

ANNUAL REPORT

Environmental Assessment Board
Environmental Appeal Board

April 1, 1999 to March 31, 2000



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Chair's Message

The 1999-2000 fiscal year was an inaugural one in the sense that the combined Environmental Assessment and Appeal Boards ("the Board") introduced new procedures to measure performance and cost effectiveness.

In addition to adopting the performance measures suggested by Management Board of Cabinet (i.e. time needed to schedule a new hearing, time needed to write the decision, and overall time from start to completion), the Board prepared customer surveys for all of its core businesses. These surveys sought the views of all parties appearing at the Board's hearings including lawyers/agents, and of anyone attending a public outreach function. Responses indicated a satisfaction rate ranging from 87% to 100%, except for a 71% rating by parties to Niagara Escarpment Pre-hearing Conferences. This lower rating reflected the antipathy some parties had for each other, rather than any negative comments about the Board or its practices.

In relation to cost effectiveness, the Board for the first time tracked the cost of a hearing. After much internal discussion, it was decided that costs would include a member's time, expenses and any expenditures related to that hearing. The overhead of the Board was not included, as general operating costs would be the same regardless of the number of hearings held by the Board. For a detailed explanation, I refer you to the section in this report on costs of hearings under Performance Measures. The average cost of cases in which a Board member was involved was \$2,291.60. Our Alternative Dispute Resolution performance measure has also been successful. The average cost of our mediation efforts was approximately \$199.00 per session. As can be seen, any successful mediation would effectively lower or even eliminate the costs of a hearing. As these are first-time 'baseline' figures, they will be interesting to compare with future fiscal year analyses.

The Board's public outreach has been very successful with its presentations. A measure of this success was captured in one comment that the Board received from a member of the public:

The presentation was [delivered] in a professional and organized fashion, was very informative, and reassures me that not all my tax dollars are being squandered.

Over 94% of the public found the presentations helpful and understandable. In addition to the Board's public outreach presentations, two personal highlights included a public presentation for the Government of the Yukon and a presentation at the 1999 Conference of the Council of Canadian Administrative Tribunals in Vancouver, B.C.

Manuals on all our procedures and "plain language" brochures were produced. A 'Frequently Asked Questions' guideline was provided to staff in both official languages. The Board also established a timeframe of seven days for scheduling a hearing upon the receipt of all necessary materials.

Thus, I believe it is fair to state that the Board, through its members and staff, has successfully met the established performance measures. A comprehensive report regarding the performance measures can be found at page 22. At Appendix E, the Performance Goals and Objectives for fiscal 2000-2001 are set out in detail.

Other successes throughout the year included our learning program, which was comprised of five very successful seminars co-ordinated by Vice-Chair Len Gertler. The programs were attended by members from our Land Cluster Group and other agencies. While all the seminars were excellent, the highlights included the address by the Honourable John Fraser on “Environmental Issues for the 21st Century: A Global and Local Perspective,” and by Justice Douglas Carruthers and Board member William Balfour on “Experts and Their Evidence.”

A real highlight from the Board’s website is the recent addition of a search capability for our archived decisions. The Board was able to install and provide this search capability at no cost. In tracking information that was downloaded from our site, I noted that some of our decisions and brochures have been requested over 1,000 times, resulting in a real savings to the government.

The Board was honoured this year when Mark Frawley received from the Premier and the Secretary of Cabinet a 1999 Amethyst Award.

Senior staff of the Board continue to work within the agency sector as a whole. Susan Dunn, Board Secretary, was re-elected treasurer of the Society of Ontario Adjudicators and Regulators. Mark Frawley, Special Counsel, is a member of the Agency Sector’s Working Group on Efficient Management. I am a member of both the Agency Sector Council and its Working Group on Quality Services. In addition, I was re-elected to the Board of Directors of the Council of Canadian Administrative Tribunals, named chair of its Communications Committee and act as a member of its Awards Committee. Also, I presided over a private arbitration between a farmer and a landfill operator. There was no cost to the Board, and as a public service to the parties, I did not receive any remuneration. It was an opportunity to utilize my expertise to assist in the resolution of a commercial/environmental dispute that would not normally have come before the Board.

In all, it was a very successful year.

