



# ENVIRONMENTAL REVIEW TRIBUNAL

*2002-2005  
Business Plan*

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# *Message from the Chair*

I am pleased to present the first Annual Business Plan produced during my term as Chair of the Environmental Review Tribunal.

My predecessor, the Vice-Chairs, members, and staff have done an excellent job of merging the former Environmental Assessment Board and the Environmental Appeal Board into one body. During this transition, the Tribunal has established ambitious performance measure targets and has met or exceeded them.

Currently we are reviewing the changes in the nature of the Tribunal's workload and intend to have more routine matters resolved by the parties prior to hearing. Alternative dispute resolution helps deal with many issues in a cost-effective manner and is usually satisfactory to the parties. However, the complexity and number of hearings before the Tribunal is increasing, due to a greater public concern about environmental issues, which is reflected in Ministry of the Environment's increased vigilance. We have received over 75 appeals as a result of Certificates of Approval issued by the Ministry concerning water systems. In order to deal with these, we have scheduled Public Information Sessions and Preliminary Hearings throughout the Province. Most of these appeals should be resolved before the hearing; the more difficult ones will not.

The Tribunal is preparing to meet this challenge. We are developing innovative case management techniques to meet the needs of the increased workload without additional staff. We are guided at all times by the goals of fairness, quality, timeliness, transparency, consistency, efficiency and courtesy. We are designing and implementing a new continuing education program for our adjudicators. This new training program is particularly important due to both the increasing complexity of cases before the Tribunal, and also the Tribunal's anticipated new responsibilities under the *Nutrient Management Act*. We are excited by these challenges and will achieve our targets.

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

# *Tribunal Mandate*

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

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

# *Core Businesses*

The Environmental Review Tribunal has four core businesses which are:

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

## **1. OUTREACH**

### *Passive Component:*

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

### *Active Component:*

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

## **2. ALTERNATIVE DISPUTE RESOLUTION**

The Tribunal=s senior staff and several of its members have received certified training in Alternative Dispute Resolution (ADR) and are experienced mediators. Mediation, generally conducted 30 days before the commencement

of a hearing, will be offered to all parties appearing before the Tribunal, and before the Niagara Escarpment Hearing Office.

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

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

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

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

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

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

# *Annual Report on Key Achievements for 2001-2002*

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

# *Key Commitments and Strategies for 2002-2003*

The Tribunal has set the following goals as priorities for the fiscal year 2002-2003:

## **1. Outreach:**

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

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

The Tribunal will enhance its public information sessions to inform the public of the hearing process prior to the commencement of complex hearings. The Tribunal recognizes the need to include a component that will deal with the public interest that may be generated by the large number of appeals for municipal water systems. Public information sessions have been added to the scheduling process for these types of appeals. The Tribunal also provides educational presentations to interested groups, including municipal governments, local service groups, professional groups such as planners or engineers, and educational institutes, which explain the Tribunal's mandate and its hearing processes. The Tribunal will continue to offer this service, upon request, and will provide this presentation on its website.

### **Risk Assessment**

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

### Commitment #2: *Website Access:*

The Tribunal considers its website to be its number one communication channel. The public has embraced the website as the primary way to access information about the Tribunal and its processes. In the current fiscal year (April 1, 2001 to March 31, 2002), the Tribunal had a total of 14,804 visitors to its site and a total of 599,989 Ahits@ on specific pages in the site. Eight decisions or orders of the Tribunal were downloaded over 1,000 times. During the year there were over 66,000 separate downloads of documents from our website. The Tribunal will continue to use its website to provide copies of decisions, the Tribunal's Rules of Practice and relevant statutes; receive stakeholder feedback, and notify the public of the status of ongoing hearings. The Tribunal's website will continue to be updated daily with hearing-related information.

The Tribunal will undertake a review of its website this fiscal year in order to assess its ease of use and ability of the public to readily access information. A reorganization of areas of the website will be undertaken in order to allow easier access to the most commonly requested information about each of the Tribunal's areas of responsibility (i.e., the Environmental Review Tribunal, the Office of Consolidated Hearings and the Niagara Escarpment Hearing Office). The Tribunal will also be adding functionality to meet the requirements of Electronic Service Delivery and will meet or exceed all targets set by the Government in this regard. This service will allow appellants to file appeals electronically. The implementation of this new process will require a review of the current administrative processes used by staff to process appeals in order to ensure that those applicants who file electronically receive the same level of service as those who file by paper copy.

