



# ENVIRONMENTAL REVIEW TRIBUNAL

*2007-2010  
Business Plan*

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## *Message from the Chair*

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It is my pleasure to present the 2007-2010 Business Plan for the Environmental Review Tribunal. This Plan highlights the Tribunal's future commitments and challenges.

During this past year, we were pleased to be able to fill two Vice-Chair positions at the Tribunal. During fiscal year 2006-2007, the number of appeals received increased by approximately 46 percent over the last fiscal. The Tribunal, with its full complement of five Vice-Chairs, has thus far been able to meet the additional workload.

In July 2006, the Minister of Municipal Affairs and Housing appointed the Tribunal to be the Hearing Officer under the *Oak Ridges Moraine Conservation Act, 2001*. This means that we now hear applications, appeals and referrals under 10 separate pieces of legislation. As new legislation is proclaimed or amendments made to existing statutes, we provide Members and staff with information and training on meeting the additional responsibilities.

The Tribunal will continue to meet its commitments for timely scheduling and decision-making; providing on-going training to Members and staff; and keeping the information on its website up to date. We continue to strive for excellence in conducting proceedings and writing quality decisions.

The Tribunal looks forward to meeting additional challenges while continuing to provide excellent service to the public.



Toby Vigod  
Chair

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## *Tribunal Mandate*

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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 Tribunal also hears matters under the *Oak Ridges Moraine Conservation Act, 2001*.

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*.

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# *Tribunal Functions*

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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 the conduct of motions, preliminary hearings, hearings and the writing of decisions.

Under the *Niagara Escarpment Planning and Development Act*, pre-hearing conferences and hearings are scheduled. 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.

The Tribunal schedules written hearings for leave to appeal applications under the *Environmental Bill of Rights, 1993*. Tribunal decisions regarding the *Environmental Bill of Rights, 1993* leave to appeal applications are to be rendered within 30 days from 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 matters filed with the Tribunal and scheduled for a hearing, 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/application 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**

Parties are encouraged to narrow or settle their differences at an early stage in a proceeding. Mediation services are offered by the Tribunal following a preliminary hearing. These services remove the need to proceed to a full hearing or reduce the number of hearing days by narrowing the issues to be adjudicated.

A number of the Tribunal Members are certified to conduct mediation. Mediation is offered to all parties (except in matters under the *Niagara Escarpment Planning and Development Act*, and *Oak Ridges Moraine Conservation Act, 2001*) and is conducted after the preliminary hearing and generally 30 days prior to the commencement of the main hearing.

### **4. PUBLIC ACCESS TO THE TRIBUNAL**

Through its website and "Guides", the Tribunal provides the public with information regarding its role, hearing procedures and processes under all relevant statutes. Copies of the "Guides" are distributed, upon request, or may be obtained directly from the Tribunal's website. A wide variety of information, which is regularly updated, is provided to the public through the Tribunal website. Users have access to information regarding the status of cases, 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 sends out questionnaires following a hearing in order to receive information on its performance. The Tribunal also welcomes feedback from the parties or professional sector regarding new policies, procedures and general operational issues. Website users may also provide comments by accessing the website and completing the feedback form.

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# *Annual Report on Key Achievements for 2006-2007*

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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.

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# *Key Commitments and Strategies for 2007-2008*

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The Tribunal has set the following goals as priorities for the fiscal year 2007-2008:

## **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:*

Tribunal Members will ensure that all parties are treated with courtesy and respect when appearing before the Tribunal. This is one criterion against which a Member's performance is measured. The Tribunal also sends out Questionnaires to the parties in most of its proceedings. Finally, the Tribunal has 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 in accordance with the Tribunal's Complaints Policy. A final report will be sent to the complainant.

Risk Assessment:

Without measures in place to address Members' conduct, the reputation of the Tribunal might be adversely affected.

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).

Where matters have been terminated due to a settlement agreement, Tribunal Members will render these decisions within 10 days from the receipt of the settlement agreement.

Risk Assessment:

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

*Commitment #3: Provide Training for Tribunal Members:*

All newly appointed Members receive extensive training before conducting hearings on their own. New Members are expected to review the respective Acts, Regulations, the Tribunal's Rules of Practice and Practice Directions. New Members attend training sessions provided by Tribunal Counsel, and are assigned to observe before conducting hearings as panel Members. Once new Members are comfortable as panel Members, they are assigned to chair hearings with other Members and write decisions. After the completion of this cycle, new 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 and training 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. Members attend in-house training sessions provided by Tribunal Counsel 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. Vice-Chairs also attend accredited courses on alternative dispute resolution.

