



ENVIRONMENTAL REVIEW TRIBUNAL

*2005-2008
Business Plan*

Table of Contents

Message from the Chair	1
Tribunal Mandate.....	2
Core Functions	3
1. Pre-Hearings, Hearings and Decision Making	3
2. Staff Processing of Hearings	3
3. Mediation	4
4. Public Access to the Tribunal	4
Annual Report on Key Achievements for 2004-2005	5
Key Commitments and Strategies for 2005-2006.....	6
1. Pre-Hearings, Hearings and Decision Making	6
2. Staff Processing of Hearings.....	8
3. Mediation	9
4. Public Access to the Tribunal	10
Future Challenges 2006-2008.....	12
Key Performance Measures	13
1. Pre-Hearings, Hearings and Decision Making	13
2. Staff Processing of Hearings.....	14
3. Mediation	15
4. Public Access to the Tribunal	16
2005-2006 Approved Budget.....	18
Inquiries	19

Message from the Chair

It is my pleasure to present the 2005 - 2008 Business Plan for the Environmental Review Tribunal. This Plan highlights our upcoming challenges and priorities.

Although we have experienced a transitional period this past year, with a reduction in Members and changes to our administrative personnel, our performance targets have been achieved by the current staff and Members. The streamlining of our internal processes, the increase in preliminary hearings and mediations has improved our overall operations and services to the public.

We have started a process of updating our Rules of Practice. It is our intention to consult broadly prior to the revised Rules being finalized this fall. The revision of our Rules will provide better clarity for a more effective and efficient Tribunal.

We will continue to provide a comprehensive training plan to ensure that all new Members will promptly receive the relevant orientation and training to enable them to effectively hear and make quality decisions regarding applications and appeals. In addition, the ongoing training of our current Members will continue to ensure they are properly apprised of all current and proposed legislation and regulations.

We are steadfastly committed to being flexible and adaptive to best meet the challenges of our mandate. We welcome these challenges with the confidence that we can surpass our performance targets and the expectations of the public.

Toby Vigod

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 applicable governing legislation.

The Tribunal functions as a quasi-judicial body, subject to the rules of natural justice, procedural fairness and the requirements of the *Statutory Powers Procedure Act*. The Tribunal's primary role is adjudicating applications and appeals under various environmental and 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, R.S.O., 1990*.

Tribunal Functions

The Environmental Review Tribunal has four main functions which are:

- 1. Pre-Hearings, Hearings and Decision Making**
- 2. Staff Processing of Hearings**
- 3. Mediation**
- 4. Public Access to the Tribunal**

1. PRE-HEARINGS, 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 Member 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 60 days of the completion of the Hearing or the filing of final written submissions (if ordered by the Hearing panel).

2. STAFF PROCESSING OF HEARINGS

This function includes all administrative steps necessary to process an appeal/application from the date of filing to the commencement of the Hearing. The Tribunal hears appeals/applications pursuant to several different statutes. When an appeal/application is received, it is dealt with through the appropriate administrative process. Each process includes:

- reviewing the appeal/application to assess its compliance with the appropriate legislation;
- assigning the appeal to the appropriate hearing process;
- scheduling the Hearing;

- monitoring and administering the appeal process through to the posting of the written decision on the Tribunal's website.

3. MEDIATION

The use of mediation as a part of the Hearing process encourages parties to narrow or settle their differences. It often removes the need to proceed to a hearing or shortens the length of a hearing by reducing the number of issues to be adjudicated.

The Tribunal is striving to have all its Members receive certified training in mediation. Mediation is offered to all parties (except matters under the *Niagara Escarpment Planning and Development Act*) and is generally conducted 30 days before the commencement of a hearing.

4. PUBLIC ACCESS TO THE TRIBUNAL

The Tribunal provides the public with information regarding its role and hearing procedures through its Guides. The Guides are distributed, upon request, or may be obtained through the Tribunal's website. A wide variety of information which is updated on an ongoing basis is provided through the website to the public. Website users have access to current information regarding the Tribunal's hearings, including decisions, orders, forms, relevant statutes, Rules of Practice and Guidelines.