### Risk Assessment:

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

### Commitment #3: *Brochures and Flyers*

The Tribunal is currently undertaking a review of its brochures and flyers first introduced when the Environmental Assessment and Appeal Boards were administratively merged into one Tribunal. These brochures and flyers are available electronically on the Tribunal's website and in paper form. Updates to these brochures and flyers must be made in order to reflect the change in the name of the new Tribunal; revise information currently incorrect due to legislative amendments; correct minor errors created in the original copy; and redraft and clarify certain statements.

#### Risk Assessment:

There are limited risk factors relating to the production of these updated documents. The Tribunal will have to make a commitment to set aside staff time and financial resources for the production and proofreading of the documents.

## **2. Alternative Dispute Resolution:**

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

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

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

#### Risk Assessment:

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

Questionnaires completed by parties at the conclusion of an ADR meeting provide the Tribunal with valuable input into the ADR process. In the past, some completed questionnaires contained comments about the process prior to the commencement of the Tribunal's involvement or comments of a nature which are beyond the mandate of the Tribunal. As these questionnaires are submitted anonymously by the parties, it is impossible to address the concerns or clarify the Tribunal's role directly with the concerned party.

### **3. Staff Processing of Hearings:**

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

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

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

#### Risk Assessment:

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

The Tribunal has no control over the size or complexity of its workload. The number of cases filed with the Tribunal is dependent, in a large part, on the number of Orders or Certificates of Approval issued by Directors under the Ministry of the Environment and on the number of development permit applications issued or refused by the Niagara Escarpment Commission. The increase of the issuance of these instruments by the Ministry or the Commission will impact on the number of appeals/applications filed with the Tribunal. Given the Tribunal's small staff complement, a large number of new applications will impact on the staff's workload and its ability to comply with these scheduling standards.

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

#### *Commitment #6: Electronic Service Delivery (ESD)*

The Tribunal recognizes that by April 1, 2003, ESD will become a reality for all government ministries and agencies. In the last fiscal year, the Tribunal held its first hearing (Niagara Escarpment Plan Review Hearing) in which all participants filed written submissions electronically during the course of the hearing. This allowed participants (over 100) and the public to access, at any time, the written submissions filed by all participants in a timely and cost effective manner. The Tribunal also accepted written submissions and other correspondence from parties electronically via email. ESD will improve the efficiency and effectiveness of the Tribunal's ability to process cases. Staff will make changes to its administrative processes and its website in order to accept appeals/applications electronically.

#### **Risk Assessment:**

The general public may perceive ESD to be elitist if they are unable to use ESD options. Parties not using ESD may consider themselves to be at a disadvantage compared to other parties who are able to use this option. The Tribunal will continue to receive paper documents and parties will be given a choice of which option they may wish to use. The Tribunal is fully aware of the government's commitment to its ESD strategy which is to improve service by offering more public access.

#### **4. Hearing and Decision Making**

This component is entirely the responsibility of the Tribunal members, all of whom are Order-in-Council appointees, and includes hearings held by members

and their written decisions.

*Commitment #7: Courtesy and Respect at Hearings*

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

**Risk Assessment:**

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

*Commitment #8: Timelines of Decision Rendering*

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

**Risk Assessment:**

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

*Commitment #9: Training for Tribunal Members*

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

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

Risk Assessment:

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

## *Future Challenges 2003-2005*

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

It is anticipated that the Ontario Government intends to proclaim the *Nutrient Management Act* during this period. This Act designates the Environmental Review Tribunal as the appellant body for appeals from all orders, certificates of approval and provincial officers' orders issued under this legislation.

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

The Government of Ontario issued a report entitled "Managing the Environment, A Review of Best Practices". The implementation of this report may or may not have an affect on the Tribunal's workload.

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

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

Complicating all of the above, the Tribunal has no control over the number or

the timing of the renewal of Order-in-Council appointees. New members require considerable training, and experience has shown that a new member normally takes at least one year before being able to handle a full caseload.

Additionally, the background of an individual appointee can at times constrain the availability of such member to assume responsibility for certain categories of hearings. This may limit the ability of the Chair to assign that member to certain hearings in order to avoid the *perception* of bias or conflict of interest.

