

**PROCEDURAL GUIDELINES FOR  
HEARINGS BEFORE THE  
MINING AND LANDS COMMISSIONER**

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**PROCEDURAL GUIDELINES FOR  
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**INTRODUCTION**

These guidelines are intended to facilitate and enhance the participation of all parties to a hearing before the Mining and Lands Commissioner.

**While reference may be made from time to time to Part VI of the Mining Act, these Guidelines are not to be used for matters arising under the Mining Act.**

The Mining and Lands Commissioner is **appointed** by Cabinet under the **Ministry of Natural Resources Act** to hear any matter, application or appeal. This hearing function is accessed when reference is made to the Mining and Lands Commissioner in an act or order-in-council. Current examples are **Section 27** of the **Conservation Authorities Act**, various sections in the **Aggregate Resources Act**, the **Conservation Land Tax Act** (by Order-in-Council), and the **Oil, Gas and Salt Resources Act**.

Not all of the aforementioned hearing functions require the Commissioner to make a decision. For example, **Section 44** of the **Aggregate Resources Act** requires that the Commissioner make a **recommendation** to the Minister of Natural Resources. This function is not governed by the **Statutory Powers Procedure Act** which only applies to those statutory bodies which make a **decision**. The obligation to conduct a fair hearing is common to all of the aforementioned situations.

Cabinet can also **assign** to the Mining and Lands Commissioner the “**authority, powers and duties**” of the Minister of Natural Resources under the **Ministry of Natural Resources Act**. This has been done with regard to **Subsection 28(5)** of the **Conservation Authorities Act**. Under that subsection, a conservation authority’s refusal of permission can be appealed to the Minister.

In exercising the authority, power and duties of the Minister under **Subsection 28(5)** of the **Conservation Authorities Act**, the Commissioner applies **Part VI** of the **Mining Act**, with necessary modifications.

Where a conflict arises between these Guidelines and any act or regulation, then the act or regulation will govern.

The Commissioner may do whatever is necessary and permitted by law to enable him or her to effectively and completely adjudicate or report on the matter before him or her.

The Commissioner may waive or vary any of these Guidelines at any time.

It is sufficient if there is substantial compliance with a form or notice required by or under these Guidelines.

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## DEFINITIONS

(1) “**Commissioner**”, means the Mining and Lands Commissioner appointed by the Lieutenant Governor in Council under the **Ministry of Natural Resources Act**, and for purposes of these Guidelines includes a Deputy Mining and Lands Commissioner or a tribunal of three within the meaning of **Subsection 6(4)** of that **Act**.

(2) “**Document**”, in addition to documentation on paper, such as letters, maps, charts, graphs, plans, surveys and models, includes videotapes, films, photographs, sound recordings and other information recorded or stored by means of any device.

(3) “**Interrogatory**”, means a question posed in writing by one party to another seeking facts or information relevant to the hearing or seeking clarification or explanation of issues or of information and material provided by the party to whom the interrogatory is addressed and may include questions between expert witnesses on technical matters.

## PART 1 – ORDER TO FILE

1. Upon receiving notice that a hearing is required or upon having a matter referred for a hearing, the Commissioner may issue an “Order to File”, requiring the parties to provide documentation and information relating to, among other things, the decision being appealed, the application to which is refers, the basis for the parties’ respective positions and the evidence the parties intend to rely on at the hearing. The Order to File will advise the parties of the time for filing and serving the aforementioned.

1. Parties are encouraged to prepare submissions such as photographs by providing certain information prior to the hearing including the name of the photographer, the date and time of the photograph, the location (and name if applicable), of the site and/or object depicted, and the direction or view from which the photograph was taken.

The Registrar will coordinate the compiling of an exhibit list and/or agreed statement of facts.