As I conclude, I recall a conversation with one of the Board’s Vice-Chairs who queried whether we could continually improve or whether we just needed to fine tune. While the latter is safer and certainly more comfortable, I was reminded of a “quotable quote”:

Nourish your imagination and flex your mind. Let your natural creativity out of the box. Dare to dream bigger dreams and envision a higher future. Though you might see what every other leader in the business world sees, start to think what no one else thinks. Never forget that deep within the body of every visionary leader lives the spirit of a little child, full of excitement and wonder.

Robin S. Sharma from The Monk Who Sold His Ferrari

This Board, thanks to its staff and members, is a visionary leader in the agency sector, and we await the excitement and wonder of 2000-2001.

Carl F. Dombek, B.A., LL.B.
Chair

07/10/2000

Board Structure

The Board's Mandate

The Environmental Assessment Board and the Environmental Appeal Board are established under the *Environmental Assessment Act* and the *Environmental Protection Act*, respectively.

Since their administrative amalgamation in 1997, the Board's mandate is to provide both an independent and impartial review of the decisions of Directors appointed by the Ministry of the Environment, and a fair and unbiased public hearing process that assesses the merits of proposed development projects, plans or programs that will have an impact on the environment.

The principal task of Board members, who are appointed by the Lieutenant Governor in Council, is to conduct fair, efficient and impartial hearings at which they must consider all the evidence presented, make a decision (or recommendation) with written reasons based on that evidence, all in a manner that protects the environment and is consistent with the Board's governing legislation. For a profile of the members of the Board, refer to Appendix A.

Under the *Niagara Escarpment Planning and Development Act*, the Minister of Natural Resources appoints the members of the Board as Hearing Officers to conduct hearings and make recommendations concerning decisions of the Niagara Escarpment Commission ("NEC"). Since the proclamation of the *Red Tape Reduction Act, 1999*, S.O. 1999 c 12 (Bill 11) amendments, in cases where the Hearing Officer agrees with the NEC's decision in its entirety, that decision is now deemed confirmed.

Under the *Niagara Escarpment Planning and Development Act*, the NEC appoints members of the Board as Hearing Officers to conduct hearings for the purposes of receiving representations respecting proposed amendments to the Niagara Escarpment Plan. Since the proclamation of the *Red Tape Reduction Act, 1999*, S.O. 1999 c 12 (Bill 11) amendments, the NEC will appoint Hearing Officers to conduct hearings only if objections are made to the proposed amendments.

The Board functions as a quasi-judicial tribunal, subject to the rules of natural justice and the requirements of the *Statutory Powers Procedure Act*. The Board's primary role is adjudicating applications and appeals under the following pieces of legislation: the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Consolidated Hearings Act*, the *Environmental Bill of Rights, 1993* and the *Niagara Escarpment Planning and Development Act*. For an overview of the legislation, refer to Appendix B.

Rules of Practice and Guidelines

On November 3, 1998, the current Rules of Practice were formally adopted at a meeting of the Board. The Rules are available to the public in written form, and on the Board's Internet site (www.ert.gov.on.ca). As with every other set of Rules adopted by the Board, these Rules remain open to revision, as circumstances and new legislation dictate, in order to reflect the changing needs of the Board and the public.

This fiscal year, the Board developed three new Guidelines or Practice Directions which were posted on the Board's website for public comment: the Guidelines on Requests for Adjournments, the Practice Direction on Constitutional Questions including Charter Issues, and the Guideline on Compelling a Witness to Attend

a Hearing. After reviewing the comments received, the Board formally adopted the adjournment guideline and practice direction on constitutional questions at its December 1999 Board meeting. The third guideline was developed late in the fiscal year and is still in the public comment phase.

Environmental Compensation Corporation

The Environmental Compensation Corporation (“ECC”) provides compensation under the authority of the *Environmental Protection Act* to persons who suffer loss or damage as a direct result of an environmental spill. Generally, it is a payer of last resort, as applicants are required to make all reasonable efforts to obtain compensation from the persons responsible for the spill. In June 1997, the *Environmental Approvals Improvement Act*, 1997, S.O. 1997, c. 7, was enacted. It provides that no application for the payment of compensation, received after June 3, 1996, for loss or damage directly resulting from a spill shall be processed or paid by the ECC. Only a few outstanding applications remain. However, these applications cannot be considered until their related civil actions have been completed. As the ECC no longer has staff and at the request of the Ministry of the Environment, the Board’s counsel monitors the outstanding applications and assists in their eventual resolution.

