



# Environment and Land Tribunals Ontario

## Your Guide to the Ontario Municipal Board

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## **Preface**

Your Guide to the Ontario Municipal Board has been produced to help you better understand how the OMB works. The Guide provides general information about the Board and its processes. If you are planning to file an appeal or just want a general overview of the Board, reading this Guide is a good place for you to start.

The information in this Guide is not a substitute for legal or professional advice, and is for informational purposes only.

Copies of this Guide, as well as other Board publications, may be obtained from the Board's website, or by contacting us directly. For an electronic copy of this document, please visit the Ontario Municipal Board website at [www.elto.gov.on.ca](http://www.elto.gov.on.ca).

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ISBN 978-1-4435-1483-5

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## Part I – About the OMB

### Overview

The Ontario Municipal Board (OMB) is an independent tribunal established through provincial legislation. The Board plays a critical role in Ontario's land-use planning process by providing an independent public forum to hear land-use disputes.

The OMB hears appeals on decisions made by provincial approval authorities, including:

- Local or regional councils
- Committees of adjustment
- Land division committees
- Expropriating authorities, or
- The Ministry of Municipal Affairs and Housing.

Some of the issues that the OMB deals with include:

- Official plans
- Zoning by-laws
- Subdivision plans
- Consents to sever land
- Minor variances from local by-laws
- Development charges
- Ward boundaries
- Applications for aggregate licences
- Land compensation.

When making a decision, the OMB may hear evidence on:

- Provincial legislation, provincial plans and policy statements
- Municipal planning documents (e.g. official plans or zoning by-laws)
- Environmental, social and economic issues
- The best interests of a community.

## **Members**

The Lieutenant Governor in Council determines the number of Members appointed to the Board, makes the appointments and designates one Member as Chair and may designate one or more Vice-Chairs.

Members are responsible for the adjudication of OMB matters. Members prepare for hearings, hold hearings and make decisions.

For more information about the Ontario Municipal Board's Members, please view the Public Appointments Secretariat website. [www.pas.gov.on.ca](http://www.pas.gov.on.ca).

## **Mandate**

The OMB is an independent tribunal subject to the rules of natural justice and the requirements of the Statutory Powers Procedures Act. The Board operates under the authority of many different acts and statutes. Most of the Board's work falls under the following acts:

- OMB Act
- Planning Act
- Municipal Act
- Aggregate Resources Act
- Development Charges Act
- Expropriations Act
- Consolidated Hearings Act
- Environmental Assessment Act
- Ontario Heritage Act

## **History of the OMB**

The OMB is one of the province's longest-standing adjudicative tribunals. Originally named the Ontario Railway and Municipal Board (ORMB), the Board was created by the Ontario government to oversee the accounts of municipalities and to supervise the then rapidly growing rail transportation system between and within municipalities.

In 1906, the ORMB assumed new responsibilities, including those previously carried out by the Office of the Provincial Municipal Auditor. At that time, the new powers given to the Board made it Ontario's

first independent, quasi-judicial administrative tribunal. Before then municipal matters were dealt with at the legislative level and the courts. The ORMB was renamed the Ontario Municipal Board in 1932.

While the OMB's mandate has evolved over the years, many of the powers given to the OMB at the time of its creation have been retained, some with changing scopes of responsibility.

### **OMB as an appeal body**

Matters are heard when an appeal is filed and it falls under the jurisdiction of the Board. Generally, once an appeal has been filed, it is sent to a motion, pre-hearing, hearing or mediation meeting. The OMB provides a forum to hear appeals on land use planning and other matters as determined by law. After a hearing takes place, the Board makes a decision based on the evidence presented at a hearing and the relevant law.

## **Part II – Becoming involved at the OMB**

### **Your role at the Board**

The OMB's hearings are generally open to the public to attend. However, to take part in an OMB hearing, you must be a **party** or a **participant**.

A party is a person or organization that is named a party by the Board. For example, in the case of a zoning by-law passed by a municipality and appealed to the Board, the parties may be the municipality, the applicant for the rezoning, and any persons who filed an appeal against the zoning by-law.

