

ONTARIO LAND TRIBUNAL

RULES OF PRACTICE AND PROCEDURE

Made under subsection 13(1) of the *Ontario Land Tribunal Act, 2021*

Effective:
June 1, 2021

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PREFACE

The Ontario Land Tribunal (“Tribunal” or “OLT”) adjudicates or mediates matters related to land use planning, environmental and heritage protection, land valuation, mining and other matters. The Tribunal is established by section 2 of the *Ontario Land Tribunal Act, 2021* [S.O. 2021, c. 4, Sched. 6] (“OLT Act”).

These Rules are made under subsection 13(1) of the OLT Act to enable the Tribunal to exercise its authority as authorized by legislation or prescribed by regulation.

The Rules are to be read in conjunction with the relevant statutory and regulatory requirements.

PART I

RULE 1

GENERAL MATTERS

1.1 **Authority and Application**

Authority: These Rules are made under the authority of subsection 13(1) of the OLT Act.

Application: These Rules apply to all matters and proceedings before the Tribunal unless otherwise specified.

These Rules are divided into two Parts:

Part I applies to all matters and proceedings before the Tribunal.

Part II applies to and is specific to those Tribunal proceedings commenced under the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended (“*Expropriations Act*”). The Rules in Part II do not apply to any other proceedings before the Tribunal.

In the Event of a Conflict: Subsection 12(3) of the OLT Act provides that, despite section 32 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (“SPPA”), the OLT Act, the regulations made thereunder and these Rules prevail over any provisions of the SPPA with which they conflict.

Effective Date: These Rules take effect on June 1, 2021 and apply to any matter or proceeding before the Tribunal, except as otherwise provided.

1.2 **Definitions** of terms in these Rules:

“*affidavit*” means a written statement made under oath or affirmation that is confined to facts or other evidence the deponent could give if testifying as a witness before the Tribunal that is substantially in the form set out in Rule 4D of the *Rules of Civil Procedure*;

“*Alternate Chair*” means the Vice-Chair appointed and designated by the Lieutenant Governor in Council as the Alternate Chair of the Tribunal under subsection 3(3) of the OLT Act to perform the duties of the Chair if the Chair is unable to act.

“*appellant*” means a person who initiates and brings an appeal to the Tribunal;

“*applicant*” means a person who makes an application to the Tribunal and includes a person requesting a matter be referred to the Tribunal. The term “applicant appellant” may also be used to describe an applicant when that person brings an appeal to the Tribunal;

“*Case Management Conference*” (“CMC”) means a hearing event convened prior to the hearing on the merits of the appeal;

“*Chair*” means the person appointed and designated by the Lieutenant Governor in Council as Chair of the Tribunal under subsection 3(2) of the OLT Act to have general supervision and direction over the conduct of the affairs of the Tribunal;

“*document*” means written and visual material and includes written and visual evidence;

“*electronic hearing*” means a hearing event held by teleconference, videoconference or some other form of electronic technology allowing the parties, participants, and the Tribunal to hear or hear and see one another or their representatives, or any witnesses throughout the hearing event;

“*file*” means to send, deliver or transmit to the Registrar or to send, deliver or transmit to the proper authority for receiving appeals, and requires that the appeal material is either deemed to be or has actually been received by the Tribunal or authority;

“*forms*” include those forms published by the Tribunal, the forms referenced in the Index to these Rules, or if not published, those forms in the *Rules of Civil Procedure*, with necessary modifications;

“*hearing event*” means a procedure held by the Tribunal at any stage of a proceeding and includes a motion, case management conference and hearing, whether these are held in the form of an in person hearing, electronic hearing or written hearing, and does not include a cross-examination on an affidavit not held before the Tribunal;

“*holiday*” means a Saturday or Sunday or other days that the Tribunal offices are closed, such as the statutory holidays of New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor in Council. Where New Year’s Day, Canada Day or Remembrance Day fall on a Saturday or Sunday, the following Monday is a holiday. 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;

“*in person hearing*” means a hearing event at which the parties or their counsel or representative(s) attend before the presiding Tribunal Member(s) in person;

“*mediation*” means the intervention into a disputed matter or matters before the Tribunal by a Tribunal Member, or alternatively, a Mediator approved by both the Chair and the Ministry of the Attorney General, to facilitate discussion and negotiations among the parties and assist them in developing a mutually acceptable settlement of the dispute, all of which is conducted on a confidential basis;

“*Member*” means a person appointed by the Lieutenant Governor in Council as a Member of the Tribunal under subsection 3(1) of the OLT Act;

“*motion*” means the formal method for a party to request that the Tribunal make a decision or issue an order at any stage in a proceeding or an intended proceeding;

“moving party” means the person who brings or makes a motion;

“municipal record” means the material required to be filed by the Municipal Clerk or approval authority with the Tribunal as prescribed and directed by statute or by regulation, or by these Rules;

“participant” means a person who is not a party to a proceeding and is only permitted to make or file a written statement to the Tribunal upon such terms as the Tribunal may determine in respect of the proceeding;

“party” includes a person entitled by the statute under which the proceeding arises to be a party to the proceeding and includes those persons whom the Tribunal accepts or adds as parties on such terms as the Tribunal may determine;

“person” includes a corporation, and the entities included within the meaning of a person in the SPPA and any other relevant legislation;

“proceeding” means any matter, procedure, appeal, referral or application before the Tribunal and this includes matters which may be initiated by the Tribunal;

“Registrar” or *“Secretary”* means the individual appointed by the Tribunal to issue orders, when authorized, of the Tribunal and to receive service of material filed with the Tribunal;

“representative” means a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, or its By-Laws to represent a person in a proceeding before the Tribunal, and this includes legal counsel or the individuals that are authorized to provide legal services;

“respondent” or *“responding party”* means a person, other than the Registrar, who is served with an initiating document in a case before the Tribunal, such as a notice of motion;

“Rules of Civil Procedure” means R.R.O 1990, Reg. 194, as amended, which are the Rules in effect for the Superior Court of Justice and the Court of Appeal, made under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

“settlement conference” means a discussion held in a proceeding amongst the parties or their representatives and the Tribunal to attempt to resolve all or part of a matter by discussion or mediation and includes a mediation session;

“submission form” means a form provided by the Tribunal for the filing of appeals, referrals or applications;

“Tribunal” means the Ontario Land Tribunal, abbreviated as the OLT, established by section 2 of the OLT Act;

“Vice-Chair” means a person appointed and designated by the Lieutenant Governor in Council as a Vice-Chair of the Tribunal under subsection 3(2) of the OLT Act;

“visual evidence” means images or images with sound intended to be introduced into evidence at a hearing event and includes computer-generated images, photographs, maps, videos, plans, drawings, surveys, models and overlays;

“written evidence” means material introduced into evidence at a hearing event and includes reports, letters, correspondence, notices, memoranda, forms, agreements, emails, charts, graphs, books of account, and any other written communication recorded or stored by means of any

device; and

“*written hearing*” means a hearing event held by means of the exchange of documents whether in hardcopy form or by electronic means.

1.3 Interpretation of the Rules These Rules shall be liberally interpreted to offer the best opportunity for a fair, just, expeditious and cost-effective resolution of the merits of the proceedings.

1.4 Matters Not Dealt With in the Rules The Tribunal may at any time in a proceeding before it make orders and direct practices and procedures that offer the best opportunity for a fair, just, expeditious and cost-effective resolution of the merits of the proceeding and may exercise any of its powers under the OLT Act, the SPPA, or other applicable legislation. If these Rules do not provide for a matter of procedure, the Tribunal may adopt or follow the procedures set out in the *Rules of Civil Procedure* where appropriate and do whatever is necessary to adjudicate effectively and completely to resolve the merits of any dispute on any matter. If the Tribunal does not provide for a particular form, then the Tribunal may adopt, or modify the applicable form in the *Rules of Civil Procedure* to apply to any proceeding before the Tribunal.

1.5 Technical Objections Substantial compliance with the requirements of these Rules is sufficient and technical non-compliance shall be deemed to be an irregularity and does not render a proceeding or a step, decision or order in that proceeding a nullity.

1.6 Tribunal May Exempt From Rules The Tribunal may grant all necessary exceptions from these Rules or from any procedural order, or grant other relief as it considers necessary and appropriate, to ensure that the real questions in issue are determined in a fair, just, expeditious and cost-effective manner.

