



ENVIRONMENTAL REVIEW TRIBUNAL

*2004-2007
Business Plan*

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Message from the Chair

I am pleased to present the Business Plan which sets forth the priorities of the Environmental Review Tribunal for the period 2004-2007, and highlights the challenges and priorities for the coming year.

The Tribunal embraces the challenge of improving on its record of achieving its performance targets.

I believe that the public rightfully expects the highest possible quality of decision-making from Ontario's tribunals. Public attention and concern are particularly focused on environmental issues. That's why we are giving priority to member training, recognizing as we do, the increasing complexity of many of our hearings.

We are committed to public access. That's why we emphasize outreach by way of public information sessions and our website. We recognize that the cost of participation must be reasonable in order to preserve access. Provision of mediation services helps in this effort.

We know too, that the public expects timeliness. Achieving our targets will provide it.

Members and staff at the Tribunal will be working towards the goals set forth in this Plan.

Ian McPhail, Q.C.

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*, the *Nutrient Management Act, 2002*, the *Safe Drinking Water Act, 2002*, 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*.

Tribunal Functions

The Environmental Review Tribunal has four main functions which are:

- 1. Outreach**
- 2. Mediation**
- 3. Staff Processing of Hearings**
- 4. Hearings and Decision Making**

1. OUTREACH

Passive Component:

The passive component of the Tribunal's outreach function consists of a number of initiatives. The Tribunal has created guides explaining its role and procedures to be distributed upon request. The Tribunal has a website which provides a wide variety of material updated on an ongoing basis. Website users have access to current information regarding the Tribunal and its hearings, including its decisions, orders, forms, relevant statutes, and Rules of Practice.

Active Component:

The active component of the Tribunal's outreach function includes a number of initiatives. These are staff responses to questions from clients, public information and education sessions delivered by senior staff or Tribunal members, and stakeholder consultation. The public information sessions are held by the Tribunal to inform the public of the hearing process prior to complex hearings or hearings with substantial public interest. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters. The Tribunal seeks 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. MEDIATION

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 shortens hearings by reducing the number of issues to be adjudicated.

The Tribunal's senior staff and most of its members have received certified training in mediation. Mediation, generally conducted 30 days before the commencement of a hearing, is offered in appeal hearings before the Tribunal, and before the Niagara

Escarpment Hearing Office. In all other cases, the Tribunal will provide mediation upon request.

3. STAFF PROCESSING OF HEARINGS

This function 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 nine 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 on appeals under the *Niagara Escarpment Planning and Development Act* of development permit 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 no 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, due to unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal members endeavour 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 2003-2004

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 2004-2005

The Tribunal has set the following goals as priorities for the fiscal year 2004-2005:

1. OUTREACH

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

Commitment #1: Public Information and Education Sessions:

The Tribunal will continue to conduct public information sessions to inform the public of the hearing process prior to the commencement of complex hearings or hearings with substantial public interest. The Tribunal will provide, upon request, educational presentations to interested groups.

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 increasing complexity of its hearings and the increase in public interest in environmental matters. Conducting these sessions will increase the Tribunal's travel and advertising expenditures.

Commitment #2: Website Access:

The public has embraced the website as the primary way to access information about the Tribunal and its processes. The Tribunal will continue to use its website to provide copies of decisions and orders, the Tribunal's Rules of Practice and relevant statutes, receive stakeholder feedback, and notify the public of the status of ongoing hearings. The Tribunal's website will continue to be updated daily with hearing-related information.

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

Risk Assessment:

There are very few risk factors related to the updating of information on the website since the Tribunal has a systems officer to perform this task. Until March 31, 2004, the Tribunal received its connection free of cost through the gateway from another agency, the Ontario Energy Board. However, with the passing of amendments to the Ontario Energy Board Act, the Ontario Energy Board has become a self-financing crown corporation without share capital requiring the Tribunal to establish its own connection at a significant cost.

Commitment #3: *Guides:*

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

Risk Assessment:

There are limited risk factors relating to the production of these updated documents. The Tribunal has reformatted these guides in a word format that allows ease of update of the documents. This format does not require any additional financial resources for production, but the Tribunal will have to make a commitment to set aside staff time for the production and proofreading of the documents.