For some matters, there are conditions to becoming a party at an OMB hearing. For instance, some matters under the Planning Act ask that parties made oral or written submissions to council before council's decision. If there are good reasons for it, the Board may also add parties to a matter.

Parties take part in the hearing by exchanging documents, presenting evidence, questioning witnesses and making submissions to the Board. Parties may also request costs, adjournments or a review of the decision.

### **How to become a party**

Submit your request, in writing to the Board, and provide a copy of your request to the other parties.

2. Be at the first day of hearings, at the start time. If you are not there, you may be denied party status.
3. At the beginning of the hearing, the Board Member asks if anyone wishes to become a party to the matter. You may stand up and ask to be added as a party.
4. Give the Board Member your name and address for the record.
5. Explain why you wish to be added as a party. After explaining your position, the Member will ask if any of the other parties object to you being added.
6. The other parties may agree or disagree to adding you as a party.
7. The Board Member decides if you will be added as a party.

A **participant** is a person or organization that participates by making a statement to the Board on some or all of the issues at a hearing. A participant may attend all or only part of the proceedings. Participants are not required to make submissions to council before becoming involved in an OMB matter.

When making a statement to the Board, participants must swear to tell the truth. They may be questioned by the Board and other parties. Participants generally do not question witnesses and cannot ask for costs, adjournments or request a review of the decision.

**How to become a participant:**

1. Be at the first day of the hearing, at the start time. If you are not there, you may be denied participant status.
2. At the beginning of the hearing, the Board Member asks if anyone wishes to become a party or a participant. At that time, you may stand up and ask to be a participant.
3. Give the Board Member your name and address for the record.

The Member will set aside time during the hearing for participant statements. Usually statements are scheduled at the end of a hearing. During a longer hearing, the Board may set a different time for participant statements so participants do not have to sit through the entire hearing.

## **General attendance of a hearing**

OMB hearings are open to the public. A person may sit in and watch a hearing to see how the OMB process works. In some rare cases, a hearing may be closed to the public if the Board determines that the matter should be heard in private. However, mediation meetings are not open to the public.

## **Part III – Appeal process**

### **Overview**

The process begins with the filing of an appeal. An appeal must be received by the deadline, along with the required information and filing fees.

Legislation generally sets out who can appeal, how to appeal and the deadlines to file an appeal. For example, it might be required that you made a presentation at a public meeting or provided written submissions to municipal council before you can appeal. Please see the legislation for more information about the requirements.

### **Filing an appeal**

#### **Step 1 – Can I appeal now?**

- Have you received a copy or seen a notice in the newspaper of a decision made by an approval authority, municipal council, Committee of Adjustment or Land Division Committee and want to appeal?
- Have you applied to your municipality for planning approval and not received a decision within the legislated timelines?
- Are there any other appeals, under the Board's jurisdiction that you would like to file?

If yes, you may be able to file your appeal.

#### **Step 2 – Appeal type**

Know your appeal type. The appeal type depends on the decision made from your approval authority or municipality. The decision you received should provide the information you need to file your appeal. If you have questions about a decision, contact the authority that issued it.

### Step 3 – Filing your appeal

Fill out an OMB appeal form or write a letter. For the most common types of appeals, there are forms available on the OMB website or by contacting the Board. If you have any questions about your appeal, contact the Board.

### Step 4 – Sending your appeal to the OMB

Send in your appeal. Most appeals are **sent to the municipality first** and are forwarded by the municipality to the OMB. Some appeals are filed directly with the OMB. The first page of the appeal form says where it should be sent. If you are not sending a form, check the legislation for the appeal type. An appeal filed directly to the OMB can be sent by mail or delivered in person with the correct filing fee\* to:

Ontario Municipal Board  
655 Bay Street, Suite 1500  
Toronto ON M5G 1E5

\*The filing fee must be paid by certified cheque or money order, made payable to the **Minister of Finance**. Do **not** make cheques payable to the Ontario Municipal Board.