2. When filing, serving or providing documents by facsimile (fax), parties are to include a cover page containing the following information:

- (a) the senders name, address, telephone number and facsimile number if available;
- (b) the name of the person to be served;
- (c) the date and time the documentation is transmitted;
- (d) the total number of pages transmitted including the cover page;
- (e) the telephone number from which the document is transmitted;
- (f) the name and telephone number of a person to contact in the event that a problem arises with the transmission.

3. Where a party is represented by a lawyer, service, filing or providing documents or notices under these guidelines may be made on the lawyer.
4. The Commissioner may order or allow such substituted service as he or she considers proper, including, publication in any specified newspaper.

In conjunction with an application for unitization under the **Oil, Gas and Salt Resources Act**, the Commissioner shall Order publication of information regarding the application in (a) specified newspaper(s).

**PART II – PRE-HEARING CONFERENCES**

**Pre-hearing conferences can be an effective method of setting the groundwork for a hearing. Occasionally they represent the first time the parties have had an opportunity to meet each other in a non-adversarial setting. While they are sometimes viewed as an extra step in the hearing process, pre-hearing conferences actually represent an efficient method of dealing with the preliminary issues that precede all hearings.**

5. In any Proceeding, the Commissioner, on his or her own initiative, or on the motion of any party, direct the parties to make submissions in writing or may hold one or more pre-hearing conferences, for the purpose of:
  - (a) identifying the parties;
  - (b) defining, formulating or simplifying issues;
  - (c) deciding the procedure to be adopted in the proceeding;
  - (d) disclosing evidence, including:
    - (i) identifying documents the parties intend to rely on;
    - (ii) exchange or arranging for the exchange of documents among parties;
    - (iii) listing all documentation in one party's possession to be disclosed to the other party;
  - (e) identifying witnesses, the nature of their evidence, and their order of presentation;

- (f) considering the advantages and disadvantages of filing witness statements and establishing a procedure for their service and filing if needed;
  - (g) discussing the compilation and circulation of an exhibit list and agreed statement of facts;
  - (h) setting the date and place for commencement of the hearing;
  - (i) estimating the length of the hearing;
  - (j) deciding any other matters that may aid in the simplification or just disposition of the proceeding;
  - (k) considering the possibility of settlement of any or all of the issues in the proceeding; and
  - (l) for any other purpose that the Commissioner deems appropriate.
6. The Commissioner may conduct a pre-hearing conference with the consent of all parties to the hearing. The Commissioner will not participate in the settlement discussions.
7. The Commissioner may assign a member of his or her staff to conduct a pre-hearing conference. The Commissioner's staff may be present at settlement discussions with parties' permission.
8. Where the parties reach agreement or settlement on any of the matters discussed at a pre-hearing conference, then such agreement may be formalized by way of an Order of the Commissioner.

9. Where a pre-hearing conference results in prolonged meetings or settlement discussions and the conclusion appears to be unsuccessful, then the Commissioner may order the parties to move directly to a hearing, taking into account the parties' ability to prepare themselves.
10. The Commissioner may require that a pre-hearing conference be recorded by a court reporter. Settlement discussions will not be recorded.

### **PART III - HEARING PROCEDURES**

11. The hearing date and location will be set by the Commissioner and notice of same will be provided to the parties.
12. The Commissioner may receive and act upon any facts agreed upon by the parties.
13. Where both parties consent to waive an oral hearing, the Commissioner may render a decision based solely on the presentation of written submissions.
14. Witnesses who appear personally before the Commissioner shall be examined under oath or after affirming that their evidence will be true.
15. The leading of witnesses in all matters of fact not in dispute is permitted.
16. With the parties' agreement, affidavits, declarations, agreed statements of fact, etc., will be accepted in place of oral testimony.

**\* NOTE: Highly technical evidence may not lend itself to this approach.**

17. Unless the Commissioner orders otherwise, hearings shall be conducted in English.

Parties having special language or physical needs should bring them to the Registrar's attention prior to the commencement of the hearing. Every effort will be made to address such needs.

