



Environment and Land Tribunals Ontario

ENVIRONMENTAL REVIEW TRIBUNAL

**A Guide to Appeals by Members of the Public
regarding Renewable Energy Approvals under
section 142.1 of the Environmental Protection Act**

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www.elto.gov.on.ca

This Guide provides a general overview of renewable energy approval appeals by members of the public under section 142.1 of the *Environmental Protection Act* and should not be relied upon as an authoritative text. Instead, the statute, Ontario Regulation 359/09 and other regulations, and the Rules of Practice and Practice Directions of the Environmental Review Tribunal prevail. For appeals of renewable energy approvals that are commenced by the Holder of a renewable energy approval, please consult the separate Guide on appeals under the *Clean Water Act, 2006*, the *Environmental Protection Act*, the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Safe Drinking Water Act, 2002*, and the *Toxics Reduction Act, 2009*.

Information about specific Hearings is available from:

Environmental Review Tribunal

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What appeals does this Guide deal with?

This Guide deals only with appeals brought by members of the general public in relation to an approval granted to a green energy project by the Director, Ministry of the Environment. Appeals by the person seeking to establish a green energy project are dealt with in a separate process.

What can an appeal deal with?

Under the *Environmental Protection Act*, there are only two grounds which can be considered on an appeal by a member of the public. They are that proceeding with the project, as approved by the Director will either:

- cause serious harm to human health, or
- cause serious and irreversible harm to plant life, animal life or the natural environment.

A person challenging the Director's approval of a project must be able to convince the Environmental Review Tribunal, by evidence and argument, that it is more likely than not that one of these two tests has been met. If they do not do so, then the law requires that the Director's decision must be confirmed.

What are the timelines?

With certain limited exceptions, the Tribunal is required to issue its decision in these matters no later than six months after a Notice of Appeal is served on the Tribunal, failing which the renewable energy approval is deemed to be confirmed.

Given the timeframe within which the Tribunal must make its decision, it was considered necessary to provide an innovative and expedited hearing process for these appeals.

Attached to this Guide as Appendix A is the timeline for the appeals dealt with in this Guide (i.e., appeals under section 142.1 of the *Environmental Protection Act*). The Tribunal may vary the timeline as appropriate subject to the requirements of the statute and regulations, including the requirement to issue a decision within six months of the start of the appeal process.

Persons considering bringing an appeal should assume that they will have to be ready for a Preliminary Hearing within four weeks of starting their appeal, and ready to proceed with a full Hearing after a further four weeks.

Persons considering bringing an appeal should be aware of the limited issues and the tight timelines for these appeals, and should be prepared to work within the expedited procedures outlined in this Guide.

The Tribunal is committed to making its processes available to all persons who wish to take the opportunity to participate in an appeal, but Parties, Participants and Presenters

must meet the obligations set out in the statute, regulations and the Tribunal's Rules of Practice and must be prepared to attend on the relevant dates scheduled by the Tribunal and to comply with any other procedural directions ordered by the Tribunal.

What is the Environmental Review Tribunal?

The Environmental Review Tribunal is an independent and impartial Tribunal established by provincial legislation. The Environmental Review Tribunal holds public Hearings on appeals arising from, amongst other things, decisions regarding the issuance, alteration or revocation of a renewable energy approval under the *Environmental Protection Act*.

The Members of the Tribunal are appointed by the Lieutenant Governor in Council for the Province of Ontario to conduct Hearings and make decisions on appeals. The Members have a variety of experience. None of the Members of the Tribunal are employees of the Ministry of the Environment.

Who can file an appeal of a renewable energy approval under section 142.1 of the *Environmental Protection Act*?

Under the *Environmental Protection Act*, a Director may approve a renewable energy project, and may establish terms and conditions for it. Under section 142.1 of that Act, any person resident in Ontario (including a corporation, but other than the person to whom the approval is issued) may appeal to the Tribunal a Director's decision to:

- issue or renew a renewable energy approval;
- impose terms and condition in issuing or renewing a renewable energy approval;
- alter the terms and conditions of a renewable energy approval;
- impose new terms and conditions on a renewable energy approval; or
- suspend or revoke a renewable energy approval.