### OMB Fee Schedule

Item	Fees	Notes
Appeal	<b>\$300.00 per person/Per appeal, effective July 1, 2016</b>  \$125.00 per	1. Appeal fees are established by REGULATION 888, R.R.O. 1990. 2. A reduced fee of \$25 will apply to each additional consent appeal filed by the same appellant against connected consent applications. 3. A reduced fee of \$25 will apply to each additional variance appeal filed by the same appellant against connected variance applications.  *Appeals received and date stamped by the municipality/approval authority on or after July 1, 2016,

Item	Fees	Notes
	person/Per appeal	are subject to the new appeal fee. OMB appeal fees are still \$125 for appeals date stamped <b>before</b> July 1, 2016.
Request for Review (sec. 43 of the Ontario Municipal Board Act)	\$300.00	Fee is established by Board as per sec. 99(1) of the Ontario Municipal Board Act.
Summons	No fee	
Certified Copy of Board Decision	\$20.00	Fee is established by Board as per sec. 99(1) of the Ontario Municipal Board Act.
Copying of documents	\$1.00 per page	If photocopying is done by OMB staff. Fee is established by Board as per sec. 99(1) of the Ontario Municipal Board Act.
Copying at the Information Office	\$0.35 per page	If photocopying is done by client at OMB office. Fee is established by Board as per sec. 99(1) of the Ontario Municipal Board Act.
Rules of Practice & Procedure	\$25.00	Free copy is available via OMB website. Fee is established by Board as per sec. 99(1) of the Ontario Municipal Board Act.
Service Charge for NSF	\$35.00	Payment must be made by certified cheque or money order. Fee is established by O. Reg. 754/92 made under the Financial Administration Act.

### Step 5 – After filing your appeal

Wait for your acknowledgement letter. After your appeal has been received, the Board will mail you an acknowledgment letter. Your case number along with the name of the OMB staff person assigned to your case is included in the letter. You may contact that person if you have any questions about your case.

## Part IV – Types of Hearings or Meetings

## **Mediation**

Unlike a hearing, a mediation meeting includes only the parties to a matter or those directed by the Board to attend. Parties should first contact each other and agree to mediation before requesting it from the Board. If the Board agrees to mediation, an OMB Member would help the parties reach an agreement on some or all of the issues in dispute.

If the dispute is resolved, the OMB issues a decision. If an agreement is not reached at mediation, the OMB will schedule a hearing for the matter.

## **Pre-hearings**

The OMB may hold a meeting before a hearing, especially if the matter in dispute is expected to be long or complicated. Pre-hearings usually:

- Identify issues, parties and participants
- Organize complicated matters
- Decide what documents should be exchanged
- Determine procedures before and during the hearing.

## **Hearings**

OMB Members conduct hearings. These hearings are less formal than a court proceeding but more formal than a committee or council meeting. For example, when you give your evidence you must swear or affirm to tell the truth and other parties may ask you questions (cross-examine you). The witness must prove that all evidence, including written documents and photographs, is valid before it can be admitted as evidence.

If the hearing is complex, it may involve lawyers, many witnesses and long presentations. In addition to local residents and concerned citizens, parties sometimes call \*expert witnesses in land use planning and other areas to speak about an issue. All witnesses are placed under oath. The length of a hearing depends on the complexity of the matter. It can range from a couple of hours to several weeks or even months.

\*An expert witness is an individual who has scientific, technical, or other specialized knowledge.

## **Oral hearings**

Oral hearings are the most common type held by the Board. These hearings are held in person, in a court-like setting. All parties and participants should attend. The hearing is similar to a court proceeding, but less formal.

## **Electronic hearings**

Electronic hearings are held using a teleconference or a videoconference call. This type of hearing is not as common as an oral hearing. It may be used when less time is needed for a hearing and the parties are separated by large distances.

## **Written hearings**

Written hearings are held only by written submissions. This type of hearing format is very rare and is usually used for matters that rely mostly on documentary evidence (such as a request for costs). The Board's Rules of Practice and Procedure provide more information about this type of hearing,

## **Part V – Preparing for a hearing**

If you are a party to an OMB matter, it is important that you are prepared for the hearing. The following section tells you how you can better prepare yourself for a case at the Board.

### **Hiring a lawyer or representative**

Some parties hire a lawyer but you do not need one to appeal. Lawyers and representatives help prepare your case and at the hearing, they question witnesses and make statements.

