

**ENVIRONMENT AND LAND TRIBUNALS ONTARIO
CONSERVATION REVIEW BOARD**

Rules of Practice and Procedure

Effective: April 1, 2015

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COMMENTARY ON THE RULES – PURPOSE AND SCOPE

The commentary is provided as a guide to the user of these Rules, and describes, in plain language, the key features of each Rule. The commentary does not form part of the Rules.

In a proceeding before the Conservation Review Board, the Review Board, the parties and all other participants are governed by the wording of the Rules themselves, and are not governed by the wording of the Commentary.

In the Commentary, the Conservation Review Board is referred to as the “Review Board”.

PART I – GENERAL

Rule 1 – Application of Rules

- 1.01 The Conservation Review Board has made these Rules in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, and the *Ontario Heritage Act*, R.S.O. 1990, c. O.18.
- 1.02 These Rules apply to every matter referred to the Review Board, including further steps taken in a matter that was commenced before April 1, 2015 and continue to apply until amended by the Review Board.

COMMENTARY ON RULE 1, “Application of Rules”

Rule 1 provides that the Ontario Heritage Act and the Statutory Powers Procedure Act give the Conservation Review Board authority to make Rules governing the practice and procedure before it.

Sections 4.3-4.6, 5.1, 5.2, 5.4, 6-16, 17.1, 21, 21.1,22, 23, 25.0.1 and 25.1 of the Statutory Powers Procedure Act apply to a hearing.

Rule 1 also provides that these Rules generally apply to all matters before the Review Board.

These Rules replace any earlier rules made by the Review Board and may be amended from time to time.

Rule 2 – Interpretation

- 2.01 Where any of these Rules, directions or orders made by the Review Board conflict with any statute, the provisions of the statute shall prevail.
- 2.02 The Review Board shall apply these Rules in a manner that will, in its opinion, produce the just, most expeditious and cost-effective determination of every matter.
- 2.03 Where procedures are not provided for in these Rules, the Review Board may adopt any procedure that is not inconsistent with these Rules, the *Ontario Heritage Act*, or the *Statutory Powers Procedure Act*.
- 2.04 The Review Board may waive or vary the application of any of these Rules by making an order or giving a direction where the Review Board considers it appropriate to do so.
- 2.05 The Review Board may exercise any of its powers on its own initiative or at the request of a party.
- 2.06 A defect in form does not invalidate a proceeding.

- 2.07 In accordance with the *French Language Services Act*, R.S.O. 1990, c. F.32, a party and its representative have the right to communicate with and receive available services in French from the Review Board. The party or its representative shall notify the Review Board in writing as soon as possible if such services are required.
- 2.08 In accordance with the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, a party and its representative have a right to accommodation with respect to services provided by the Review Board. The party or its representative shall notify the Review Board as soon as possible if such accommodations are required.

COMMENTARY ON RULE 2, “Interpretation”

Rule 2, “Interpretation”, provides that, if there is a conflict between the Rules and the Ontario Heritage Act (or other statute) the statute will govern.

The Review Board applies the Rules in a transparent and professional manner that balances providing an open forum to all concerned participants and the efficient and effective determination of all matters.

The Review Board may vary the Rules where appropriate.

Parties are entitled to receive available services in French in certain parts of Ontario and should make a request for such services well in advance. See Rule 25 for more information.

Rule 3 – Definitions

3.01 In these Rules,

“Act” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18;

“document” includes:

- (a) a notice, form, order, direction, correspondence, memorandum, file, book of account, agreement, report, chart, graph, and any other written or pictorial communication;
- (b) a sound recording, videotape, photograph, map, plan, survey, or like thing;
- (c) information recorded or stored by means of any device, including a computer file;
- and
- (d) a facsimile or a copy of a document;

"day" means a business day and does not include a holiday;

"electronic hearing" means a hearing held by conference telephone call or some other form of electronic technology allowing persons to hear one another throughout the hearing;

"hearing" means a hearing held by the Review Board and includes an electronic hearing, an oral hearing and a written hearing;

"holiday" means

- (a) any Saturday or Sunday,
- (b) any day when the Review Board is not open during its regular hours of business,
- (c) New Year's Day,
- (d) Family Day,
- (e) Good Friday,
- (f) Easter Monday,
- (g) Victoria Day,
- (h) Canada Day,
- (i) Civic Holiday,
- (j) Labour Day,
- (k) Thanksgiving Day,
- (l) Remembrance Day,
- (m) Christmas Day,
- (n) Boxing Day, and
- (o) any day fixed as a holiday by proclamation of the Governor General or the Lieutenant Governor, and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

"oral hearing" means a hearing at which the parties or their representatives attend in person before the Review Board;

"participant" means a person granted status under Rule 22;

"party" means a person who is made a party by the provisions of the Act or who is specified as a party by the Review Board or who is granted party status by the Review Board on request;

"pre-hearing conference" means the step in a proceeding that follows the referral of a matter to the Review Board and precedes the hearing;

"proceeding" means all steps taken in a matter that is referred to the Review Board for a hearing, beginning when the Review Board receives the referral of the matter and ending when the Review Board makes a report or dismisses, discontinues or otherwise disposes of the matter;

"public record" includes any document filed or served in a proceeding, but does not include a document that the Review Board has ordered to be held in confidence under Rule 17 and does not include the Review Board's notes;

"representative" means a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8, to represent a party or a witness in a proceeding;

"Review Board" means the Conservation Review Board, continued by subsection 24(1) of the Act;

"Rules" means these rules and includes any orders or directions made by the Review Board with respect to its practices and procedures;

"written hearing" means a hearing held by means of the exchange of documents, whether in written form or by electronic means.

COMMENTARY ON RULE 3, “Definitions”

Rule 3, “Definitions”, defines certain key terms for the purposes of the Rules, including “document”, the various types of “hearing”, “party”, “proceeding”, and “public record”.

A proceeding begins when a matter is referred to the Review Board; it includes a pre-hearing conference and a hearing, and it ends when the Review Board makes its report or otherwise disposes of the matter.

The word “hearing”, used by itself, includes an electronic, an oral and a written hearing. For further information, see the Commentary on Rule 4.

A “representative” may be a lawyer, paralegal, related person, friend or neighbour of a party. For further explanation of persons authorized to provide legal services, see By-Law 4 under the Law Society Act available at www.lsuc.on.ca. See also the Commentary on Rule 9.

Rule 4 – Format of Hearing and Pre-Hearing Conference

- 4.01 This Rule applies to a hearing and, with necessary modifications, to a pre-hearing conference conducted by the Review Board.
- 4.02 The Review Board may direct that any part of a proceeding, including a pre-hearing conference and a hearing, include any combination of electronic, oral and written hearings.
- 4.03 The Review Board shall not hold a written hearing if a party satisfies the Review Board that there is good reason for not holding a written hearing.
- 4.04 The Review Board shall not hold an electronic hearing if a party satisfies the Review Board that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
- 4.05 Subrules 4.03 and 4.04 do not apply if the only purpose of the hearing is to deal with procedural matters.
- 4.06 In giving a direction in accordance with subrule 4.02, the Review Board may consider the following:
- (a) the suitability of a written or electronic hearing considering the subject-matter of the hearing;
 - (b) whether the nature of evidence is appropriate for a written or electronic hearing, including whether credibility is in issue and the extent to which facts are in dispute;
 - (c) the extent to which the issues in dispute are questions of law;
 - (d) the convenience of the parties;
 - (e) the cost, efficiency and timeliness of the proceeding or part thereof;
 - (f) ensuring a fair and understandable process;
 - (g) the desirability or necessity of public participation or public access to the Review Board’s process; and
 - (h) any other factor the Review Board considers relevant.

- 4.07 A party may object to the holding of a written or electronic hearing by filing an objection with the Review Board, and serving the objection on every other party, within seven days of receiving the notice of the hearing.
- 4.08 A party may respond to the objection by filing a written response with the Review Board, and serving the response on every other party, within seven days of receiving the objection.
- 4.09 If a party objects to a written hearing, the Review Board may, after considering the objection and any response,
- a) accept the objection, cancel the written hearing and schedule an oral or electronic hearing; or
 - b) reject the objection and proceed with the written hearing.
- 4.10 If a party objects to an electronic hearing, the Review Board may, after considering the objection and any response,
- a) accept the objection, cancel the electronic hearing and schedule an oral or written hearing; or
 - b) reject the objection and proceed with the electronic hearing.
- 4.11 The Review Board may impose conditions on the holding of an electronic hearing and may direct that a party set up the electronic hearing.