*Risk Assessment:*

It takes a significant amount of time to train new Members to become proficient in conducting hearings on their own and handling a number of cases that may be at different stages in the process. This could impact the Tribunal's ability to schedule and determine matters in a timely fashion. However, the training ensures that Members are properly prepared to fulfill their duties as adjudicators.

*Commitment #4: Offer Pre-Hearing Conferences and schedule Preliminary Hearings, prior to the commencement of the Hearing:*

At least 30 days before 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 preliminary hearings for all other appeals and applications.

Risk Assessment:

The pre-hearing conferences for *NEPDA* matters and preliminary hearings for all other appeals and applications have been established to prepare the parties 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 and documents are not exchanged, the hearing may be adjourned, causing a delay in the resolution of the appeal.

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

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

Risk Assessment:

The risk of not reporting on the outcome of requests for review, appeals and judicial reviews of Tribunal decisions is that the public or interested parties may not be aware of the outcome. There is no statutory requirement for any party to advise the Tribunal that they are appealing its decision. However, once the Tribunal is advised of an appeal or judicial review, the Tribunal is committed to obtaining copies of decisions on those matters.

## **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 that time frame.

#### Risk Assessment:

In the scheduling of complex hearings, it may be difficult for staff to adhere to the timelines standards. In proceedings involving multi-parties, it may be difficult to co-ordinate a consistent date for the receipt of information from all parties. The staff will endeavour to ensure that all parties receive the same standard of timeliness 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 are referred to the Tribunal. Any increase in the issuance of these instruments or decisions 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 process and comply with these timelines.

The Tribunal also has no control over the increase of responsibilities resulting from changes, amendments or additions made to its governing legislation. This will impact the mandate of the Tribunal and the staff's ability to meet its scheduling timelines.

### **3. MEDIATION**

Mediation is offered and available to all parties in all proceedings before the Tribunal except in appeals of development permit decisions or Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act*, and matters under the *Oak Ridges Moraine Conservation Act, 2001*. Most of the Tribunal Vice-Chairs and some Members have been certified as mediators through accredited courses. Mediation is offered in a timely manner and held after a preliminary hearing, generally 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 and often removes the need to proceed to a full hearing. The number of required hearing days and issues to be

adjudicated are often reduced, resulting in lower costs to 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. After the completion of the mediation session, the Tribunal will continue to distribute Questionnaires to the parties to ascertain its performance. The Questionnaires are designed to request comments regarding the parties' level of satisfaction with the process and the Tribunal's services. The Tribunal will continue to monitor the number of cases in which mediation sessions were successfully held and a hearing was cancelled. Further, Questionnaires that are completed and returned will be reviewed by the Tribunal, in order to improve its services.

*Risk Assessment:*

Mediation should be held in a timely manner. The Tribunal is willing to assist parties in mediating their case after the preliminary hearing and before the hearing or anytime thereafter. However, not all parties wish to participate in the mediation process, which is voluntary. This variable may affect the public's perception of the Tribunal's performance in this area.

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 relating to matters beyond the mandate of the Tribunal. Since 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, the Tribunal is not able to address these concerns directly with the person who made the comment.

#### **4. PUBLIC ACCESS TO THE TRIBUNAL**

The Tribunal will continue to improve its communication with stakeholders, parties and members of the public. Through its website, the Tribunal will also continue to provide updated information to the public on its processes, status of hearings, decisions and orders.

*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 to provide information and copies of decisions and orders, the Tribunal's Rules of Practice and Practice Directions, relevant statutes and "Guides" to the Tribunal's processes. The website will continue to elicit stakeholder feedback; and, provide the status of ongoing hearings as well as continue to be a vehicle for receiving comments on significant changes to the Tribunal's Rules of Practice or processes. The Tribunal's website will continue to be updated daily with hearing-related information.

The Tribunal will continue to improve the information provided on the website by increasing its number of archival decisions. The Tribunal will continue to review its website for ease of use and accessibility to information.

**Risk Assessment:**

There are very few risk factors related to implementing changes or updating information on the website since the Tribunal employs a dedicated systems officer. As changes occur relating to the status of cases, the Tribunal will continue to update its website within 24 hours.

**Commitment #9: *Update Guides:***

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

**Risk Assessment:**

There are limited risk factors in keeping these documents current as the Guides are available 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 time for staff to implement the changes and proofread the documents.

## *Future Challenges 2008-2010*

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The number of appeals received by the Tribunal is dependent upon the volume of decisions, orders and approvals issued by the Ministry of the Environment and the number of development permit decisions and Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act*. The Tribunal adjudicates applications and appeals and hears referrals under ten statutes. In July 2006, the Tribunal was designated the Hearing Officer for matters under the *Oak Ridges Moraine Conservation Act, 2001*.