This person is referred to as the "Appellant".

How is accommodation provided?

Parties, Participants, Presenters, witnesses and representatives are entitled to accommodation of *Human Rights Code*-related needs by the Tribunal and should notify the Tribunal Secretary as soon as possible if accommodation is required.

What language services are available?

A person should inform the assigned Case Manager at least fourteen days before the Preliminary Hearing or Hearing if he or she requires the Preliminary Hearing or Hearing to be translated into French.

Is a lawyer needed?

A Party may be self-represented or represented by a lawyer or other representative authorized under the *Law Society Act*.

Given the expedited hearing process for these appeals, it is essential that a Party or representative of a Party be available throughout the proceeding.

What are the deadlines for filing appeals?

The Appellant must file a Notice of Appeal with the Tribunal, and serve the Director and the person who has been granted approval for the project (the approval holder) with a copy, within 15 days of the notice of the decision respecting the renewable energy project being posted on the Environmental Registry. Proof that the Director and the approval holder have been served in accordance with the Tribunal's Rules (Rules 86 to 88) must be submitted when the appeal is filed with the Tribunal.

In determining whether a Notice of Appeal has been filed in time, the Tribunal calculates "days" as calendar days, according to the Tribunal's Rules of Practice. Please see Rule 15 for further information on this. If a Notice of Appeal is submitted late, the Tribunal has no legal authority to consider the application.

What information must a Notice of Appeal contain?

There is no required form for a Notice of Appeal. Most people send Notices of Appeal in a letter format.

The Notice of Appeal must include:

- the Appellant's name and address along with the name and address of anyone representing him or her;
- the address to which the Appellant wants notices and other official documents to be delivered;
- the telephone number, facsimile number and/or e-mail address where the Appellant can be contacted during business hours;
- a statement that the Appellant is appealing the decision of the Director in relation to a renewable energy project;
- a copy of the decision under appeal;
- an identification of the portions of the renewable energy approval that the Appellant is appealing;
- a description of how engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health or serious and irreversible harm to plant life, animal life or the natural environment;
- a statement of the issues and material facts relevant to the subject matter of the appeal that the Appellant intends to present at the main Hearing;
- a description of the relief requested (i.e., what decision the Appellant would like the Tribunal to make); and
- an indication of whether the Appellant will seek a stay of the decision.

The reasons for the appeal should be specific and describe how engaging in the renewable energy project in accordance with the approval will cause the harm described above. Without the Tribunal's permission, an Appellant is not entitled to appeal any portion of the renewable energy approval that is not set out in the Notice of Appeal.

Does filing the appeal result in the decision under appeal not taking effect?

No. Decisions of a Director respecting renewable energy projects generally take effect as soon as they are issued even though a decision is being appealed. The Tribunal may, however, issue a stay order to postpone the legal effect of all or part of a decision.

How is a stay requested?

A person who intends to apply for a stay of a decision of the Director should include an indication of this intention in the Notice of Appeal. A stay is sought by making a motion to the Tribunal. After the Tribunal hears the motion, it will determine whether to issue a stay or not.

A person seeking a stay shall arrange through the assigned Case Manager a teleconference call with a Tribunal Member, the Director and any other Parties to seek directions as to the form and content of the motion; the exchange of necessary supporting materials, including affidavit materials; the scheduling of dates for cross-examination of witnesses, if required; and the scheduling of the Hearing of the motion.

What information is required on a stay motion?

After a date, time and place for the stay Hearing is established, the person seeking a stay must serve the Director and any other Parties with a formal Notice of Motion at least three days before the Hearing of the motion and file two copies with the Tribunal. The Tribunal may shorten this period if requested. The Notice of Motion must set out the grounds for requesting a stay and the date, time, and place of the stay Hearing. The Notice of Motion must also include evidence and submissions respecting:

- how the relevant statutory tests that are applicable to the granting of a stay are met;
- whether there is a serious issue to be decided by the Tribunal;
- whether irreparable harm will ensue if the relief is not granted; and
- whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

What decisions can the Tribunal make on the appeal?