If you do not hire a lawyer or representative, you should be prepared to:

1. Do your own research on the matter.
2. Find the documents and evidence you need for your case.
3. Make copies of the documents for all parties and the Board (except of public documents like official plans).
4. Speak on your own behalf at the hearing.
5. Present your evidence at the hearing.
6. Question witnesses at the hearing.

## **Request an adjournment**

If you cannot be at a hearing, you may ask the Board to adjourn or delay the hearing for another date. In most cases, only a party to a matter can request an adjournment. To request an adjournment, fill out the Request to Adjourn Form available on the OMB website or send a letter to the Board with the following information:

1. Your name, address, phone and fax numbers, OMB case number, municipality and hearing date.
2. Your role in the matter, e.g. applicant, appellant, or municipality.
3. The reason(s) for the delay.
4. A letter of consent or position of the other parties on your request to adjourn. It is your responsibility to contact the other parties and ask for their consent/position. If the other parties do not provide consent/position, you must tell the Board how you tried to get the other parties consent/position. Requests to adjourn are rarely granted without the consent of other parties (only under exceptional circumstances).
5. How long of a delay you need along with a suggested new date or dates.

For further information, please read the information sheet called “Here’s what you need to know about postponing a hearing”. You may also wish to review the Board's Rules of Practice and Procedure (Rules 61 to 65) as they address adjournments in further detail.

## **Motions**

Motions allow you to ask the Board to make an order on a matter before or during the hearing process. At the motion, you will be asked to give reasons for your request. Some types of motion hearings include requesting:

- An adjournment
- Someone provide documents
- Dismissal of an appeal without a hearing
- Directions on a procedure that applies to the case.

## **Steps to file a Motion**

1. Send the OMB a letter describing your request.

2. Wait for the OMB to respond to your request. It may:
  - Turn it down
  - Advise you of your options
  - Schedule a date for you to make submissions on the motion.
3. If your request for a motion is allowed, the OMB will advise you of the date, time and location of the motion hearing. If a hearing is already scheduled, the Board may advise you to bring the motion forward at the start of the hearing.
4. Once you receive a date from the Board, you must send to the other parties:
  - A copy of the Notice of Motion
  - A brief and clear sworn statement (an affidavit) of the issues and facts that support your request
  - A statement about what you want the Board to order
  - Copies of any documents that will be used at the motion.

For more information about motions, please read our information sheet “Here’s what you need to know about motions” or read Rules 34 to 43 of the OMB’s Rules of Practice and Procedure.

### **How to summons a witness**

If you want a person to give evidence who wouldn’t otherwise be at your hearing, you can ask the OMB to issue a summons ordering him or her to attend.

You may serve a summons on a person (in Ontario) who has not agreed to appear as a witness for the party, so he or she can:

- Give evidence on oath or affirmation
- Present documents.

A party should complete the Request for Summons Form and send it to the Board. The request must include information about the issues and answer why it is needed to summons that witness. The form is on the OMB website or you can contact the Board for a copy.

For more information about requesting a summons, please read our information sheet “Here’s what you need to know about calling witnesses to a hearing” or read Rule 45 of the OMB’s Rules of Practice and Procedure.

## **Evidence**

You can give the OMB evidence in the form of photographs, reports, letters, videos and models. Paper exhibits must be in a form that can be folded or reduced to letter size (8 1/2" by 11").

All material that you file with the OMB before or at a hearing is placed in the public file. Nothing is confidential unless the OMB orders it.

You may view a file at the OMB office in Toronto but you must call ahead to make an appointment. Appointments should be scheduled several weeks before a hearing. Usually, a file is not available just before a hearing, during a hearing and when a written decision is being prepared.

## **Presenting Evidence**

A witness presenting evidence at a hearing must swear or affirm that their evidence is the truth. Some evidence, such as the municipality's official plan or a by-law, is accepted without a witness. But you will have to provide a certified copy of the relevant parts of the plan or by-law, unless the municipality provides it.

All evidence must be related to the issues and on a topic that the OMB has the authority to deal with. The Member may stop a witness from speaking if the witness is not giving evidence that is related to the issues.