2. MEDIATION

Mediation 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 courses. Mediation will be offered, in a timely manner, to all parties 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 hearing days and issues to be adjudicated, thereby reducing costs for the parties and taxpayers.

Commitment #4: Mediation 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 mediation 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 and subsequently did not proceed to a hearing.

Risk Assessment:

Mediation should be done in a timely manner. The Tribunal is willing to assist parties in mediating their case before or during the hearing stage. However, in the past, not all parties wished to participate in the mediation process even though other parties to the case had requested these services. This is a factor outside the Tribunal's control, which may adversely impact on the public's perception of the Tribunal's performance. This perception may be that the public considers 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.

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

Questionnaires completed by parties at the conclusion of a mediation session provide the Tribunal with valuable input into the 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 were beyond the mandate of the Tribunal. The Questionnaires are submitted anonymously in order to encourage truthful responses and ensure fairness for those people who may appear before the Tribunal again in the future. Therefore, it is impossible to address the concerns or clarify the Tribunal's role directly with the concerned party.

3. STAFF PROCESSING OF HEARINGS

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

Commitment #5: Timeliness in scheduling hearings:

The staff is committed to ensure that every appeal/application is processed through the appropriate administrative mechanism to provide timely scheduling of all matters before the Tribunal. Staff will adhere to timeliness standards to ensure, on average, cases to be 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. This commitment does not apply to the scheduling of hearings under the *Consolidated Hearings Act* as the administrative process does not allow for the scheduling of these hearings within 30 days.

Risk Assessment:

In the scheduling of complex hearings, it may be difficult for the staff to adhere to the scheduling standards. In multi-party proceedings, it may be difficult to coordinate the receipt of information from all parties in a timely manner. The staff will endeavour 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 of 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 appeals and applications will impact on the staff's workload and its ability to comply with these scheduling standards.

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

4. HEARINGS AND DECISION MAKING

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

Commitment #6: Courtesy and Respect at Hearings:

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

Risk Assessment:

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

Commitment #7: Timelines of Decision Rendering:

Tribunal members will comply with all legislated requirements. For those decisions without legislated requirements excluding decisions under the *Consolidated Hearings Act*, Tribunal members will endeavour to render 90% of all decisions within 30 days following completion of the hearing or the filing of final written submissions (if so ordered by the hearing panel).

Risk Assessment:

The Tribunal has no control over the size and complexity of its workload. The number and complexity of cases heard by the Tribunal is dependent on the number and complexity of applications and appeals filed. An increase in the number of applications and appeals, coupled with an increase in the number of sitting days, may prevent Tribunal members from meeting this target.

Commitment #8: Training for Tribunal Members:

All newly appointed members receive training before sitting hearings on their own. Members are expected to review the various Acts, relevant decisions and Rules of Practice 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 regularly throughout the year. The learning program is designed to enlighten the members on a broad range of issues facing the environmental and administrative law communities. Members also attend in-house training sessions conducted specifically on the Tribunal's legislation, Rules of Practice, and administrative processes. Members also attend courses and conferences held by other organizations, such as the Council of Canadian Administrative Tribunals, the Society of Ontario Adjudicators and Regulators and the Law Society of Upper Canada. Some members also attend courses on alternative dispute resolution.

Risk Assessment:

It takes significant training and time for new members to become proficient conducting hearings on their own and acquiring a full caseload of hearings. This could impair the Tribunal's ability to schedule and conduct cases in a timely manner.

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

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

Risk Assessment:

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

There is no requirement for any party to advise the Tribunal that they are appealing its decision. The Tribunal can only report on a decision if it has been advised of a further appeal.

Future Challenges 2005-2007

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.

The Ontario Government has proclaimed the *Nutrient Management Act, 2002*, and the *Safe Drinking Water Act, 2002*. These Acts designate the Environmental Review Tribunal as the appellate body for appeals from orders, certificates of approval, licences and permits issued under certain legislation. It is anticipated that the workload will increase once appeals are received under the *Nutrient Management Act, 2002*. The Tribunal will be required to develop a training plan for members and staff regarding this legislation.

