



# ENVIRONMENTAL REVIEW TRIBUNAL

2009-2012  
*Business Plan*



# Table of Contents

Message from the Chair .....	1
Tribunal Mandate.....	2
Tribunal Functions .....	3
1. Conducting Pre-Hearings, Hearings and Decision Making.....	3
2. Processing of Hearings.....	3
3. Conducting Mediation.....	4
4. Providing Public Access.....	4
Annual Report on Key Achievements for 2008-2009.....	6
Key Commitments and Strategies for 2009-2010.....	7
1. Conducting Pre-Hearings, Hearings and Decision Making.....	7
2. Processing of Hearings.....	9
3. Conducting Mediation.....	10
4. Providing Public Access.....	11
Future Challenges 2010-2012.....	14
Key Performance Measures.....	15
1. Conducting Pre-Hearings, Hearings and Decision Making.....	15
2. Processing of Hearings.....	18
3. Conducting Mediation.....	19
4. Providing Public Access.....	20
2009-2010 Approved Budget.....	21
Inquiries.....	22



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## *Message from the Chair*

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It is my pleasure to present the 2009-2012 Business Plan for the Environmental Review Tribunal. This Plan highlights the Tribunal's core functions, future commitments and challenges.

The Tribunal hears applications, appeals, and referrals under 12 separate pieces of legislation. As new legislation is proclaimed or amendments made to existing statutes, Members and staff are provided with information and training on meeting the additional responsibilities.

On August 20, 2008, the Tribunal's Conflict of Interest Rules came into effect. These Rules were approved by the Conflict of Interest Commissioner, under the *Public Service Act of Ontario, 2006*, and are posted on the Tribunal's website. An updated Complaints Policy was also posted at the same time.

The Tribunal now shares office space at 655 Bay Street with the Assessment Review Board, Board of Negotiation, Conservation Review Board and the Ontario Municipal Board. However, the Tribunal maintains its distinct mandate and identity while sharing some administrative functions with the other cluster tribunals. The Tribunal is in the process of updating its case management system to a platform currently in use by the Ontario Municipal Board. This improvement will provide better reporting and tracking of hearing matters.

On January 22, 2009, the Tribunal, formerly an agency of the Ministry of the Environment, became an agency of the Ministry of the Attorney General.

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

The Tribunal looks forward to meeting additional challenges while maintaining its commitment 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 administrative tribunal, 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 *Clean Water Act, 2006*, 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*. As directed by the Minister of Municipal Affairs and Housing, the Tribunal also hears matters under the *Oak Ridges Moraine Conservation Act, 2001* and the *Greenbelt Act, 2005*.

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 appeals of development permit applications 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. Conducting Pre-Hearings, Hearings and Decision Making**
- 2. Processing of Hearings**
- 3. Conducting Mediation**
- 4. Providing Public Access**

## **1. CONDUCTING PRE-HEARINGS, HEARINGS AND DECISION MAKING**

This function is performed by the Tribunal Members, who are all 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 within 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 required by regulation to be rendered within 30 days from the day the application is filed, unless the Tribunal Member determines that a longer period is required, due to unusual circumstances.

In all other types of matters filed with the Tribunal that are scheduled for a hearing, the 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. PROCESSING OF HEARINGS**

This function, which is performed by the Tribunal staff, includes all the administrative steps necessary to process an appeal/application from the date of filing to the completion of the hearing. Since the Tribunal hears appeals/applications pursuant to a number of different statutes, a new

appeal or application is dealt with through a specific 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 throughout the process;
- posting the final written decision on the website.

### **3. CONDUCTING MEDIATION**

Parties are encouraged to narrow or settle their differences at an early stage of the hearing process. Mediation services are offered to the parties by the Tribunal following a preliminary hearing and generally 30 days prior to the commencement of the main hearing. These services may 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, Oak Ridges Moraine Conservation Act, 2001* and the *Greenbelt Act, 2005*.

### **4. PROVIDING PUBLIC ACCESS**

The Tribunal provides the public with information regarding its role, hearing procedures, status of cases, hearing locations and administrative processes under all relevant statutes through its website and “Guides”. Copies of the “Guides” may be obtained directly from the Tribunal’s website or, upon request, by mail. A wide variety of information, which is regularly updated, is provided to the public through the Tribunal’s website. In 2008, the ability to file appeals/applications electronically was expanded. Users have access to information regarding scheduled hearings, the status of cases, hearing locations, decisions, orders, forms, relevant statutes, Rules of Practice and Practice Directions, Conflict of Interest Rules and the Tribunal’s Complaints Policy.