1.7 Failure to Comply With Rules The Tribunal expects compliance with these Rules and adherence to Tribunal orders arising from the application of these Rules by all parties and participants. If a party or participant to any proceeding has not complied with a requirement of these Rules or a Tribunal order, such as a procedural order and any requirement included therein, then the Tribunal has the discretion to determine the consequences of non-compliance and may grant necessary relief or exercise any of its powers authorized by legislation or regulation.

RULE 2

GENERAL POWERS OF THE CHAIR

2.1 Duties of the Chair The Chair of the Tribunal has general supervision and direction over the affairs of the Tribunal, including the scheduling of hearing events and the assignment of Members to hearing events conducted by the Tribunal.

2.2 Alternate Chair If the Chair is unable to act, the Alternate Chair shall perform the duties of the Chair and has all the powers of the Chair for the purpose.

RULE 3

TIME

3.1 Computation of Time Time is computed under these Rules or in a Tribunal order in accordance with the *Rules of Civil Procedure* unless otherwise provided. For greater clarity, a day

shall mean a calendar day and when the time for doing anything under these Rules falls on a holiday, the time is extended to include the next day that the Tribunal is open for business. When there is reference to two events, the time between the two events is computed by excluding the day on which the first event occurs and including the day on which the second event occurs.

3.2 Extension or Reduction of Time The Tribunal may extend or reduce any time required in these Rules or in a Tribunal order, with any terms or conditions, unless a statute or regulation provides otherwise. The Tribunal cannot extend a time period to file an appeal prescribed in a statute. A request for a change in time requirements established in a proceeding may be made by bringing a motion, or the Tribunal may change a time requirement on its own initiative, with or without notice or a hearing event, either before or after the time period expires.

3.3 Conducting a Proceeding if a Party is Absent The Tribunal will not proceed for at least 30 minutes after the commencement time given in the Notice for an in person hearing event if a party of record or that party's representative has not yet appeared, unless prior notice has been given to the Tribunal that the person will not attend at the scheduled time.

The Tribunal will not commence an electronic hearing event for a period of 15 minutes after it is scheduled to begin should a party of record or that party's representative not be linked to the proceeding.

The Tribunal may start the hearing event after waiting for the requisite time period for that format of hearing event.

RULE 4

REPRESENTATIVES

4.1 Appearance in Person or by an Authorized Representative A party or participant may attend a proceeding in person and/or with their representative. Representatives who are not legal counsel or licensed paralegals must file a written confirmation of authorization to act for the party or participant. If authorization of the representative changes, the person or the representative shall immediately notify the Tribunal and the other parties and provide particulars of any new representative.

4.2 Notices of Proceedings Provided to Representatives Any notice given in the manner set out in these Rules to a representative is deemed to be effective notice to the party or participant for whom the representative acts.

RULE 5

INITIATING PROCEEDINGS - GENERAL

5.1 Form of Application, Appeal or Referral Unless a statute or these Rules provide for other methods, or the Tribunal directs otherwise, when proceedings are initiated by filing an application, appeal or referral directly with the Tribunal, the application, appeal or referral must be provided in electronic format as approved by the Tribunal and must:

- (a) be addressed to the Registrar;
- (b) provide the applicant/appellant/referrer's name, telephone number(s), e-mail address, postal address and postal code;
- (c) state the statutory origin or authority and nature of the matter, adequately detailed reasons

- upon which the matter is being brought before the Tribunal, and the order requested;
- (d) state how and when the applicant/appellant/referrer participated in the process of the application while it was before the council of the municipality or approval authority (where appropriate);
 - (e) include any applicable fee charged;
 - (f) inform the Tribunal of a request to assign a bilingual Member if the applicant/appellant/referrer wishes the proceeding to be conducted wholly or partly in French;
 - (g) be signed by the applicant/appellant/referrer or their representative;
 - (h) include any documentation as required by the Tribunal in the relevant appeal form; and
 - (i) ensure that electronic documents are in portable document format (PDF) with searchable text and tabbed electronic bookmarks.

5.2 Appeal or Submission Forms Where a matter is to be appealed or referred or an application is made and the Tribunal has prescribed a submission or appeal form on its website, that form should be obtained, completed and filed as directed on the form. Any information included on the form filed with the Tribunal is accessible by the public unless otherwise directed by the Tribunal.

5.3 Where No Fee Paid Unless the Tribunal directs otherwise, the Tribunal will not consider a matter or schedule a hearing event unless any applicable fee charged has been paid.

5.4 Content of the Record of the Municipality or Approval Authority When an appeal is filed with a municipality or an approval authority and the municipality or approval authority is required to forward the record of the appeal to the Tribunal, the content of that record shall include, and not be limited to, all prescribed information and material in electronic format as approved by the Tribunal including all written submissions either received or considered, or documents and reports prepared or filed, in relation to the decision, refusal or non-decision that has been appealed.

In addition, the municipality shall provide an affidavit from an employee with a summary of the oral submissions which were received from the public at the statutory public meeting, if applicable, relating to the planning matter that is the subject of the appeal and any other document referenced in the submission form set out in Rule 5.2. The municipal record shall include, where available, a device upon which is stored the video and audio record of each public session at which oral submissions were made to the council/approval authority regarding the application, together with a list of the names of the persons who made the submissions, a summary of the nature of each submission and the time on the recording where the submission begins.

5.5 Dispute Over Statutory Requirements to Appeal Where applicable, a Municipal Clerk or approval authority whose decision or non-decision is the subject of the matter shall forward the record to the Registrar if there is a dispute as to whether an appeal, or purported appeal, of a decision or non-decision satisfies any applicable legislative requirements. The Tribunal shall determine the applicable legislative requirements necessary for a person to qualify as an appellant and decide if the matter in dispute is a proper appeal. The Tribunal may direct the Municipal Clerk or relevant approval authority to supplement the information provided should the Tribunal determine certain information is necessary for it to determine the extent of its jurisdiction over the matter in dispute.

5.6 Hearing Event Format The Tribunal may hold an in person, electronic or written hearing event, unless the format for the event is otherwise prescribed by legislation or regulation.

RULE 6

NOTICES

6.1 **Notices** Any notice required by these Rules or a Tribunal order shall be given in writing in the form, manner and with such notice period as directed by the Tribunal.

6.2 **Notice of Hearing Event** The Tribunal may direct a party to give notice of a hearing event to any person or persons and may direct the method of providing the notice. The party that gave notice shall file an affidavit of service with the Tribunal within 14 days after providing notice to confirm that the Tribunal's direction was properly carried out.

6.3 **Hearing Event Venue or Electronic Hearing Format** The Tribunal shall set the time, date, format and may direct that the sitting of a hearing event before it be convened at a suitable meeting facility or by designated electronic hearing format.

RULE 7

DOCUMENTS, EXHIBITS, FILING, SERVICE

7.1 **Form of Documents** Unless otherwise directed by the Tribunal, every document filed or introduced by a party or participant in a proceeding before the Tribunal shall be legible and prepared on letter size paper (8 ½" x 11"), except for large documents such as plans, surveys or maps, and, where bound together with other documents, shall have each page numbered consecutively, throughout the entire text or within tabs, including any graphic content. Wherever possible, an electronic copy of the document must also be filed with the Tribunal, identically numbered as the paper document.

7.2 **Other Exhibits** Large graphic or other such types of visual evidence should not be glued to foam or other boards. They shall be on paper and be removed from the boards following the hearing event, and folded to 8 ½" x 11". Three-dimensional models must be photographed and the photographs must be introduced with the model. Visual evidence must be reviewed by the other parties before the hearing event or by an earlier date if set out in a procedural order.

7.3 **Copies of Documents for Parties and the Municipal Clerk** A party who intends to introduce a document as evidence at a hearing event shall provide a copy of the document to all the parties at the beginning of the proceeding or by an earlier date if that is required by the terms of a procedural order or otherwise directed by the Tribunal. If the document is an official plan, those parts of the plan to be referred to at the hearing event should be distributed to the parties, and a copy of the entire plan must be made available to the Tribunal Member(s). If the Tribunal orders that the Municipal Clerk keep copies of documents for public inspection, they do not need to be certified copies, unless a party objects that they are not authentic copies.