18. For those matters to which **Part VI** of the **Mining Act** is applied, motions and hearings will be recorded.
19. All transcripts or copies of transcripts and all electronic records ordered by the parties to the proceedings or other persons shall be paid for by those parties or other persons.

**\* NOTE: Under section 125 of the Mining Act, copies originating with the Mining and Lands Commissioner are furnished upon the same terms as in the Ontario Court (General Division).**

20. Any party tendering a document as evidence must provide two copies for the Commissioner, and one for each party.
21. Parties may, at the hearing, and with permission of the Commissioner, replace original documents with copies.
22. Where possible, copies of reports, witness statements, and other documentary material should be double-sided. Pages should be numbered consecutively, and sections should be tabbed and pages within sections numbered consecutively.
23. Lengthy reports should include a concise summary.
24. Wherever possible, a glossary of technical terms should be provided prior to commencement of the hearing. A combined effort of the parties is acceptable.

25. All parties should request that the reports and evidence of their expert witnesses be expressed, to the extent possible, in clear and non-specialized language. The purpose of this direction is to facilitate the understanding and participation of non-expert persons in the hearing process.
26. Duplication of testimony and documentary evidence should be avoided.

**PART IV – POWERS OF SUBPOENA (SUMMONS)**

27. Where the Commissioner is exercising a statutory power of decision then (s)he may on his or her initiative, or upon the request of any party, issue a summons to any person to give evidence.

Parties requesting the issuance of a summons must notify the Registrar.

Parties are expected to ensure that any person they have summoned will be paid a fee. Attendance money is in accordance with the Ontario Court (General Division) scale and paid at the time of service of the summons.

**PART V – ORDER OF PRESENTATION AND EXAMINATION OF WITNESSES**

28. Unless the Commissioner orders otherwise, evidence shall be presented first by the party appealing a decision, or making an application, or seeking a licence, followed by the opposing party. The first party shall also have the right to reply to the evidence presented by the second party.

The examination of witnesses will consist of direct examination, cross-examination, and re-examination.

## **PART VI – USE OF WITNESS STATEMENTS**

29. The Commissioner may order that witness statements be exchanged among the parties.
30. Whether the order is made on the Commissioner's initiative or as a result of the request of a party, the commissioner will determine the recipients of the statements, as well as the dates for service.
30. (1) Witness statements shall contain the following:
  - (a) name and business address of the witness (and qualifications or curriculum vitae, if appropriate);
  - (b) a statement of whether the witness has an interest in the application and, if so, the nature of the Interest;
  - (c) a statement of whether the evidence will be factual evidence or opinion evidence or both;
  - (d) a statement of whether the witness has some special skill which he or she possesses by reason of experience or study which qualifies him or her to give evidence;
  - (e) a full but concise statement of evidence;
  - (f) reference to and identification of proposed exhibits which are part of the witness' evidence, including: supporting documents, plans, reports, technical memoranda, etc. (a separate sheet shall be attached to the statement listing the exhibits);
  - (g) an acknowledgement that the witness intends to appear before the Commissioner if requested by the party submitting his or her witness statement and be subject to examination and cross-examination, and;
  - (h) the date of the statement.

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- (2) Where a formal report has been prepared by a witness for purposes of the hearing, then that report may be used as a witness statement, provided that the above information appears in the body of the report, or is appended to it.

#### **PART VII – PRESENTATION OF EXPERT WITNESSES**

32. Witnesses having technical or special knowledge shall provide three copies of a written curriculum vitae describing their qualifications and experience.

Where the curriculum vitae demonstrates a degree of the special or technical knowledge possessed by the witness, then parties will not normally be required to qualify the witness such.

However, no party will be precluded from challenging the qualifications of a witness before his or her testimony is given.

Expert witnesses possessing expertise in more than one area may be asked to specify which area is being relied upon for the evidence.

#### **PART VIII – MEETING OF EXPERT WITNESSES**

33. The parties may be asked to consider arranging a meeting between their expert witnesses in order to identify common facts and issues or to clarify same.

