

Updates to the Ontario Land Tribunal Rules of Practice and Procedure: Rules 18 and 25

.....

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 the Chair, ~~will~~ may 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 may set the date of the mediation, and 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.

18-218.3 **Parties to Confer** The Tribunal may, at any stage of a proceeding, direct the parties to discuss participating in OLT mediation for the purpose of resolving or narrowing issues in dispute.

18-318.4 **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, and may include other parties to the proceeding. 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. Participation in a mediation does not confer party status within the meaning of Rule 8 for the proceeding.

18-418.5 **Procedure at a Mediation** Where the Tribunal convenes a mediation, it will appoint a Member of the Tribunal, or alternatively, a Mediator approved by

the Chair, who may use any appropriate dispute resolution technique to help the parties voluntarily resolve the appeal or any issue(s) relating to it.

18-518.6 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.

18-618.7 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 or Mediator'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 or Mediator who mediates a matter shall not be called as a witness in any proceeding to give evidence or produce documents regarding the mediation discussions.

18-718.8 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 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 25.142 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 and copy the request and all supporting material to all other parties. 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 Parties shall not respond to a request for review until and unless directed by the Tribunal. 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, **and**
 - i. order a rehearing of the proceeding; or
 - ii. rescind or vary the decision, approval or order that is the subject of the request.

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 a rehearing of the proceeding 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; ~~or~~
- c. made an error of law or fact such that the Tribunal would likely have reached a different decision;
- d. ~~—~~
- e-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
- f. ~~—~~
- g-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 In addition to Rule 25.7** The Chair may exercise their discretion and grant a request if the Chair is satisfied that the request for review raises a convincing and compelling case that the Tribunal ~~heard false or misleading evidence from a party or witness that was discovered to be false only after the hearing and would have affected the result;~~

should consider evidence that was not available at the time of the hearing but that is credible and could have affected the result; or should amend the planning instrument(s) of an earlier settlement decision, approval, or order, where:

- a. the parties make a request on consent,
- b. the amendment(s) constitute good planning, and
- c. the amendment(s) are substantially in accordance with the original approval.

25.9 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 or Rule 25.8. 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.

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

25.11 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.

25.12 The Chair May Initiate a Request The Chair may initiate a Request for Review and exercise their discretion under Rule 25.7 or 25.8 upon notice with reasons to all parties to a proceeding and within a reasonable time after that Tribunal decision, approval or order is made.