



ENVIRONMENTAL REVIEW TRIBUNAL

*2006-2009
Business Plan*

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Message from the Chair

It is my pleasure to present the 2006 - 2009 Business Plan for the Environmental Review Tribunal. This Plan highlights our achievements and future commitments and challenges.

After broad consultation, our revised Rules of Practice and Practice Directions were adopted by the Tribunal and released on October 28, 2005. In addition, Guides and administrative processes were also revised and updated. The results have been favourable and the revisions to our Rules have resulted in a more effective and efficient Tribunal. As a result of the changes to our overall operations, services to the public have improved.

This past year has also been marked by changes in Tribunal membership. However, even while experiencing vacancies in our Vice-Chair complement, and dealing with a number of complex cases, our performance targets have generally been achieved by the staff and Members.

This year, we have held several Learning Programs and Member Training sessions for all our Members. These sessions provided our Members with additional knowledge regarding our revised Rules, legislation and processes. In addition, the Learning Programs continued to offer our Members valuable insights into emerging environmental issues and proposed legislation.

The Tribunal looks forward to meeting additional challenges while continuing to provide excellent service to 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 to adjudicate applications and appeals under various environmental statutes.

The Tribunal determines applications and appeals under the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Safe Drinking Water Act, 2002*, 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 filed 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, c. N.2, as amended.

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 function of the Tribunal is performed by the Tribunal Members, all of whom are Order-in-Council appointees, and includes hearings held by the Members and their written decisions.

Under the *Niagara Escarpment Planning and Development Act*, all recommendations/decisions made on appeals of development permit applications are required by legislation to be rendered 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 rendered 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 required. In all other types of decisions, Tribunal Members endeavour to render their decision within 60 days of the conclusion 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 the administrative steps necessary to process an appeal/application from the date of filing to the completion of the Hearing. The Tribunal hears appeals/applications pursuant to several different statutes. When an appeal/application is received, it is dealt with through an administrative process. Each process includes:

- reviewing the appeal/application to assess its compliance with the appropriate legislation;
- acknowledging the appeal and requesting further information, if required;
- scheduling the Hearing;
- monitoring and managing the case through the process including the posting

of the written decision on the Tribunal's website.

3. MEDIATION

Since mediation services are offered at the commencement of the Hearing process, parties are encouraged to narrow or settle their differences at an early stage. Often these services remove 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 certified to conduct mediation. Mediation is offered to all parties (except matters under the *Niagara Escarpment Planning and Development Act*) and is generally conducted after the preliminary hearing and 30 days prior to the commencement of the main hearing.

4. PUBLIC ACCESS TO THE TRIBUNAL

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

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

The Tribunal welcomes feedback from the parties or professional sector regarding new policies, procedures and general operational issues. Comments may also be provided by accessing the website and completing the feedback form.

Annual Report on Key Achievements for 2005-2006

The Tribunal reports 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 2006-2007

The Tribunal has set the following goals as priorities for the fiscal year 2006-2007:

1. PRE-HEARINGS, HEARINGS AND DECISION MAKING

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

Commitment #1: Parties to be treated with Courtesy and Respect at Hearings:

Tribunal Members will ensure that all parties are treated with courtesy and respect when appearing before the Tribunal. 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 filed in accordance with the Tribunal's Complaints Policy. A final report will be sent to the complainant.

Risk Assessment:

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

Commitment #2: Target Timelines for 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 these decisions within 60 days following the conclusion of the Hearing or the filing of final written submissions (if so ordered by the Hearing Panel).

Risk Assessment:

The length and complexity of a Hearing will often have a direct impact on the time required to prepare a decision by the member.

Commitment #3: Provide Training for Tribunal Members:

All newly appointed Members receive training before conducting hearings on their own. Members are expected to review the respective Acts, Regulations, the Tribunal's Rules of Practice and Practice Directions and attend member training sessions provided by General Counsel. Members will observe hearings before conducting 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 environmental and administrative law issues. Combined with the Learning Program, Members also attend in-house training sessions provided by Tribunal 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 a significant amount of training and time for new Members to become proficient in conducting hearings on their own and handle a full caseload of hearings. This could impair the Tribunal's efficiency in scheduling and determining cases in a timely manner.