Resource Sharing in the Agency Sector

Knox M. Henry, Vice-Chair, is cross-appointed as a part-time member of the Ontario Rental Housing Tribunal. The Board agreed to share up to five days per month of Vice-Chair Henry’s time to allow him to sit on hearings of the Tribunal. This initiative is part of the Board’s overall commitment to sharing resources within Ontario’s Agency Sector.

The Board’s offices are located within the same office tower as the offices of the Ontario Energy Board (“OEB”). As a result of an agreement between the Chairs of both Boards, the Board receives its internet and e-mail access through the OEB’s connection.

Space adjacent to the Board’s offices is occupied by the Ontario Pesticides Advisory Committee (“OPAC”). The Board currently shares resources with OPAC that include: the provision of a Local Area Network and systems support, including web design and maintenance; a common entrance and backup reception; and other administrative functions.

Participation in the Work of Agency Reform

The Agency Reform Commission’s function was to report on ways Ontario’s regulatory and adjudicative agencies could improve the services they offer to the public.

The Board is committed to collaborating with other agencies to share ideas and experiences, and to develop and improve agency policies, procedures and management. Members and staff have participated widely in other agency sector initiatives. The Board also contributes significant staff and members’ time to various agency reform committees. Carl Dombek, Chair, was a member of the Agency Reform Secretariat’s Working Group on Sector Co-ordination, which made recommendations concerning the co-ordination of services across the sector. Mr. Dombek is currently a member of a new body, the Agency Sector Council, which was created to oversee various ongoing workgroups. Some of these include: Quality Service, Efficient

Management, and Appointments. Mark Frawley, Special Counsel, is a member of the Working Group on Efficient Management. Mr. Frawley was also a member of the Agency Reform Secretariat's Working Group on Case Management. That Working Group, which began its work in the summer of 1998, presented clinics on Case Management and Technology to the Agency Sector in June 1999.

Participation in Other Organizations

Susan Dunn, the Board Secretary, has been an elected member of the Society of Ontario Adjudicators and Regulator's ("SOAR") Board of Governors since 1996. She is also on the SOAR Executive as the treasurer for 1998-2000. Ms Dunn is responsible for the implementation and maintenance of SOAR's computerized membership list.

Carl Dombek, Chair, has been an elected member of the Canadian Council of Administrative Tribunals' Board of Directors since 1998.

Mario Faieta, Counsel, is a member of the Executive of the Environmental Law Group of the Canadian Bar Association – Ontario Branch, and is the Associate Editor of the Canadian Environmental Law Reports.

Mark Frawley, Special Counsel, is a member of the Shared Services Bureau's Customer Council, and of Management Board of Cabinet's Information and Information Technology Standards Council.

Recognition

In December 1999, Mark Frawley, Special Counsel, received a Amethyst Award for Outstanding Achievement by Ontario Public Servants. The certificate which accompanied the award stated:

In recognition of his work using Internet technology and in re-engineered business processes. He has been responsible for substantial improvements in customer service and public accessibility of the Board's work and decisions.

The Board is pleased that Mark's contributions in improving customer service to its clients were recognized by the government.

Outreach

In its performance measures for 1999-2000, the Board undertook to provide public education about the Board's mandate and hearing process to interested government bodies, organizations and interest groups. The Board has conducted 20 presentations to local governments, schools and chambers of commerce. For a complete schedule of the Board's public outreach presentations, refer to Appendix C.

In addition, members and staff were invited to speak at a number of other engagements. Carl Dombek, Chair, delivered a presentation to the Yukon Government on the Board's environmental assessment process. Mr. Dombek also delivered presentations at the Council of Canadian Administrative Tribunals Conference in Vancouver, B.C. on tribunal reform and at the Ministry of the Environment's Expert Witness course. Mark Frawley, Special Counsel, delivered presentations to the Conference of Boards and Agencies, as well as to

the Ontario Grievance Settlement Board, the Public Service Grievance Board, and the Health Services Appeal and Review Board.