The Tribunal staff respond to questions from clients and the public regarding hearings and processes of the Tribunal. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters.

The Tribunal welcomes 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.

Annual Report on Key Achievements for 2004-2005

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 2005-2006

The Tribunal has set the following goals as priorities for the fiscal year 2005-2006:

1. PRE-HEARINGS, HEARINGS AND DECISION MAKING

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

Commitment #1: 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 thoroughly investigate any complaint brought forward in accordance with the Tribunal's Complaints Policy. A final report will be sent to the complainant.

Risk Assessment:

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

Commitment #2: 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 80% of all decisions within 60 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 length and complexity of the Hearing and this will often have a direct impact on the timelines in preparing a decision.

Commitment #3: *Training for Tribunal Members:*

All newly appointed Members receive training before conducting hearings on their own. Members are expected to review the respective Acts and their Regulations, Rules of Practice, Practice Directions and Guidelines of the Tribunal and attend training sessions provided by General Counsel. 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 a series of educational sessions 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 provided by General Counsel and conducted specifically on the Tribunal's enabling and governing 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 to conduct hearings on their own and handle a full caseload of hearings. This could impair the Tribunal's ability to schedule and conduct cases in a timely manner.

Commitment #4: *Offer pre-hearing conferences in appeals under the Niagara Escarpment Planning and Development Act and schedule preliminary hearings in all other appeals and applications, prior to the commencement of the hearing:*

The Tribunal is committed to providing pre-hearing conferences for matters under the *Niagara Escarpment Planning and Development Act (NEPDA)* and for all other appeals and applications, preliminary hearings will be held, at least 30 days prior to the commencement of the hearing.

Risk Assessment:

The pre-hearing conferences and preliminary hearings for *NEPDA* matters and for all other appeals and applications have been established so that the parties: identify the issue(s); and agree to set dates to complete document exchange and/or witness statements. If the parties do not agree to participate, then pre-hearing conferences cannot be held.

If the parties are not properly prepared then the hearing may be adjourned which causes a delay in resolving the appeal.

Commitment #5: Report on appeals and judicial review of Tribunal Decisions:

The Tribunal will report on the outcome of appeals and judicial reviews of its decisions. The Tribunal will review and analyze its own practices to take into account the results of any such appeals or judicial reviews.

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 the court's 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 when it has been advised of a further appeal and the outcome of that appeal.

2. STAFF PROCESSING OF HEARINGS

This phase includes all administrative steps necessary to process an appeal/application from the date of filing to the posting of the written decision on the Tribunal's website.

Commitment #6: 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, that within 30 calendar days from the date the appeal/application is received by the Tribunal, cases will be scheduled for a hearing. 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 co-ordinate 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 appeals filed with the Tribunal is dependent upon the number of instruments issued by the Directors of the Ministry of the Environment and on the number of decisions made regarding development permit applications and the number of Niagara Escarpment Plan Amendments that come before the Tribunal. Any increase in the issuance of these instruments or decisions regarding development permit applications, will impact on the number of appeals filed with the Tribunal. This increase will have an impact on the Tribunal 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, amendments or additions are made to its governing legislation. This will also impact the staff's ability to meet its scheduling standards.

3. MEDIATION

Mediation is available to all parties in most proceedings before the Tribunal. A few Tribunal Members have been certified through accredited courses. Mediation will be offered in a timely manner, to all parties (except in matters under the *Niagara Escarpment Planning and Development Act*) 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 #7: 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. Further, these returned Questionnaires will assist the Tribunal in improving its services.

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.

4. PUBLIC ACCESS TO THE TRIBUNAL

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 and Guides.

Commitment #8: *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 for the following activities: providing copies of decisions and orders; providing copies of the Tribunal's Rules of Practice and relevant statutes;

receiving stakeholder feedback; and, notifying the public of the status of ongoing hearings. The Tribunal's website will continue to be updated daily with hearing-related information.

The Tribunal is reviewing its website this fiscal year in order to improve its ease of use and the 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. The Tribunal will continue to update its website within 24 hours of any changes occurring.

Commitment #9: *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 are 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, however the Tribunal will have to make a commitment to set aside staff time for the production and proofreading of the documents.