COMMENTARY ON RULE 4, “Format of Hearing and Pre-Hearing Conference”

Rule 4 relates to the various formats that a hearing and a pre-hearing conference may take.

Oral hearings are in person and pre-hearing conferences are usually an electronic hearing (normally held by telephone conference call).

The Review Board may, in appropriate circumstances, direct that a hearing (or part of a hearing) be held as a written hearing (in which documents are exchanged but the Review Board and the parties do not meet) or an electronic hearing (normally held by telephone conference call).

In some cases, parties may object to alternate formats, and the Review Board will consider the objection before making a decision on the format.

Rule 5 – Calculation of Time

- 5.01 To calculate time for the purposes of these Rules:
- (a) when calculating the number of days between two events, the day on which the first event happens is not counted and the day on which the second event happens is counted; and
 - (b) when the time expires on a holiday, the act may be done on the next day that is not a holiday.

COMMENTARY ON RULE 5, “Calculation of Time”

This Rule sets out the method of counting time. The basic principle is that the first day is not counted but the last day is unless the last day is a holiday.

“Holiday” is defined in Rule 3.

Example:

- *If the Review Board directs a party, on February 5, to file a document within 14 days, then the party does not count the first day (February 5), but does count the next 14 days. The last day for filing the document is February 19.*
- *If the last day, February 19, is a Saturday or a Sunday, then that day does not count (because every Saturday and Sunday is a holiday), and the last day for filing the document is the Monday following.*
- *If the last day, February 19, is a Saturday or a Sunday, and the following Monday is also a holiday, such as Family Day, then the last day for filing the document is the Tuesday following.*
- *If the last day, February 19, is a holiday such as Family Day, then the holiday Monday does not count and the last day for filing the document is the Tuesday following.*
- *Holidays are included in the calculation of time in all other circumstances.*

Rule 6 – Extending or Abridging Time

- 6.01 The Review Board may extend or abridge the time specified for the performance of anything required by these Rules before or after the expiration of a time period and on such conditions as it considers appropriate.
- 6.02 Where a party cannot meet a time limit required by these Rules, the party shall promptly request an extension from the Review Board and notify every other party of the request, where possible.
- 6.03 The Review Board may invite submissions from the other parties before granting or denying the request.

COMMENTARY ON RULE 6 “Extending or Abridging Time”

Where the Rules impose a time limit, the Review Board has the power to move the time limit later or earlier.

If a party wants an extension of a time limit, it must make a request to the Review Board, and tell the other parties about the request, where possible.

Rule 7 – Recordings and Transcripts of Proceedings

- 7.01 No person shall make an audio or visual recording of any part of the proceeding without the permission of the Review Board.
- 7.02 The Review Board shall not permit a party to make a recording of any part of a proceeding if it considers that the making of the recording would cause undue prejudice to any party.
- 7.03 A party seeking to make a recording of any part of a proceeding shall make a request to the Review Board 14 days in advance. Subject to subrule 7.02, the Review Board may grant or deny the request. If the Review Board grants the request, the party seeking to make the recording shall retain a qualified verbatim reporter at the party's own expense.
- 7.04 If a party intends to make use of a transcript or partial transcript from a qualified verbatim reporter, the party shall:
- (a) notify the Review Board and every other party of its intention;
 - (b) file a copy of the transcript with the Review Board; and
 - (c) serve a copy of the transcript on every other party.
- 7.05 Subject to subrule 7.02, the Review Board may on its own initiative make a recording of any part of the proceeding. The Review Board will retain a qualified verbatim reporter at its own expense.
- 7.06 Where the Review Board retains a qualified verbatim reporter, the Review Board may, at its own expense and on notice to the parties, order a transcript or partial transcript from the qualified verbatim reporter without providing a copy of the transcript to the parties. In any such case, the Review Board will advise the parties that it has ordered a transcript and, where the Board orders a partial transcript, the Review Board shall notify the parties as to the part of the transcript that the Review Board has ordered.

COMMENTARY ON RULE 7, “Recordings and Transcripts of Proceedings”

No person may make a recording of any part of the pre-hearing settlement conference. As well, no person may make a recording of any part of the pre-hearing conference or hearing if the Review Board believes that this would cause undue prejudice to any party. This means no audio or video recordings.

A party wishing to make such a recording must request permission, which the Review Board may or may not grant. The Review Board will not grant permission if it believes that the recording would cause undue prejudice to any party. In considering a request, the Review Board will take into consideration its duty to accommodate under the Human Rights Code.

If permission is granted, the party making the request must hire and pay for a qualified verbatim reporter. For further information on qualified verbatim reporters please see: the Court Reporters' Association of Ontario (www.crao.ca) or the Chartered Shorthand Reporters' Association of Ontario (www.csrao.net)

If the party hires a qualified verbatim reporter to produce a written transcript of all or part of the hearing, the party must notify the Review Board and must provide a copy to the Review Board

and to every other party.

The Review Board may hire a qualified verbatim reporter and order its own copy of the transcript. It will notify the parties that it has ordered the transcript (or partial transcript) but the Review Board need not provide a copy to the parties.

Rule 8 – Meeting in the Absence of the Review Board

- 8.01 At any time in the proceeding the Review Board may direct the parties to attend a meeting in the absence of the Review Board for the purpose of considering or resolving any issues as directed by the Review Board.

COMMENTARY ON RULE 8, “Meeting in the Absence of the Review Board”

The Review Board may require parties to meet, in the absence of the Review Board, to discuss and try to resolve issues specified by the Review Board.

PART II – PARTIES AND REPRESENTATIVES

Rule 9 – Parties and Representatives

- 9.01 This Rule applies to a party and, with necessary modifications, to a person requesting party status.
- 9.02 A party may attend or participate in a proceeding in person, with a representative, or may send a representative to attend in place of the party.
- 9.03 A representative or party shall file, upon request of the Review Board, **Form 1, Representative of a Party – Commencement of Authorization** found in Appendix A.
- 9.04 Where a representative intends to cease representing a party, the representative and the party shall promptly, and in no case later than 24 hours before the start of any step in the proceeding, file with the Review Board **Form 2, Representative of a Party – Cessation of Authorization** found in Appendix A.
- 9.05 Any document served on a representative by any other party, by its representative or by the Review Board is deemed to have been served on the party whom the representative represents.
- 9.06 Where a party to a proceeding before the Review Board becomes aware of a change in ownership for a property that is the subject of a matter before the Review Board, the party shall give notice of the change to the Review Board and to the other parties within 14 days of becoming aware of the change in ownership.

COMMENTARY ON RULE 9, “Parties and Representatives”

Parties and persons wanting to become parties may be represented by a lawyer or paralegal licensed by the Law Society of Upper Canada (LSUC). They may also be represented by an unlicensed person if that person falls within a category the LSUC has exempted from its licensing requirements, such as an unpaid friend or family member and students, volunteers and employees of Legal Aid clinics. Please refer to the LSUC’s By-laws for a list of approved exemptions.

The representative may also represent the party or person when the party or person is not present.

If the representative is to cease acting for the party or person, he or she must sign and submit Form 2 (found in Appendix A).

A witness may also have a representative, as set out in Rule 10.

Rule 10 – Representative of a Witness

10.01 A witness at an electronic or oral hearing may be advised by a representative as to his or her rights, but such representative may take no other part in the hearing unless the Review Board directs otherwise.

10.02 Where an oral hearing is held in the absence of the public, the representative of a witness is not entitled to be present except when that witness is giving evidence.

COMMENTARY ON RULE 10, “Representative of a Witness”

The participation of a witness in a proceeding is more restricted than the participation of a party, and the role of a representative of a witness is also more restricted.

Where a hearing is being held by electronic or oral means, the representative of a witness can provide advice to that witness on his or her testimony, but cannot participate in any other part of the hearing without the Review Board’s permission.

In an oral hearing that is closed to the public, the representative of a witness may not attend the hearing except when that witness is giving evidence.

For information on electronic, oral and written hearings, see the Commentary at Rule 4.

Where a witness has a representative he or she does not need to submit Form 1 or Form 2 found in Appendix A to these Rules.

Representatives of parties and of persons wishing to become parties are dealt with in Rule 9.

