

Assessment Cycle 2017-2020 ARB Transition Plan

This document is designed to address the approach the Board will take on how to deal with the existing hearings scheduled between today and November 30th, 2017 along with providing further direction and clarification of the process to be followed.

Rules:

The new Rules are to be applied to previous cycle appeals along with the 2017 appeals.

Duty Vice:

Effective June 1 2017 only Vice Chairs will be assigned to act as Duty Vice.

In the event that a Duty Vice is not a Vice Chair, any requests for adjournments, expedited directions or Motions are to be referred to a Vice Chair for response.

Management of previous cycle appeals:

In the past, the function of making procedural directions was performed by individual Board Members, who made orders in administrative TCC's.

As of April 1, 2017, all open appeals before the Board will be moving into the next cycle, and the new process. The new Rules will be applied to these appeals. Consequently, the function of making procedural directions will be implemented administratively.

The Board is currently developing the protocol whereby the Registrar, Associate and Vice Chairs will work together with the parties to provide procedural directions to the parties. In this regard, subject to the comments below, all appeals will be assigned a Commencement Day and a Schedule of Events. The Schedule of Events includes the due dates for completing disclosure, along with other key mandatory due dates.

Administrative TCC's:

The Board is discontinuing scheduling new administrative TCC's after June 1, 2017.

A TCC that is currently scheduled to occur after June 1, 2017 will proceed, but it will be the final TCC held in respect of the appeals on the docket. If a Board Member receives a request to schedule a hearing or mediation, the Member is to advise the parties that their appeal will be scheduled administratively using the new cycle approach of the

Schedule of Events. Under the new Rules scheduling is done administratively. However, please encourage the parties to continue working on the appeals in the interim.

The Associate Chair may approve continued use of administrative TCC's after June 1, 2017, but the intent is that this will only be considered for case managed appeals. The Associate Chair and Vice Chairs will be consulting with the Members who have been doing case management, to determine the most efficient method to proceed with these appeals in the new cycle.

How the Board will transition previous cycle appeals into the new system

The Board, for many appeals, does not have sufficient information to determine the status of the exchange of disclosure and pleadings. Therefore, in preparation for setting the commencement dates for the General Proceeding appeals, administration will be preparing reports, (Appeal Status Reports) which will be sent out to all parties, requesting a status update on the appeal.

Where there are no procedural directions in place for an appeal, the Board will apply the new Rules: the Board will assign a Commencement Day and Schedule of Events for the appeal.

Remember that the new Rules allow for flexibility. For example, Rule 34(c), which provides that the Board specify a Schedule of Events that is different from Schedules A or B.

There are basically two approaches for processing previous cycle appeals. The first approach applies when the appeals are in the early stages of pleading preparation and exchange of disclosure, and the second approach is for appeals that are nearly ready for a hearing.

Approach one:

For some previous cycle appeals, the parties are still in the early stages and the exchange of disclosure is not near completion. This can be the case even where SOI and SOR have been exchanged. In those cases, the most pragmatic approach will be to "start over". This means that the Board will revoke any previous procedural directions or orders and assign a Commencement Day and Schedule of Events for the appeal. The benefit of this approach is that it imposes both the due dates for completion of disclosure, and the consequences for failing to comply with the Schedule of Events.

Approach two:

Other previous cycle appeals may have progressed further. Where:

- all parties have confirmed that all pleadings are complete; and

- all parties have confirmed that all disclosure is complete, [or substantially complete, in which case the Board will set a peremptory due date to complete exchange of disclosure];

the Board will then:

- Set a due date by which the parties are required to meet to discuss settlement and advise the Board in writing:
 - Whether the appeals are settled;
 - If they are not settled, provide written confirmation to the Board indicating that they request a Settlement Conference.
- Set a due date for filing all documents to be relied on at the Settlement Conference, and any future Mediation or Hearing; and
- Confirm that Rule 48 (No New Documents) and Rule 49 (No New Issues) apply to the appeal proceeding

Once the Board has received the mandatory meeting form, which provides an update to the Board regarding the status of the appeal, the Board will proceed to schedule a settlement conference.

Hearings and Scheduling of Appeals:

At this time, there will be no further scheduling of any hearing events, or mediations as of June 30th, unless otherwise approved by the Associate Chair, (that is, there will be exceptions on a case-by-case basis).