Commitment #4: Offer pre-hearing conferences and schedule preliminary hearings, 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 providing preliminary hearings, at least 30 days prior to the commencement of the hearing.

Risk Assessment:

The pre-hearing conferences for *NEPDA* matters and preliminary hearings for all other appeals and applications have been established so that the parties are prepared for the main hearing. At these hearing events, 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, the hearing may be adjourned, causing a delay in resolving the appeal.

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

The Tribunal will report on the outcome of request for review, appeals and judicial reviews of its decisions. Upon the release of any such appeals or judicial review decisions, the Tribunal will consider its own practices.

Risk Assessment:

Except for the Tribunal's review of its own decisions, the Tribunal will have to receive a copy of the court decision in order to review and report. 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 received the outcome or been advised of a further 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 rendering and 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 using the appropriate administrative tools to provide timely scheduling of all matters before the Tribunal. Staff will adhere to timeliness standards and ensure, on average, that within 30 calendar days from the date the appeal/application is received by the Tribunal, it is scheduled for a hearing. This commitment does not apply to the scheduling of hearings under the *Consolidated Hearings Act* as the complexity of 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 timelines standards. In proceedings involving multi-parties, 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 timelines in scheduling appeals/applications.

The Tribunal has no control over the number of appeals/applications filed or the complexity of its workload. The number of appeals filed with the Tribunal is related to the number of instruments issued by the Directors of the Ministry of the Environment; 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 workload of the Tribunal staff and their ability to comply with these timelines.

The Tribunal also has no control over the increase of responsibilities if changes, amendments or additions are made to its governing legislation. This will impact the mandate of the Tribunal and 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. Mediation services often removes the need to proceed to a hearing or reduces the number of required hearing days and issues to be adjudicated, resulting in reduced costs for the parties and taxpayers.

Commitment #7: Offer Mediation Services:

The Tribunal will continue to offer these services in every appeal and, upon request, in all applications filed in order to encourage parties to resolve their issues. In addition, after the completion of the mediation session, the Tribunal distributes Questionnaires to the parties to ascertain whether its 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 number of cases in which mediation sessions were successfully held and subsequently did not proceed to a Hearing. Further, Questionnaires that are completed and returned 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, not all parties wish to participate in the mediation process even though other parties in the case have requested these services. This is a variable and may adversely impact on the public's perception of the Tribunal's performance. The public may consider that they are not receiving a service which provides cost saving measures (both public and private), and eliminates the need for or reduces the length of a hearing.

Questionnaires completed by the parties at the conclusion of a mediation session provide the Tribunal with valuable input into the process. However, some completed Questionnaires contain comments about the appeal process prior to the commencement of the Tribunal's involvement or comments which are 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 in the future. Therefore, the Tribunal is not able to address the concerns or clarify its 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 updated information to the public on its processes, status of hearings, decisions and orders through its website.

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 Practice Directions 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 has made significant improvements to its search engine and provided access to archival decisions on the website. The Tribunal will continue 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 changes or the updating of information on the website since the Tribunal has a dedicated systems officer who can perform this task. The Tribunal will continue to update its website within 24 hours of any changes occurring relating to the status of cases.

Commitment #9: *Update Guides:*

The Tribunal will undertake to update its Guides immediately following changes to any legislation, regulation or the Tribunal's Rules of Practice. These Guides are available in a downloadable format from the website or in paper form, upon request.

Risk Assessment:

There are limited risk factors in keeping these documents current. The Tribunal has reformatted these Guides in a word format that allows ease of update. The downloadable format does not require any additional financial resources for production, however as changes occur, the Tribunal will have to make a commitment to set aside staff time for the production and proofreading of the documents.