The Minister of Municipal Affairs and Housing has recently recommended that the Environmental Review Tribunal be appointed the Hearing Office for matters under the *Greenbelt Act, 2005*. Once measures are put in place to implement this recommendation, the Tribunal will co-ordinate training and information sessions for its Members and staff.

The *Clean Water Act* (Bill 43) was introduced in the Legislature on December 5, 2005 and received Royal Assent on October 19, 2006. Although the *Act* is not yet in force, it names the Tribunal as the appellate body. The Tribunal will need to provide its Members and staff with information sessions and training on this additional piece of legislation.

As the Ministry of Environment moves towards implementing administrative penalties, it is anticipated that there will be orders issued under section 182.1 of the *Environmental Protection Act*, which deals with environmental penalties. This will likely result in more appeals being filed with the Tribunal.

The Ministry is also proposing legislative changes to improve its Brownfields Program which may include additional responsibilities for the Tribunal.

The Tribunal will continue to hold training and information sessions for its Members and staff regarding new or amended legislation, Rules and administrative processes. The Tribunal looks forward to the added responsibilities. However, it is expected that the Tribunal's operating expenditures will increase as a result of the anticipated increase in workload.

In February 2007, the Agency Cluster Pilot Project issued its Interim Report recommending the clustering of the Environmental Review Tribunal, the Ontario Municipal Board, the Assessment Review Board, the Board of Negotiations, and the Conservation Review Board. One of the recommendations resulting from the Agency Cluster Pilot Project is that the Environmental Review Tribunal co-locate both physically and virtually with the four Boards. It is anticipated that this co-location will take place during the

next year and shared operational units will be established.

Although the Tribunal anticipates a number of added responsibilities and challenges over the next few years, the Tribunal will ensure that it meets its performance measures and continues to provide excellent customer service.

# Key Performance Measures

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

Goals/Outcomes	Measures	Targets/Standards	2007-2008 Commitments
Commitment #1: Tribunal Members will treat all participants 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 participants and monitor respect and courtesy by Tribunal members and to investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of the 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> . Where matters have been terminated due to the applicable settlement agreement, decisions will be rendered within 10 days from the receipt of the settlement.	In 80% of these hearings held, Tribunal members will adhere to the applicable target.

<p>Commitment #3: Tribunal Members will be trained.</p>	<p>All Members will receive adequate training to conduct hearings, write decisions and, conduct mediation sessions.</p>	<p>Members will be trained in the conduct of hearings, knowledge of legislation and Tribunal Rules, decision writing and alternative dispute resolution.</p>	<p>New members will be trained to conduct hearings independently within 3 months of appointment. All members 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 which includes Member Training and is designed to provide information on environmental, planning and administrative law issues.</p>
<p>Commitment #4: Offer pre-hearing conferences in appeals and plan amendments under the <i>NEPDA</i> and schedule Preliminary Hearings in all other appeals and applications, prior to the commencement of the hearing.</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>

Commitment #5: Report on requests for review, appeals and judicial review of Tribunal Decisions.	The Tribunal will report the outcome of any requests for review, or appeals of its decisions or judicial review applications.	Review and analyze the outcome of any requests for review, or appeal of its decisions or judicial review applications.	The Tribunal will summarize any decision on a request for review, or appeal or judicial review in its Annual Report. The Tribunal will review its practices in light of any court decisions.
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2. Core Function:  
Staff Processing of  
Hearings

Goals/Outcomes	Measures	Targets/Standards	2007-2008 Commitments
Commitment #6: Continue to schedule hearings within timelines.	Hearings will be scheduled within the timelines standard.	On average, hearing dates will be scheduled within 30 calendar days from the filing date of the application/appeal and within 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. Core Function:  
Mediation

Goals/Outcomes	Measures	Targets/Standards	2007-2008 Commitments
<p>Commitment #7: Offer Mediation services in all appeal cases, where appropriate, and on request in application cases after a preliminary hearing, prior to the commencement of the hearing.</p>	<p>When all parties agree to participate, mediation sessions will be held following the preliminary hearing and generally 30 days prior to the commencement of the hearing.</p>	<p>To 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 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>

4. Core Function:  
Public Access to the  
Tribunal

Goals/Outcomes	Measures	Targets/Standards	2007-2008 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 update the content, to improve user access and to track the number of visitors to the site.</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, and Practice Directions, the release of the Business Plan and Annual Report will be posted as approved.</p>
<p>Commitment #9: Guides will be updated.</p>	<p>The Tribunal will review its guides in order to update the information to ensure accuracy and consistency.</p>	<p>To continue to provide information on the hearing process to the public.</p>	<p>To review and revise the guides as needed or as changes to Rules, governing legislation and policies arise.</p>

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# ***2007-2008 Approved Budget***

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*The budget information will be updated when funds are allocated to the Tribunal from the Ministry of the Environment.*

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## *Inquiries*

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