolous or vexatious or that a Party has acted in bad faith. The Tribunal will also consider whether the issues respecting the conduct of such a Party can be addressed by a denial or reduction of costs in its favour rather than a costs award against it.

### **Costs for Motions**

219. Parties shall take all reasonable steps to avoid unnecessary motions and other actions that unduly delay the proceeding. If a motion, or the opposition to a motion, is unreasonable, frivolous, vexatious or brought in bad faith, costs may be awarded, payable forthwith, against a Party.

### **Determination of Amount of Costs Awards**

220. Eligible expenses that may be recovered through costs include:

- (a) legal and consulting fees;
- (b) travel and related expenses;
- (c) transcripts, photocopying, facsimile, delivery costs, applicable taxes; and
- (d) other necessary and reasonable disbursements.

221. In the table below, the Tribunal has established maximum levels for legal and professional services and disbursements. Parties should not assume they will recover all of their disbursements or receive full indemnification for legal or consulting fees through a costs award. The Tribunal may make adjustments based on the criteria outlined in these Rules.

Based on the circumstances of each case, the Tribunal will determine the scope of the costs and whether the commencement date for work billed may precede the date of the Notice of Hearing. Costs for preparing and presenting the costs application itself are available only where the Party's costs claim is reasonable. Reasonable disbursements that are directly related to a Party's participation in the proceeding may also be recovered. Receipts for expenses are normally required.

Table

<b>Legal Fees</b>		<b>Maximum Rates</b>
	Senior Counsel (>10 yrs. experience)	\$210 /hr
	Intermediate Counsel (5-10 yrs exp.)	\$165 /hr
	Junior Counsel (<5 yrs exp.)	\$140 /hr
	Paralegal or Articling Student	\$80/hr
<b>Consulting Fees</b>		
	Senior Consultant (>10 yrs. experience)	\$210 /hr
	Intermediate Consultant (5-10 yrs exp.)	\$165 /hr
	Junior Consultant (<5 yrs exp.)	\$130 /hr
	Technician or Analyst	\$50/hr
<b>Disbursements</b>		<b>Current Maximum Rates</b>
	Travel by Automobile	40.00¢/km for southern Ontario 41.00¢/km for northern Ontario
	Meals	\$40.00/day
	Photocopies/facsimile	25¢/copy

222. The cost of hotel accommodation (if the Hearing lasts more than one day) and meals will normally be allowed when the claimant is located more than 99 kilometres from the Hearing site. Reasonable claims for public transit, taxi or airport limousine travel are acceptable. Reimbursements for air and rail travel and reasonable compensation for travel time will be considered when the claimant is located more than 99 kilometres from the site of the proceeding and the attendance of the claimant is necessary. The claimable amounts are based on Ontario government disbursement rates and updated rates are available from the Tribunal.

### **Interest Rate**

223. Unless ordered otherwise, awards of costs shall bear interest in the same manner as those made under section 129 of the *Courts of Justice Act*.

### **CORRECTION OF ERRORS**

224. The Tribunal may at any time correct a typographical error, error of calculation, or other similar error made in a decision, order, recommendation or report.

### **NEW EVIDENCE**

225. Once the Hearing has ended but before the decision is rendered, a Party may make a motion to admit new evidence.

226. The Tribunal shall not admit new evidence unless it decides that the evidence is material to the issues, the evidence is credible and could affect the result of the Hearing, and either the

evidence was not in existence at the time of the Hearing or, for reasons beyond the Party's control, the evidence was not obtainable at the time of the Hearing.