Future Challenges 2007-2009

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. As new legislation is introduced, 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. Although the appeals have been minimal under the *Safe Drinking Water Act, 2002* and *Nutrient Management Act, 2002*, since proclamation, it is anticipated that the workload will increase once additional appeals are received under both pieces of legislation. The Tribunal provided information sessions and will continue with training 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.

Bill 43, *Clean Water Act* was recently introduced into the legislature on December 5, 2005. Although not yet finalized, it names the Tribunal as the appellate body.

Following a report from the Environmental Assessment Advisory Panel, the Ministry is considering the Panel's recommendations, which could lead to an increased role for the Tribunal.

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.

Changes in legislation complied with the increase in enforcement and monitoring will create training and administrative challenges for the Tribunal. These challenges will be a priority in order to handle any increase in responsibility which will have an impact on Tribunal expenditures, the hiring of new Tribunal Members and/or staff, increased travel and direct hearing-related costs.

It is expected that the Tribunal will need to provide training for new Members and continue with training for all Members on new or proposed legislation. These training sessions are vital to the overall performance of the Tribunal.

The Tribunal is prepared to undertake more responsibilities through changes in its Rules and administrative processes. The Tribunal welcomes new challenges and will continue to strive to meet its performance measures.

Key Performance Measures

1. Pre-Hearings, Hearings and Decision Making
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2006-2007 Commitments
Commitment #1: Tribunal Members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through the distribution of 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 distribute Questionnaires to hearing participants and monitor respect and courtesy by Tribunal members to investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of hearing Questionnaires received will be reported in the Tribunal's Annual Report. All complaints will be investigated 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 these 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, 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 will be trained to conduct hearings independently within 3 months of appointment. All members will receive ongoing training

			<p>regarding the Tribunal's legislation, Rules of Practice and administrative policies.</p> <p>The Tribunal will continue to conduct its Learning Program designed to provide information 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>To 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.</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 request for review, appeals and judicial review of Tribunal Decisions.</p>	<p>The Tribunal will report the outcome of any requests for review, or appeals of its decisions or judicial review applications.</p>	<p>Review and analyze the outcome of any requests for review, or appeal of its decisions or judicial review applications.</p>	<p>The Tribunal will summarize any decision on a request for review, or appeal or judicial review in its Annual Report. The Tribunal will review practices in light of any decisions of appeal.</p>

**2. Staff Processing of Hearings
Core Function:**

Goals/Outcomes	Measures	Targets/Standards	2006-2007 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 continue to adhere to the target.

**3. Mediation
Core Function:**

Goals/Outcomes	Measures	Targets/Standards	2006-2007 Commitments
Commitment #7: Offer Mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation sessions will generally be held at least 30 days prior to the commencement of the hearing.	To increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the mediation session to ascertain their level of satisfaction with the

			<p>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	2006-2007 Commitments
<p>Commitment #8: The Tribunal will use its website to provide information and communicate with the public.</p>	<p>The Tribunal will continue to review its website to improve the access to information and the Tribunal will continue to track the number of visitors to the site to monitor its use.</p>	<p>To continue to increase the use and efficiency of the website.</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 #9: Guides will be updated.	The Tribunal will review its guides in order to update the information to ensure accuracy and consistency.	To continue to provide information on the hearing process to the public.	To review and revise the guides as needed or as changes to governing legislation and policies arise.
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2006-2007 Approved Budget

Environmental Review Tribunal

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General Account for the Operation of the Tribunal:

Salaries and Wages	\$ 1,024.1
Other Direct Operating Expenditures	\$ 369.1
Total	\$ 1,393.2

Funds allocated for Clean Water:

Other Direct Operating Expenditures	\$ 396.4
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Funds allocated for Nutrient Management:

Salaries and Wages	\$ 42.8
Other Direct Operating Expenditures	\$ 69.0

Total Funds allocated to the Tribunal:	\$ 1,901.4
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Inquiries

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