7.4 **Prefiling of Witness Statements and Reports** If the hearing is expected to last more than 5 days, the Tribunal may require that parties calling expert or professional witnesses serve on the other parties any expert witness statements and reports prepared for the hearing, at least 30 days in advance of the commencement of the hearing, unless otherwise directed by the Tribunal. The Tribunal may in its discretion, or at the request of a party, also make this prefiling order for hearings expected to last fewer than 5 days. The expert witness statement must contain:

- (a) an executed acknowledgment of expert's duty form (attached to these Rules) and the expert's qualifications;
- (b) the issues the expert will address, their opinions on these issues, the reasons that support

their opinions and their conclusions; and

(c) a list of the reports or documents, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement if it contains the required information.

An expert may not be permitted to testify if this statement or report is not served on all parties when so directed by the Tribunal.

7.5 Duty of the Expert Witness 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 signing the acknowledgment form attached 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;
- (c) provide such additional assistance as the Tribunal may reasonably require to determine a matter in issue;
- (d) not to seek or receive assistance or communication from any third party, except technical support, while giving oral evidence in examination in chief, while under cross-examination, or while in reply; and
- (e) acknowledge that these duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

7.6 Other Witnesses The Tribunal may also require that a witness who is not presenting expert evidence provide a witness statement. A witness statement should contain:

- (a) a short written outline of the person's background experience and interest in the matter;
- (b) a list of the issues that they will discuss; and
- (c) a list of reports or materials that they will rely on at the hearing.

The Tribunal may decline to allow the witness to testify if this statement is required by the Tribunal and has not been provided to the other parties.

7.7 Participant Statements A person who wishes to participate in a proceeding as a participant, shall file a written participant statement that sets out their position on the appeal and issues of the proceeding, together with an explanation of their reasons in support of their position. A participant may only make submissions to the Tribunal in writing unless otherwise provided for by an Act or regulation.

7.8 Amendment of Documents Documents filed with the Tribunal can only be amended with the consent of the parties or by order of the Tribunal. The Tribunal may require that the person requesting an amendment do so by way of a motion under Rule 10.

7.9 Copies of Tribunal Documents A person may examine any document, including electronic documents, filed with the Tribunal and copy it after paying the Tribunal's fee, unless a statute, a Court Order, an order of the Tribunal or these Rules provide otherwise.

7.10 Return of Exhibits Exhibits of all types introduced at a hearing will be kept for 180 days after the Tribunal decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Tribunal agrees. If no such request is made, the exhibit becomes the property of the Tribunal and may be archived.

7.11 Service by Personal Service or Electronic Service Where any document is required to be served or filed, including the one commencing a proceeding or a motion or providing notice, it shall be served by personal service, registered mail or electronically (unless a statute or the Tribunal requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented, to that party directly, where that party has provided an address for service and/or an e-mail address;
- (c) where that party is a corporation and is not represented, to the corporation directly, to the attention of an individual with apparent authority to receive the document;
- (d) where served on or filed with a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the document; or
- (e) where served on or filed with the Tribunal, to the Registrar, or the assigned administrative staff.

Subject to Rule 7.12, if a document is served by e-mail, then service is effective on the date of service.

7.12 If Served Electronically After 4:30 p.m. Any document served electronically after 4:30 p.m. is deemed to have been served on the next business day.

7.13 Proof of Electronic Service A confirmation printout received by the sender is proof of the full transmission and receipt of the electronic service.

RULE 8

ROLE AND OBLIGATIONS OF A PARTY

8.1 Role and Obligations of a Party Subject to Rule 8.2 below, a person conferred party status to a proceeding before the Tribunal may participate fully in the proceeding, and by way of example may:

- (a) Identify issues raised in a notice of appeal for the approval of the Tribunal;
- (b) Bring or respond to any motion in the proceeding;
- (c) Receive copies of all documents and supporting information exchanged, relied upon or filed in connection with any hearing event conducted in the proceeding;
- (d) Present opening and closing submissions at the hearing;
- (e) Present and examine witnesses and cross-examine witnesses not of like interest;
- (f) Claim costs or be subject to a costs award when ordered by the Tribunal; and
- (g) Request a review of the Tribunal's decision or order as set out in Rule 25.

8.2 Power of Tribunal to Add or Substitute Parties The Tribunal may add or substitute a party to a proceeding when that person satisfies any applicable legislative tests necessary to be a party and their interest may be transferred or transmitted to another party to be added or substituted provided their presence is necessary to enable the Tribunal to adjudicate effectively and completely on the issues in the proceeding.

8.3 Non-Appellant Party A party to a proceeding before the Tribunal which arises under any of subsections 17(24) or (36), 34(19) or 51(39) of the *Planning Act* who is not an appellant of the municipal decision or enactment may not raise or introduce a new issue in the proceeding. The non-appellant party may only participate in these appeals of municipal decisions by sheltering

under an issue raised in an appeal by an appellant party and may participate fully in the proceeding to the extent that the issue remains in dispute. A non-appellant party has no independent status to continue an appeal should that appeal be withdrawn by an appellant party.

8.4 Common Interest Class Where the Tribunal is of the opinion that more than one party is of common interest with another party or other parties, the Tribunal may, on its own initiative or on the request of any party, appoint a person of that class of parties to represent the class in the proceeding.

RULE 9

DISCOVERY

9.1 Order for Discovery The Tribunal may make an order for discovery for a party to obtain necessary information from another party. Such an order will be made only on motion and only if the party has requested information and it has been refused or no answer has been received. The notice of motion shall be accompanied by an affidavit, which sets out the efforts made to obtain the desired information and the reasons that demonstrate that the information sought is both necessary and relevant to the disposition of the issues in the proceeding. The Tribunal may order:

- (a) any person to provide an affidavit containing a list of relevant documents in the possession of the person;
- (b) the delivery of relevant documents;
- (c) an examination or cross-examination of any person or party;
- (d) an examination for discovery by written questions;
- (e) the inspection and testing of property;
- (f) the examination of a witness before the commencement of a proceeding (under the *Rules of Civil Procedure*);
- (g) any other form of discovery; and
- (h) that conditions be imposed concerning the timing and scope of discovery.

9.2 Rules of Civil Procedure Apply to Proceedings Following Order for Discovery If an order for discovery is obtained, then any production obligations continue to apply in the course of the proceeding with respect to the production of materials and documents subsequently obtained.

RULE 10

MOTIONS

10.1 Notice of Motion A motion brought before the commencement of a hearing event shall be made by notice of motion.

10.2 Date for Motion A moving party shall obtain from the assigned administrative staff a motion date if the motion is to be heard in person or by electronic hearing. A person may request, or the Tribunal may order, that the motion be heard in person or by electronic hearing.

10.3 Motion in Writing A party bringing a motion before the commencement of a hearing event may request a motion be held in writing, or the Tribunal may make its own determination that the motion be held in writing, in which case the Tribunal will notify the moving party and all other parties. The moving party shall serve a notice of written motion within 15 days of receipt of this notice. Parties wishing to respond to a written motion shall serve a response within 7 days of

the date of the moving party's notice of written motion. A moving party may reply to a response within 3 days of the date of the written response.

10.4 Content of Motion Material The notice of motion to be heard in person, electronically, or in writing shall:

- (a) state the day, time and location of the hearing of the motion;
- (b) state the precise relief sought;
- (c) state the grounds to be argued, including a reference to any statutory provision or Rule to be relied on;
- (d) list the documentary evidence to be used at the hearing of the motion;
- (e) be accompanied by an affidavit setting out a brief and clear statement of the facts upon which the moving party will rely; and
- (f) state the names and addresses of the responding parties or their representatives and all persons to whom the notice of motion is to be given.

10.5 Service of the Notice of Motion A notice of motion and all supporting material, as set out in Rule 10.4, shall be served at least 15 days before the date of the motion to be held in person or by electronic hearing unless the Tribunal orders otherwise. A notice of motion shall be served on all parties, on any other person as directed by the Tribunal, and on the Registrar. An affidavit of service shall be filed with the Tribunal prior to or at the hearing of the motion.

10.6 The Notice of Response to Motion A responding party shall serve a notice of response that:

- (a) states the response to be made, including a reference to any statutory provision or Rule to be relied on;
- (b) lists the documentary evidence to be used at the hearing of the motion; and
- (c) includes an affidavit setting out a brief and clear statement of the facts upon which the responding party will rely.

10.7 Service of the Notice of Response to Motion The notice of response to motion and all supporting material as set out in Rule 10.6 shall be served no later than 7 days before the date of the motion to be held in person or by electronic hearing unless the Tribunal orders otherwise. The notice of response shall be served on all parties, on any other person as directed by the Tribunal, and on the Registrar. An affidavit of service shall be filed with the Tribunal prior to or at the hearing of the motion.