## **REVIEW OF ORDERS AND DECISIONS (RECONSIDERATION)**

227. A Party may request a review of an order or decision.
228. Notwithstanding Rule 89, a Party making a request under Rule 227 shall serve and file a Notice of Motion and all supporting material within 30 days of the date of the making of the order or decision that is the subject of the request, except in the case of orders and decisions made under the *Environmental Bill of Rights, 1993* or the *Consolidated Hearings Act*, in which case the request must be made within ten days.
229. Notwithstanding Rule 90, a Party who wishes to respond to a motion to review shall serve and file its submissions and all supporting material within ten days of the serving of the Notice of Motion and all supporting material under Rule 228.
230. In deciding whether it is advisable to review all or part of its order or decision, the Tribunal may consider any relevant circumstances including:
  - (a) whether the Tribunal acted outside its jurisdiction;
  - (b) whether there is a material error of law or fact such that the Tribunal would likely have reached a different decision but for that error;
  - (c) whether there is new evidence admissible under the conditions of Rule 226;
  - (d) the extent to which any person or any other Party has relied on the order or decision;
  - (e) whether the order or decision is under appeal or is the subject of a judicial review application; and
  - (f) whether the public interest in finality of orders and decisions is outweighed by the prejudice to the requester.
231. The Tribunal may grant the motion in whole or in part, based on the material filed and/or the record from the original Hearing, and may make procedural directions for the review.
232. The Panel who issued the original order or decision shall not hear the motion to review, but may hear the review itself if so designated by the Chair.
233. The Panel who heard the motion to review shall not conduct the review.
234. Following the review Hearing, the Tribunal may confirm, vary, suspend, or cancel the order or decision under review in whole or in part.
235. Rules 227 to 234 are not applicable to proceedings under the *Environmental Assessment Act* or the *Niagara Escarpment Planning and Development Act* or the *Oak Ridges Moraine Conservation Act, 2001* or the *Greenbelt Act, 2005*. Decisions made under the *Environmental Assessment Act* can only be reconsidered in accordance with section 11.4 of that Act.

## **ENFORCEMENT**

236. A certified copy of the Tribunal's decision or order in a proceeding may be filed in the Superior Court by the Tribunal or by a Party and on filing shall be deemed to be an order of that court and is enforceable as such. A Party who files a decision or order with the Superior Court shall notify the Tribunal within ten days of the filing.

## **NOTICE OF APPEAL/JUDICIAL REVIEW**

237. A person appealing a decision of the Tribunal shall file a copy of the Notice of Appeal with the assigned Case Manager at the time the appeal is filed with the court. A Notice of Application for judicial review shall be served on the assigned Case Manager at the time the application is filed with the court.

## **TRANSITION**

238. These Rules and Practice Directions apply to all proceedings, including further steps taken in proceedings that were commenced before November 15, 2007.



- Environmental Review Tribunal
- Niagara Escarpment Hearing Office
- Office of Consolidated Hearings

Case #
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## Notice of Constitutional Question

Case Name			
Act under which proceeding arises	<p style="text-align: right;">_____ intends to question the constitutional validity</p> <p style="text-align: center;">(identify party)</p> <p>(or applicability) of _____</p> <p style="text-align: center;">(identify the legislative provisions)</p> <p>or to claim a remedy under subsection 24(1) of the <i>Canadian Charter of Rights and Freedoms</i> in relation to an act or omission of the government of Ontario (or Canada). The question is to be heard</p> <p>on _____ at _____</p> <p style="text-align: center;">(Day) (Date) (Time)</p> <p>at _____</p> <p style="text-align: center;">(address where hearing is taking place)</p>		
Material Facts	The following are the material facts giving rise to the constitutional question:		
Legal Basis	The following is the legal basis for the constitutional question:		
Mailing Addresses	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> <p>The Attorney General of Ontario Constitutional Law Branch, 4<sup>th</sup> Floor, 720 Bay Street Toronto ON M5G 2K1 Fax: (416) 326-4015</p> <p>The Attorney General of Canada Suite 3400, Exchange Tower Box 36, First Canadian Place Toronto ON M5X 1K6 Fax: (416) 973-5004</p> <p>Tribunal Secretary Environmental Review Tribunal 655 Bay Street, Suite 1500 Toronto ON M5G 1E5</p> </td> <td style="width: 50%; border: none; vertical-align: top;"> <p>Names and addresses of counsel for all other parties and of all other parties acting in person :</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> </td> </tr> </table>	<p>The Attorney General of Ontario Constitutional Law Branch, 4<sup>th</sup> Floor, 720 Bay Street Toronto ON M5G 2K1 Fax: (416) 326-4015</p> <p>The Attorney General of Canada Suite 3400, Exchange Tower Box 36, First Canadian Place Toronto ON M5X 1K6 Fax: (416) 973-5004</p> <p>Tribunal Secretary Environmental Review Tribunal 655 Bay Street, Suite 1500 Toronto ON M5G 1E5</p>	<p>Names and addresses of counsel for all other parties and of all other parties acting in person :</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>The Attorney General of Ontario Constitutional Law Branch, 4<sup>th</sup> Floor, 720 Bay Street Toronto ON M5G 2K1 Fax: (416) 326-4015</p> <p>The Attorney General of Canada Suite 3400, Exchange Tower Box 36, First Canadian Place Toronto ON M5X 1K6 Fax: (416) 973-5004</p> <p>Tribunal Secretary Environmental Review Tribunal 655 Bay Street, Suite 1500 Toronto ON M5G 1E5</p>	<p>Names and addresses of counsel for all other parties and of all other parties acting in person :</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>		
(This notice must be served at least fifteen days before the question is to be addressed by the Tribunal.)			