PART III – FILING AND SERVICE OF DOCUMENTS

Rule 11 – Filing of a Document with the Review Board

- 11.01 This Rule applies with necessary modifications to a person requesting party status.
- 11.02 Any document filed with the Review Board shall include:
- (a) the name, address, email address, telephone number and facsimile number of the party filing the document; and,
 - (b) the name, address, email address, telephone number and facsimile number of the party's representative, if any.
- 11.03 A document must be filed by personal delivery, courier, registered mail, regular mail, e-mail or facsimile to the Review Board at:
- Conservation Review Board
655 Bay Street, Suite 1500
Toronto, Ontario M5G 1E5
Fax: (416) 326-5370 or 1(844) 213-3474
conservation.review.board@ontario.ca
- 11.04 A document is deemed to be filed:
- (a) by personal delivery, courier, email, registered mail or regular mail on the date of receipt stamped on the document by the Review Board;
 - (b) by facsimile transmission, when the party sending the document receives a fax confirmation receipt, but if the fax confirmation receipt indicates a time after 5 p.m., the document is deemed to be filed on the day following; and
 - (c) by electronic mail, when the party sending the document receives an e-mail confirmation from the Review Board, but if the e-mail confirmation indicates a time after 5 p.m., the document is deemed to be filed on the day following.
- 11.05 Any party filing a document with the Review Board must at the same time serve every other party with a copy of the document.
- 11.06 The Review Board may direct the number of copies of a document that a party or its representative is required to file with the Review Board.

COMMENTARY ON RULE 11, “Filing of a Document with the Review Board”

Under Rule 11, formal delivery of a document to the Review Board is called “filing”.

The methods for filing a document with the Review Board (under Rule 11) are similar to the methods for serving a document on a party (under Rule 12).

A party who files a document with the Review Board must at the same time serve it on every other party and follow the appropriate procedures under Rule 12.

Rule 12 – Service of a Document on a Party, on a Person Requesting Party Status, or on their Representative

- 12.01 This Rule applies with necessary modifications to a person requesting party status.
- 12.02 Service means the delivery of a document to a party or to its representative in accordance with these Rules.
- 12.03 Subject to subrule 12.04, a document must be served on a party in one of the following ways:
- (a) by personal delivery by giving the document to the party;
 - (b) by registered mail to the party's last known address; or
 - (c) by courier to the party's last known address.
- 12.04 A party may request and the Review Board may direct that a document may be served on a party in any of the following ways:
- (a) by regular mail to the party's last known address;
 - (b) by facsimile transmission to the party's last known facsimile number;
 - (c) by electronic mail, if the party receiving the document agrees; or
 - (d) as otherwise directed by the Review Board.
- 12.05 Where service is made by facsimile transmission the document shall include a cover page indicating:
- (a) the name, address, and facsimile number of the sender;
 - (b) the name of the person to be served;
 - (c) the date and time the document is transmitted;
 - (d) the total number of pages transmitted including the cover page; and
 - (e) the name and telephone number of a person to contact if a problem arises with the transmission.
- 12.06 Subject to 12.07, a document is deemed to be served,
- (a) by registered mail or regular mail on the seventh day after mailing;
 - (b) by courier, on the day following the day specified in the courier agreement as the day of delivery; and
 - (c) by facsimile transmission or by electronic mail, on the day sent, but if the document is sent after 5:00 p.m., the document is deemed to be served on the day following.
- 12.07 Despite subrule 12.06, if the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the document until a later date, the document will be deemed to be served on such later date.
- 12.08 A copy of a document served on a party or its representative must at the same time be filed with the Review Board.
- 12.09 Unless the Review Board directs otherwise, a party who has served a document shall file with the Review Board an affidavit or a statement of service that indicates how, when, and on whom service was made.

COMMENTARY ON RULE 12, “Service of a document on a party, on a person requesting party status, or on their representative”

These Rules require that documents be delivered in a formal way, so that the act and the date of the delivery can both be verified. This formal delivery of a document to a party is called “service” of a document.

Generally, a person is required to serve a document by physically handing it to the party, by sending it by registered mail, or by sending it by courier.

The Review Board may permit service by a less formal method, such as regular mail, fax or e-mail.

Rule 12 also provides for the date on which the document is considered to be served (i.e., deemed to be received by the party).

Documents sent by registered or regular mail are served on the seventh day following. (See the Commentary on Rule 5 for the method on determining the seventh day.)

Documents sent by courier are considered served on the day following the day specified in the courier agreement as the day of delivery.

Documents sent by fax or e-mail are considered served on the same day, but if they are sent after 5 p.m., they are served on the day following.

Where a party serves a document, it must file with the Review Board a copy of the document, together with an affidavit (which must be sworn or affirmed) or a statement of service (which is not sworn or affirmed) that sets out the date and the method of service, and the name of the person who was served.

An affidavit may be sworn or affirmed by a person with the authority to do so, such as a lawyer, a notary public, a municipal clerk or councillor, or another person appointed as a commissioner for taking oaths. For more information, see:

[Link to e-laws website: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c17_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c17_e.htm)

PART IV – COMMENCEMENT, DISMISSAL, AND CONDUCT OF PROCEEDING

Rule 13 – Commencement of Proceeding

- 13.01 A proceeding commences when the Review Board receives a reference of a matter from the council of a municipality or from the Minister in accordance with the Act.
- 13.02 Upon receiving documents relating to the commencement of a proceeding, the Review Board may decide not to process the documents if:

- (a) the documents are incomplete; or
 - (b) there is some other technical defect.
- 13.03 The Review Board will resume the processing of documents related to the commencement of proceeding if it is satisfied by the party who referred the matter that:
- (a) the documents have been completed within the time period, if any, specified by the Review Board;
 - (b) any technical defect has been corrected; or
 - (c) any other requirement set out in the decision has been complied with.
- 13.04 Once the reference documents have been processed, the Review Board may consider the notice of objection and determine whether any clarifications or corrections are required. If it makes such a determination, the Review Board will contact the person who filed the notice.

COMMENTARY ON RULE 13, “Commencement of Proceeding”

Rule 13 states that a proceeding may not be initiated if the necessary documents are not clear or complete or if there is some other technical defect with the documents such as a missing page, failure to refer to all parties/documents, improper address for service etc.

The Review Board may contact an objector if it requires clarifications concerning the notice of objection.

Rule 14 – Dismissal of Proceeding without Hearing

- 14.01 The Review Board may, on its own initiative, dismiss a proceeding without a hearing if:
- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
 - (b) the proceeding relates to matters that are outside the jurisdiction of the Review Board; or
 - (c) some aspect of the statutory requirements for bringing the proceeding has not been met.
- 14.02 Before dismissing a proceeding, the Review Board shall serve notice of its intention to dismiss the proceeding on every party.
- 14.03 The notice of intention to dismiss the proceeding shall set out the reasons for dismissal and inform every party of its right to make written submissions to the Review Board.
- 14.04 A party who receives notice in accordance with subrules 14.02 and 14.03 may make written submissions to the Review Board within fourteen days of receiving the notice.
- 14.05 The Review Board shall not dismiss a proceeding until it has given notice in accordance with subrules 14.02 and 14.03 and considered any submissions made in accordance with subrule 14.04.

COMMENTARY ON RULE 14, “Dismissal of Proceeding without Hearing”

The Review Board may dismiss a proceeding without holding a hearing where the proceeding is frivolous, where the matter is outside the authority of the Review Board or where a statutory requirement has not been met (e.g., late filing of an objection or improper notice).

Where the Review Board is considering a dismissal, it will first notify the parties and permit them to provide written reasons as to why the proceeding should not be dismissed.

Rule 15 – Conduct of Proceedings

15.01 The Review Board may, on its own initiative or at the request of a party, give a direction which shall govern the conduct of the proceeding.

15.02 The Review Board may amend a direction at any time.

15.03 To prevent an abuse of process or to allow for the proper conduct of proceedings, where a party or its representative:

- (a) has not complied with a requirement of these Rules;
- (b) has not complied with an order, direction, or request for information from the Review Board; or,
- (c) has caused undue delay, or otherwise prevented the fair, just or expeditious resolution of the matter;

the Review Board may:

- i. direct that the proceeding be stayed until the Review Board is satisfied that the direction, order or request has been complied with;
- ii. dismiss the proceeding; or,
- iii. make any other order it considers appropriate.

COMMENTARY ON RULE 15, “Conduct of Proceedings”

Rule 15 gives the Review Board the power to give directions to govern how a proceeding will be conducted.