- Any hearings that are scheduled between now and November 30th, will remain in place.
- Central Issues/Case Managed Issues – Over the next few weeks, Paul and/or Vice Chairs will be meeting with the current assigned Members to review the completion status for each appeal, including:
 - (i) have the parties completed the exchange of *full* disclosure and pleadings; and
 - (ii) if there is a settlement, has the municipality agreed to the settlement, or confirmed that it does not oppose the settlement.]
- Going forward, no further TCC's, mediations or hearings are to be scheduled
- Summary Appeals:

- Effective June 1, 2017, all Summary proceeding appeals will be reviewed by region and by rep and commencement dates will be starting as of July 2017.
- General Appeals:
 - As noted above, starting within the next several weeks, reports will be sent to all of the parties, copies to MPAC and the municipalities, and they will be asked to provide status updates on the completion status of the appeals. Where the assignment of a Commencement Day and full Schedule of Events is required, our intention is to begin setting Commencement Days as of October or November 2017
- Poverty Appeals will continue to be scheduled into Hearings.
- Adjournments must all be referred to the Associate Chair or a Vice Chair.

Waivers:

Effective April 1, 2017, waivers for Minutes of Settlement by municipalities are no longer in effect.

Minutes of Settlement:

The Board will no longer schedule Minutes of Settlement TCC's. Where the parties advise a Board Member that a proceeding is resolved and minutes of settlement will be filed with the Board, the Member must do the following:

- First, question the parties to ensure that they have, in fact, reached a settlement.
- If the Municipality is not present, confirm with the other parties whether the Municipality will either execute the Minutes of Settlement or has advised that it will not execute the Minutes but does not oppose the settlement.
- The Board Member should then confirm that Rules 69 and 70 apply.
- Advise the parties that, should they need an extension to the due date, they must submit a written request to the case co-ordinator, including an explanation for the delay, and confirming the amended due date for filing the minutes.
- Advise the parties that, if the Minutes of Settlement are not filed with the Board by the due date, then the Board will schedule a peremptory hearing and at that

time either the parties will submit the finalized Minutes of Settlement or the matter will heard.

Please note that, where the parties confirm that the Municipality that will not execute, but does not oppose the Minutes of Settlement, the Board will proceed to issue a decision immediately upon receipt of the Minutes of Settlement executed by the other parties.

Requests to Adjourn Hearings:

Effective June 5, 2017, all adjournment requests will be directed to either the Associate Chair or a Vice Chair.

Parties will be directed to submit their request for the adjournment by motion in writing, addressing the Board's Rules on adjournments (Rules 83 and 84).

Where an adjournment request is denied, the Associate Chair or Vice Chair will provide the case co-ordinator with reasons. The party's motion and the reasons will be provided to the Member who conducts the hearing.

If a party renews its request for an adjournment at the hearing, it cannot be considered by the Hearing Member.

The Hearing Member will not address adjournment requests at the hearing, unless exceptional circumstances arise immediately prior to the hearing, such as urgent health or family emergencies, or unforeseen events that prevent a party or witness from attending a hearing.

Common Issues that may arise:

1. The Member is at a Hearing, and the parties advise that they have reached a settlement on CVA, but there is a factual issue to be resolved before the Minutes of Settlement can be finalized. [Examples of such factual issues: the parties need to finalize area of the building, MPAC need to confirm areas to be assigned to commercial v. industrial tax class, etc.]

(a) First, quiz the parties to satisfy yourself that the matter is purely factual, and will most likely be resolved. (If you are not satisfied that this is the case, then you should proceed with the hearing.)

(b) Where you are satisfied that the appeals will be resolved, set a date by which the parties are to advise the Board:

i. That the appeals have been resolved, and whether the Municipality will execute the Minutes, or has confirmed that it will not oppose the settlement;

ii. Confirm that Rules 69 and 70 will apply.

(c) Provide a status update to the case co-ordinator confirming the above.

2. Prior to the hearing, the parties submitted a written request to adjourn the Hearing, and the adjournment was denied. At the commencement of the Hearing, the parties renew their adjournment request before the Hearing Member.

(a) Advise the parties, that they cannot renew their motion before because:

i. The matter is *res judicata*. It has already been adjudicated and, therefore, cannot be re-litigated; and

ii. A Hearing Member does not have the jurisdiction to review the decision of another Member.

(b) Proceed with the hearing.

[Note, the parties may have asked for an adjournment because they say they need to get more information, do an inspection, etc. If the motion to adjourn was denied, then the hearing must proceed. The Hearing Member will proceed to hear all evidence that the parties can adduce.]

- i. If the parties assert that they need to obtain and file further evidence, then you, as the Hearing Member, will decide if you need such evidence. If so, you can provide directions as to how the evidence will be filed. For example, if it is simple documentary evidence, then you could set a due date to file the evidence without further examination/cross-examination. If examination/cross-examination is required, then you can schedule an additional hearing day to complete the hearing of the evidence.