

## PROCEDURAL RULES – MINING AND LANDS TRIBUNAL

### PREAMBLE

The Mining and Lands Tribunal makes decisions under the authority of the *Mining Act, Conservation Authorities Act, Oil, Gas and Salt Resources Act, Lakes and Rivers Improvement Act, Assessment Act and the Aggregate Resources Act*. In some instances, the Mining and Lands Tribunal reports to a Minister. A hearing that results in a report is processed in the same manner as a hearing that results in a decision of the Mining and Lands Tribunal. For more information on the types of hearings, please refer to the Office of the Mining and Lands Tribunal Annual Report.

### Application

1. These rules apply to all proceedings before the Mining and Lands Tribunal which commenced on or after February 5, 2018.
2. These rules are made pursuant to the *Statutory Powers Procedure Act*. They supplement the procedural requirements set out in Part VI of the *Mining Act*, which, if applicable, prevails. If Part VI does not apply and no other statute prescribes the procedure, these rules apply. The Mining and Lands Tribunal may also consider the Rules of Civil Procedure made under the *Courts of Justice Act* when determining a procedural matter not expressly provided for in Part VI, the *Statutory Powers Procedure Act* or these rules.
3. The Mining and Lands Tribunal expects all parties to comply with these rules and any directions and orders issued by the Tribunal.
4. The Mining and Lands Tribunal may grant exemptions from these rules and may give directions to ensure that the real questions at issue are determined in a just, expeditious and cost-effective manner.

### Interpretation

5. In these rules,  
“Tribunal” means the Mining and Lands Tribunal and includes members appointed under the *Ministry of Natural Resources Act*;  
“Document” means written and visual material and includes written and visual evidence;  
“Proceeding” means any process or matter in which the Tribunal has authority to make a decision and includes a referral by a minister, as well as an appeal to the Minister under subsection 28(15) of the *Conservation Authorities Act*;

“Hearing” means a procedure, at any stage of a proceeding, by which evidence and / or submissions are presented directly to the Tribunal, whether in oral, electronic or written format, but does not include cross-examination on an affidavit in the absence of the Tribunal.

### **Commencing Proceedings**

6. Proceedings that are initiated by filing a referral, appeal or application must be in writing and must:

- be addressed to the Mining and Lands Tribunal;
- provide the applicant’s name, the name(s) of any opposing party or parties, the name(s) of any agent or counsel, as well as telephone and fax number(s) and e-mail addresses (if any), addresses for regular mail and postal code(s);
- state the nature of the matter, the statutory authority for the Tribunal to hear it, the order/relief requested and the reasons for it;
- inform the Tribunal of a request to assign a bilingual Tribunal member if the applicant wishes the hearing to be conducted wholly or partly in French; and
- be signed by the applicant or their representative;
- if an appeal, include a copy of the disputed decision or order.

### **Refusal to Process a Matter – Administrative Dismissal**

7. (1) The Tribunal or a member of the Tribunal’s staff may refuse to process an appeal, application or referral to the Tribunal if:

- the matter has not been submitted within the statutory time period;
- the information is not complete;
- the matter has not been submitted in accordance with statutory requirements; or
- there is any other reason why it should not be processed.

(2) The Tribunal or staff member will give notice of the reasons for the refusal to process the appeal, application or referral and prescribe a date for response or correction.

(3) A copy of the response or correction shall be provided to any other parties and to the Tribunal.

(4) After the prescribed date for response, the Tribunal may determine whether the matter is to be dismissed administratively.

## **Dismissal Without a Hearing**

8. (1) The Tribunal may dismiss a matter administratively, on his or her own initiative and without a hearing in any of the following circumstances:

- if he or she is satisfied that the Tribunal is without jurisdiction to hear the matter;
- in matters under the *Conservation Authorities Act*, the applicant has not filed an application with the conservation authority and received a decision from that authority;
- where the substance of the application to which the appeal relates is substantially different from that which was the basis of the decision of the conservation authority under the *Conservation Authorities Act* or the Provincial Mining Recorder under the *Mining Act*;
- the grounds set out in the notice of appeal do not disclose any substantive basis upon which all or part of the appeal could be allowed;
- where the appeal or application is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay; or
- where the appellant or applicant has persistently and without reasonable grounds commenced proceedings before the Tribunal that constitute an abuse of process.

(2) Before a proceeding is dismissed for lack of jurisdiction, all parties to the proceeding will be given notice. Before a proceeding is dismissed for any other reason, the party who commenced it will be given notice. The notice will provide grounds for the proposed dismissal and prescribe deadlines by which parties may make written submissions to the Tribunal.

(3) This Rule supplements the authority of the Tribunal under section 122 of the *Mining Act*.

## **Mediation**

9. (1) On the Tribunal's own initiative or at the request of a party, the Tribunal may arrange for mediation of any issue at any time prior to the conclusion of the hearing. Mediation shall not take place without the consent of all parties.

(2) All information exchanged for the purposes of the mediation and any notes or written information associated with the mediation are confidential and shall not be released to any person or admitted into evidence in any proceeding.