- Environmental Review Tribunal
- Niagara Escarpment Hearing Office
- Office of Consolidated Hearings

Case #
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## Statement of Service

When directed or required under the Rules of Practice, this form may be used as proof of service.

Case Name			
Service	<b>Type of notice served</b> <input type="checkbox"/> Notice of Motion <input type="checkbox"/> Notice of Preliminary Hearing <input type="checkbox"/> Notice of Hearing <input type="checkbox"/> Other <i>specify</i> ▼	<b>Method of delivery</b> <input type="checkbox"/> Certified Mail <input type="checkbox"/> Registered Mail <input type="checkbox"/> Courier (including Priority Post) <input type="checkbox"/> Facsimile copier (FAX) <input type="checkbox"/> Personal delivery <input type="checkbox"/> Other <i>specify</i> ▼	Name of courier, agent or service
	Date and Time document sent		
Address where served	Number and Street / R.R. #		Suite/Unit #
	City	Province	Postal Code
FAX # (if applicable)			
Confirmation	<b>Acting on behalf of</b> <input type="checkbox"/> Appellant / Applicant / Proponent <input type="checkbox"/> Respondent <input type="checkbox"/> Other <i>specify</i> ▼		
	I state that I served	who represents	
	<b>Signature of Server</b>		<b>Position</b> (if applicable)
	Dated at (Location)		on (Date)



- Environmental Review Tribunal
- Niagara Escarpment Hearing Office
- Office of Consolidated Hearings

Case #
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## Summons to Witness

(For Oral Hearing)

Act under which proceeding arises					
Person you want to attend hearing	Name of Witness				
	Address - Street and Number, City, Province, Postal Code				
Date and Location of Hearing	You are required to attend to give evidence at the hearing of this proceeding: on _____ (day) _____ (date) at _____ (time) at _____ (address where hearing is taking place)				
	YOU ARE REQUIRED TO BRING WITH YOU AND PRODUCE AT THE Hearing the following documents and things: (Set out the nature and date of each document and give sufficient particulars to identify each document and thing.)				
Failure to attend	IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE ONTARIO SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.				
	<table border="1"><tr><td>Signature by Tribunal</td><td>Date</td></tr><tr><td> </td><td> </td></tr></table>	Signature by Tribunal	Date		
Signature by Tribunal	Date				
	NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice.				



- Environmental Review Tribunal
- Niagara Escarpment Hearing Office
- Office of Consolidated Hearings

Case #
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## Summons to Witness

(For Electronic Hearing)

Act under which proceeding arises					
Person you want to participate in hearing	<p>Name of Witness</p> <hr/> <p>Address - Street and Number, City, Province, Postal Code</p>				
Date and time of electronic hearing	<p>You are required to participate in an electronic hearing:</p> <p>on _____ (day) _____ (date) at _____ (time)</p> <p>In the following manner: (Give sufficient particulars to enable witnesses to participate):</p>				
Failure to participate	<p>IF YOU FAIL TO PARTICIPATE OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE ONTARIO SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.</p>				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; border-bottom: 1px solid black; vertical-align: bottom;"><b>Signature by Tribunal</b></td> <td style="width: 30%; border-bottom: 1px solid black; vertical-align: bottom;"><b>Date</b></td> </tr> <tr> <td style="border-top: 1px solid black; height: 100px; vertical-align: bottom;"> <p>NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice.</p> </td> <td style="border-top: 1px solid black;"></td> </tr> </table>	<b>Signature by Tribunal</b>	<b>Date</b>	<p>NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice.</p>	
<b>Signature by Tribunal</b>	<b>Date</b>				
<p>NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice.</p>					