Parties who have been asked to consider this procedure and have decided against it, may be asked to give reasons.

Notwithstanding the above, the Commissioner may at any time either before or during the hearing, order the parties to arrange a meeting of experts if it becomes apparent that such a meeting can help to identify common facts and issues or to clarify same.

Meetings between experts are to be held without prejudice. Statements made during these meetings (other than the aforementioned agreement), shall not be used or referred to during the hearing except with the agreement of all the parties.

Where meetings between experts result in agreement on facts and/or issues, then the parties will be encouraged to set such agreement down in written form.

#### **PART IX - DISCLOSURE OF EVIDENCE, ETC.**

34. Documents produced or released in accordance with these Guidelines are intended to assist in case preparation and are for the sole use of the recipients unless and until they have been received in evidence at the hearing, and in the case of interrogatories or witness statements, the relevant witnesses have testified.

While parties will be expected to provide each other and the Commissioner with copies of all documents they intend to rely on at the hearing, the existence of any document relating to any matter in issue at the hearing can be the subject of a request for disclosure.

It follows that any person who refers to a document in any of the notices, affidavits, witness statements, answers to interrogatories, or reports produced for the hearing can be asked to produce that document for inspection by any party.

The person producing the document has ten (10) days to answer such a request.

The party making the request is permitted to make copies at their own expense.

#### **PART X - INTERROGATORIES OR WRITTEN QUESTIONS AND DISCOVERIES**

35. Parties may ask, or the Commissioner may order that written questions be exchanged or that discoveries be conducted. The Commissioner will establish time limits for such matters.

Parties are expected to answer written questions as fully as possible and to provide a reasonable explanation if they have not done so.

**PART XI – SITE VISITS**

36. The Commissioner may view and examine the subject property. The Commissioner may also order that a view and an examination be done by an engineer, surveyor or other scientific person.

The parties will be notified and if they wish to attend, arrangements will be coordinated by the Registrar. Those parties wishing to invite the Commissioner for a will be expected to coordinate same with the Registrar's assistance.

**\* NOTE: For those matters to which Part VI of the Mining Act applies, Sections 118 and 119 of the Mining Act describe this process more fully, including the rights of the parties to cross-examine the person ordered by the Commissioner to view and examine the property.**

**PART XII – MOTIONS**

37. Any party wishing to make a motion shall notify the Registrar in order to obtain a date and shall serve all affected parties with notice of same at least three (3) days before the motion date.

Parties involved in the motion shall provide a copy of all affidavits and other material necessary for the hearing of the motion to each other and to the Commissioner prior to the hearing date.

**PART XIII – TELEPHONE CONFERENCE CALLS**

38. If satisfied that no significant prejudice to a party will result, the Commissioner may require that pre-hearing conferences, motions, or hearings be conducted by telephone conference call. Telephone conference calls will be coordinated by the Registrar. Parties may request proceedings by telephone conference call, in which case the Commissioner may consider all relevant factors including but not limited to the nature of the proceeding and its suitability for a telephone conference and the convenience of the parties.

In the case of hearings, the use of the telephone conference call will be considered only where the parties have addressed the matters listed in Guideline 5 prior to the telephone conference call date.

A hearing conducted by telephone conference call is a public hearing. All the proprieties of a regular hearing will be followed.

At any time during a telephone conference call the Commissioner may require, or the parties may request, that the hearing be stopped in order to be continued in person. The Commissioner will set a new date and every effort will be made to continue where the telephone conference call left off, as long as no party is prejudiced by this change in procedure.

**PART XIV – POSTPONEMENTS AND ADJOURNMENTS**

39. Where the Commissioner has set a date for a hearing, pre-hearing conference, or motion with the agreement of all parties or their counsel, then they will be expected to attend on that date.

Where an adjournment is requested, it may be granted by the Commissioner upon condition(s) if necessary.