This power allows the Review Board to deal with parties who do not comply with the Rules, or who cause undue delay.

Where the Review Board gives a direction and a party does not comply, the Review Board may direct that the proceeding be stayed (i.e., suspended or halted) until the direction is complied with.

PART V– PUBLIC ACCESS TO HEARINGS AND DOCUMENTS

Rule 16 – Public Access to Hearings

- 16.01 A hearing held by the Review Board shall be open to the public unless the Review Board orders otherwise in accordance with subrule 16.03.
- 16.02 An electronic hearing held by the Review Board shall be open to the public unless,
(a) the Review Board considers that it is not practical to hold the hearing in a manner that is open to the public; or
(b) the Review Board orders otherwise in accordance with subrule 16.03.
- 16.03 At the request of a party or on its own initiative, the Review Board may order that all or part of a hearing be held in the absence of the public if the Review Board considers that:
(a) matters involving public security may be disclosed; or
(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

COMMENTARY ON RULE 16, “Public Access to Hearings”

A Review Board hearing is open to the public unless the Review Board orders that it be closed, to prevent disclosure of matters of public security, or intimate financial or personal matters.

An electronic hearing is open to the public unless the Review Board considers it is not practical or it orders that it be closed, to prevent disclosure of matters of public security, or intimate financial or personal matters.

For the rules governing pre-hearing conferences, refer to Rule 18.

Rule 17 – Public Access to Documents

- 17.01 Members of the public are entitled to have reasonable access to the Review Board’s public record.
- 17.02 Subject to subrule 17.03, the Review Board shall place all documents filed with it on the public record.
- 17.03 At the request of a party or on its own initiative, the Review Board may order that all or part of a document be held in confidence, where the Review Board considers that all or any part of the document may disclose:
(a) matters involving public security; or
(b) intimate financial or personal matters or other matters of such a nature, that the desirability of avoiding disclosure in the interests of any person affected or in the

public interest outweighs the desirability of adhering to the principle that documents be placed on the public record.

17.04 Where the Review Board orders that all or part of a document be held in confidence, the document or part thereof shall not form part of the public record and the portion of the hearing that deals with the document or part thereof shall be held in the absence of the public.

17.05 The Review Board and its proceedings are subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31.

COMMENTARY ON RULE 17, “Public Access to Documents”

The Review Board will place documents filed with it on the public record, unless the Review Board makes an order that a document (or part of a document) is confidential, to prevent disclosure of matters of public security, or disclosure of intimate financial or personal matters. “Public record” is defined in Rule 3.

Where the Review Board orders that a document is confidential, the part of the hearing that deals with that document will be closed to the public.

The Freedom of Information and Protection of Privacy Act requires that the government protect the privacy of an individual’s personal information existing in government records. It also gives individuals the right to request access to government information.

PART VI – PRE-HEARING CONFERENCE

Rule 18 – Purpose, Conduct and Results of a Pre-Hearing Conference

18.01 A pre-hearing conference is conducted in accordance with section 67.1 of the Act and these Rules.

18.02 The Review Board may direct the parties to participate in a pre-hearing conference for the purposes of:

- (a) settling or simplifying any or all of the issues;
- (b) determining whether a Pre-hearing Settlement Conference (PHSC) should be convened;
- (c) identifying facts or evidence that may be agreed upon;
- (d) identifying and resolving preliminary objections or procedural problems;
- (e) deciding procedural matters, including the dates by which any steps in the proceeding are to be taken or begun, and estimating the duration of the hearing;
- (f) considering requests for party status in accordance with Rule 21;
- (g) determining whether any person should be added as a party;
- (h) setting the date, time, place, purpose and format of the hearing; and,
- (i) ensuring the just, most expeditious and cost-effective determination of the matter.

- 18.03 A pre-hearing conference will be open to the public unless the Review Board directs otherwise. To preserve the confidentiality of settlement discussions, Pre-hearing Settlement Conferences will involve only parties to the proceeding and will not be open to the public.
- 18.04 The Review Board may set out in writing the results of the pre-hearing conference, including:
- (a) any orders, directions, agreements or undertakings made or given at the pre-hearing conference;
 - (b) the date or dates of the hearing; and,
 - (c) any issues to be determined at the hearing.

COMMENTARY ON RULE 18, “Purpose, Conduct and Results of a Pre-Hearing Conference”

The Review Board may order that a pre-hearing conference take place before the hearing begins. The format of a pre-hearing conference is generally a telephone conference call.

The pre-hearing conference involves the Review Board and the parties or their representatives, and will generally be open to the public except where settlement discussions take place. Pre-hearing settlement conferences under Rule 19 will be closed to the public.

The purposes of the pre-hearing conference can include simplifying the issues, setting hearing dates, dealing with other procedural matters, and generally deciding on the quickest and most efficient way of dealing with the subject-matter of the hearing.

The pre-hearing conference is held without prejudice to the parties. That is, except in the case in which the parties reach a settlement, nothing said or done during any negotiations that take place at the pre-hearing conference will affect the rights of the parties.

If the Review Board considers it appropriate, it may set out the results of the pre-hearing conference in writing.

Rule 19 – Pre-Hearing Settlement Conferences (PHSC)

- 19.01 The Review Board may encourage parties to take part in a pre-hearing settlement conference either of its own accord or at the request of the parties. Parties may request a PHSC by writing to the Registrar. Provision for a PHSC may be included in procedural orders.
- 19.02 The Review Board may assign a Board Member to conduct a PHSC. A Board Member who presides at a PHSC shall not preside at the hearing.
- 19.03 Prior to scheduling a PHSC, a Board Member will evaluate the suitability of using a PHSC to resolve some or all of the issues. The Review Board will consider the following factors in its assessment:
- (a) parties consent;
 - (b) sufficiency of information disclosed and exchanged;
 - (c) legal issues raised in the proceeding;

- (d) results of any prior attempts to negotiate a settlement or resolve the matter;
- (e) resources available to the parties to participate in a PHSC and/or hearing;
- (f) any public interest issues raised in the proceeding; and,
- (g) any other relevant considerations.

If the Review Board determines that a PHSC should proceed, then the Review Board will convene a PHSC.

The Review Board shall set the date of the PHSC and direct how notice of the PHSC will be given.

- 19.04 Unless otherwise ordered, at least 14 days before the date set for the PHSC, the parties shall prepare and produce to the Review Board and to the other parties the following:
- (a) concise statements describing the nature of the objection, the issues, the evidence expected to be called at the hearing and applicable legal principles;
 - (b) experts' reports intended to be relied upon or, if the expert reports have not yet been prepared, a statement describing the anticipated opinion of the expert, the facts upon which the opinion is based and the qualifications of the expert; and,
 - (c) any other relevant materials that will assist in resolution of the dispute.
- 19.05 All documents created solely for the PHSC or any statements made without prejudice for the purpose of resolving the dispute in a PHSC and any offer to settle shall be confidential, and cannot be introduced into evidence in the same or other proceeding without the consent of the party who created the document or made the statement or offer.

Notes made by the Member presiding at the PHSC shall remain confidential and shall not be released to any person or admitted into evidence in any proceeding. The Member presiding at a PHSC is not competent or compellable in any proceeding to give evidence regarding the discussions.

- 19.06 At all PHSCs, the following apply:
- (a) the PHSC is confidential and is to be held *in camera*;
 - (b) the PHSC may be held in person or by electronic conferencing;
 - (c) the Member presiding has the discretion to determine the manner in which the PHSC is to be conducted and, without limiting the generality of that discretion, may where the Member deems it appropriate to resolve the dispute:
 - i. facilitate discussion between the parties;
 - ii. make any order that can be made under these Rules;
 - iii. direct parties to exchange documents/information on a without prejudice basis;
 - iv. meet with any party without the other parties present;
 - v. address the settlement and simplification of issues;
 - vi. adjourn or cancel the PHSC; or,
 - vii. refer any matter at issue to be scheduled for a hearing event;
 - (d) at the end of the PHSC the Member presiding shall return to the parties any documents provided by them for the purpose of the PHSC.
- 19.07 If, in the course of a PHSC, all parties settle all of the issues in dispute pursuant to a withdrawal of objection, the parties shall provide notice of withdrawal in accordance with Rule 23.