(3) If an order of the Tribunal is necessary to implement a settlement, the parties must obtain approval of the Tribunal.

(4) If mediation is conducted by a Tribunal member then that mediator will not subsequently hear the matter unless the parties consent and the Tribunal approves.

### **Information to Accompany a Request for Leave for a Hearing**

10. Where a statute authorizes an application for leave to the Tribunal, the applicant shall provide the information set out in Rule 6 and, in addition, shall state the reason why leave is necessary.

### **Pre-Hearing Conferences (PHC's)**

11. (1) The Tribunal may direct parties to participate in a pre-hearing conference if the Tribunal determines one is desirable in order to consider any of the following matters:

- a) the possibility of settlement of any or all of the issues in the proceeding;
- b) simplification/streamlining of the issues;
- c) the possibility of obtaining admissions that may facilitate the hearing;
- d) the number of expert witnesses and other witnesses that may be called by each party, and dates for the service of any outstanding or supplementary expert reports;
- e) the advisability of having the Tribunal appoint an expert;
- f) the estimated duration of the hearing;
- g) any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.

(2) The parties shall participate in the pre-hearing conference in accordance with the direction of the Tribunal.

(3) If settlement is discussed pursuant to sub rule (1) (a), the Tribunal member who conducts a pre-hearing conference in a proceeding shall not preside at the hearing, except with consent of the parties.

### **Adjournments**

12. Hearings will take place on the date and time set unless the Tribunal exercises discretion to grant an adjournment.

13. Requests for an adjournment with the consent of the parties must be made in writing and are to include the reasons for the adjournment, suggested dates when all parties are available and the signed consents of all the parties.

14. A motion for an adjournment that is not on consent of all parties must be delivered at least 10 days before the date set for the hearing.

15. If the reason for requesting an adjournment arises less than ten days before the hearing date, motion materials must be served as soon as possible. If the Tribunal refuses to consider a late request, the motion for an adjournment may be made in person at the beginning of the hearing.

16. A late request for an adjournment may be granted only in exceptional circumstances. The Tribunal must be informed forthwith of the intended request and the nature of the exceptional circumstances.

### **Hearing Formats**

17. Hearings may be held in one or a combination of three formats: written, electronic and in person. Specific rules regarding written and electronic hearings are set out below.

### **Written Hearings**

18. The Tribunal may hold a written hearing for all of a proceeding or for any issue in a proceeding.

19. Factors that may be considered by the Tribunal when deciding to hold a written hearing include:

- fairness and convenience to the parties
- costs and efficiency
- any effects on public access to the hearing process
- whether it is necessary to hear oral testimony of any witness

20. Notice will be given to the parties of the proposal to hold a written hearing.

21. Unless the Tribunal is persuaded that there is a good reason not to hold a written hearing, he/she may reject the objection and proceed with the written hearing.

22. Staff may invite the parties to agree on dates for the exchange of written evidence and submissions. Where parties are unable to agree, then dates may be prescribed by the Tribunal.

23. Evidence in a written hearing must be by affidavit and any documents submitted are to be attached to an affidavit of a person having personal knowledge of the document. The Tribunal may permit evidence to be filed in a different form or in electronic form as approved by the Tribunal upon request of a party.

24. A copy of every document that a party delivers to the Tribunal must be delivered to every other party.

### **Electronic Hearings**

25. The Tribunal may hold an electronic hearing for all of a proceeding or for any issue in a proceeding.

26. Factors that may be considered by the Tribunal when deciding to hold an electronic hearing include:

- maintaining the integrity of the hearing process
- fairness and convenience
- whether the evidence and legal issues (including credibility) are suitable for an electronic hearing
- the protection and confidentiality of evidence
- cost and efficiency
- any effects on public access
- whether any party will experience significant prejudice

27. Notice will be given to the parties of the proposal to hold an electronic hearing.

28. Where the Tribunal is not persuaded that a party will experience significant prejudice, he/she may reject the objection and proceed with the electronic hearing.

29. No party shall participate in an electronic hearing using a cellular telephone without the agreement of all parties to the hearing and the permission of the Tribunal.

30. The schedule for the exchange of documents will take place in the same manner as Written Hearings set out above.

### **Filing of Documents Including Document Formatting**

31. (1) A party who intends to introduce a document as evidence at a hearing shall provide two copies to the Tribunal and a copy to all the parties at the beginning of the hearing or by the deadline directed by the Tribunal in an Order to File (see Rule 33).

(2) All documents shall have each page numbered consecutively throughout the entire text and graphic content even if there are dividers or tabs.

(3) A list of all documents received by the Tribunal, identifying temporary exhibit numbers, will be made available to the parties at the hearing.

(4) As each document is tendered for admission at the hearing its exhibit number will be confirmed, unless an objection as to admissibility is upheld by the Tribunal.

(5) During the hearing, all parties shall refer to documents by reference to their exhibit number.