More enforcement and monitoring of environmental matters by the Ministry of the Environment may result in an increase in the number of appeals.

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 development permit appeals filed with the Tribunal. The Niagara Escarpment Commission is currently establishing, through a public process, policies on water taking and wind power. It is anticipated that both policies, once adopted, will be controversial to one sector or another. As a result, applications for plan amendments or development permits may result in appeals which will impact upon the work of 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. Even with an anticipated and significant increase in the caseload, the Tribunal will continue to strive to maintain its high standard of meeting its performance measures.

As with all quasi-judicial tribunals, new members require considerable training, and experience has shown that a new member normally takes at least one year before being able to handle a full caseload. Within the next fiscal year, the appointments of four full-time members expire. This could result in a potential change in membership and additional training requirements.

Key Performance Measures

1. Outreach
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
<p>Commitment #1: Public 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.</p>	<p>Present public information sessions in cases of complex hearings or substantial public interest.</p>	<p>The Tribunal will conduct public information sessions prior to the commencement of complex hearings and hearings with substantial public interest.</p>
<p>Commitment #2: Website Access</p> <p>The Tribunal will use its website to communicate with the public.</p>	<p>The Tribunal will continue its review of its website to improve ease of access and the Tribunal will continue to track the number of visitors to the site to monitor its use.</p>	<p>Continued increase in the use and efficiency of the site.</p>	<p>The information contained on the website will be reviewed and improvements made to ensure ease of use for the public.</p>

			<p>The website will be updated each business day.</p> <p>Any amendments to the Rules of Practice, Practice Directions and Guidelines, or publication of the annual report will be posted as approved.</p>
Commitment #3: Guides will be updated.	The Tribunal will review its guides in order to update the information to ensure accuracy and consistency.	Continued communication of the hearing process to the public.	To review and revise the guides as changes to governing legislation and policies arise.

2. Mediation
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
<p>Commitment #4: Mediation Services</p> <p>Offer Mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.</p>	When all parties agree to participate, mediation sessions will generally be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	<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 mediation session to ascertain their</p>

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

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #5: Improve Timeliness in Scheduling Hearings	Hearings will be scheduled within the timeliness standard.	On average, hearing dates will be scheduled within 30 calendar days from the date of the receipt of the application/appeal and 7 calendar days from the date the Tribunal receives all necessary information/documentation from the parties.	Staff will adhere to the target.

4. Hearings and
Decision Making
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #6: 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 #7: 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 and hearings under the <i>Consolidated Hearings Act</i> .	In 90% of all hearings held, Tribunal members will adhere to the target.
Commitment #8: Training of Members.	Members will receive adequate training to conduct hearings, write decisions and, in some cases, conduct mediation sessions.	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. All members will receive ongoing training regarding the

			<p>Tribunal's legislation, Rules of Practice and administrative policies.</p> <p>The Tribunal will continue to conduct its learning program designed to enlighten members on environmental issues and administrative law.</p>
<p>Commitment #9: Appeals and judicial review of Tribunal Decisions.</p>	<p>The Tribunal will report the outcome of any appeal of its decisions or judicial review applications.</p>	<p>Review and analyze the outcome of any appeal of its decisions or judicial review applications.</p>	<p>The Tribunal will summarize any decision on appeal or judicial review in its Annual Report. The Tribunal will review practices in light of any decisions of appeal.</p>

2004-2005 Approved Budget

Environmental Review Tribunal

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General Account for the Operation of the Tribunal:

Salaries and Wages*	\$ 1,002.9
Other Direct Operating Expenditures	396.9
Total	\$1,399.8

Funds allocated for Safe Drinking Water, Large Waterworks Compliance, Walkerton Inquiry Report – Part 2:

Other Direct Operating Expenditures	410.0
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Funds allocated for Nutrient Management:

Other Direct Operating Expenditures	61.3
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Total Funds allocated to the Tribunal:	\$1.871.1
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*As of this fiscal year, benefits are being managed centrally.

Inquiries

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