*Appendix D: Form 4*

# **Practice Directions of the Environmental Review Tribunal**

## **I. Practice Direction for Technical and Opinion Evidence**

### **Purpose**

1. Technical staff, advisors, consultants and “expert” witnesses routinely give scientific and technical information and their professional opinions in reports and testimony on important issues that the Tribunal must resolve. The opinions given usually purport to be the independent professional judgment of the advisor or witness, based on his or her considerable experience and training. The Tribunal relies on the professional integrity and ethics of these witnesses.
2. The purpose of this Practice Direction is to assist Parties, their representatives, and their witnesses who will give scientific, technical, and opinion evidence to prepare for the Hearing and to present evidence to the Tribunal. The Tribunal seeks to ensure the reliability of scientific and technical evidence and opinion evidence provided to it. Comprehensive and reliable evidence will promote efficiency and fairness in the Tribunal’s process, decrease cost and delay, and make the Hearing process less adversarial.

### **Technical and Scientific Evidence**

3. Many witnesses, particularly government employees, appear before the Tribunal to give evidence of scientific and technical observations, tests, measurements, and estimates. While these witnesses are often not considered “experts” who interpret scientific and technical evidence and provide opinions, they collect, compile, and to some extent interpret, information that is essential to the Tribunal’s understanding of the issues and often forms the basis for “expert” opinion evidence. In this Practice Direction, these witnesses are referred to as “technical witnesses” and the scientific and technical information they convey is referred to as “technical evidence”.

### **Opinion Evidence**

4. Generally, lay witnesses, including technical staff of companies and government agencies may only state facts, that is, observations made with their physical senses, or in the case of person with appropriate training, observations made with specialized equipment, for example, taking samples and analyzing them in a laboratory and recording the results. They may not give opinions about the significance of the results of such measurements for environmental quality or human health.
5. To give opinion evidence, a witness must have specialized education, training, or experience that qualified him or her to reliably interpret scientific or technical information or to express opinions about matters for which untrained or inexperienced person cannot provide reliable opinions. Such matters often include whether pollution

has caused or is likely to cause significant harm to the environment. Such witnesses are often called “expert witnesses” or “opinion witnesses”.

### **The Role of the Technical Witness**

6. The Tribunal expects the witness giving technical or scientific evidence to remain within his or her area of competence. The witness should not attempt to interpret the meaning or significance of tests, observations and measurements unless qualified to do so. The witness should disclose in advance to the other Parties all measurements, tests, observations, and data relating to the issues about which he or she will give evidence, and disclose in examination-in-chief all information relevant to the issues before the Tribunal. Observations, tests, or measurements that do not appear to support the position of the Party for whom the witness is testifying should also be stated.

### **The Role of Expert or Opinion Witnesses**

7. Opinion evidence from a properly qualified “expert” witness should be based on accurate facts, reliable estimates, and accepted or tested techniques or methods of investigation, measurement, and analysis. Expert witnesses must present evidence in an unbiased manner and not act as an advocate. The same obligations applicable to technical witnesses apply to expert or opinion witnesses.

### **The Role of the Tribunal**

8. The decisions that the Tribunal must make involve the public interest and may have serious and far-reaching environmental consequences. These decisions must be based on a balanced record, composed of accurate and reliable technical information and professional opinions. All Parties and their representatives and witnesses have a responsibility to contribute to such a balanced record to assist the Tribunal to fulfill its duty. They are expected to make every effort to comply fully with this Practice Direction. The Tribunal expects that lawyers and other representatives will provide appropriate direction to witnesses to achieve this result.
9.
  - (a) The Tribunal expects the opinion witness to provide it with assistance by way of qualified, relevant opinions and accurate information in relation to matters within his or her expertise. Objectivity and impartiality are necessary to assist the Tribunal in making its decision.
  - (b) Evidence that is influenced by the special interests of a Party may be received and considered, but the Tribunal may give this evidence little or no weight.
  - (c) The witness should express an opinion to the Tribunal only when the opinion is based on adequate knowledge and sound conviction. The witness should be reluctant to accept an assignment to provide evidence for use by the Tribunal if the terms of reference of the assignment do not allow the witness to carry out the investigations and obtain the information necessary to provide such an opinion. A witness who accepts an assignment under these circumstances should advise the Tribunal of the limitations that the terms of reference place on his or her ability to

provide the information necessary to assist the Tribunal in making a sound decision.