On an appeal by a member of the public in relation to a renewable energy project, the Tribunal is required to review the decision of the Director, and consider only whether engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health, or cause serious and irreversible harm to plant life, animal life, or the natural environment. The onus is on the Appellant to prove that it is more likely than not that such harm will be caused.

If the Tribunal determines that engaging in the renewable energy project in accordance with the approval will cause such harm, the Tribunal may revoke the decision of the Director; by order, direct the Director to take such action as the Tribunal considers the Director should take in accordance with the Act and regulations; or alter the decision of the Director, for which purpose the Tribunal may substitute its opinion for that of the Director. If the Tribunal determines that no such harm will be caused, the Tribunal must confirm the Director's decision. The Tribunal's decision must be consistent with any policies issued by the Minister of the Environment designed to guide decisions of this kind that were in place at the time the Director's decision was made.

When will the Tribunal make a decision?

On an appeal by a member of the public of a Director's decision in relation to a renewable energy project, the Tribunal must issue a written decision six months from the day that notice of the appeal is served on the Tribunal. If this is not done, the Director's decision is deemed to be confirmed by the Tribunal. The Tribunal has brought in new procedures (see below) designed to ensure that this tight timeframe can be met. However, if particular circumstances justify adjournments after a Notice of Appeal is filed, that time will not count against the six month deadline. Adjournments that have the effect of extending the six month deadline will be granted only on consent of the parties or where the Tribunal determines that an adjournment is necessary to secure a fair and just determination of the proceeding on its merits. An application for judicial review also stops the calculation of the six month period from the day the application is commenced until it is disposed of, if the proceeding before the Tribunal is adjourned by the Tribunal or stayed by the Divisional Court.

A copy of the decision is mailed to all Parties and Participants. Decisions of the Tribunal are also available on the Tribunal's website usually within 24 hours of their release.

How will the hearing process be expedited?

Because the Tribunal is required to issue a written decision within six months of the date that the Tribunal is served notice of an appeal by a member of the public, the hearing process will be expedited.

(a) Hearings to be peremptory

All Preliminary Hearing and Hearing dates are considered peremptory to all Parties, Participants and Presenters; that is, once a date has been set, the Preliminary Hearing or Hearing will proceed on that date except in exceptional circumstances. If a Party, Participant or Presenter has been notified of the time, date and place of a Hearing and fails to attend, the person will not be entitled to any further notice and Tribunal may, among other things, proceed with the Preliminary Hearing or Hearing; deem the person to have accepted all of the material facts set out in the materials of other parties; and make its decision in the absence of that person. For information on adjournments, please refer to the Tribunal's Rules of Practice at Rules 104 to 107.

(b) Director to provide names and addresses

Within four days of receiving the Notice of Appeal, the Director must provide the Tribunal with a list of names and addresses of all persons given notice during the consultation on the renewable energy approval application and a list of persons who have given notice to the

Director that they have an interest in the particular renewable energy project. This information will ensure that the Tribunal can give notice of the Preliminary Hearing and Hearing in an expedited fashion.

(c) Schedule for hearing events issued

Within eight days from the appeal expiry date, the Tribunal will provide the Parties with a schedule for a determination of the appeal, prior to it being finalized by the Tribunal. Absent exceptional circumstances, the events and the intervals between them will be set in accordance with the timeline in Appendix A to this Guide.

(d) Director to provide information

Within 14 days of receiving the Notice of Appeal, the Director must file with the Tribunal all applicable reports that had been filed with the Director with respect to the renewable energy project and that relate to the grounds available on an appeal under section 142.1 of the *Environmental Protection Act*.

(e) Expedited hearing process

In the fourth week after the appeal has been launched, the Tribunal will hold a Preliminary Hearing into the matter. Before the Preliminary Hearing:

- the Parties must exchange and file with the Tribunal existing documents within their possession, control or power (with the exception of privileged documents), lists of witnesses and a summary of their anticipated evidence relevant to the subject matter of the appeal, and
- the Director and the approval holder must file a statement of the issues, material facts and submissions intended to be relied on in responding to the issues raised by the Appellant.