### **Disclosure and Discovery and Notice to File**

32. At any stage of a proceeding the Tribunal may, through a Notice to File, direct the parties to exchange documents, witness statements, reports of expert witnesses, particulars and anything that is necessary for a fair hearing and the Tribunal may prescribe deadlines for this disclosure.

33. Parties may, by mutual consent, conduct examinations for discovery orally or in writing. If a party has proposed examinations for discovery and the other party has refused or failed to respond, a motion to the Tribunal for directions may be brought. The notice of motion shall be accompanied by an affidavit that identifies the nature of the information sought to be obtained by discovery. It must also explain the efforts made to obtain it and why the information is both necessary and relevant to the disposition of the issues in the proceeding.

34. The Tribunal may direct a party to attend an examination for discovery by another party and may impose conditions concerning the scheduling, the scope and the location for discovery and:

- a) may require any party to provide an affidavit containing a list of relevant documents in their possession;
- b) may direct the oral examination for discovery of a party;
- c) may designate the officer or employee of the party who is to be examined, unless the party is an individual, and
- d) may direct an examination for discovery by written questions; and
- e) may direct the inspection and testing of property;

### **Compelling the Attendance of Witnesses by Summons**

35. A party who requires the attendance of a witness may contact a member of the Tribunal's staff to arrange for the issuance of a summons. Section 12 of the Statutory Powers Procedure

Act applies to the procedure for the issuing of a summons, including the need for personal service, the entitlement to fees or allowances and the failure to attend or remain in attendance.

### **Motions**

36. A motion brought prior to the commencement of a hearing shall be made by notice of motion.

37. A motion concerning a procedural matter will be processed as a written hearing.

38. If the motion is to be heard in person or electronically (an oral hearing), the moving party shall consult with the other parties as to potential hearing dates and then consult with staff to obtain a hearing date and time. The notice of motion for an oral hearing shall state the date, time and place for the hearing of the motion.

39. The parties should agree on deadlines for the exchange of materials for use on the motion but, if they do not agree, the Tribunal may prescribe the deadlines.

40. (1) Every notice of motion shall:

- a) state the precise relief sought;
- b) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and
- c) list the documentary evidence to be used in support of the motion.

41. A motion may be made at an oral hearing with leave of and in accordance with any procedural directions of the presiding member.

### **Use of Electronic and Other Devices**

42. The making of photographic, audio or video recordings or the use of any device capable of producing visual or aural representations by electronic means is prohibited unless authorized by the Tribunal or by statute or regulation.

### **Costs**

43. In cases to which sections 126, 127 and 128 of the *Mining Act* do not apply, costs may be ordered pursuant to section 17.1 of the *Statutory Powers Procedure Act*, and the following rules apply:

1. A party may make a request for costs at any time after the conclusion of the stage in the proceeding for which costs are claimed, but not later than 30 days after the date of the Tribunal's final order or judgment.

2. Costs may be awarded against a party if the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith. Such conduct can include, but is not limited to:
  - a) failing to attend a hearing or failing to send a representative when properly given notice, without contacting staff;
  - b) failing to give notice without adequate explanation, lack of cooperation with other parties during prehearing proceedings, changing a position without notice to the parties, or introducing an issue or evidence not previously mentioned;
  - c) failing to act in a timely manner or failing to comply with a procedural order or direction of the Tribunal where the result is undue prejudice or delay;
  - d) a course of conduct necessitating unnecessary adjournments or delays or failing to prepare adequately for a hearing;
  - e) failing to present evidence, continuing to deal with issues, asking questions or taking steps that the Tribunal has determined to be improper;
  - f) failing to make reasonable efforts to combine submissions with parties of similar interest;
  - g) acting disrespectfully or maligning the character of another party;
  - h) knowingly presenting false or misleading evidence.
3. A request for costs shall contain the following information:
  - a) the amount requested;
  - b) the extra preparation or hearing time caused by the conduct alleged to attract costs;
  - c) copies of all supporting invoices for expenses claimed or an affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred.

#### **Review of a Decision or Order of the Tribunal Not Made Under the Mining Act \***

44. A request for review shall be made within 30 days after the date of the decision or order and shall include:

1. Requester's full name and contact information

2. The same information for the representative of the requester
  3. Requester's signature
  4. Reasons for the request
  5. Desired result of the review
  6. If the request is based on new evidence that was unavailable at the time of the hearing, an affidavit stating the facts relied upon in support of the claim that it was not available and proving the new evidence
  7. Statement as to whether the requester will submit (or has submitted) an application for leave to appeal or judicial review to the court, and a copy of the notice of appeal or notice of application for judicial review
45. The Tribunal may exercise its discretion to grant a request for a review where a convincing and compelling case has been made that the Tribunal:
- acted without jurisdiction;
  - failed to provide procedural fairness;
  - made an error of law or fact such that a different decision would likely have been reached;
  - heard false or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result, or
  - should consider evidence which was not available at the time of the hearing, but that is credible, relevant and could have affected the result.

\*An order or judgment of the Tribunal made under the *Mining Act* is final and conclusive except where an appeal can be brought (see section 134 of the *Mining Act*, R.S.O. 1990, c. M.14, as amended.)