## **Rules**

The Rules of Practice and Procedure provide details about OMB processes and procedures. Reading the Rules before appealing to the Board may help you to be better prepared for the process.

## **Accessibility**

Most OMB hearings are held in the municipality where the property is located. This means that the accessibility of hearing rooms is not under the control of the Board. Once notice has been issued for a hearing, anyone who has questions about the accessibility of a hearing venue should contact the municipality where the hearing is being held. Most hearings are held at a public location such as city halls, libraries and recreation facilities. The municipality should be able to tell you if your hearing location is easily accessible. If there are any issues with the accessibility of the hearing location, please contact the OMB as soon as possible.

## **Requesting a Hearing in French**

To request a hearing in French, write to the OMB at least 25 days before the hearing. For services in other languages, you must provide your own interpreter.

## **Recording a Hearing**

Hearings are not recorded by the OMB. You may also arrange, at your expense, for a court reporter to transcribe the hearing.

Filming of the hearing is not permitted. For audio recording of a hearing, you must request permission in advance of the hearing.

For further information, please review Rule 91 of the OMB's Rules of Practice and Procedure.

## **Part VI – The Hearing Process**

### **At the hearing**

Usually, at the start of the hearing, the Board Member decides who gives evidence first. Sometimes, the order is stated in legislation. Either way, you should always be prepared to go first.

The first party gives all of his or her evidence, followed by the other parties who support that position. Then the parties who oppose that position give evidence. Each witness may be questioned by the other parties.

The first party may respond to the other parties' evidence. He or she should respond only to the issues raised in the evidence and not repeat earlier statements.

After all the parties have spoken, presented evidence, asked questions and responded, the parties may give their final summary and arguments.

### **After the hearing – decisions and orders**

The OMB may make a decision at the end of a hearing or the decision may be reserved (issued at a later date). The Member(s) who hears the appeal delivers the decision. The decision may not refer to all of the evidence presented at a hearing, but may only refer to the evidence and issues that the OMB considers most relevant.

OMB decisions issued after January of 2001 are available to view on the Board's website. Generally, 85 per cent of decisions issue within 45 days of a hearing. More complex decisions may take longer to issue.

An OMB decision speaks for itself. It would be inappropriate for the Board's administrative or communications staff to paraphrase or attempt to interpret decisions. Letting the written decision speak for itself prevents potential confusion.

Decisions of the OMB become final only when it issues a formal order. The OMB usually issues the decision and order in one document. Sometimes, it may issue a decision but delay the order until certain conditions are met.

### **Decision reviews and appeals**

For the OMB to consider a review, you need to prove that it made an error that if known may have changed the decision. The OMB would need proof that it:

- Acted outside its jurisdiction;
- Violated natural justice such as by not giving notice of the hearing;
- Heard false or misleading evidence that could have changed the decision; or
- Should consider new evidence not available at the time of the hearing that could change the decision.

The OMB will turn down review requests that provide the same evidence or re-argue the issues. Requests for a review of an OMB decision must be received within 30 days of the date of the decision. Only parties to a matter can ask for a review.

If you think that the OMB made an error on a question of law (not in the evidence) in its decision, you may bring a motion to the Divisional Court.

In certain rare circumstances, you may be able to seek Judicial Review in the Divisional Court. People usually hire a lawyer to appeal to a court or to ask for a Judicial Review because of the complex procedures and issues. You should contact the Registrar of the Court for more information about court processes and procedures.

For more information about OMB decision reviews or appeals, please read the “Here's What You Need to Know if You Disagree With an OMB Decision” information sheet.

## **Part VII – General information**

### **E Services**

There are several electronic services available on the OMB website, [www.elto.gov.on.ca](http://www.elto.gov.on.ca)

### **E Decisions**

You may search the database for OMB decisions that issued from 2001 onwards. Search for a decision using OMB case numbers or specific key words. To view and print the decisions returned from this search engine, you need Adobe Reader. If a decision includes an attachment, the attachment may not be available to view electronically.