- (d) Technical evidence and opinion evidence should be, and should be seen to be, the independent product of the witness uninfluenced by the interests of any Party.
- (e) The witness must never assume the role of an advocate for a Party. Argument and advocacy should be left to counsel or agents presenting the Party's case. This does not preclude the vigorous advancement of strongly held scientific or other professional opinions or prevent a duly qualified witness who is also a Party from advancing technical and opinion evidence.
- (f) The witness has a duty to change his or her opinion where circumstances, such as the receipt of new information, require it. If at any time before the Tribunal issues its final decision, the witness changes his or her view on a material matter for any reason, particularly after having read the reports or listened to the evidence of witnesses for other Parties, the change in the information and/or opinion should be communicated to the other Parties and the Tribunal without delay. Where reports or documents prepared by the witness contain errors or information which has changed, this must be promptly identified. However, the witness must not change his or her opinion or change or withhold information to suit the position taken by any Party.

## **Preparing Reports**

10. In preparing reports to be used by the witness' employer or client in determining the issues to be raised and the employer or client's position on those issues and for use as evidence, and in testifying before the Tribunal, the witness has the following disclosure duties:
  - (a) It is the responsibility of the witness to make fair and full disclosure.
  - (b) The witness should make it clear when a particular question or issue falls outside his or her expertise.
  - (c) To provide enough information on the assumptions made, procedures used, and conclusions drawn to allow comprehension of the report as it stands, and to permit fair and efficient cross-examination.
  - (d) When the witness is providing an opinion or giving evidence on an issue for which there are differences of professional or scientific opinion he or she has an obligation to make such differences clearly known to the Tribunal and all Parties. The witness should make reasonable efforts to be fully informed of those differences.
  - (e) The witness should state all the material facts and assumptions upon which his or her opinion is based. He or she should consider and acknowledge material facts which could detract from the opinion. Where the facts are in dispute, the Tribunal expects that the witness will give his or her view of the facts and the proof relied upon before giving the opinion.
  - (f) Where the opinion and evidence are based on information contained in other documents, detailed references should be provided in any report prepared by the expert, and copies of those documents made available on request before and during the Hearing.

- (g) The witness is expected to disclose to the Tribunal and to the other Parties all significant information and opinions, and errors, shortcomings and limiting factors even if no one has asked for them.
- (h) The witness should give direct answers to questions and should not be evasive while giving testimony. Any effort to avoid answering direct questions could adversely affect the weight assigned to the witness' evidence on the issue or the evidence as a whole.

## **Giving an Opinion**

- 11. (a) When giving an opinion, the witness should state and explain the degree of certainty of the opinion or the level of probability that it is correct. The degree of uncertainty and the reasons for uncertainty should be candidly acknowledged. Uncertainties and assumptions inherent in measurement, estimates, projections and predictions should be clearly identified. The level of confidence or the sensitivity to error must be explained.
- (b) Where there is a lack of consensus with respect to the use of a particular model or formula, the rationale for the chosen approach should be identified.
- (c) If the witness' opinion is not properly researched because insufficient data are available, this shortcoming must be stated. Any limiting qualifications to the opinion should be identified. The Tribunal expects to be told when a lack of factual information or experience will increase the probability of inaccurate conclusions or predictions. The witness should avoid speculation where data are insufficient.
- (d) Where an estimate falls within a range of reasonable possibilities, based on the same data, the variance within that range should be thoroughly disclosed. Where a prediction can lead to a range of potential impacts, that range should be fully described.