10.8 Reply Submission A moving party may serve a reply submission, 3 days prior to the commencement of the hearing of the motion.

10.9 Oral Submissions All the parties to a motion which is heard in person or by electronic hearing may make oral submissions.

10.10 Motions Made at Hearing Events A motion may be made at an in person or electronic hearing event with leave of and in accordance with any procedures ordered by the presiding Tribunal Member.

10.11 Tribunal May Initiate a Motion The Tribunal may, at any time in a proceeding, initiate a motion to inquire into any matter or question of law in relation to its jurisdiction, and may determine the parties to that motion and issue directions necessary to inquire into the matter.

RULE 11

CONSTITUTIONAL QUESTIONS

11.1 Constitutional Questions Where a party intends to raise a question about the constitutional validity or applicability of a matter before the Tribunal, or where the party claims a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served and filed on the other parties to the proceeding, the Attorney General of Canada and the Attorney General of Ontario with proof of service, as soon as the issues requiring notice are known and, in any event, at least 15 days before the question is argued. The notice referred to shall be in substantially the same form as required under the *Rules of Civil Procedure* for a notice of constitutional question.

RULE 12

SETTLEMENT BEFORE TRIBUNAL PROCEEDINGS

12.1 Procedure if Settlement Before Hearing Event The Tribunal may hold a hearing on the terms of a settlement if the parties in the proceeding agree to a settlement prior to a hearing event. The Tribunal may issue any directions to the parties necessary to ensure compliance with all statutory requirements, or to assist the Tribunal, prior to convening the settlement hearing. If all statutory requirements and the public interest are satisfied, the Tribunal may issue an order approving the settlement, with any necessary amendments.

RULE 13

COMPELLING ATTENDANCE OF WITNESSES BY SUMMONS

13.1 Summons

a) Who May Summons a Witness A party who wishes to compel the appearance before the Tribunal of a person in Ontario who has not agreed to appear as a witness for that party may serve a summons on that person for that person to attend any hearing event before the Tribunal to:

- (i) give relevant and admissible evidence under oath or affirmation; or
- (ii) produce any relevant and admissible documents or things.

b) How to Obtain a Summons A party who wishes to summons a witness shall make a request in writing to the Registrar.

c) When a Summons Will Issue A party requesting a summons must set out in its request to the Tribunal the issues and the evidence that a witness is to address, the relevance of that evidence, and why the summons is required. If that information is not contained in the request for summons, the summons shall not be issued. If the requisite information is contained in the request for summons and the Tribunal is satisfied that the evidence to be given by the witness named in the request for summons is relevant to the issue(s) before the Tribunal, is necessary and is admissible, the summons shall be signed and issued by the Registrar.

d) When a Summons Requires a Motion If the Tribunal is not satisfied from the information in the request for summons that the evidence to be given by the named witness is relevant to the issues before the Tribunal, necessary or admissible, the summons shall not issue. The party

requesting the summons may then:

- (i) submit a further request for summons, with more details in respect of the nature of the evidence to be given by the proposed witness and the relevance, necessity and admissibility of that evidence; or
- (ii) bring a motion in accordance with these Rules seeking an order of the Tribunal for the issuance of the summons.

The Tribunal Member hearing the motion shall determine whether the summons shall issue, based on a determination of the necessity of the evidence to be given by the proposed witness, the relevance of the evidence to the matter before the Tribunal, and the admissibility of the evidence.

e) Application to Quash a Summons Despite the issuance of a summons, any person who has been served with a summons issued by the Tribunal may apply to quash the summons by notice of motion in accordance with these Rules.

f) Summons Without a Named Witness A summons may be issued by the Tribunal without the witness' name identified thereon if a sufficient case has been made to the Tribunal as to the need for the summons or the urgency of the matter. A party seeking such a summons shall do so by notice of motion in accordance with these Rules.

g) Serving the Summons Except in the event that it is impossible or impractical to do so, a summons must be served on the witness by personal service, no later than 5 days before the time for attendance. At the same time, the same attendance money to be paid as for attendance before the Superior Court of Justice shall be paid or offered to the witness.

13.2 Attendance of the Witness Once the summons is served on a witness, the witness shall attend the in person or electronic hearing before the Tribunal at a time and place stated in the summons (or as otherwise arranged with the person serving the summons), and shall bring with them all documents and things within their possession as required by the terms of the summons unless otherwise directed by the Tribunal.

RULE 14

LANGUAGE OF PROCEEDINGS

14.1 Use of English and French The Tribunal may conduct a hearing event in English or French or partly in English and partly in French.

14.2 Where French is Used A person who wishes a hearing event to be conducted wholly or partly in French or who wishes to give evidence or make submissions in French must notify the Registrar no later than 25 days before the hearing event.

14.3 Documents in English or French Where written evidence or a submission is provided in either English or French, the Tribunal may order that the person presenting such evidence or submissions also provide it in the other language if the Tribunal considers it necessary for the fair determination of the matter.

14.4 Where an Interpreter is Required If an interpreter is required for a witness whose language is not English or French, the party calling the witness must provide the interpreter and demonstrate the qualification of the interpreter to faithfully conduct the translation.

RULE 15

SCREENING

15.1 Administrative Screening The Tribunal shall conduct administrative screening of matters initiated with the Tribunal to identify whether:

- (a) the matter has been submitted to the Tribunal within the statutory filing period;
- (b) the matter has been submitted to the Tribunal in accordance with any statutory requirements; and
- (c) the matter has been initiated in accordance with the provisions of any applicable Rule.

Where the Tribunal finds that the documents filed to initiate the proceeding are incomplete, filed without the required fee, or are otherwise not in compliance with these Rules, the Tribunal may decide not to process the documents. The Tribunal shall notify the party who has commenced the proceeding of the deficiency, and, if applicable, shall provide the party with a date by which they may respond to the deficiency.

15.2 Additional Materials Requested shall be Filed If the Tribunal notifies the person seeking to appeal, pursuant to Rule 15.1, that the information submitted is incomplete, then the person seeking to appeal shall provide a copy of the supplementary information to all other parties and to the Tribunal.

15.3 Completed Matter Deemed Filed on Original Date If the defect set out in a notice sent out under Rule 15.1 is resolved to the satisfaction of the Tribunal, then the matter is deemed to have been properly filed on the day it was first received rather than the day the further required information was received.

15.4 Dismissal of Proceeding without a Hearing The Tribunal may, on its own initiative and without a hearing event, dismiss a matter by adjudicative order where:

- (a) the initiating matter is frivolous, vexatious or is commenced in bad faith;
- (b) the initiating matter deals with matters that are outside the jurisdiction of the Tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

Before dismissing a matter, the Tribunal shall provide appropriate notice of the intended dismissal to the party who has initiated the proceeding and any appropriate statutory parties to the proceeding. All parties who receive such notice may make written submissions on the dismissal within the timelines set out in Rule 10.

RULE 16

CONSOLIDATION

16.1 Consolidating Proceedings or Hearing Matters Together The Tribunal may order that two or more proceedings or any part of them, be consolidated, heard at the same time, or heard one after the other, or stay or adjourn any matter until the determination of any other matter, subject to any applicable statutory or regulatory restrictions.

16.2 Effect of Consolidating Proceedings When two or more proceedings are consolidated,

- (a) statutory procedural requirements for any of the original separate proceedings apply, where appropriate, to the consolidated proceeding;
- (b) parties to each of the original separate proceedings are parties to the consolidated

proceeding; and

(c) evidence to be presented in each of the separate proceedings is evidence in the consolidated proceeding.

16.3 Effect of Hearing Matters Together When two or more proceedings are heard together but not consolidated,

(a) statutory requirements for each proceeding apply only to that particular proceeding and not to the others;

(b) parties to the hearing are parties to their individual proceedings only and not parties to the other proceedings; and

(c) unless otherwise ordered by the Tribunal, evidence in the hearing is evidence in each proceeding to which it could apply.

16.4 Tribunal May Reverse Decision for Consolidated Proceedings The Tribunal may separate consolidated proceedings or matters heard together at any time if it finds that the proceedings have become unduly complicated, delayed or repetitive or a party is unduly prejudiced.