Where an adjournment is granted to allow the appellant to make a new application to the conservation authority under **Section 28** of the **Conservation Authorities Act**, and that application is subsequently refused by the conservation authority, then, upon appeal to the Minister under the **Conservation Authorities Act**, the Commissioner may hear both matters together.

#### **PART XV – COSTS**

40. For those matters affected by **Part VI** of the **Mining Act**, the Commissioner may award costs, either on his or her own initiative, or on the request of a party.

#### **PART XVI – FAILURE TO APPEAR AFTER NOTICE**

41. Where notice of a motion, pre-hearing conference, or hearing has been given in accordance with these guidelines and statutory requirements and a party does not attend the hearing of the motion, pre-hearing conference or hearing, the Commissioner may proceed in that party's absence and that party may not be entitled to any further notice of that portion of the proceedings unless the Commissioner directs otherwise.

#### **PART XVII – REVIEW OF A DECISION**

**A request to review a decision is granted only in the most extraordinary circumstances. A request to review is not an opportunity to re-argue a case nor to rebut findings made in the decision. The Commissioner is not required to rehear a matter if (s)he is satisfied the outcome of the decision is not likely to change.**

42. The Commissioner may at any time, and without prior notice to the parties, correct a typographical error, an error of calculation, a misstatement, a technical error, ambiguity or failure to pronounce on a matter that should have been provided for in the decision.

43. The Commissioner may review a final decision or order on his/her own initiative or at the request of a party. Non-parties cannot request a review of a decision.

#### **Contents of a Review Request**

44. A request for a review shall be in writing and signed by the requester and shall:
- (a) state the reasons for requesting the review;
  - (b) state the desired outcome;
  - (c) attach any documents which support the request;
  - (d) state the full name, address, telephone number and fax number (if any) of the requester;
  - (e) if the requester has a representative, state the full name, address, telephone number and fax number (if any) of the requester's representative;
  - (f) attach a copy of the original decision;
  - (g) attach an affidavit from the requester setting out the facts relied on in support of the request;
  - (h) request an order suspending the order or decision pending determination of the review and explain why a suspension is needed.
  - (i) be served on all parties to the original hearing;
  - (j) attach an affidavit of service.

### **Threshold Factor for Review**

45. In deciding whether it is advisable to review all or part of a decision, the Commissioner may consider any relevant circumstances, including:
- (a) whether there is significant new evidence which was not available to at the time of the original proceeding;
  - (b) whether the party relying on the new evidence acted promptly after learning of the new evidence;
  - (c) whether the new evidence, if believed, would have affected the final result;
  - (d) the extent to which any other person has relied upon or acted on the decision;
  - (e) whether the public interest in finality of decisions is outweighed by the prejudice to the requester;
  - (f) whether the Commissioner made a material error of law or fact such that a different decision would have been reached.

### **Time Limits**

46. A request to review shall be filed within 90 days of the date of the decision.
47. A request made after this date may be considered where the Commissioner is satisfied that there is good reason for the delay.

### **Multiple Requests for a Review**

48. The Commissioner will consider only one request for a review of a decision by a party.

**Commissioner's Discretion**

49. The Commissioner will consider the request for review and decide whether it is advisable to review the decision.
50. The Commissioner may refuse a request for review without seeking submissions from any other party.

**Review Procedures**

51. Where the Commissioner decides to consider a request for a review of a decision, then all parties will be notified, provided with copies of applicable materials, and allowed an opportunity to make submissions. A 30 day time limit will be imposed on the actions of all parties in the process.
52. The Commissioner may make such procedural orders as are considered necessary and appropriate.
53. The Commissioner may consider the record from the original hearing, in addition to the materials filed by the requester and other parties.
54. Where the request for review is granted, it may be granted in whole or in part, and the decision may contain any procedural directions the Commissioner considers appropriate for the review on the merits. The procedural directions are binding on the Commissioner on the review on the merits unless otherwise ordered.
55. Unless otherwise ordered, a review on the merits shall be conducted electronically.