## **Plain Language**

- 12. (a) In preparing reports and giving testimony, the witness should take into account that the Hearing process is a public process in which reports and testimony must be understood by participants and observers who may not have any significant technical knowledge. Therefore, the language and writing style should be simple and direct and scientific or technical terms and concepts should be explained in clear, simple language.
- (b) Where specialized language is necessary to accurately convey information, the witness should use it rather than risk misleading or over-simplifying. However, the witness should avoid the use of scientific terms and jargon and unfamiliar acronyms, or at least fully explain those terms, so that the technical information and opinion can be easily understood.

## **Issue Resolution**

13. (a) The Tribunal expects that the witness will attempt to adequately address, well in advance of the Hearing, the concerns raised by other Parties in an effort to resolve issues, shorten the Hearing, and save time and expense.
- (b) The Tribunal may order the Parties' consultants (including independent consultants, technical or professional staff and advisors) to have one or more meetings and, where appropriate, communicate directly with each other outside of meetings in order to expedite the proceeding. The purposes of the meeting are to:
- (i) exchange all relevant information and documentation related to facts or opinions in dispute;
  - (ii) discuss all facts or opinions in dispute with a view to reducing or eliminating areas of controversy;
  - (iii) arrange for a site visit if this may assist the consultants to obtain more complete information;
  - (iv) reach consensus on facts, issues and opinions which do not require a determination by the Tribunal;
  - (v) clarify differences of opinion and to consider whether further studies or information are required;
  - (vi) where applicable, develop conditions of approval acceptable to all Parties; and
  - (vii) explore any other means of resolving areas of dispute between the Parties.

## **Efficiency**

14. (a) Reports, witness statements, and information should be produced in a timely fashion to all Parties.
- (b) All reasonable requests for answers to written questions (often referred to as "interrogatories") must be answered promptly and thoroughly by the witness.
- (c) Notwithstanding the requirements for full disclosure, the witness should make every effort to give succinct answers (while at the same time ensuring that they are direct and complete) to questions put to him or her in writing, in examination-in-chief, in cross-examination and in re-examination and by the Tribunal. Answers should be concise, responsive and focused on the most essential issues.
- (d) During his or her testimony a witness should not be called upon to review the minutia of fundamental techniques, and to read correspondence and other reports line-by-line, unless it is clear that the purpose of such elaboration warrants this expenditure of time.

## Compliance

15. If this Practice Direction is not complied with, the Tribunal may:
- (a) decline to accept the opinions or evidence of an otherwise qualified witness;
  - (b) admit the evidence, but accord it little weight;
  - (c) adjourn the date of the Hearing until such time as this Practice Direction is complied with;
  - (d) note the conduct of the witness and subject the witness to adverse comment in its decision;
  - (e) report a breach of professional standards of conduct, an attempt to mislead, incompetence or negligence, extensive violation of this Practice Direction, or serious interference with the Tribunal's process to the professional association or licensing body responsible for compliance with standards of conduct; and/or
  - (f) order that costs be paid forthwith by the Party who retained or employed the witness.

## II. Practice Direction for Tribunal Appointed Mediators

Note: This Practice Direction does not apply to proceedings under the *Niagara Escarpment Planning and Development Act*, *Oak Ridges Moraine Conservation Act, 2001* or *Greenbelt Act, 2005*.

### Purpose

1. Environmental disputes often involve difficult situations involving many Parties and complex and conflicting values, interests and positions. In disputes that come before it, the Tribunal is given decision-making powers under Ontario's environmental protection legislation. The Tribunal recognizes that the assistance of a mediator can frequently reduce the scope of disputes and can even lead to agreements that eliminate the need for a Hearing. The Chair may decide to appoint a different member of the Tribunal or another person to assist the Parties in negotiations relating to some or all matters in dispute among them. These negotiations are independent of the Hearing process.
2. Mediation involves negotiation assisted by a neutral third Party, who assists the Parties to deal constructively with the issues in dispute among them. A mediator is able to take an active approach in helping the Parties to achieve a broader understanding of the issues, to look for ways to bring new and relevant data to the discussions, to look at things from a variety of perspectives, to generate options and to construct solutions.
3. This Practice Direction has been developed in an effort to communicate the Tribunal's expectations of the conduct of both the Parties and mediator in those cases where a mediator has been appointed. It is imperative that the Tribunal's adjudicative role not be compromised by the appointment of a mediator. For that reason this Practice Direction may represent a departure from mediation principles, processes and practices followed elsewhere. This Practice Direction does not constitute a comprehensive code for mediators, and is not intended to exclude the application of generally accepted and/or reasonable practices and principles that do not conflict with it.