Future Challenges 2006-2008

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 Tribunal anticipates that there could be an increase in the number and complexity of cases to be adjudicated.

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 has been undertaking a training plan for Members and staff regarding this legislation and its regulations.

The Ontario Government has also proclaimed the *Oak Ridges Moraine Protection Act, 2001*. Although not yet finalized, the Environmental Review Tribunal may be given additional responsibilities in relation to this legislation.

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

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 any 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.

As with all quasi-judicial tribunals, changes in Members and the appointment of new Members in the next fiscal year will result in additional training. Past experience has shown that this training period can vary before a Member is able to handle a full caseload.

Even with an anticipated and significant increase in the caseload and expected additional Member and staff training, as well as changes to administrative processes and procedures, the Tribunal will continue to strive to maintain its high standard of meeting its performance measures.

Key Performance Measures

1. Pre-Hearings, Hearings and Decision Making Core Function:			
Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
Commitment #1: 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 continue to provide Questionnaires to hearing participants and monitor respect and courtesy 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 #2: Tribunal Members will render timely decisions.	The Tribunal will track the time it takes to render written decisions.	Decisions will be rendered within 60 days of final arguments, excepting hearings with legislated timelines and hearings under the <i>Consolidated Hearings Act</i> .	In 80% of all hearings held, Tribunal members will adhere to the target.
Commitment #3: Training of Tribunal Members.	All 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 without prior Tribunal experience are trained to conduct hearings independently within one year of appointment. All members

			<p>will receive ongoing training regarding the 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 #4: Offer pre-hearing conferences in appeals under the <i>NEPDA</i>* and schedule preliminary hearings in all other appeals and applications, prior to the commencement of the hearing.</p> <p><i>*Niagara Escarpment Planning and Development Act</i></p>	<p>When all parties agree to participate, pre-hearing conferences for matters under the <i>NEPDA</i>* will be held and for all other appeals and applications, preliminary hearings will be held, at least 30 days prior to the commencement of the hearing.</p>	<p>Increase the number of cases receiving pre-hearing conferences.</p>	<p>Continue to offer pre-hearing conferences in every matter under the <i>NEPDA</i>* and preliminary hearings in all other appeals and applications. Questionnaires will be sent to all parties at the completion of the <i>NEPDA</i>* pre-hearing conference to ascertain their level of satisfaction with the process and assist the Tribunal in improving its services.</p> <p>The Tribunal will monitor the success of pre-hearing conferences by tracking the cases that are resolved prior to the hearing.</p>
<p>Commitment #5: Report on appeals and</p>	<p>The Tribunal will report the outcome of any</p>	<p>Review and analyze the outcome of any</p>	<p>The Tribunal will summarize any deci-</p>

judicial review of Tribunal Decisions.	appeal of its decisions or judicial review applications.	appeal of its decisions or judicial review applications.	sion on appeal or judicial review in its Annual Report. The Tribunal will review practices in light of any decisions of appeal.
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**2. Staff Processing of Hearings
Core Function:**

Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
Commitment #6: 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 filing date of the application/appeal and 7 calendar days from the date the Tribunal receives all required information/documentation from the parties.	Staff will adhere to the target.

**3. Mediation
Core Function:**

Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
Commitment #7: Offer Mediation services in all appeal cases, where	When all parties agree to participate, mediation sessions will generally be held at least 30 days prior	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in

<p>appropriate, and on request in application cases, prior to the commencement of the hearing.</p>	<p>to the commencement of the hearing.</p>		<p>applications.</p> <p>Questionnaires will be sent to all parties at the completion of the mediation session to ascertain their level of satisfaction with the process and assist the Tribunal in improving its services.</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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4. Public Access to the Tribunal
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
<p>Commitment #8: The Tribunal will use its website to provide information and 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</p>

			publication of the Annual Report will be posted as approved.
Commitment #9: 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.

2005-2006 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 Clean Water:

Other Direct Operating Expenditures	\$410.0
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Funds allocated for Nutrient Management:

Salaries and Wages*	\$42.8
Other Direct Operating Expenditures	\$61.3

Total Funds allocated to the Tribunal: \$1,924.6

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

Inquiries

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