RULE 17

ADJOURNMENTS

17.1 Hearing Dates Fixed Hearing events will take place on the date set unless the Tribunal agrees to an adjournment. Adjournments will not be allowed that may prevent the Tribunal from completing and disposing of its proceedings within any applicable prescribed time period.

17.2 Requests for Adjournment if All Parties Consent If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include the reasons, a suggested new date, and the written consents of all parties. However, the Tribunal may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent. The consenting parties are expected to present submissions to the Tribunal on the application of any prescribed time period to dispose of the proceeding.

17.3 Requests for Adjournment without Consent If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 15 days before the date set for the hearing event. If the reason for an adjournment arises less than 15 days before the date set for the hearing event, the party must give notice of the request to the Tribunal and to the other parties and serve their motion materials as soon as possible. If the Tribunal refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

17.4 Emergencies Only The Tribunal will grant last minute adjournments only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Tribunal must be informed of these emergencies as soon as possible.

17.5 Powers of Tribunal upon Adjournment Request The Tribunal may,

(a) grant the request;

(b) grant the request and fix a new date or, where appropriate, the Tribunal will schedule a case management conference on the status of the matter;

(c) grant a shorter adjournment than requested;

- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- (f) grant an indefinite adjournment, if the Tribunal finds no substantial prejudice to the other parties or to the Tribunal's schedule and the Tribunal concludes the request is reasonable for the determination of the issues in dispute. In this case, a party must make a request, or the Tribunal on its own initiative may direct, that the hearing be rescheduled or resumed as the case may be;
- (g) convert the scheduled date to a mediation or case management conference; and
- (h) make any other appropriate order.

RULE 18

MEDIATION

18.1 Mediation is a confidential process in which the parties to an appeal talk about their differences and, with the facilitative assistance of a Mediator, they attempt to negotiate a consensual resolution of the appeal or any of the issues raised and disputed by the parties to the proceeding.

18.2 Mediation Requests A party or parties may request that the Tribunal conduct a mediation of any issue raised in a proceeding. Prior to the Tribunal granting this request, the Chair or designate, or alternatively, a Mediator approved by both the Chair and the Ministry of the Attorney General, will conduct a mediation assessment to determine whether the issue or proceeding is suitable for mediation. If the Chair, designate, or approved Mediator determines that mediation should proceed, then the Tribunal will convene a mediation, with the participation and consent of two or more of the parties. The Tribunal shall set the date of the mediation and direct how notice of the mediation will be given. Where it is determined that mediation is not appropriate, the Tribunal shall notify the parties.

18.3 Mediation Participation and Attendance A mediation directed and convened by the Tribunal shall include the municipality or approval authority whose decision or non-decision is the subject of the appeal and the appellant(s) as determined by the Tribunal. In appropriate circumstances, a person who is not a party may participate in a mediation with the permission of the Tribunal and the consent of the mediating parties, subject to terms established by the Tribunal for doing so.

18.4 Procedure at a Mediation Where the Tribunal convenes a mediation, it will appoint a Member of the Tribunal, or alternatively, a Mediator approved by both the Chair and the Ministry of the Attorney General, who may use any appropriate dispute resolution technique to help the parties voluntarily resolve the appeal or any issue(s) relating to it.

18.5 Member May Not Preside A Tribunal Member who conducts a mediation in which one or more of the issues have not been resolved may not preside at any hearing event of those unresolved issues.

18.6 Mediation or Settlement Discussions Confidential Mediation is a confidential process, meaning any information or documents prepared for or exchanged during the mediation, any suggestion or proposal for resolving the appeal or issues relating to it, and any offer to settle made during a mediation shall remain confidential and cannot be placed in the Tribunal's file nor disclosed in evidence in the same or any other proceeding(s). A Tribunal Member's notes of a mediation are also confidential and shall not be released to any person or admitted into evidence in any proceeding. A Tribunal Member who mediates a matter shall not be called as a witness in any proceeding to give evidence or produce documents regarding the mediation discussions.

18.7 Authority to Make Decisions Each party is required to have in attendance at the mediation an individual (or individuals) having the authority to make binding decisions or an individual (or individuals) with the requisite seniority, title, and authority to provide recommendations to a decision making body who in turn has the authority to make binding decisions.

RULE 19

CASE MANAGEMENT CONFERENCES

19.1 Case Management Conference At the request of a party, on its own initiative or as may be required by legislation or regulation, the Tribunal may direct parties to participate in a case management conference conducted by a Member of the Tribunal, which can include settlement conferences, motions or preliminary hearing matters, such as to:

- (a) identify the parties and participants;
- (b) determine the issues raised by the appeal;
- (c) narrow the issues in dispute;
- (d) identify facts or evidence the parties may agree upon or on which the Tribunal may make a binding decision;
- (e) obtain admissions that may simplify the hearing, which may include the examination of persons by the Tribunal as part of the conference;
- (f) provide directions for exchange of witness lists, witness statements, expert witness statements and reports, for meetings of experts including to address the disclosure of information such as the disclosure of the information that was not provided to the municipality before council or the approval authority made its decision that is the subject of the appeal, and for further disclosure where necessary;
- (g) provide directions to the parties to file a hearing plan to outline how the hearing will proceed, the order of witnesses, or the anticipated time for submissions to ensure the Tribunal sets aside sufficient time in its hearing calendar to dispose of the issues;
- (h) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (i) fix a date, place and format for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (j) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents;
- (k) address the production and cost sharing of joint document books; and
- (l) deal with any other matter that may assist in a fair, just, expeditious and cost-effective resolution of the issues.

19.2 Sample Procedural Order and Meeting Before Case Management Conference

Where the parties are known before the case management conference, they are expected to discuss the matters set out in Rule 19.1 and present a draft procedural order to the Tribunal for its approval. Sample procedural orders are listed in the Index to these Rules.

19.3 Serving Notice of a Conference The Tribunal will determine the notice requirements for a Case Management Conference and any directions to serve a Notice of Case Management Conference that provides the time, place and format of the conference. The directions may include a notice to all persons or authorities entitled by legislation or regulation. The person, municipality or approval authority who is issued the direction must serve this notice on those persons entitled to notice of the conference and provide an affidavit to the Tribunal, at or prior to the conference, to prove service of the notice.

19.4 Tribunal Member Presides The Tribunal's Chair will assign at least one Member of the Tribunal to conduct the conference.

19.5 Public Attendance at a Case Management Conference A case management conference held in person will be open to the public. A case management conference held by electronic hearing will be open to the public where practical. Despite the general principle of public open sessions, where circumstances prevail that may require confidentiality, in the discretion of the presiding Tribunal Member, part or all of the conference may be conducted *in camera*.

19.6 Conversion from One Procedure to Another The Tribunal Member may, at any time, conduct a procedural discussion, initiate a motion, inquire into a preliminary matter, or convert the conference into a hearing. The Tribunal will state in the notice of a case management conference that the parties are expected to arrive prepared for a procedural and settlement conference as well as a preliminary hearing, where evidence or formal statements or submissions may be heard. Even if no settlement is reached, the Tribunal may proceed to make a final decision on any evidence received during the conference.

19.7 Results of Failure to Attend a Conference If a party fails to attend the conference or by authorized representative, the Tribunal may proceed without that party. The non-attending party is not entitled to notice of subsequent hearing events in the proceedings.

19.8 Tribunal Order Following The Tribunal Member conducting the case management conference will issue an order that may decide any of the matters considered at the conference and provide procedural directions for any subsequent hearing event.

19.9 Hearing Member Bound The Tribunal Member conducting the hearing or any subsequent hearing event is bound by the order resulting from the case management conference unless that Member is satisfied that there is good reason to vary the order.

19.10 Methods of Holding Hearing Events The Tribunal may direct in an order following a conference that hearing events in a proceeding be held by a combination of written, electronic or in person hearing events.

RULE 20

ELECTRONIC HEARINGS

20.1 Hearing Events by Teleconference or Videoconference The Tribunal may hold a hearing event by electronic hearing, such as by teleconference or videoconference, for the determination of any issue in the proceeding. Where the Tribunal directs that a hearing event be held by electronic hearing, the Tribunal may direct a party to make the necessary arrangements and to give notice of those arrangements to the Tribunal and other parties.

20.2 Objection to the Electronic Format A party who objects to a hearing event being held as an electronic hearing shall notify the Tribunal and all other parties of its objection within the time period specified in the notice of the electronic hearing. The objecting party shall set out the reasons why the electronic hearing is likely to cause the objecting party significant prejudice.