### **E Status**

Using E Status, you may view a list of OMB cases by municipality. Only active cases will be listed. When you find the case you are interested in, open the link. Information about the case, including hearing date, time and location (if scheduled), case status and any decisions or orders that issued on the matter should be posted. A contact name and phone number for the case will also be listed.

### **Publications**

OMB publications provide up-to-date and important information about the Board and its processes. Besides this Guide, you may read our:

- Annual Reports (dating back to 1998)
- Rules of Practice and Procedure
- Information Sheets
- Website ([www.elto.gov.on.ca](http://www.elto.gov.on.ca))

### **Glossary**

**Adjournment** – An adjournment means that a hearing will be postponed to a later date. To ask for an adjournment, please fill out and submit the Request to Adjourn form.

**Affidavit** – An affidavit is a written statement made under oath that can be presented as evidence at a hearing.

**Applicant** – An applicant is the person or organization that makes an application to the Board.

**Appellant** - An appellant is the person or organization that makes an appeal to the Board.

**Decision** – A decision is a judgement of the Board. It may be given orally at the hearing, though a written decision should be issued soon after the hearing.

**Electronic hearing** – This is a hearing that is held by teleconference or some other form of electronic technology.

**Hearing event** – A formal proceeding of the OMB. Parties will be notified of hearing date and location.

**Motion** – A motion is when a party asks the Board to do something before or during a hearing. For example, a person may ask for certain documents to be presented, ask to have clarification on a procedure or ask to have the proceedings dismissed. If granted, a motion hearing will be held either in person or by teleconference.

**Oral hearing** – An oral hearing is a hearing that is held in person.

**Order** – A Board decision is final only when it issues a formal order. The OMB usually issues the decision and the order in one document.

**Participant** - A participant is a person or organization that makes a statement to the Board and may take part in some or all of an OMB hearing.

**Party** – A party is a person or organization that is accepted by the Board to be a party and is fully involved in an OMB proceeding.

**Pre-hearings** - A pre-hearing may be scheduled to clarify complicated issues, including identifying parties and participants, and developing procedures to follow during the hearing.

**Representative** - A representative is a person who has been authorized, in writing, to represent a party at an OMB proceeding.

**Settlement conference** – This meeting is held between parties involved in an OMB hearing with the intention of resolving some or all of the matters in dispute.

**Summons** - A summons is a legally binding document that compels a person to attend a hearing as a witness. It can also require the witness to bring certain documents and appear on the date and at the place specified.

**Teleconference** – A teleconference is a type of hearing that is held over the telephone.

**Visual evidence** – This type of evidence, including computer-generated images, photographs, maps, videos, plans, surveys, models and overlays, can be introduced at a hearing event.

**Written evidence** – This type of evidence, including reports, letters, charts, graphs, books of account, and information recorded or stored by means of any devices, can be introduced at a hearing event.

### **Please Note**

The information contained in this Guide is not intended as a substitute for legal or other advice, and in providing this information, the Ontario Municipal Board (OMB) assumes no responsibility for any errors or omissions in Guide, and shall not be liable for any reliance placed on the information in this Guide. Additional information, including the OMB's Rules of Practice and Procedure, is available at [www.elto.gov.on.ca](http://www.elto.gov.on.ca), or by calling (416) 212-6349 or toll free 1-866-448-2248.



The **Environment and Land Tribunals Ontario (ELTO)** includes the Assessment Review Board, Board of Negotiation, Conservation Review Board, Environmental Review Tribunal, Ontario Municipal Board, Niagara Escarpment Hearing Office and the Office of Consolidated Hearings. The Tribunals operate under specific legislative requirements and share resources and best practices. The Ontario Municipal Board hears appeals and applications on a wide range of municipal and land-related matters including official plans, zoning by-laws, subdivision plans, consents and minor variances, land compensation, development charges, ward boundaries, and aggregate resources. For more information contact us at:

Environment and Land Tribunals Ontario

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5

Telephone: (416) 212-6349 or toll free: 1-866-448-2248

Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca)

ISBN 978-1-4435-1483-5/ © Queen's printer for Ontario, 2009

Disponible en français: Guide de la Commission des affaires  
municipales de l'Ontario