The Tribunal staff respond to questions from clients and the public regarding hearings and administrative 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 hearings and mediations in order to receive feedback on its performance. The Tribunal also welcomes comments regarding new policies, procedures and general

operational issues and encourages the use of the feedback form posted on its website. The public can also address questions to the Tribunal through an e-mail address [ertribunalsecretary@ontario.ca](mailto:ertribunalsecretary@ontario.ca).

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# *Annual Report on Key Achievements for 2008-2009*

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During the last fiscal year, the Tribunal implemented Conflict of Interest Rules under the *Public Service Act of Ontario, 2006* and revised its Complaints Policy. Both of these documents are now posted on the Tribunal's website.

The Tribunal is currently in the process of upgrading its case management system and the search engine on its website.

The Tribunal reports on these annual achievements as well as hearing activities in its Annual Report.

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# *Key Commitments and Strategies for 2009-2010*

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The Tribunal has set the following goals as priorities for the fiscal year 2009-2010:

**1. CONDUCTING PRE-HEARINGS, HEARINGS AND DECISION MAKING**

This commitment relates to 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 that is used to measure a Member's performance, as reflected in the "Position Description and Performance Planning and Review for Members". The Tribunal sends out Questionnaires to the parties in most of its proceedings and requests comments regarding its performance. The Tribunal also has a Complaints Policy, which has been posted on its website, to address concerns about the conduct of its Members. The Tribunal treats all such complaints very seriously. Complaints are investigated thoroughly and in accordance with that Policy. After the investigation, a final report is sent to the complainant.

Risk Assessment:

The reputation of the Tribunal might be adversely affected if the Tribunal did not have a process in place to capture feedback regarding its Members' conduct and measures to address any complaints.

Commitment #2: *Target Timelines for Decision Rendering:*

Tribunal Members will comply with all legislated requirements in issuing their decisions. 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:*

On-going training ensures that Members are properly prepared to fulfill their duties as adjudicators. All newly appointed Members receive extensive training and are expected to review the respective Acts, Regulations, and the Tribunal's Rules of Practice and Practice Directions. New Members attend training sessions provided by Tribunal Counsel, and are assigned to observe hearings before acting 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 training, new Members are then assigned to conduct hearings on their own.

All Members participate in the Tribunal's Learning Programs, which are a series of educational and training sessions held regularly throughout the year. The Learning Programs are designed to enlighten the Members on a broad range of environmental, planning 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 issue decisions in a timely fashion.

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* and preliminary hearings for all other appeals and applications, at least 30 days before the commencement of the hearing.

Risk Assessment:

Pre-hearing conferences for matters under the *Niagara Escarpment Planning and Development Act* and preliminary hearings for all other appeals and applications are held to prepare the parties for the main hearing. At these preliminary hearing events, the parties identify the issue(s) and agree to set dates to complete exchange of documents and/or witness statements.

In matters under the *Niagara Escarpment Planning and Development Act*, pre-hearing conferences can only be held if the parties agree to participate. When parties choose not to participate, they may not be properly prepared, documents may not be exchanged in a timely fashion, and the hearing may need to be adjourned, causing a delay in the resolution of the appeal.

Commitment #5: *Report on requests for review, appeals and judicial reviews 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 a decision on any such appeals or judicial review, the Tribunal will review its own practices, if required.

Risk Assessment:

Since there is no statutory requirement for any party to advise the Tribunal that they are appealing its decision, the Tribunal may not be able to report on the outcome. This may result in the public or interested parties not being aware of a further decision or the Tribunal may not being able to respond to the decision. However, once the Tribunal is advised of an appeal or judicial review decision, the Tribunal is committed to obtaining copies and reporting on these decisions in its Annual Report.

## **2. PROCESSING OF HEARINGS**

This function 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 a matter is scheduled for a hearing within 30 calendar days from the date the appeal/application is received by the Tribunal. However, staff may not be able to meet the standard in cases

where the parties have requested a matter not be scheduled due to settlement discussions. This commitment does not apply to the scheduling of hearings under the *Consolidated Hearings Act* as the administrative process is more complex and does not allow for hearings to be scheduled within that time frame.