# *Key Performance Measures*

1. Outreach Core Business:			
Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
<p>Commitment #1: Public education and information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process.</p>	<p>The Tribunal will conduct public information sessions prior to the commencement of its complex hearings. The Tribunal will continue to speak to other interested groups where the Tribunal's profile can be showcased.</p>	<p>Present to a growing number of key audiences.</p>	<p>To review its protocol on when to conduct public information sessions prior to a hearing.</p> <p>The Tribunal will develop an electronic presentation and oral scripts to ensure consistency of information provided by different staff members at all public information sessions.</p>
<p>Commitment #2: Website Access</p> <p>The Tribunal will use its website to communicate with its clients.</p>	<p>The Tribunal will undertake a review of its website to improve ease of access and the Tribunal will continue to track the number of visitors to the site to monitor its use.</p>	<p>Continued increase in the use and efficiency of the site.</p>	<p>The configuration of the website will be reviewed and improvements made to ensure ease of use for the public.</p> <p>A new section of the website will be developed to allow for Electronic Service Delivery.</p>

			<p>website will be updated each business day to ensure optimal delivery.</p> <p>New Rules of Practice, Practice Directions and Guidelines, etc. will be posted as approved.</p>
<p>Commitment #3: Brochures and Flyers will be updated electronically and in paper form.</p>	<p>The Tribunal will review its brochures and flyers in order to update the information to ensure accuracy and consistency of information.</p>	<p>Continued communication of the hearing process to the Tribunal's clients.</p>	<p>To review and revise the brochures and flyers electronically and in paper copy.</p>

**2. Alternative Dispute Resolution  
Core Business**

Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
<p>Commitment #4: ADR Services</p> <p>Offer ADR services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.</p>	<p>When all parties agree to participate, mediation meetings will generally be held at least 30 days prior to the commencement of the hearing.</p>	<p>Increase the number of cases receiving mediation.</p>	<p>Continue to offer mediation services in every appeal and at the request of the parties in applications.</p> <p>Questionnaires will be sent to all parties at the completion of the</p>

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

Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
Commitment #5: Improve Timeliness in Scheduling Hearings	Hearings will be scheduled within the timeliness standard.	Hearing dates will be scheduled within 30 calendar days from the date of the receipt of the application/appeal and 7 calendar days from the date the Tribunal receives all necessary information/documentation from the parties	Staff will adhere to the target.
Commitment #6: Electronic Service Delivery (ESD)	ESD option will be available for all applicants/appellants to electronically file applications/appeals and written submissions.	Parties will be able to access ESD options in all types of cases by April 1, 2003.	Administrative procedures will be reviewed and modified to accept applications/appeals filed electronically.

			The impact of ESD on Tribunal Rules, Guidelines and Policies will be reviewed.
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4. Hearing and Decision Making Core Business			
Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
Commitment #7: Tribunal Members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy.  All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To provide Questionnaires that monitor respect and courtesy accorded to hearing participants by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of Hearing Questionnaires will be reported in the Tribunal's Annual Report.  All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #8: Tribunal Members will render timely decisions.	The Tribunal will track the time it takes to render written decisions.	Decisions will be rendered within 30 days of final arguments, excepting hearings with legislated timelines.	In 90% of hearings held, Tribunal members will adhere to the target.
Commitment #9: Training of Members.	Members will receive adequate training to conduct hearings.	Members will be trained in the conduct of hearings, knowledge of legislation and Tribunal rules, decision writing and alternative dispute resolution.	New members are trained to conduct hearings independently within one year of appointment.

# *2002-2003 Approved Budget*

## **Environmental Review Tribunal**

(\$000's)

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

Salaries and Wages	\$ 933.5	
Employee Benefits	\$ 160.0	
Transportation and Communication	\$ 125.9	
Services	\$ 273.8	
Supplies and Equipment	\$ 56.1	
Total Direct Operating		\$1,549.3

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

Transportation and Communication	\$ 20.0	
Services	\$ 160.0	
Supplies and Equipment	\$ 20.0	

### **Funds allocated for the Walkerton Inquiry Report – Part 1:**

Services	\$ 200.0	
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Total Funds allocated to the Tribunal: \$1,949.3

# *Inquiries*

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