### Mediation Practice

4. All Parties must agree to the mediation process.
5. The most important outcomes of a mediation process are: an understanding by the Parties of the position and interests of other Parties, information sharing and constructive negotiations. Although it is desirable, it is not a requirement that the Parties reach agreement on all or even just some of the issues discussed during the process.
6. The Tribunal expects that negotiations and agreements will reflect the primary importance of environmental conservation and protection, and other objectives expressed in the applicable legislation and regulations.

7. The content of discussions during the mediation process (and documents prepared as part of the mediation process) are privileged, and will not be communicated at any time by the mediator to non-Parties, the public, the media or the Panel, except with the consent of all Parties.
8. The notes, records and recollections of the mediator are confidential and shall not be subject to disclosure in subsequent Tribunal or other proceedings, and shall not be admissible as evidence.
9. The mandate of the mediator includes the following:
  - (a) a review of the issues and an assessment of the willingness of the Parties to negotiate;
  - (b) facilitating discussion and sharing of information;
  - (c) organizing, scheduling and chairing meetings and developing agendas;
  - (d) imposing deadlines in the mediation process, when necessary;
  - (e) developing agreement on the issues to be addressed during the mediation;
  - (f) designing the mediation process with the Parties;
  - (g) seeking to reduce conflict and increase co-operation and trust among the Parties and assisting the Parties in an impartial manner to conduct constructive negotiations and pursue creative problem-solving;
  - (h) working with the Parties to ensure that they fully understand each others' interests and positions and encouraging the Parties to explore the development of consensus on the issues in dispute;
  - (i) informing the Parties of pertinent Tribunal policy (as stated in its Rules, Practice Directions, annual reports, decisions and rulings, or other public domain documents) where appropriate;
  - (j) identifying relevant environmental or other concerns which have not been addressed or adequately resolved by the Parties;
  - (k) requiring that the directions contained in this Practice Direction be followed throughout the mediation, and that the integrity of the process be maintained by all participants; and
  - (l) advising the Tribunal whether a Hearing is required if issues are unresolved.
10. Where the mediator is a member of the Tribunal, if a proposed settlement that alters the decision that is under appeal is reached during the mediation by all Parties, or if a proposed settlement reached in mediation is not agreed to by all Parties, and the appeal is proposed to be withdrawn or the Director or the Risk Management Inspector or Official proposes to revoke the decision that is the subject of the appeal, the mediator shall review the proposed settlement agreement, withdrawal or revocation and consider whether the proposed agreement, withdrawal or revocation is consistent with the purpose and provisions of the relevant legislation and whether the proposed agreement, withdrawal or revocation is in the public interest. The mediator shall also consider the interests of Parties, Participants and Presenters. After the consideration of the above factors, the mediator may decide that the Hearing should continue or may issue a decision dismissing the proceeding. If during a mediation an appeal or application is proposed to be withdrawn and the decision under appeal is not altered, the mediator shall issue a

decision dismissing the proceeding in accordance with Rules 190 and 191. Where the mediation is conducted by a non-Tribunal member, a proposed settlement will be reviewed by the Tribunal in accordance with Rules 191 to 194.