- 19.08 If, following a PHSC, a party wishes to withdraw from a proceeding prior to commencement of a proceeding, the party will file with the Review Board a notice of withdrawal signed by the party or its representative, and serving the notice on the clerk of the municipality, or the Minister as the case may be. The Review Board may continue the proceeding if other parties do not resolve their issues in dispute and do not withdraw prior to the hearing.
- 19.09 If, in the course of a PHSC, the parties do not settle all of the issues in dispute, the Member shall advise the Registrar that the matter has not settled.
- 19.10 No party who enters the hearing process subsequent to a PHSC will be allowed to raise issues in respect of which an agreement has been reached in a PHSC, without leave of the Review Board.

COMMENTARY ON RULE 19, “Pre-Hearing Settlement Conferences”

A Pre-hearing Settlement Conference is an event held pursuant to s. 67.1 of the Ontario Heritage Act to consider the settlement and simplification of an issue or issues, as well as procedural or other relevant matters that the parties consent to dealing with in advance of a hearing. The Review Board may encourage or request that the parties take part in a PHSC because early discussion of issues may produce a resolution.

PHSCs can save hearing time and shorten the time to dispute resolution. Benefits of settlement conferences include:

- *providing an opportunity for all the parties to meet (if they have not yet done so);*
- *acquire a better understanding of the matter;*
- *reduce the length of time of the hearing by resolving some of the procedural and/or substantive issues, so that there are fewer issues to be adjudicated and the parties are properly prepared; or*
- *to settle the matter even after the hearing has started.*

Rule 20 – Notice of Pre-hearing Conferences and Pre-hearing Settlement Conferences

- 20.01 The Review Board shall serve notice of pre-hearing conferences and pre-hearing settlement conferences on every party and on such other persons as it considers appropriate.
- 20.02 Notices shall include:
- (a) the date, time, place, purpose and format of the conference;
 - (b) a party’s right to make submissions about the format of the conference where applicable;
 - (c) a party’s right to be represented;
 - (d) the possibility that some or all of the issues may be settled; and
 - (e) the possibility that orders may be made or that directions may be given at the pre-hearing conference that will be binding on every party with respect to the proceeding, including setting the date or dates and format of the hearing.

COMMENTARY ON RULE 20, “Notice of Pre-Hearing Conferences and Pre-hearing Settlement Conferences”

The Review Board will notify parties of the date, the purpose and the format of pre-hearing conferences and pre-hearing settlement conferences.

The notice will also state that orders may be given that will bind the parties for the remainder of the proceeding.

PART VII – PARTIES AND PARTICIPATION

Rule 21 – Requesting Party Status

21.01 A person who is not a party and who wishes to participate in the proceeding as a party shall request in writing that the Review Board grant it party status.

21.02 The Review Board may invite submissions from all parties before deciding whether or not to grant the request.

21.03 In deciding whether to grant a person party status, the Review Board may consider:

- (a) the nature of the case;
- (b) the issues;
- (c) whether the person has a genuine interest in the issues;
- (d) the likelihood of the person being able to make a useful and different contribution to the understanding of the issues;
- (e) any delay or prejudice to the parties; and
- (f) any other matter the Review Board considers appropriate.

COMMENTARY ON RULE 21, “Requesting Party Status”

A non-party may request that the Review Board allow it to participate as a party, and should make the request as soon as it becomes aware of the proceeding.

In considering the request, the Review Board may take into account whether those who are already parties have any objection, whether the requester has a genuine interest in the issues, as well as whether the requester will make a useful and different contribution to the proceeding.

If the Review Board does grant the request, then the requester becomes a party and has all the same rights and responsibilities as the other parties.

Rule 22 – Participation by Members of the Public

- 22.01 The Review Board may name persons to be participants in all or part of a proceeding on such conditions as the Review Board considers appropriate. The Review Board may require participants who have similar interests to designate one person to act as their spokesperson, or to coordinate their submissions.
- 22.02 In deciding whether to allow a person to participate in all or part of the proceeding, the Review Board may consider:
- (a) the nature of the case, issues and interests;
 - (b) the potential contribution to the Review Board’s understanding of the issues;
 - (c) any delay or potential prejudice to the parties; and,
 - (d) any other relevant matter.
- 22.03 A participant does not have the rights and obligations of a party to the proceeding, but may make a presentation at the hearing and be cross-examined on it by other parties, subject to any other direction of the Review Board.

COMMENTARY ON RULE 22, “Participation by Members of the Public”

The Review Board may invite members of the public to participate in the hearing after being sworn or affirmed.

The Review Board may place limits on the extent to which the public can participate.

A member of the public does not have the rights or responsibilities of a party.

For further information on giving evidence at a hearing, see Rule 29.

Rule 23 – Withdrawal

- 23.01 At any time before the conclusion of the hearing, a party may withdraw from a proceeding by filing with Review Board a notice of withdrawal signed by the party or its representative, and serving the notice on the clerk of the municipality, or the Minister as the case may be.
- 23.02 The Review Board shall promptly notify every other party of the party’s withdrawal.

COMMENTARY ON RULE 23, “Withdrawal”

Where a party wishes to withdraw, it will advise the Review Board and the municipality, or the Minister, as the case may be. The Review Board will advise the other parties.

In most cases, where a party withdraws, the Review Board will not hold a hearing, or if a hearing is in progress, it will discontinue the hearing.

In certain circumstances involving proceedings with more than two parties, the hearing will continue despite the withdrawal of one of them.

PART VIII – HEARINGS

Rule 24 – Notice of Hearing to Parties

- 24.01 The Review Board shall set the date, time, place, purpose and format of the hearing.
- 24.02 The Review Board shall serve written notice of the hearing on every party.
- 24.03 The Review Board shall set out in **every notice of hearing**:
- (a) a reference to the statutory authority under which the hearing will be held;
 - (b) a statement of the date or dates, time, place and purpose of the hearing; and
 - (c) any other information the Review Board considers appropriate.
- 24.04 **In addition** to the information referred to in subrule 24.03, a notice of an **oral hearing** shall include:
- (a) a statement of the place of the hearing;
 - (b) a statement that if the party notified does not attend at the hearing, the Review Board may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding; and
 - (c) a statement that the hearing shall be open to the public unless the Review Board orders otherwise.
- 24.05 **In addition** to the information referred to in subrule 24.03, a notice of a **written hearing** shall include:
- (a) details about the manner in which the hearing will be held;
 - (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
 - (c) if clause (b) does not apply, a statement that the hearing shall not be held as a written hearing if the party satisfies the Review Board that there is good reason for not holding a written hearing and an indication of the procedure to be followed for that purpose; and
 - (d) a statement that if the party notified neither acts in accordance with clause (c), if applicable, nor participates in the hearing in accordance with the notice, the Review Board may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.
- 24.06 **In addition** to the information referred to in subrule 24.03, a notice of an **electronic hearing** shall include:
- (a) details about the manner in which the hearing will be held;
 - (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
 - (c) if clause (b) does not apply, a statement that the party notified may, by satisfying the Review Board that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the Review Board to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose;
 - (d) a statement that if the party notified neither acts in accordance with clause (c), if applicable, nor participates in the hearing in accordance with the notice, the Review Board may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding; and
 - (e) a statement that the hearing shall be open to the public unless the Review Board directs otherwise.

24.07 The Review Board shall place on the public record at the commencement of a hearing an affidavit or a statement of service that indicates how, when, and on whom the notice was served or to whom notice was given.

COMMENTARY ON RULE 24, “Notice of Hearing to Parties”

*Rule 24 deals with notice to the **parties**. Rule 25 deals with notice to the **public**. The format of a hearing can be electronic, oral, written or a combination (as set out in Rule 4). The different hearing formats are defined in Rule 3.*

*The Review Board gives notice of every hearing to every **party**. **Every** hearing notice will set out the relevant provisions of the Ontario Heritage Act, and the date, time and purpose of the hearing.*

In addition to these general requirements:

- *the notice of an **oral hearing** gives the place of the hearing, and says that if a party does not attend, it is not entitled to be notified any further, and that the hearing is open to the public*
- *the notice of a **written hearing** says that the hearing will be by the exchange of documents (usually) and that it will deal with procedural matters (usually)*
- *the notice of an **electronic hearing** says that the hearing will be by telephone conference call (usually) and that it will deal with procedural matters (usually)*

The Review Board will prepare an affidavit (a statement that is signed and sworn or affirmed) or a statement showing how, when and to whom the notice was given.