In the fifth week after the appeal has been launched, the Tribunal will conduct a mediation of the matter, if mediation is appropriate.

In the seventh week after the appeal has been launched, the Tribunal may continue the Preliminary Hearing for the purpose of finalizing the issues and witness list and issuing further directions about the scope of the Hearing. Before the continuation of the Preliminary Hearing the Parties must:

- exchange and file with the Tribunal any additional documents and witness lists as well as witness statements and resumes of any expert witnesses relevant to the subject matter of the appeal that the Parties intend to rely upon at the main Hearing; and
- file with the Tribunal a list of facts and issues that remain in dispute.

In the eighth week after the appeal has been launched, the Tribunal will commence the main Hearing.

How can neighbours and other concerned people participate?

Neighbours and other people who feel that they are affected by the renewable energy approval decision under appeal in relation to the permitted grounds of appeal may apply to the Tribunal for permission to participate in the Hearing – either to support the Appellant, to support the decision of the Director, or to advance a different position.

To participate in the Hearing, a person who wishes to be named as either a Party, Participant or Presenter must file with the Tribunal, no later than four days before the Preliminary Hearing a written request setting out:

- a statement of the issues and material facts relevant to the subject matter of the appeal that the person intends to present at the main Hearing;
- whether the person's participation is likely to make a relevant contribution to the Tribunal's determination of whether engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health, or serious and irreversible harm to plant life, animal life or the natural environment;
- whether the person's interests may be directly and substantially affected by the Hearing or its result; and
- whether the person has a genuine interest, whether public or private, in the subject matter of the proceeding.

The Tribunal will provide requests for status to the Appellant, Director and approval holder or will provide their contact information to the person making the request so that the person can serve the request on them. The Appellant, Director and approval holder will be required to provide their responses to the request for status no later than one day before the Preliminary Hearing.

What is the difference between a Party, Participant, and Presenter?

The Tribunal has established various levels of participation to ensure that all those interested in the Hearing can be involved. The Tribunal encourages participation in its Hearings. As outlined below, different levels of participation are available according to a person's needs and interests.

Who can be a Party?

Those persons specified as Parties by the *Environmental Protection Act* and persons otherwise entitled by law to be Parties are automatically Parties to the proceeding. Additionally, if a person requests Party status, the Tribunal may name that person a Party after considering the matters discussed above.

What is the role of a Party?

Those who request and receive Party status from the Tribunal assume the fullest range of rights and responsibilities. Most Parties are represented by either a lawyer or other representative, but a Party may be self-represented. A Party can be either one person (including a corporation) or a group of persons. Generally speaking, unincorporated associations are not considered to be persons before the Tribunal. Therefore, unincorporated associations must be represented by an individual. A Party may:

- be a witness at the Hearing;
- be questioned by the Tribunal and the Parties;
- bring motions;
- call witnesses at the Hearing;
- cross-examine witnesses called by other Parties;
- make submissions to the Tribunal including final argument;
- receive copies of all documents exchanged or filed by the Parties;
- participate in mediation;
- attend site visits; and
- claim costs and be liable for costs, where permitted by law.

Who can be a Participant?

A person who has an interest in the subject matter of the Hearing may be named as a Participant. In deciding whether to name a person as a Participant rather than as a Party, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's would be. A person who may otherwise qualify as a Party may request Participant status.

What is the role of a Participant?

In addition to the right to observe and present relevant evidence at a Hearing, a Participant may:

- be questioned by the Tribunal and the Parties;
- make submissions to the Tribunal at the commencement and end of the Hearing;
- upon request, receive a copy of the documents exchanged by the Parties that are relevant to the Participant's interests; and
- attend site visits.

However, someone with Participant status cannot:

- raise issues that have not already been raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions;

- participate in mediation unless permitted to do so by the Tribunal; and
- claim costs or be liable for costs.

Who can be a Presenter?

A person who has an interest in the subject matter of the Hearing may be named as a Presenter. In deciding whether to name a person as a Presenter rather than as a Party or Participant, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's or Participant's would be. A person who may otherwise qualify as a Party or Participant may request Presenter status.

What is the role of a Presenter?