20.3 Response to Notice of Objection The Tribunal may request a written response from other parties to the objection of an electronic hearing within a time period set out by the Tribunal.

20.4 Procedure When Objection is Received If the Tribunal receives an objection to hold a

hearing event by electronic hearing, it may:

- (a) accept the objection, cancel the electronic hearing, and schedule an in person or written hearing; or
- (b) if the Tribunal is satisfied, after considering any responding submissions that no significant prejudice will result to a party, then the Tribunal will reject the objection and proceed with the electronic hearing.

20.5 Directions for the Electronic Hearing The Tribunal may direct the arrangements for the electronic hearing or designate an approved location for videoconference to protect the integrity of the hearing process, including the security and confidentiality of evidence as necessary.

20.6 Videoconferences The Tribunal shall pre-approve all arrangements for conducting a hearing event by videoconference, including the pre-filing and exchange of motion materials, documents, written submissions or any visual and written evidence, and the locations for the conference. Any information, statement or material intended to be filed as an exhibit at a videoconference shall be pre-filed with the Tribunal and provided to all parties in accordance with the Tribunal's directions or procedural order for conducting a hearing event by videoconference.

20.7 The View of the Camera A party's representative or a witness in a videoconference shall be in view of the camera, with minimal visual obstructions, in the course of their presentations or submissions to the Tribunal. Where a witness is being examined or cross-examined, there shall be a view of the witness, counsel protecting the witness, and the person conducting the examination or cross-examination. Any document that may be referred to by parties or their witnesses shall be visible and legible to the Tribunal and all other parties to the conference, either by the camera or by referring to a copy of the document exchanged in accordance with the Tribunal's directions.

RULE 21

WRITTEN HEARINGS

21.1 Power to Hold Hearing Events by Written Submissions The Tribunal may conduct the whole or any part of a hearing event in writing, unless a party satisfies the Tribunal that there is good reason for not doing so. Notice of a written hearing will be sent only to the known parties.

21.2 How to Object A party who objects to a written hearing shall file and provide a copy of a written objection to the other parties, setting out details of its claim that a written hearing will result in significant prejudice and shall do so within the specified time period.

21.3 Procedure for Exchange of Documents in Written Hearings If no notice of objection is received,

- (a) the moving party shall provide to the Tribunal and the other parties copies of its affidavit(s) and submissions within 30 days after the date of the Tribunal's notice of the written hearing. The submissions shall include the reasons for the proceeding, the order requested, any law or authorities relied on and an analysis as to how the law and authorities inform the issues in dispute. The affidavit shall include the facts relied on and the evidence supporting the facts;
- (b) the other parties wishing to respond to the submissions shall do so by copy to all parties and the Tribunal within 20 days of the date that the applicant's affidavit and submissions were served. The responding submissions shall include an affidavit of the facts and the evidence relied upon and state if that party has any submissions or evidence on any of the issues raised, if this is the case, and set out the order requested, any law or authorities relied on and an analysis as to how

the law and authorities inform the issues in dispute; and

(c) the moving party may reply to the other parties' responses, with a copy to the Tribunal, within 10 days after the date for service of the responses, and the reply shall be limited to any new evidence or issues in the responses that the moving party could not have addressed at the outset of their case.

21.4 Requirement that Evidence be Sworn or Affirmed Evidence in a written hearing must be by affidavit, and any documents filed shall 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.

RULE 22

CONDUCT OF PROCEEDINGS

22.1 Hearings to be Public All Tribunal hearing events will be open to the public except where the presiding Tribunal Member determines that the hearing event is to be heard in private, such as a mediation or the exceptions to a public hearing set out in relevant legislation or regulation, such as subsection 9(1) of the SPPA.

22.2 Confidentiality Orders The Tribunal may order that any document filed in a proceeding be treated as confidential and not be disclosed to the public where the Tribunal is of the opinion that: a) matters involving public security may be disclosed; or b) the document contains information regarding intimate financial or personal matters or other matters that are of such a nature that the public interest or the interest of the person affected outweighs the desirability of adhering to the principle that documents filed in a proceeding be available to the public.

22.3 Procedure at a Hearing The Tribunal may, by order, establish and direct the procedure at a hearing event, unless an Act provides differently, in order to ensure the issues in dispute are disposed of in the most fair, just, expeditious and cost-effective manner.

22.4 Site Visit If the Tribunal determines that a site visit would be of benefit in obtaining a fair understanding of any evidence which is the subject of the proceeding, the Tribunal may conduct a site visit on such terms as the presiding Tribunal Member establishes to facilitate and to govern the conduct of the site visit and the participation of the parties to the proceeding in the visit.

22.5 Photographic, Audio or Video Recording No person shall take or attempt to take a photograph, motion picture, video recording, or other recording capable of producing audio or visual representations by electronic means, or otherwise, at any proceedings of the Tribunal otherwise open to the public, unless the presiding Tribunal Member authorizes the recording. The following conditions must be satisfied by the person making the request:

- (a) the Tribunal Member determines that the proceedings will not be disrupted or delayed if approval is given;
- (b) the Tribunal Member determines that the approval will not result in any prejudice to any party to the proceedings;
- (c) the equipment must be of a type approved by the Tribunal and be placed in locations approved by the Tribunal Member so as to be unobtrusive; and
- (d) a photograph or visual recording may only take place in such a manner that will not disrupt or interrupt the proceedings.

22.6 Submissions to a Request The Tribunal Member shall afford the parties to the proceeding an opportunity to make submissions to the Tribunal on any of the items set out in Rule

22.5 and respond to those submissions. The Tribunal may impose conditions on any approval necessary to ensure the items in Rule 22.5 are satisfactorily addressed.

22.7 Withdrawal of Approval The Tribunal may withdraw permission to record temporarily or permanently if the conditions in Rule 22.5 or as ordered by the Tribunal are not met, or if the Tribunal in the circumstances cannot conduct a full and fair hearing.

22.8 Verbatim Reporters Any party may arrange at his or her own expense, for the attendance of a qualified verbatim reporter, for the purpose of recording all testimony and submissions during a hearing event. Before a qualified verbatim reporter is permitted to record only part of a proceeding, the party retaining the qualified verbatim reporter must obtain the consent of the Tribunal. In considering whether to provide its consent, the presiding Tribunal Member will consider, among other matters, whether permitting a record of only part of the proceedings would result in prejudice to a party.

22.9 Transcripts If a party orders a transcript or partial transcript of the hearing event, the party must notify the Tribunal, and the other parties to the proceedings that it has done so, and the Tribunal shall receive a copy free of charge. The party must furnish the copy of the transcript to the Tribunal within three days of the date of the party's receipt of the transcript. The Tribunal may also at its own initiative and on notice to the parties, order a transcript or partial transcript from the qualified verbatim reporter without furnishing a copy of the transcript to the parties and direct a party or all parties to pay the cost of the transcript. The Tribunal will advise the parties that it has ordered the transcript and where the Tribunal orders a partial transcript, the Tribunal shall notify the parties as to the part of the transcript the Tribunal has ordered.

RULE 23

COSTS

23.1 Who May Request an Order for Costs Only a party may ask for an award of costs at the end of a hearing event. If the request for costs is not made before the Tribunal renders its decision at the end of the hearing event, the party must notify the Tribunal and the party from whom costs are sought within 30 days after the written decision is issued that the party will be seeking costs, against whom the costs are sought, and an indication of the approximate amount of costs being sought.

23.2 Costs Requests will be considered by Written Motion All cost requests shall be considered and disposed of by the Tribunal in writing unless a party satisfies the Tribunal that consideration of the request in writing is likely to cause the party significant prejudice.

23.3 Disposition of Request Where Request Made Before Issuance of Written Decision If the request for costs is made before the end of the hearing event and prior to a decision, the Tribunal may direct that the request be considered at a later date in the manner determined by the Tribunal.