Rule 25 – Notice of Hearing to the Public

25.01 Notice of hearing to the public shall be given as follows:

- (a) if the hearing is with respect to property situated in a municipality, by publication in a newspaper of general circulation in the municipality at least ten days before the date of the hearing; or
- (b) if the hearing is with respect to property situated in an unorganized territory, by publication or by otherwise making it known in the territory in a manner and at such times as the Review Board considers adequate to give the public in the territory reasonable notice of the hearing.

25.02 The notice of hearing shall be published by the Review Board, or other party as directed, where the hearing is with respect to the following provisions of the Act:

- (a) section 29;
- (b) section 30.1;
- (c) section 31;
- (d) subsection 32(2)(b);
- (e) subsection 32(11)(b);
- (f) section 34.6;
- (g) section 34.8;
- (h) subsection 34.9(2)(b);

- (i) subsection 34.9(7)(b);
 - (j) section 52;
 - (k) section 58; and
 - (l) section 60.
- 25.03 The notice of hearing shall be published by the council of the municipality in which the property is located, where the hearing is with respect to the following provisions of the Act:
- (a) subsection 32(2)(a); and
 - (b) section 33;
- 25.04 Where a municipality is required to publish notice of hearing in a newspaper having general circulation in the municipality, notice given in accordance with a policy adopted by the municipality under section 270 of the *Municipal Act, 2001*, S.O. 2001, c. 25 or section 212 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Schedule A is deemed to satisfy the requirement to publish notice in a newspaper.
- 25.05 The notice of hearing shall be published by the Minister where the hearing is with respect to the following provisions of the Act:
- (a) section 34.5;
 - (b) subsection 34.9(2)(a); and
 - (c) section 55.
- 25.06 The entity responsible for publication shall set out in every notice of hearing to the public,
- (a) a reference to the statutory authority under which the hearing will be held;
 - (b) a statement of the date or dates, time, place and purpose of the hearing; and
 - (c) any other information that it considers appropriate.
- 25.07 The public notice referred to in subrule 25.01 shall be published in both English and French in the areas of the province designated as bilingual under the *French Language Services Act*.
- (Note: for a list of the designated areas consult the *French Language Services Act*, S.O. 1990, c. F.31, available at:
[Link to e-laws website: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f32_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f32_e.htm))
- 25.08 Notwithstanding anything in subrules 25.03 and 25.05, the Review Board may, on its own initiative, publish the notice of hearing to the public.
- 25.09 The entity responsible for publication shall file with the Review Board no later than at the commencement of a hearing, an affidavit or a statement of service that indicates how and when the notice was published.

COMMENTARY ON RULE 25, “Notice of Hearing to the Public”

Rule 25 deals with notice to the **public**. Rule 24 deals with notice to the **parties**.

Notice to the **parties** is always given by the Review Board as provided for in the *Statutory Powers Procedure Act*.

Notice to the **public** is given by the Review Board, the municipality, or by the Minister of

Culture, depending on the applicable provisions of the Ontario Heritage Act.

Rule 25.02 gives the list of specific Ontario Heritage Act provisions that require the giving of notice by the Review Board, the municipality or the Minister.

Notice to the public will include a reference to the relevant provisions of the Ontario Heritage Act, and the date, time, place and purpose of the hearing.

The French Language Services Act lists the parts of Ontario in which the notice of hearing must be in French as well as in English.

The organization responsible for giving the notice will provide a statement with details about how and when the notice was published.

Rule 26 – Requesting an Adjournment Fourteen or More Days Before a Scheduled Hearing Date

- 26.01 A hearing will take place on the scheduled date unless the Review Board agrees to an adjournment.
- 26.02 As soon as a party becomes aware of the need for an adjournment, it shall notify every other party and obtain their consent to the adjournment, if possible.
- 26.03 At least fourteen days before a scheduled hearing date, a party requesting an adjournment shall file with the Review Board a written request, and the request shall include:
- (a) the reason(s) for the request;
 - (b) the proposed new date;
 - (c) a statement by the requesting party that it has notified every other party; and
 - (d) a statement by the requesting party that it has obtained the consent of every other party to the adjournment and to the proposed new date, if that is the case.
- 26.04 Where a party to the proceeding does not consent to the adjournment or to the proposed new date, the party may file with the Review Board written submissions setting out its reasons for not consenting.
- 26.05 If a party files with the Review Board written submissions in accordance with subrule 26.04, it shall provide every other party with a copy of its submissions.
- 26.06 Even where all parties have consented to the adjournment and to the proposed new date, the Review Board may hold a hearing before granting or denying the request.
- 26.07 After considering the request and any submissions, the Review Board may:
- (a) grant the request and fix a new date;
 - (b) grant a shorter adjournment than requested;
 - (c) deny the request, even if every party consented;
 - (d) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue; or
 - (e) give any other direction that it considers appropriate.

COMMENTARY ON RULE 26, “Requesting an Adjournment Fourteen or More Days Before a Scheduled Hearing Date”

Once the Review Board has scheduled a hearing date, the hearing takes place on that date unless a party requests a later date and the Review Board agrees. As provided for in s. 7 of the Statutory Powers Procedure Act, if a party does not attend at or otherwise participate in a scheduled hearing, the Review Board may continue with the hearing in the party’s absence.

A party seeking an adjournment shall request it at least 14 days in advance of the scheduled date, give the reason for the request, propose a new date, and include a statement that the party has notified all other parties of the request.

If the requester has asked for and obtained the consent of the other parties to the adjournment and the proposed new date, the requester should include that information as well.

Parties who do not consent may send written reasons to the Review Board and to the other parties.

The Review Board will take all this information into account in making its decision about the adjournment.

Rule 27 – Requesting an Adjournment Less Than Fourteen Days Before a Scheduled Hearing Date

- 27.01 A party who requests an adjournment less than fourteen days before a scheduled hearing date shall, as soon as possible, file a written request with the Review Board and notify every other party of the request.
- 27.02 In making the request under subrule 27.01, the party requesting the adjournment shall submit all information required under subrule 26.03, to the extent possible.
- 27.03 The Review Board may decide to grant or to deny the request based on the information provided by the requesting party, if it considers it appropriate to do so.
- 27.04 The Review Board may require that the request be made at the beginning of the hearing at which time the Review Board will provide every other party with the opportunity to make submissions.
- 27.05 The Review Board will grant a request for an adjournment that is made less than fourteen days before the next scheduled hearing date only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Review Board must be informed of these emergencies as soon as possible.
- 27.06 After considering the request and any submissions, the Review Board may:
- (a) grant the request and fix a new date;
 - (b) grant a shorter adjournment than requested;
 - (c) deny the request, even if every party consented;

- (d) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue; or
- (e) give any other direction that it considers appropriate.

COMMENTARY ON RULE 27, “Requesting an Adjournment Less than Fourteen Days Before a Scheduled Hearing Date:

A party who requests an adjournment less than 14 days before a scheduled hearing date shall notify the Review Board and the other parties as soon as possible, and shall provide as much of the information referred to in Rule 26 as possible.

The Review Board may grant or deny the request based on the submissions of the requester.

On the other hand, the Review Board may require the requester to appear on the scheduled hearing date and make the request at that time, and the Review Board will give the other parties an opportunity to respond.

As provided for in s. 7 of the Statutory Powers Procedure Act, if a party does not attend at or otherwise participate in a scheduled hearing, the Review Board may continue with the hearing in the party’s absence.

The Review Board will only grant such a request in an emergency situation.

PART IX – EVIDENCE AND WITNESSES

Rule 28 – Disclosure

- 28.01 The Review Board may make orders in relation to the disclosure of information, but nothing in these Rules authorizes the making of an order requiring the disclosure of privileged information.
- 28.02 Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be given the particulars of any such allegations at least fourteen days before the next scheduled hearing date.
- 28.03 At least fourteen days before the next scheduled hearing date, a party shall,
(a) disclose to every other party the existence of every document and thing that the party will refer to or tender as evidence at the hearing;
(b) file with the Review Board and serve on every other party a copy of every document referred to in clause (a); and
(c) make available for inspection by the Review Board and every other party all original documents and things that the party will refer to or tender as evidence at the hearing.
- 28.04 At least fourteen days before the next scheduled hearing date, a party who intends to rely on or refer to the written report of an expert shall file with the Review Board and serve on every other party a signed copy of the report, containing the name, address, and qualifications of the expert.