#### Risk Assessment:

In the scheduling of complex hearings, it may be difficult for staff to adhere to the timeliness standards. In proceedings involving multi-parties, it may be difficult to obtain information from all the parties by the same date. However, 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 may have an impact on the number of appeals filed with the Tribunal, which affects 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 its responsibilities resulting from changes, amendments or additions made to its governing legislation. These increases to the Tribunal's responsibilities may impact the staff's ability to meet their scheduling timelines.

### **3. CONDUCTING MEDIATION**

Mediation is offered and available to all parties in all proceedings before the Tribunal except in appeals of development permit applications or Plan amendment proceedings under the *Niagara Escarpment Planning and Development Act*, and matters under the *Oak Ridges Moraine Conservation Act, 2001* and the *Greenbelt Act, 2005*. 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. Mediation results in a reduction of the number of required hearing days, issues to be adjudicated and 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 send 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. Questionnaires that are completed and returned will be reviewed by the Tribunal in order to improve its services. The Tribunal will continue to monitor the number of cases in which mediation sessions were successfully held and a hearing was cancelled.

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 is held and before the hearing or anytime throughout the hearing process. However, not all parties wish to participate in the mediation process, which is voluntary. This variable may affect the 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 Questionnaires contain comments about the process 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 particular concerns.

#### **4. PROVIDING PUBLIC ACCESS**

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, hearing locations, scheduled hearings, decisions and orders.

Commitment #8: *Website Access:*

The public has embraced the website as the primary method to obtain information about the Tribunal and its processes. The Tribunal will continue to provide website access for the filing of appeals and applications electronically, obtaining information, and copies of its decisions and orders, the Tribunal's Rules of Practice and Practice Directions, Tribunal policies, relevant statutes and "Guides" that describe

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 will continue to update its website within 24 hours with hearing-related information and improve the information by reviewing its contents and updating materials. The Tribunal will review its website for ease of use and accessibility to information.

**Risk Assessment:**

Since the Tribunal's information and technology support is now part of the Justice IT Cluster, problems regarding the availability of the website need to be addressed through the established processes of the Justice IT Cluster. This may require more IT staff to be involved rather than having a dedicated IT staff member available to assist. As a result, a delay in service may occur in providing a functioning website and website access by the public to file an appeal or application or to obtain information regarding the status of cases or information about the Tribunal.

The Tribunal has also transferred the responsibility of posting orders and decisions from a dedicated systems officer to Tribunal support staff. If the material to be posted on the website is more complex, Tribunal support staff may require the assistance from a systems officer from the Justice IT Cluster. This may cause a delay in the posting of the material on the website.

**Commitment #9:      *Update Rules of Practice and Practice Directions, Guides and Tribunal Policies:***

The Tribunal will continue to update its Rules of Practice and Practice Directions immediately following changes to legislation affecting the Tribunal's mandate or whenever housekeeping amendments are required. The Tribunal will continue to update its "Guides" to reflect any changes to its Rules of Practice and Practice Directions. Rules and "Guides" may be downloaded from the website or obtained in paper format, upon request. Tribunal Policies, such as the Complaints Policy, will be updated and posted on the website. As new policies are developed, they will also be posted on the Tribunal's website.

**Risk Assessment:**

There are limited risk factors in keeping these documents current as they 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 staff time to implement the changes,  
proofread and post the documents.

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## *Future Challenges 2010-2012*

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The Tribunal now adjudicates applications, appeals and referrals under a total of 12 statutes. In 2008, the passage of the *Cosmetic Pesticides Ban Act* has resulted in additional responsibilities for the Tribunal.

The Tribunal continues to hold Learning Programs and training sessions for its Members and staff in regard to changes in legislation and policy. The Tribunal will also continue to revise its Rules of Practice and Practice Directions, and Guides as further legislative or administrative changes occur.

As part of the Assessment, Environmental and Municipal Appeal Tribunals cluster the Tribunal will continue to provide cost efficient delivery of its services. The Tribunal is committed to meeting its key commitments and performance measures as set out in its four main core functions and is committed to providing an excellent level of customer service.