A Presenter need only attend at the Hearing when presenting evidence. In addition to the right to observe, be a witness and present relevant evidence at a Hearing either during the regular daytime sessions or, where there is a large public interest, at a special evening session, a Presenter may:

- be questioned by the Tribunal and the Parties;
- provide the Tribunal with a written statement as a supplement to oral testimony; and
- upon request, receive a copy of documents exchanged by the Parties that are relevant to the Presenter's interests.

However, someone with Presenter status cannot:

- raise issues that have not already been raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions;
- make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;
- participate in mediation unless permitted to do so by the Tribunal;
- attend site visits unless permitted to do so by the Tribunal; and
- claim costs or be liable for costs.

What is a Preliminary Hearing?

The Tribunal will hold a Preliminary Hearing four weeks after the time to file an appeal has expired in order to facilitate preparation for the main Hearing. The main Hearing will normally start approximately four weeks after the date of the Preliminary Hearing. The Member will issue

a written order after the Preliminary Hearing regarding what was decided at the Preliminary Hearing.

A Preliminary Hearing may be held to:

- identify Parties, Participants and Presenters, and the scope of their participation in the Hearing;
- determine whether the Hearing will be conducted orally, electronically or in writing;
- hear preliminary motions;
- identify, define or narrow issues;
- develop an agreed statement of facts and evidence;
- determine whether any issues can be settled or withdrawn;
- determine the order of presentation of evidence and submissions; and
- consider any other matters that may assist in the just and expeditious disposition of the proceeding.

Is mediation available?

Tribunal-assisted mediation is offered to all Parties and is voluntary. Mediation is conducted after the Preliminary Hearing and generally prior to the commencement of the main Hearing. The member of the Tribunal who conducts the mediation will not conduct the Hearing unless all Parties consent.

The Tribunal's Members are trained and experienced in providing mediation services to help resolve disputes. This service is provided at no cost to the Parties. The mediator may exclude everyone but the Parties from the mediation, and all documents submitted and all statements made at the mediation are confidential and without prejudice. Any settlement agreement will be reviewed by the Tribunal in accordance with the Tribunal's Rules of Practice and Practice Directions. If the Tribunal is satisfied that the settlement agreement is in accordance with the Rules, the Tribunal will accept the settlement agreement and attach the settlement agreement to its decision dismissing the proceedings.

How does one prepare for the hearing process?

The key to effective participation in the hearing process is being well informed and prepared to provide one's views and evidence at the Hearing. The Tribunal can only consider the information provided at the Hearing and the grounds for appeal discussed above. The evidence intended to be relied upon should be relevant to the issues before the Tribunal.

Parties, Participants and Presenters are strongly encouraged to review the Rules of Practice and Practice Directions of the Environmental Review Tribunal and the relevant provisions of the *Environmental Protection Act*, in particular, the limited grounds available on an appeal of a renewable energy project decision.

What are the disclosure requirements?

As discussed above, the Tribunal will provide a schedule for the exchange and filing of documents. The Tribunal must be given two copies of all documents filed.

Parties must provide without charge any documents they are required to provide to all other Parties. Participants and Presenters may make a request to the Tribunal to receive a copy of all documents relevant to their interests

The obligation to disclose is continuing. All relevant documents discovered during the course of the Hearing must be provided to the other Parties and the Tribunal.

What is a Witness Statement?

Witnesses may be trained professionals, members of the community, academic specialists, or individuals with specific knowledge who can give the Tribunal relevant information.

A witness statement is a concise, but complete, written statement of the evidence a witness intends to present.

A witness statement should be direct and to the point. It is intended that the statement be complete in the sense that the witness should not have to add anything new to the evidence at the Hearing. However, the witness is entitled to explain more fully anything contained in the statement.