- 28.05 Where a party does not provide every other party with access to information the party intends to refer to in a proceeding, the party may not refer to that information unless the Review Board directs otherwise.
- 28.06 Unless the Review Board directs otherwise, a party who has not complied with this Rule may not refer to the document, report or thing.
- 28.07 Documents filed with the Review Board under Rule 28 shall be filed in duplicate and paginated, subdivided with tabs and shall include colour images where appropriate.

COMMENTARY ON RULE 28, “Disclosure”

The Review Board may order that information be disclosed, but may not order the disclosure of “privileged information” (certain information that passes between a party and its lawyer). Where a party intends to question the conduct or character of another party, it must give details to that party 14 days in advance of the scheduled hearing date.

Every party shall disclose, and make available, the documents and things it will rely on, 14 days in advance.

Where the document is the report of an expert, the party must also provide a copy signed by the expert, containing his or her name, address and qualifications as part of its disclosure documents.

Every party must have the opportunity to examine and test the evidence put forward by every other party. A party who does not make information available to the other parties will not be able to use that information in the hearing, unless the Review Board directs otherwise. For example, a party who refuses to produce a non-privileged document for inspection by the Review Board and the other parties, should not expect that the Review Board will allow the party to make use of the document.

The Review Board will not require that a party disclose a document or other information that is privileged.

A party who refuses to allow the Review Board or the other parties to make a site visit to examine the condition of a property, place or thing will not normally be permitted to refer to the condition of the property, place or thing. The property, place or thing in question might be the exterior or interior of a building, or a structure such as a monument or a bridge.

Documents for disclosure must be filed in duplicate, paginated, contain colour images where appropriate, and tabs or dividers where appropriate. Following subrule 11.02, a party must also be sure to submit 2 copies of all documents.

Rule 29 – Witnesses

- 29.01 A witness at an oral or electronic hearing shall be examined on oath or affirmation, unless the Review Board directs otherwise.

29.02 At least 14 days before the next scheduled hearing date, a party shall file with the Review Board and serve on every other party the name of every witness that the party intends to call to present evidence.

29.03 At least 14 days before an expert witness is called, a party who intends to call such witness shall file with the Review Board and serve on every other party a document containing the name, address and qualifications of the expert witness as well as a copy of all the documents to which the expert witness will refer.

It is the duty of every expert engaged by or on behalf of a party who is to provide opinion evidence at a proceeding under these Rules to acknowledge either prior to (by executing the acknowledgment form attached as **Form 6 in Appendix A** to the Rules) or at the proceeding, that they are to:

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to the matters that are within the expert's area of expertise; and
- (c) provide such additional assistance as the Review Board may reasonably require to determine a matter in issue.

These duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

29.04 Unless the Review Board directs otherwise, a party who has not complied with this Rule may not be permitted to call a witness.

29.05 A party may, at an oral or electronic hearing;

- (a) call and examine witnesses and present evidence and submissions; and
- (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

29.06 The Review Board may limit the presentation of evidence by:

- (a) excluding any evidence that it considers irrelevant or unduly repetitious; and
- (b) reasonably limiting further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

29.07 The Review Board may direct that:

- (a) any particular facts be proved by affidavit;
- (b) the affidavit of a witness be read at an oral or electronic hearing; and
- (c) a witness be examined on oath or affirmation before the commencement of a hearing.

COMMENTARY ON RULE 29, "Witnesses"

Witnesses are examined on oath (with a book of scripture or sacred object such as an eagle feather) or on affirmation (without a book of scripture or sacred object) unless the Review Board directs otherwise. Both an oath and an affirmation are solemn promises to tell the truth and both obligate the witness to tell the truth, leaving them subject to being charged with an offence, including perjury.

A party must file its list of witnesses 14 days in advance of the hearing date and, where one of the witnesses is an expert, must provide the name, address and qualifications of the expert, together with a copy of the documents the expert will use at the hearing.

A party who does not make appropriate advance disclosure will not be able to use the witnesses, unless the Review Board directs otherwise.

A party may examine (i.e., ask questions of) its own witnesses, and cross-examine the witnesses of the other parties on relevant matters.

The Review Board may exclude repetitious evidence, and may limit unnecessary examination and cross-examination.

The Review Board may require that certain evidence be proved by documents (rather than being proved through oral questioning) and may require that oral examination take place before the start of the hearing.

Rule 30 – Summons to Witness

- 30.01 A party may request that the Review Board summon a person to give oral testimony or to produce any document or other thing at a hearing by:
- (a) completing and submitting to the Review Board **Form 3, Summons to Witness (Oral Hearings)** or **Form 4, Summons to Witness (Electronic Hearings)**, found in Appendix A; and
 - (b) preparing and submitting to the Review Board a written request setting out the following information:
 - (i) the name of the witness and his or her address for service;
 - (ii) a brief summary of the evidence to be given by the witness;
 - (iii) an explanation of why the evidence of the witness would be relevant and necessary;
 - (iv) details of any document or thing which the witness should be required to bring to the hearing; and
 - (v) why the summons is required.
- 30.02 The documents referred to in subrule 30.01 shall be submitted to the Review Board as far in advance of the scheduled hearing date as possible so that the Summons to Witness may be served on the witness in time to allow him or her to arrange to attend the hearing.
- 30.03 After considering the information submitted by the requesting party, the Review Board may decide not to issue a summons.
- 30.04 Where the Review Board has issued a summons, it may decide that the summons should be cancelled or varied or, if the witness is present, that the witness should be excused from the remainder of the hearing.
- 30.05 Where the Review Board has issued a summons, it may direct that the party who requested the summons serve it personally on the person summoned.

- 30.06 The person summoned is entitled to receive the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice.
- 30.07 A witness who is summoned may object to the summons by applying to the Review Board to have it cancelled or varied.
- 30.08 Where the witness objects to the summons, the Review Board may cancel or vary the summons if the witness satisfies the Review Board that the evidence sought is not relevant or is privileged, or if the witness is not able to supply the evidence sought.
- 30.09 If the person summoned fails to comply with the summons, the Superior Court of Justice may issue a warrant for the arrest of the person or may punish the person in the same way as for contempt of that Court.
- 30.10 The warrant shall be in **Form 5, Warrant for Arrest (Defaulting Witness)** found in Appendix A.

COMMENTARY ON RULE 30, “Summons to Witness”

A party may request that the Review Board “summon” a witness (that is, issue a written order compelling the person to come to the hearing and bring certain documents with him or her) by filing Form 3 (for an oral hearing) or Form 4 (for an electronic hearing).

A party should request a Summons as far in advance as possible.

Where the Review Board does issue a Summons:

- *the Review Board may later decide to cancel or vary it*
- *the witness may request that it be cancelled or varied*
- *the requesting party may be directed to serve it in person on the witness (see Rule 11 for details)*
- *the requesting party must pay the witness a fee for attending*
- *if the witness does not obey the summons, a judge may issue an arrest warrant, set out in Form 5*

PART X – REPORT OF THE REVIEW BOARD

Rule 31 – Report of the Review Board

- 31.01 After the conclusion of the hearing, the Review Board shall make a report to the council of the municipality, or to the Minister, as the case may be, and the Review Board shall send a copy of its report to every other party.
- 31.02 The report shall contain the Review Board’s findings of fact, its recommendations, and any information or knowledge used by it in reaching its recommendations.

COMMENTARY ON RULE 31, “Report of the Review Board”

After the hearing ends, the Review Board will make a report to the municipality (if the municipality requested the hearing) or to the Minister of Culture (if the Minister requested the hearing) and send a copy of the report to every party.

The Review Board will generally make its report within 30 days of the end of the hearing. The report contains the Review Board’s recommendations, and its reasons for the recommendations.

Rule 32 – Corrections and Clarifications

32.01 The Review Board may at any time correct a typographical error, error of calculation or similar error made in any direction, order, or report, as the case may be.

COMMENTARY ON RULE 32, “Corrections and Clarifications”

The Review Board may correct typographical, arithmetical errors or similar errors in its report at any time.

Rule 33 – Decision of the Council of the Municipality or of the Minister

33.01 The council of the municipality or the Minister, as the case may be, shall consider the report of the Review Board and make a decision in accordance with the Act.

COMMENTARY ON RULE 33, “Decision of the Council of the Municipality or of the Minister”

After considering the report of the Review Board and its recommendations, the council of the municipality, or the Minister, will make a decision to follow all, some, or none of the recommendations of the Review Board.