23.4 Disposition of Request Where Request Made After Issuance of Decision Subject to the party satisfying the requirements in Rule 23.1 for submission of a request, and Rule 23.2 for an in person or electronic motion, the Tribunal may direct the party or parties requesting costs to:

(a) attend before the Tribunal, on notice to the party or parties against whom costs are sought, on a date fixed by the Tribunal, and make oral submissions with respect to the application for costs provided that the party or parties against whom costs are sought shall also be permitted to make oral submissions with respect to the application for costs; or

(b) within 35 days of the Tribunal's direction, serve upon each party against whom costs are sought, and file with the Tribunal documentation which shall include, subject to any other documentation ordered by the Tribunal:

- i. the reasons for the request and the amount requested;
- ii. an estimate of any extra preparation or hearing time caused by the conduct alleged to attract costs;
- iii. copies of supporting invoices for expenses claimed or an affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and
- iv. an affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question; or

(c) within 35 days of the Tribunal's direction, serve and file a notice of motion for costs in accordance with Rule 10. A motion for costs shall only proceed as an in person or electronic hearing, if a party satisfies the requirements in Rule 23.2, and the notice of motion must contain the following information:

- i. the reasons for the request and the amount requested;
- ii. an estimate of any extra preparation or hearing time caused by the conduct alleged to attract costs;
- iii. copies of supporting invoices for expenses claimed or an affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and
- iv. an affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question.

23.5 Response by Other Party Where the Tribunal directs a proceeding in writing in accordance with Rule 23.2, the party or parties against whom the request for costs is made shall, within 15 days of service of the documentation from the party requesting costs, provide a written response to the Tribunal and the other parties to whom the request for costs is made.

23.6 Reply by Party Seeking Costs Where the Tribunal directs a proceeding in writing in accordance with Rule 23.2, the party requesting costs may provide to the Tribunal and other parties to whom the request for costs relates a reply to a written response, within 10 days of the service of the response.

23.7 Member Seized to Consider Costs Order The Tribunal Member who conducted the hearing event on the merits shall make the decision on the request for costs. If that Member is, for any reason, unable to hear or deal with the request, the Chair will direct another Member of the Tribunal to hear the motion.

23.8 Period Eligible for Costs Order The Tribunal may make a costs award for conduct at any time during a proceeding.

23.9 Circumstances in Which Costs Order May be Made The Tribunal may only order costs 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. Clearly unreasonable, frivolous, vexatious or bad faith conduct can include, but is not limited to:

- (a) failing to attend a hearing event or failing to send a representative when properly given notice, without contacting the Tribunal;
- (b) failing to give notice without adequate explanation, lack of co-operation with other parties

- during the proceedings, changing a position without notice to the parties, or introducing an issue or evidence not previously mentioned or included in a procedural order;
- (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 hearing events;
 - (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; or
 - (i) breaching a confidentiality requirement of a mediation, settlement conference or of a decision of the Tribunal in the hearing of the merits.

The Tribunal is not bound to order costs when any of these examples occur as the Tribunal will consider the seriousness of the misconduct.

23.10 Powers of Tribunal The Tribunal may deny or grant the application for costs or award a different amount and fix the costs of and incidental to the proceeding and direct payment be made by a certain date by order.

23.11 Interest on Award Awards of costs may bear interest in the same manner as those made under section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

RULE 24

TRIBUNAL DECISIONS AND ORDERS

24.1 Issuing a Tribunal Decision or Order The Tribunal order may be contained in the decision and issued as a decision and order of the Tribunal. Where the order issues separately from the written decision, the Registrar is authorized to and will issue the appropriate order as directed by the Tribunal.

24.2 A Condition Imposed in a Tribunal Decision If a temporal condition is imposed in a Tribunal decision, it shall be satisfied by the date set by the Tribunal unless the Tribunal determines that the specified time may be extended. If a date is not set by the Tribunal, the condition shall be satisfied within a reasonable time. If the condition is not so satisfied, the Tribunal has the discretion to reopen the hearing event from which the decision issued upon notice to the parties to that proceeding.

24.3 Effective Date of Tribunal Decision A Tribunal decision or order is effective on the date that the decision or order is issued by electronic means or in hardcopy, unless the decision or order states otherwise.

CORRECTING MINOR ERRORS IN DECISIONS AND ORDERS

24.4 Correcting Minor Errors The Tribunal may at any time and without prior notice to the parties correct a technical or typographical error, error in calculation or similar minor error made in a decision or order. There is no fee if a party requests this type of correction.

24.5 Processing Request as a Review Request If a party requests a correction or clarification that the Tribunal finds is a request for a substantive change in the decision or order, the Tribunal shall treat it as a request for review under section 23 of the OLT Act and Rule 25.

RULE 25

REVIEW OF A TRIBUNAL DECISION OR ORDER

25.1 Tribunal's Powers on Review When exercising its powers pursuant to section 23 of the OLT Act, unless specifically excluded by legislation, Rules 25.2 to 25.11 shall govern.

25.2 Request for Review of Tribunal Decision The Chair shall consider a person's request for a review of a decision, approval, or order if the person files the request in electronic format as directed by the Tribunal, with the information set out in Rule 25.3. The Chair may further direct that two hardcopies of the request be filed. A request for review does not stay the effect of the original decision, approval or order unless the Chair so orders.

25.3 Contents of a Request A party making a request for review shall file notice of such request with the Chair within 30 days of the date of the Tribunal's written decision. Such notice shall include:

- (a) the requestor's full name, address, telephone number and e-mail address;
- (b) the full name, address, telephone number and e-mail address of the requestor's representative (if any);
- (c) the requestor's or representative's signature;
- (d) the reasons for the request;
- (e) the desired result of the review (such as a change or alteration to the decision or a rehearing of the proceeding);
- (f) any documents that support the request, including copies of any new evidence that was unavailable at the hearing;
- (g) an affidavit stating the facts relied upon in support of the request;
- (h) a statement as to whether the requestor has or will submit an application for or judicial review or seek to appeal to the court; and
- (i) the filing fee (cheque or money order payable to the Minister of Finance) charged under section 11 of the OLT Act or other applicable legislation.

25.4 Initial Screening of the Request The Tribunal will not consider a request for review if:

- (a) the request does not include the information required by Rule 25.3;
- (b) the request is made by a non-party;
- (c) the request is not filed within 30 days of the date of the Tribunal's written decision unless the Chair determines that there is a valid and well-founded reason to extend this time; or
- (d) it is a second request by the same party raising the same or similar issues.

25.5 Filing and Serving a Response to a Request for Review A party that files a request for review may be directed by the Tribunal to serve the request and all supporting material on all other parties to the original hearing event. The Tribunal may require any or all other parties to provide, by a specific date, a response to the request. The Tribunal may identify the issues to address in the response. The response to a request for review shall include the reasons for the response, any supporting documents, and an affidavit stating the facts relied upon in the response. The response shall be served on the other parties and filed with the Chair.

25.6 Power of the Chair to Dispose of the Request Subject to Rule 25.7, the Chair may exercise their discretion to:

- (a) dismiss the request for review, in which case, the decision, approval or order remains in force

and effect;

- (b) order an in person, electronic or written motion for review before the Tribunal to consider the request and submissions as directed in Rule 25.5; or
- (c) grant the request for review, in whole or in part.

The parties will be notified by the Tribunal in the event the Chair directs a motion or rehearing of the proceeding. A different Member or panel of the Tribunal may be assigned by the Chair to conduct the motion for review or the rehearing.

25.7 The Exercise of the Chair's Discretion The Chair may exercise their discretion and grant a request and order either a rehearing of the proceeding or a motion to review the decision only if the Chair is satisfied that the request for review raises a convincing and compelling case that the Tribunal:

- (a) acted outside its jurisdiction;
- (b) violated the rules of natural justice or procedural fairness, including those against bias;
- (c) made an error of law or fact such that the Tribunal would likely have reached a different decision;
- (d) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result; or
- (e) should consider evidence which was not available at the time of the hearing, but that is credible and could have affected the result.

25.8 The Motion to Review A Tribunal Member or panel assigned by the Chair to conduct a motion to review may, after receiving submissions from the parties, order a rehearing of all or part of the proceeding only if satisfied that the request raises a convincing and compelling case in respect of one or more of the issues set out in clauses a) to e), inclusive, of Rule 25.7. Should the Tribunal Member or panel that conducts the motion determine that the requestor has not satisfied this requirement, then the request shall be dismissed and the decision, approval or order that is the subject of the request shall remain in force and effect.

25.9 Procedure on Motion The Tribunal's Rules on Motions generally apply to a motion to review unless the Tribunal directs otherwise.

25.10 The Review Hearing The Tribunal Member or panel that conducts the review hearing shall rehear the appeal or application, in whole or in part, as either directed by the Chair or the decision arising from the motion to review, and may review, confirm, rescind, change, alter or vary any decision, approval or order made by the Tribunal.