11. No Party or Participant who enters the Hearing process subsequent to a mediation will be allowed to raise issues in respect of which a mediated agreement has been reached, without leave of the Tribunal.
12. Agreements reached by the Parties shall be promptly put in writing and signed by them or by their duly-authorized representatives.
13. The Tribunal and the mediator will communicate with each other only in writing or e-mail, with copies provided to the Parties.
14. If the Parties do not settle the matter in its entirety, the mediator shall prepare a Mediator's Report listing the issues that remain outstanding and setting out any agreed upon dates or steps to set dates for the resumption of the Hearing and shall send a copy to the Parties and the Tribunal.
15. The confidentiality of communications of the Parties and of the mediator shall be strictly maintained by the mediator. The mediator may communicate privately from time to time with individual Parties unless the Parties agree that there will be no private communications. The mediator will not advise a Party (or anyone else) of information which was received by the mediator from another source, if that information was given on the basis that it would not be disclosed, unless the source subsequently consents to the disclosure. The mediator may elect to refuse to receive information from a source on a non-disclosure basis.
16. The mediator shall, in the event that Parties will be proceeding to a Hearing, work with the Parties to ensure that they are ready to proceed on schedule and in a timely fashion. With the consent of the Parties, and subject to paragraph 7, the mediator will advise the Tribunal as to whether the Parties are ready to proceed, and include any suitable recommendations.
17. The mediator shall not do, say, or disclose anything which would compromise the neutrality and independence of the Tribunal or undermine its adjudicative role. Nor shall the mediator provide strategic coaching to individual Parties to improve their chances of success before the Panel or champion their cause in any forum.
18. The Tribunal and the mediator shall not be a party to any agreement reached in mediation.
19. The mediation process should, wherever possible, be scheduled in such a manner as to permit adequate time for the preparation for, and completion of, the mediation, without creating conflict with the Hearing schedule if a Hearing is required despite the mediation.

### **III. Practice Direction for Site Visits**

#### **Purpose**

1. The purpose of this Practice Direction is to provide guidance for the process and conduct of a site visit.
2. The purpose of a site visit is to provide the opportunity for the Tribunal to better understand the issues raised or the evidence submitted in a particular Hearing. A site visit is not held for evidence gathering, although the questions and answers raised as a result of the site visit may be evidence at a Hearing. The Panel's observations while on the site are not evidence.

#### **Who may attend site visits**

3. Parties and Participants may attend a site visit as of right. Presenters may ask the Panel for permission to attend. In some cases there may be quite a large number of Presenters and practicality concerns dictate that they may not attend as of right. However, in most cases where the number of Presenters is small, they will be granted permission to attend.

#### **When a site visit should be held**

4. A site visit will only be undertaken when the Panel has determined that it is required in order to appreciate or understand the evidence or issues raised. Examples of when a site visit would be appropriate include those situations where the proximity of certain features on the site to each other or to neighbouring properties is at issue or where an appreciation is needed of the size or scope of an undertaking or natural feature.
5. An order to conduct a site visit may be made over the objection of a Party or Participant. The decision to hold a site visit is that of the Tribunal. Where a proposed site visit is contested, the Tribunal shall hear the submissions from the Parties and Participants before making an order for a site visit.
6. Access to property, other than a residential dwelling, is authorized by section 9 of the *Environmental Review Tribunal Act*.

#### **How a site visit is held**

7. A written procedural order may be sent to the Parties, Participants and those Presenters granted permission to attend setting forth the date, time and location of the site visit. The order will provide that if a person does not attend, the site visit may proceed in his or her absence. If a written order is not practicable, the Panel will, in his or her oral order, warn persons that if they do not attend, the site visit may proceed in their absence. The order should address the scope of the visit, areas to be observed, and who is to attend.

8. During the site visit, the rules of procedural fairness will be observed at all times. The Panel will ensure that any discussion is capable of being heard by all in attendance at all times.
9. If the site visit will be on private property the owner or occupier may be concerned about confidential information on the site being accessed by members of the public. This may occur particularly in the case of an industrial or commercial occupier of the site. In this case, it may be appropriate for each attendee to sign a non-disclosure agreement. The person requiring such an agreement should bring this to the attention of the Panel during the Hearing and other persons should be permitted to make submissions prior to a ruling on whether a non-disclosure agreement need be signed.
10. If the site visit is on property that may be hazardous or under construction, the property owner or occupier may be concerned about persons injuring themselves. In this case, it may be appropriate for each attendee to sign a waiver of liability agreement. The person requiring such an agreement should bring this to the attention of the Panel during the Hearing and other persons will be permitted to make submissions prior to a ruling on whether a waiver of liability need be signed. Safety wear such as hard hats and work boots will be mandatory on such visits.

### **Use of information obtained at the site visit**

11. If a member makes any material observations during the site visit upon which he or she intends to rely, he or she should first advise the Parties, Participants and Presenters of the observations and provide them with an opportunity to make submissions before making an order or decision in reliance of those observations.