A witness statement should contain the following information:

- the name, address and telephone number of the witness;
- whether the evidence will be factual evidence or, if the witness is a qualified expert, opinion evidence;
- a resume of the witness' qualifications, where the witness is to give opinion evidence;
- a signed form in accordance with Form 5 of the Tribunal's Rules of Practice, where the witness is to give opinion evidence;
- whether or not the witness has an interest in the application and, if so, the nature of the interest;
- a summary of the opinions, conclusions and recommendations of the witness;
- reference to those portions of other documents which form an important part of the opinions, conclusions and recommendations of the witness;
- a summary of answers to any interrogatories to or from other Parties that will be relied on at the Hearing;

- where applicable, a discussion of proposed conditions of approval that are in controversy among the Parties or agreed upon conditions that may be related to issues in dispute;
- the date of the statement; and
- the signature of the witness.

If the witness statement does not contain all of the above information Parties may jeopardize their right to have the evidence admitted or may delay the Hearing.

Witnesses will normally attend in person to give oral evidence and be subject to cross-examination. A Party who seeks to have witnesses present opinion evidence must have them accepted as experts by the Tribunal before their evidence can be admitted.

Witness statements should be exchanged among the Parties and filed with the Tribunal within the time directed by the Tribunal.

Can the Tribunal require a Witness to attend?

The Tribunal has the power to summon a witness to attend a Hearing, to give evidence and to bring relevant documents and material. A summons can be issued because the Tribunal wants to hear from the witness or because a Party has requested that the Tribunal require the person to act as a witness. The person calling a witness is responsible for paying for the witness' attendance costs at the same rate as is paid to a person summoned to appear before the Superior Court. It is the responsibility of a person calling a witness to obtain and serve the summons as soon as possible before the commencement of the Hearing.

How does the Tribunal hear an appeal?

The Tribunal may conduct a Hearing by a panel of one, two or three members. An appeal will normally be conducted by way of an oral Hearing. It might sometimes be conducted electronically (for instance by telephone), by way of written submissions, or by a combination.

At an oral or electronic Hearing, each Party will have an opportunity to present evidence and submissions, call and cross-examine witnesses and explain the Party's case to the Tribunal.

At a written Hearing, all Parties will be provided with the opportunity to make written submissions and to comment on other Parties' written submissions.

Who can attend Tribunal Hearings?

Tribunal Hearings are open to the public unless they are ordered otherwise by the Tribunal. The Tribunal may order a Hearing closed to the public on its own initiative, or at the request of a Party. The Tribunal will only order a Hearing closed to the public when the Tribunal determines that intimate financial, personal or other matters may be disclosed at a Hearing that are of such a nature that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that Hearings will be open to the public.

Who can access Tribunal documents?

All documents filed with the Tribunal and all communications to and from the Tribunal form part of the Tribunal's Public Record and are, therefore, available for reasonable access by all persons unless the Tribunal orders otherwise.

What is the order of presentation at a Hearing?

Once the Parties, Participants and Presenters are identified, Parties and Participants will be asked in turn to give a very brief opening statement outlining what they feel are the issues in the case before the Tribunal, a brief summary of the evidence they intend to present, the names of the witnesses that they intend to call, and the amount of time they feel they will require to present their case.

While the Tribunal can direct the order of the presentation of evidence, in an appeal under section 142.1 of the *Environmental Protection Act*, the Appellant will usually present evidence first. At the conclusion of the examination of each of the Appellant's witnesses, the Parties are given an opportunity to cross-examine the witness. Upon completion of the cross-examination of each witness, the Appellant is entitled to re-examine a witness on any issue that arose for the first time during the cross-examination of the witness.

When the Appellant's evidence has been presented, other Parties, Participants and Presenters supporting the Appellant will be given an opportunity to present their case following the same procedures.

The Director and holder of the renewable energy approval and any other Parties supporting their position can then call their witnesses. Cross-examination and re-examination will be allowed of any evidence presented.

The Appellant will next be given an opportunity to present any additional evidence that arises out of the evidence of the other Parties. This reply will be limited to evidence that the Appellant could not reasonably have anticipated during the initial presentation of evidence.

When all the evidence has been heard, each Party and Participant will be entitled to make a final submission. This submission gives the Parties and Participants a chance to summarize the important facts on which they are relying, to summarize any points of law or policy which they think are relevant for the Tribunal's consideration, and to persuade the Tribunal to accept their argument or position.

At any time during the Hearing, the Tribunal may ask questions of Parties, Participants, Presenters, witnesses or their representatives.