25.11 The Chair May Initiate a Request The Chair may initiate a Request for Review and exercise their discretion under Rule 25.7 upon notice with reasons to all parties to a proceeding and within a reasonable time after that Tribunal decision, approval or order is made.

PART II

RULE 26

EXPROPRIATION PROCEEDINGS

26.1 Application of Rule This Rule applies to Tribunal proceedings under the Expropriations Act.

26.2 Additional Definitions The following definitions are applicable to proceedings under Part II:

“*Act*” means the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended;

“*claimant*” means an owner as defined in the Act;

“*Request to Negotiate*” means a request to the Tribunal from the claimant and respondent to negotiate a dispute over the compensation payable under the Act prior to the exchange of pleadings;

“*pleadings*” mean the Notice of Arbitration and Statement of Claim or Notice of Arbitration or Reply; and

“*respondent*” means a statutory authority as defined in the Act.

Notice of Negotiation in advance of Pleadings

26.3 A claimant or a respondent may file a Request to Negotiate with the Registrar prior to service of the Notice of Arbitration and Statement of Claim or the Notice of Arbitration.

26.4 The Tribunal may, following receipt of the Request to Negotiate convene a mediation with the claimant and respondent and Rule 18 shall apply with necessary modifications and directions that may be issued by the Tribunal to the claimant and respondent. Failure of the claimant or respondent to comply with a Tribunal direction may result in the termination of the mediation by the Tribunal. The Tribunal may also terminate the mediation, upon notice to the claimant and respondent at any time and for any reason.

26.5 The claimant or respondent that terminates the mediation upon notice to the Tribunal may proceed to resolve the dispute over the compensation payable under the Act by filing a Notice of Arbitration and Statement of Claim, or a Notice of Arbitration, as appropriate and within any applicable statutory claim period.

The Pleadings: Notice of Arbitration and Statement of Claim, Response, Reply

26.6 Notice of Arbitration and Statement of Claim by Claimant A claimant seeking compensation shall serve a combined Notice of Arbitration and Statement of Claim on the respondent and shall file with the Tribunal proof of service of the Notice within 10 days of the date of service. The Notice and Statement must be filed in electronic form (pursuant to Rule 5) and set out:

- (a) the amount claimed;
- (b) the basis upon which the amount is calculated; and
- (c) the facts in support of each element of compensation claimed.

26.7 Reply to Notice of Arbitration The respondent shall serve a reply on the claimant within 20 days after service of the Notice of Arbitration, and shall file with the Tribunal a copy of the reply, and be filed in electronic form (pursuant to Rule 5) along with proof of service on the claimant.

26.8 Notice of Arbitration by Respondent Where a claimant has not served a Notice of Arbitration under Rule 26.6, the respondent may serve on the claimant a Notice of Arbitration, and shall file with the Tribunal proof of service of the Notice within 10 days of the date of service.

26.9 Service of Statement of Claim for Compensation Where a Notice of Arbitration has been served by the respondent, the claimant shall have 20 days to serve a Statement of Claim, unless a different time period is directed by the Tribunal. The Tribunal will not make an appointment for the hearing of the arbitration until the claimant has filed with the Tribunal and served on the respondent a Statement of Claim for Compensation within the time required by the Tribunal unless the Tribunal decides otherwise upon request.

26.10 Service of Reply to Statement of Claim for Compensation Where a claimant has served a Statement of Claim for Compensation under Rule 26.9, the respondent shall serve a reply within 20 days after being served with the Statement, and shall file with the Tribunal a copy of the reply and proof of service on the claimant.

26.11 Denial to be Raised in Reply Where a respondent denies that a claimant is entitled to any compensation on the grounds:

- (a) that the claimant has no interest in the land expropriated or injuriously affected;
- (b) that no compensation is payable with respect to the interest of the claimant in such land; or
- (c) that the claim is barred by a provision in the Act or any statute,

It must raise such denial in its reply, setting out the relevant facts and statutory provisions relied on. If this is not done, the respondent may not make such denial at the hearing of the arbitration, unless the Tribunal permits it.

26.12 Forms An offer of compensation and acceptance of an offer of compensation made under section 25 of the Act may be in the Forms in R.R.O. 1990, Regulation 363. An acceptance may be served upon the person named in the offer of compensation to receive it.

26.13 General Rule for Service of Documents Service of documents may be made, in addition to the methods set out in subsection 1(2) of the Act:

- (a) in the case of Her Majesty the Queen in right of the Province of Ontario, in the manner set out in section 15 of the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17, as amended; and
- (b) in the case of a municipal or other corporation, partnership or individual, on the persons prescribed by the *Rules of Civil Procedure*.

26.14 Required Pleadings The only pleadings required in an arbitration to determine compensation are a Statement of Claim and a reply, or in the case of a matter under Rule 26.7, a Notice of Arbitration, a Statement of Claim for Compensation and a reply, unless the Tribunal orders otherwise.

26.15 Examination of Representative by Opposing Party A person appointed under section 37 of the Act to represent an owner of land may be examined or cross-examined by an opposing party in the place of the owner.

26.16 Applicability of Rules of Civil Procedure No Tribunal order is required for examinations for discovery or documents. The *Rules of Civil Procedure* apply to proceedings under this Part unless the Tribunal on motion orders otherwise. (Note, however, that appraisal reports to be relied on must be served at least 15 days before the hearing).

Expropriation Case Management Conference Procedures

26.17 Case Management Conference A party may request and the Tribunal may direct the parties to attend a case management conference, and the Rules governing such conferences apply.

26.18 Time for Hearing The Tribunal may appoint a time for a hearing of the arbitration upon receipt of the notice of readiness for hearing, signed by or on behalf of all parties; or by an order following an in person or electronic motion (notice of the motion cannot be served until 30 days after service of the Notice of Arbitration) or a case management conference.

26.19 Motions Heard in Other Locations If the owner of land located outside of the City of Toronto consents, in person motions may be heard at the Tribunal's offices in Toronto, or in any municipality reasonably close to where the lands are located.

26.20 Notice of Hearing The Registrar will mail a notice of the time and place for the arbitration to the respondent.

26.21 Verbatim Reporter The expropriating authority shall arrange, at the expense of the expropriating authority, for the attendance of a qualified verbatim reporter to record, in writing, all oral evidence submitted before the Tribunal.

26.22 Service of Notice of Hearing Upon receipt of the Notice of Hearing, the respondent shall, at least 20 days before the hearing, serve a copy of the notice of hearing upon all registered owners, and also upon any person known to the respondent to be an owner as defined in the Act, or who is claiming to be entitled to any part of the compensation which may be awarded at an arbitration under the Act.

26.23 Notice for Expert Reports If the *Rules of Civil Procedure* specify a greater notice period for appraisal or other expert reports than under subsection 28(1) of the Act, the greater notice period applies.

26.24 Filing of Documents At the commencement of a hearing to determine compensation, the respondent shall file a copy of the certificate of approval of expropriation under the Act, the plan of the expropriated land and proof of its registration in accordance with section 9 of the Act, where applicable; and an affidavit proving service of the notice of hearing under Rule 26.20 and that the persons served are all the persons required to be served.

26.25 Settlement Offer If an offer to settle is made and it is not dealt with in the Act, the *Rules of Civil Procedure* apply.

26.26 Mediation Rule 18 in Part I applies with necessary modifications as appropriate to Part II, to reflect that proceedings under the *Expropriations Act* are between the claimant and respondent. Either the claimant or respondent that participated in an unsuccessful mediation pursuant to Rule 26.3 may request a mediation assessment before the Tribunal as set out in Rule 18, following the delivery of the Notice of Arbitration and Statement of Claim or Notice of Arbitration, despite having participated in mediation prior to filing pleadings in Rule 26.4.

26.27 Form of Expropriation Order An order issued under this part shall be in the form of an

order pursuant to R.R.O. 1990, Regulation 363.

ACKNOWLEDGMENT 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 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 may reasonably require, to determine
 a matter in issue.
 - d. not to seek or receive assistance or communication, except technical support, while under cross-
 examination, through any means including any electronic means, from any third party, including but
 not limited to legal counsel or client.

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

INDEX OF FORMS

The following forms referred to in these Rules are available on the [OLT Website](#), and include, and are not limited to:

1. Sample Affidavit
2. Notice of Constitutional Question
3. Notice of Motion
4. Notice of Response to Motion
5. Notice of Reply
6. Sample Procedural Orders