



Ontario

Environment and Land Tribunals Ontario

OFFICE OF CONSOLIDATED HEARINGS

A Guide to Hearings under the
Consolidated Hearings Act

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This Guide provides a general overview of Hearings before the Joint Board under the *Consolidated Hearings Act* and should not be relied upon as an authoritative text. The statutes, regulations and, where adopted by the Joint Board, the Rules of Practice and Practice Directions of the Environmental Review Tribunal prevail.

Information about specific Hearings is available from:

The Office of Consolidated Hearings
Environment and Land Tribunals Ontario
655 Bay Street, Suite 1500
Toronto, Ontario M5G 1E5

Telephone: (416) 212-6349 Toll Free: 1-866-448-2248
Facsimile: (416) 314-4506 Toll Free: 1-877-849-2066
TTY: 1-800-855-1155 via Bell Relay
Email: ERTTribunalSecretary@ontario.ca
Website: www.elto.gov.on.ca

The Office of Consolidated Hearings accepts collect calls.

What is a Joint Board?

A Joint Board is established under the authority of the *Consolidated Hearings Act* to combine different matters arising under one or more specified statutes where separate Hearings would otherwise be required. Hearings can only be combined if they deal with matters relating to the same undertaking. The members of a Joint Board are appointed from the Environmental Review Tribunal and the Ontario Municipal Board. The Joint Board may adopt the Rules of Practice of the Environmental Review Tribunal or the Ontario Municipal Board. This Guide sets out an overview where the Joint Board has adopted the Rules of Practice and Practice Directions of the Environmental Review Tribunal.

Notice of undertaking

The person making an application for a consolidated Hearing (the “Proponent”) shall give written notice to the Hearings Registrar specifying the general nature of the undertaking, the Hearings that are required or that may be required, and the Acts under which the Hearings are required or may be required. Upon receipt of a notice that is in accord with these requirements, the Hearings Registrar shall refer the matter to the Chair of the Environmental Review Tribunal and the Chair of the Ontario Municipal Board who together by order shall establish the Joint Board.

How can neighbours and other interested people participate?

To participate in the Hearing, neighbours and others who wish to participate at the Hearing should attend the Preliminary Hearing and request that the Joint Board add them as either Parties, Participants or Presenters or they should notify the Office of Consolidated Hearings in writing before the commencement of the Hearing indicating that they wish to be added as Parties, Participants or Presenters. A person may also attend at the Hearing and request to be added as a Party, Participant or Presenter.

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

The Joint Board has established various levels of participation to ensure that all those interested in the Hearing can be involved. A choice of participation levels addresses different needs and interests.

Who can be a Party?

Those persons specified as Parties by the statute(s) under which the proceeding arises and persons otherwise entitled by law to be Parties are automatically Parties to the proceeding. Additionally, if a person requests Party status, the Joint Board may name that person to be a Party after considering relevant matters including: whether the person’s interests may be directly and substantially affected by the Hearing or its result; whether the person has a genuine interest, whether public or private, in the subject matter of the proceeding; and whether the person is likely to make a relevant contribution to the Joint Board’s understanding of the issues in the proceeding.

What is the role of a Party?

Those who request and receive Party status from the Joint Board assume the fullest range of rights and responsibilities. Most Parties are represented by either a lawyer or an agent, but a Party may act on his or her own behalf. A Party can be either an individual or a group. A Party may:

- be a witness at the Hearing;
- be questioned by the Joint Board and the Parties;
- bring motions;
- call witnesses at the Hearing;
- cross-examine witnesses called by other Parties;
- make submissions to the Joint Board including final argument;
- receive copies of all documents exchanged or filed by the Parties;
- 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 Joint Board 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 his or her views at a Hearing, a Participant may:

- be questioned by the Joint Board and the Parties;
- make submissions to the Joint Board 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 grounds not already raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions; 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 Joint Board 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 he or she is presenting his or her evidence. In addition to the right to observe and present his or her views at a Hearing, a Presenter may:

- be a witness and present his or her views either during the regular daytime sessions or, where there is a large public interest, at a special evening session;
- be questioned by the Joint Board and the Parties;
- provide the Joint Board 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 grounds not already raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions;
- make oral and written submissions to the Joint Board at the commencement and at the end of the Hearing;
- claim costs or be liable for costs; and
- attend site visits unless a request to attend is made to the Joint Board and the Joint Board grants the request.