What principles govern the Tribunal's Hearings?

The Tribunal conducts its hearings to ensure the just, most expeditious and cost effective determination of the proceedings. The Tribunal is committed to open, accessible, and understandable hearing procedures which facilitate and enhance access to justice and public participation.

The Tribunal's objective is to consider all the evidence presented, and make a decision with written reasons in a manner that is consistent with the *Environmental Protection Act*.

Can the Tribunal award costs?

Participating in a Hearing invariably entails some costs. Typically these costs might include:

- fees for lawyers, representatives or agents;
- fees for expert assistance and witnesses;
- travel and accommodation expenses;
- costs for materials used for presentations (such as photographs, graphics, etc.).

In rare circumstances, costs may be awarded in appeals under section 142.1 of the *Environmental Protection Act* but only where there has been unreasonable conduct by a Party. Rules 212 to 220 and Rules 225 to 231 of the Tribunal's Rules of Practice should be consulted.

Can the Tribunal's decision be appealed/reviewed?

An appeal of the Tribunal's decision may be made in writing to the Minister of the Environment on any matter other than a question of law. The Minister of the Environment will then confirm, alter or revoke the decision of the Tribunal if the Minister considers that it is in the public interest to do so.

The appeal must be made within 30 days after the release of the Tribunal's decision.

An appeal of the Tribunal's decision on a question of law may be made to the Divisional Court. This appeal must be filed in accordance with the *Ontario Rules of Civil Procedure*.

The opportunity also exists for judicial review of the decision by the Divisional Court.

For more information:

For further information, please refer to the *Environmental Protection Act* and to the Rules of Practice and Practice Directions of the Environmental Review Tribunal. All of these documents are available on the Tribunal's website at www.elfto.gov.on.ca.

Appendix A

Timeline for Appeals under Section 142.1 of the *Environmental Protection Act* *

	15 days after notice of decision	Within 4 days after Director receives Appeal Notice	Within 8 days after Appeal expiry date	Within 14 days after Director receives Appeal Notice	Within 3 weeks after Appeal expiry date	At least 4 days before the Preliminary Hearing
Notice of decision on renewable energy project posted on Environmental Registry	Appeal expiry date	Notice list: Director gives Tribunal name and address list for notices	Notice from Tribunal: Preliminary Hearing, Continuation of Preliminary Hearing and Hearing dates	Disclosure: Director gives to Appellant and files with Tribunal material relevant to the statutory test from public consultation on renewable energy approval application	Disclosure: Exchange among Parties and filing of existing documents within Parties possession, control or power (except privileged documents), existing lists of witnesses, summary of intended evidence relevant to the subject matter of the appeal and a statement of the issues and material facts to be relied on by the Parties in responding to Appellant's issues	Request for Status: Written request to Tribunal to be added as Party, Participant and Presenter (must set out status sought, how test is met and statement of the issues and material facts). The Tribunal will subsequently forward the request to the Parties or direct the requestor to do so.

At least 1 day before the Preliminary Hearing	4 weeks After Appeal expiry date	Within 5 weeks after Appeal expiry date	Within 5.5 Weeks after Appeal expiry date	At least 7 days Before the Hearing	At least 4 days before the Hearing	8 weeks after Appeal expiry date	Within 6 months after Tribunal receives Appeal Notice
Response to status request: By Appellant, Director and Approval holder	Preliminary Hearing to: Determine Party, Participant, Presenter Status, define issues, hear preliminary motions	Mediation (if applicable)	Disclosure: Exchange among Parties and filing of additional documents, witness lists and statements, and resumes of expert witnesses, relevant to subject matter of the appeal, to be relied on at the Hearing	Issues and facts still in dispute: Filing by Parties of material, list of facts and issues still in dispute	Continuation of the Preliminary Hearing: To finalize issues and witness lists; issue further directions, if appropriate	Date of Hearing	Release of Tribunal's Decision (as required by the <i>Environmental Protection Act</i>)

* Note: the Tribunal may vary the timeline as appropriate and issue directions at any stage of the proceeding, subject to the requirements of the statute or regulations, including the requirement to issue the decision within six months.