PART XI – COSTS

Rule 34 – Order to Pay the Costs of a Party

34.01 This Rule applies where a party reasonably believes that the conduct or course of conduct of another party has been unreasonable, frivolous or vexatious or the other party has acted in bad faith.

- 34.02 The party may request, by making written submissions, that the Review Board make a costs order against the other party, in favour of the requesting party, relating to the costs incurred by the requesting party in participating in the proceeding.
- 34.03 Where the Review Board receives a request made in accordance with subrule 34.02, it may consider the conduct or course of conduct of the requesting party as well as the conduct or course of conduct of the party against whom the costs order is requested.
- 34.04 The Review Board may take into account whether either party:
- (a) failed to attend a hearing or send a representative when properly served with notice;
 - (b) failed to file or serve a document;
 - (c) failed to give notice or adequate explanation or failed to co-operate at any stage of the proceeding;
 - (d) caused unnecessary adjournments or delays or failed to prepare adequately for any step in the proceeding;
 - (e) continued to deal with irrelevant issues, or asked questions or acted in a manner that the Review Board determined to be improper;
 - (f) failed to comply with an undertaking given by the party to another party;
 - (g) failed to comply with an order made by the Review Board, or a direction given by it;
 - (h) failed to make reasonable efforts to combine submissions with parties of similar interest, when requested to do so by the Review Board;
 - (i) acted disrespectfully or maligned the character of a party;
 - (j) knowingly presented false or misleading evidence; and
 - (k) did or failed to do any other thing that the Review Board considers relevant to the making of a costs order.
- 34.05 The Review Board may require that a party support its request by filing with the Review Board receipts, invoices or other documents relating to the costs it has incurred in participating in the proceeding and by serving those receipts, invoices or other documents on the party against whom the costs order is requested.
- 34.06 Before making a costs order, the Review Board will provide the party against whom the order is requested with an opportunity to make submissions.
- 34.07 Where the Review Board has determined that the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or the party has acted in bad faith, the Review Board may order the party to pay all or part of the costs of another party.
- 34.08 The Review Board may decline to make a costs order even where it has determined that the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or the party has acted in bad faith.
- 34.09 Unless the Review Board directs otherwise, a party shall file its request for a costs order with the Review Board, and serve it on the party against whom the costs order is requested, within thirty days of the conclusion of the hearing.
- 34.10 The Review Board may make a costs order based on written submissions by the requesting party, and written submissions by the other party, if any, or the Review Board may hold a hearing to hear brief oral submissions.

- 34.11 In its costs order, the Review Board may order to whom and by whom the costs are to be paid, may determine the amount of the costs, and may set a date by which they are to be paid.
- 34.12 An order for the payment of costs bears interest in the same manner as an order made under section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

COMMENTARY ON RULE 34, “Order to Pay the Costs of a Party”

If one party believes that a second party has behaved in a way that is unreasonable, and this behaviour has caused the first party to spend more money on the proceeding than it would have spent otherwise, it may request that the Review Board order the second party to pay money to the first party, within 30 days after the hearing ends.

The Review Board may grant or deny the request, after hearing from the second party.

In considering the request, the Review Board may take into account the behaviour of the requesting party.

The Review Board may also take into account whether any party failed to attend a hearing, failed to provide documents, failed to co-operate, failed to prepare adequately, failed to obey a Review Board order, etc.

The Review Board may require the requesting party to provide receipts to support its request for compensation.

If the compensation is ordered, and is not paid by the date specified, then the amount owing bears interest.

APPENDIX A

**Environment and Land Tribunals
Ontario**

Conservation Review Board

655 Bay Street, Suite 1500
Toronto ON M5G 1E5
Telephone: (416) 212-6349
Toll Free: 1-866-448-2248
Fax: (416) 326-6209
Toll Free Fax: 1-877-849-2066
Web Site: www.elto.gov.on.ca

**Tribunaux de l'environnement et de
l'aménagement du territoire Ontario**

Commission des biens culturels

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**Form 1 – Representative of a Party-Commencement of Authorization
(SUBMIT TO the Conservation Review Board)**

I, _____, hereby authorize _____ to act
Name of Party Appointing Representative Name of Representative

as my representative in all matters for the purposes of a proceeding before the Conservation
Review Board, concerning Conservation Review Board File No. _____. I further
authorize the Conservation Review Board to disclose to _____
Name of Representative

personal information pertaining to me as may be necessary, in accordance with the *Freedom of
Information and Protection of Privacy Act*.

Signature of Party

Date (yyyy/mm/dd)

Representative's Contact Information

Name of firm or organization (if applicable): _____

Address: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Representative's Declaration

I declare that the information provided above is truthful, complete and correct. I have been
authorized by the appointing party to represent him/her/it throughout the proceeding before the
Conservation Review Board and have the authority to bind the party with respect to withdrawal
and all other issues.

Signature of Representative

Date (yyyy/mm/dd)

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**Form 2 – Representative of a Party-Cessation of Authorization
(SUBMIT TO the Conservation Review Board)**

I, _____ hereby announce that I intend to
Name of Representative

cease acting as a representative for _____
Name of Party

as of _____ in a proceeding before the Conservation Review Board
Date (yyyy/mm/dd)

concerning Conservation Review Board File No. _____.

Signature of Representative

Date (yyyy/mm/dd)

Party's Declaration

I declare that the information above is truthful, complete and correct. I acknowledge
that I am aware that _____
Name of Representative

intends to cease acting as my Representative as of

Date (yyyy/mm/dd)

Signature of Party

Date (yyyy/mm/dd)

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**Form 3 - Summons (ORAL HEARING)
(SUBMIT TO the Conservation Review Board)**

Statutory Powers Procedure Act

(Title of Proceeding)

SUMMONS TO A WITNESS BEFORE THE CONSERVATION REVIEW BOARD

TO: *(name and address of witness)*

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on *(day)*, *(date)*, at *(time)*, at *(place)*, and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS REQUIRED BY THIS SUMMONS, THE ONTARIO SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT BE ISSUED FOR YOUR ARREST, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

Date _____

CONSERVATION REVIEW BOARD

Name

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice.



**Form 4 - Summons (ELECTRONIC HEARING)
(SUBMIT TO the Conservation Review Board)**

Statutory Powers Procedure Act

(Title of Proceeding)

SUMMONS TO A WITNESS BEFORE THE CONSERVATION REVIEW BOARD

TO: *(Name and address of witness)*

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING on *(day)*,
(date), at *(time)*, in the following manner:

IF YOU FAIL TO PARTICIPATE OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS
REQUIRES, THE ONTARIO SUPERIOR COURT OF JUSTICE MAY ORDER THAT A
WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME
WAY AS FOR CONTEMPT OF THAT COURT.

Date _____

CONSERVATION REVIEW BOARD

Name

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise
participating in the hearing as are paid to a person summoned to attend before the Ontario
Superior Court of Justice.

**Environment and Land Tribunals
Ontario**

Conservation Review Board

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**Form 5 - WARRANT FOR ARREST (DEFAULTING WITNESS)
(SUBMIT TO the Conservation Review Board)**

Statutory Powers Procedure Act

Ontario Superior Court of Justice

(Name of Judge)

(Day and Date)

(Court Seal)

(Title of Proceeding)

WARRANT FOR ARREST

TO ALL police officers in Ontario

AND TO the officers of all correctional institutions in Ontario

WHEREAS the witness *(name)* of *(address)*, was served under section 12 of the *Statutory Powers Procedure Act* with a summons to witness to give evidence at the hearing of this proceeding before the Conservation Review Board on *(day)*, *(date)* at *(time)*,

AND WHEREAS the witness failed to obey the summons, and I am satisfied that the evidence of the witness is material to this proceeding,

YOU ARE ORDERED TO ARREST and bring the witness *(name)* before the Conservation Review Board to give evidence in this proceeding, and if the Review Board is not then sitting or if the witness cannot be brought forthwith before the Review Board, to deliver the witness to a provincial correctional institution or other secure facility, to be admitted and detained there until the witness can be brought before the Review Board.

(Signature of Judge)

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Form 6 - ACKNOWLEDGEMENT OF EXPERT'S DUTY

Case Number	Municipality

1. My name is.....(*name*)
I live at the(*municipality*)
in the.....(*county or region*)
in the(*province*)
2. I have been engaged by or on behalf of.....(*name of party/parties*) to provide evidence in relation to the above-noted Review Board proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c. to provide such additional assistance as the Review Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

Signature