What is a Preliminary Hearing?

The Joint Board will hold a Preliminary Hearing (which forms part of the Hearing) in order to facilitate preparation for the main Hearing. The Joint Board 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 the length, schedule and location of the Hearing;
- determine whether the Hearing will be conducted orally, electronically or in writing;
- hear preliminary motions such as motions to dismiss for non-compliance with a direction of the Joint Board;
- identify, define, scope and simplify issues;
- establish dates for the exchange among Parties and with the Joint Board of all documents relevant to the proceeding, witness lists, witness statements, and resumes of any expert witnesses;
- where applicable, establish dates for the exchange among all Parties and with the Joint Board of a common document book and a list of all documents in the possession, power and control of the Parties;
- develop an agreed statement of facts and evidence;
- canvass the possibility of the settlement or withdrawal of any or all the issues; and
- consider any other matters that may assist in the just and expeditious disposition of the proceeding.

Is Mediation Available?

In appropriate cases, mediation is offered to all parties and is voluntary. Mediation is conducted after the Preliminary Hearing and generally 30 days prior to the commencement of the main Hearing. The member of the Joint Board who conducts the mediation will not conduct the Hearing unless all Parties consent.

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. A settlement agreement will be reviewed by the mediator to ensure that it is in accord with the Rules of Practice and Practice Directions. If the mediator is satisfied that the settlement agreement is in accordance with the Rules of Practice and Practice Directions, the mediator will accept the settlement agreement and attach the settlement agreement to his or her decision dismissing the proceedings.

How does one prepare for a Hearing?

The key to effective participation in a Hearing is being well informed and prepared to provide one's views and evidence at the Hearing. The Joint Board can only consider the information provided at the Hearing. The evidence intended to be relied upon should be relevant to the issues before the Joint Board.

Parties, Participants and Presenters are strongly encouraged to review the statutes relevant to the undertaking, the *Consolidated Hearings Act* and the Rules of Practice and Practice Directions of the Environmental Review Tribunal.

What are the disclosure requirements?

All Parties must provide without charge to all other Parties a copy of every relevant document that is in their possession, control or power, no later than the disclosure date set at the Preliminary Hearing. Participants and Presenters may request to receive a copy of all documents relevant to their interests. Privileged documents are excepted.

All documents intended to be relied upon at the Hearing must be filed with Joint Board. Two copies of each document must be provided if the document is filed prior to the commencement of the Hearing. If the document is filed during the course of the Hearing, a sufficient number of copies must be provided so that there is a copy for each Joint Board member and for the record file.

The obligation to disclose is continuing. That is, all relevant documents discovered during the course of the Hearing must be provided to the other Parties and, if the document is to be relied upon at the Hearing, the Joint Board.

How are special needs accommodated?

A person with a disability should inform the assigned Case Manager in advance of the Hearing of any special needs that must be accommodated.

What language services are available?

A person should inform the assigned Case Manager in advance of the Preliminary Hearing or Hearing and, in any event, at least 14 days before the Preliminary Hearing or Hearing if he or she requires the Preliminary Hearing or Hearing to be translated into French.

What is a Witness Statement?

Witnesses may be trained professionals, members of the community, academic specialists, or individuals with specific knowledge who can provide the Joint Board with 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;

- the qualifications of the witness, 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.

Witness statements should be exchanged between the Parties and filed with the Joint Board within the time directed by the Joint Board, which is usually no later than 15 days prior to the commencement of the Hearing.