# *Key Performances Measures*

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

Goals/Outcomes	Measures	Targets/Standards	2009-2010 Commitments
<p>Commitment #1: Tribunal Members will treat all participants with courtesy and respect.</p>	<p>The Tribunal will send Questionnaires to hearing participants at the completion of the hearing and review Questionnaires received to monitor performance regarding respect and courtesy.</p> <p>All complaints received will be investigated in accordance with the Tribunal's Complaints Policy.</p>	<p>To continue to send Questionnaires to hearing participants in order to monitor performance regarding respect and courtesy by Tribunal Members. To investigate complaints in accordance with the Tribunal's Complaints Policy.</p>	<p>Results of the Questionnaires received will be reported in the Tribunal's Annual Report.</p> <p>All complaints will be investigated and the Tribunal will comply with its Complaints Policy.</p>
<p>Commitment #2: Tribunal Members will render timely decisions.</p>	<p>The Tribunal will track the time Members take to render written decisions.</p>	<p>Decisions will be rendered within 60 days of final arguments, except for those hearings with legislated timelines and hearings under the <i>Consolidated Hearings Act</i>. Where matters have been terminated due to a settlement agreement, decisions will be rendered within 10 days from the receipt of the settlement.</p>	<p>In 80% of all hearings held, Tribunal Members will adhere to the applicable target.</p>

Goals/Outcomes	Measures	Targets/Standards	2009-2010 Commitments
<p>Commitment #3: Tribunal Members will be trained.</p>	<p>All Members will receive adequate training to conduct hearings, and write decisions. Vice-Chairs will receive training to conduct mediation sessions.</p>	<p>Members will be trained in the conduct of hearings, knowledge of legislation, 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 Programs, which include Member Training. These Programs are designed to provide information on new legislation, environmental, planning and administrative law issues.</p>
<p>Commitment #4: Offer pre-hearing conferences in appeals and plan amendments under the <i>Niagara Escarpment Planning and Development Act</i> ("NEPDA").</p>	<p>When all parties agree to participate, pre-hearing conferences for matters under the <i>NEPDA</i> will be held. 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 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>

Goals/Outcomes	Measures	Targets/Standards	2009-2010 Commitments
Schedule preliminary hearings in all other appeals and applications, prior to the commencement of the hearing.			The Tribunal will monitor the success of pre-hearing conferences by tracking the cases that are resolved prior to the hearing.
Commitment #5: Report on requests for review, appeals and judicial reviews of Tribunal Decisions.	The Tribunal will report on 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.

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

Goals/Outcomes	Measures	Targets/Standards	2009-2010 Commitments
<p>Commitment #6: Continue to schedule hearings within the timeliness standard.</p>	<p>Hearings will be scheduled within the timeliness standard.</p>	<p>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.</p>	<p>In 90% of all cases, staff will adhere to the target of scheduling within 7 calendar days of receiving all required information/documentation.</p> <p>The target may not be met in cases where parties have requested a matter not be scheduled due to settlement discussions.</p>

**3. Core Function: Conducting Mediation**

Goals/Outcomes	Measures	Targets/Standards	2009-2010 Commitments
<p>Commitment #7: Offer mediation services in all appeal cases, where appropriate. Upon request provide mediation services in application cases after a preliminary hearing is held and 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 mediation sessions.</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: Providing Public Access**

Goals/Outcomes	Measures	Targets/Standards	2009-2010 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, 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 Tribunal will continue to update its website within 24 hours regarding hearing related information. 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: Rules, Guides and Tribunal Policies will be updated.</p>	<p>The Tribunal will review its Rules, Guides and Policies in order to update the information to ensure accuracy and consistency.</p>	<p>To continue to update information on the hearing process.</p>	<p>To review and revise the Rules, Guides and Tribunal Policies as needed or when changes to governing legislation, regulations and government policies arise.</p>

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# ***2009-2010 Approved Budget***

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

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# *Inquiries*

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Tribunal Secretary  
Environmental Review Tribunal  
655 Bay Street, Suite 1500  
Toronto, ON M5G 1E5  
Telephone: 416-314-4600  
Fax: 416-314-4506  
Email: [ertribunalsecretary@ontario.ca](mailto:ertribunalsecretary@ontario.ca)  
Website: [www.ert.gov.on.ca](http://www.ert.gov.on.ca)