Summons to Witness

The Joint Board 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 when the Joint Board wants to hear from the witness or because a Party has requested that the Joint Board require the person to be a witness. The person calling a witness is responsible 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 the Party calling a witness to obtain and serve the summons as soon as possible before the commencement of the Hearing.

Can a Hearing be Postponed or Adjourned?

All Hearing dates are considered peremptory; that is, once a date has been set for a Hearing, the Hearing will proceed on that date except in exceptional circumstances, such as the sudden illness of a Party. If a person has been notified of the time, date and place of a Hearing and fails to attend, the Joint Board may proceed with the Hearing and make its decision in the absence of that person.

For information on adjournments, please refer to the Rules of Practice.

How does the Joint Board conduct a Joint Hearing?

The Joint Board may conduct a Hearing by a panel of one, two or three members. A Hearing may 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 his or her case to the Joint Board.

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

What is the order of presentation at a Hearing?

Once the Parties are identified, they will be asked in turn to give a very brief opening statement outlining what they feel are the issues in the case before the Joint Board, 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 expect will be required to present their case.

While the Joint Board can direct the order of the presentation of evidence, the Proponent will usually present his or her case first. At the conclusion of the examination of each of the Proponent's witnesses, other Parties in turn are given an opportunity to cross-examine the witness. Upon completion of the cross-examination of each witness, the Proponent is entitled to re-examine the witness on any issue that arose for the first time during the cross-examination of the witness.

When all the Proponent's evidence has been presented, other Parties, Participants and Presenters in support of the Proponent will be given an opportunity to present their case following the same procedures.

After the Proponent's and any supporting evidence has been presented, any Parties opposing the appeal or application can call their witnesses. Cross-examination and re-examination will be allowed regarding any evidence presented.

Finally, the Proponent will 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 he or she could not reasonably have been expected to anticipate during his or her 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 Joint Board's consideration, and to persuade the Joint Board to accept their argument or position.

At any time during the Hearing, the Joint Board may ask questions of witnesses or of counsel or representatives.

What principles govern the Joint Board's Hearings?

The Joint Board's objective is to consider all the evidence presented, and make a decision with written reasons in a manner that is consistent with the statute(s) under which the application is submitted.

What type of decision can the Joint Board make?

The Joint Board may grant or deny the appeal or application. In granting the appeal or application, the Joint Board may do so subject to conditions.

When will the Joint Board make a decision?

Usually the Joint Board issues a written decision, and the reasons for its decision, approximately 60 days following the Hearing.

A copy of the decision is mailed to all Parties and Participants. Decisions of the Joint Board are also available on the Office of Consolidated Hearings website usually within 24 hours of its release.

Can the Joint Board 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.).

Costs may be awarded by the Joint Board. Rules 204 to 223 of the Rules of Practice should be consulted where the Environmental Review Tribunal's Rules of Practice have been adopted by the Joint Board in relation to a proceeding. Rules 213 to 216 apply specifically to the types of proceedings covered by this Guide but the remaining costs Rules are also relevant. Costs awards may be ordered to help defray the costs of participation borne by Parties, other than the Proponent, the Director and government decision makers, who make a substantial contribution to the proceedings through responsible participation. Costs awards may also be ordered to sanction unreasonable conduct by any Party.

Can the Joint Board's decision be appealed/reviewed?

An application to review the decision of the Joint Board must be submitted to Cabinet within 28 days of the decision being released. The opportunity also exists for judicial

review of the decision by the Divisional Court and a review by the Joint Board under the limited circumstances set out in Rules 227 to 235.

For More Information:

For further information, please refer to the *Consolidated Hearings Act*, as well as the statute governing the application or appeal (eg. the *Planning Act*, the *Niagara Escarpment Planning and Development Act*), and to the Rules of Practice and Practice Directions of the Environmental Review Tribunal or the Rules of Practice of the Ontario Municipal Board. This information is available on the website of the Office of the Consolidated Hearings at www.elto.gov.on.ca. The Rules of Practice of the Ontario Municipal Board are available from its website at www.elto.gov.on.ca.