“Showcase Ontario” is an annual exhibition of the innovative ways in which the provincial government is using information technology to provide services more effectively. In April 1999, the Board was invited to staff a booth at “Showcase Ontario” highlighting the Board’s website.

In-House Learning Program

The Board has continued to conduct the Learning Program for its members and senior staff. It generally involved half-day workshops and seminars on topics of relevance to the business of the Board. This fiscal year, the Board hosted a number of outstanding speakers. In conjunction with the government’s initiative on cooperation, the Board has expanded the invitation to attend to other organizations. Members and staff from the following organizations attended sessions: Agriculture, Food and Rural Affairs Tribunal; Ministry of the Environment; Ministry of Natural Resources; the Niagara Escarpment Commission; the Ontario Farm Products Marketing Commission; the Ontario Civilian Commission on Police Services; and the Ontario Municipal Board. For a complete list of the Learning Program’s workshops and seminars held in this fiscal year, refer to Appendix D.

Resources and Land Cluster

Similar to the 1996 “Wood” Commission’s direction to restructure the Agency sector (and which resulted in the Board’s administrative merger in December 1997), other corporate government initiatives have been and continue to be implemented to streamline services, reduce costs and increase efficiencies. Notably, the Information and Information Technology Strategy project resulted in the realignment of service structures within government on the basis of “clusters”. There are seven clusters, one of which is the Resources and Land cluster comprised of the Ministries of: Agriculture, Food and Rural Affairs; Natural Resources; Environment; and Northern Development and Mines.

In January 1999, the Board decided to take a lead role in cluster-based agency service sharing. At the Chair’s invitation, the heads of each of the Land cluster agencies, their senior staff and representatives of Management Board of Cabinet’s Agency Reform Secretariat were invited to participate in a series of meetings. The meetings explored partnering of agencies that are not co-located in order to develop service sharing arrangements.

The benefits of sharing arrangements go beyond that of making internal services more efficient and cost-effective. They improve quality of services offered to agency clients and to the public in general. And promotes a culture open to new ideas.

As a result of initial meetings, it was agreed to strike a committee to ensure a structured approach to communication linkages. The committee meets as required to share ideas and innovations, and assist one another on issues of mutual interest. Four areas of sharing opportunities were identified at the initial meeting: case management systems; shared training for members and staff; design and maintenance of agency Internet sites; and combined public outreach presentations.

In the area of case management systems, the Board shared its knowledge and best practices with other agencies with respect to its case management system and internet technology. The Board made its procedural manuals available to these agencies.

The Board invited Land cluster agencies to its learning programs, and several agencies sent members and staff to sessions of mutual interest.

The Board undertook to advise the committee of any public outreach presentations that the Board is conducting where the audience may have an interest in a presentation from their respective agency.

Administrative Liaison Committee

In conjunction with the Director of the Ministry of the Environment's Environmental Assessment and Approvals Branch, the Board's Chair invited the heads and senior staff of the Niagara Escarpment Commission, the Environmental Commissioner of Ontario and the Assistant Deputy Minister of Operations Division of the Ministry of the Environment to participate in a forum for the exchange of information and ideas related to the administrative operation of the Branch, the Commission and the Commissioner's office as they impact upon the Board, and reciprocally, information and ideas related to the administration and operation of the Board as it impacts upon the Branch, the Commission and the Commissioner's Office. The inaugural meeting was held in April 1999. At its first meeting, the group approved Terms of Reference for the committee. Another meeting was held in October 1999 and a representative from the Lands and Waters Branch of the Ministry of Natural Resources was invited to join the Committee. The Board looks forward to future meetings with the Administrative Liaison Committee.

Website

The Board has enhanced its website to include various new features. The Board has added a user survey, and, as a result of public requests, a search function was added to the archive of decisions section. An expanded search capability is under consideration. The site now contains e-mail addresses for all staff.

The Board monitors the public's use of its website. From its launch on July 1, 1998, more than 10,000 visitors have accessed the website, many to read and/or download the full text version of every decision issued since April 1998. Some individual decisions, since their posting on the website, have been downloaded more than 1,000 times. It is anticipated that website usage will grow in the next fiscal year.

For a list of the most popular downloads, refer to Appendix F.

Board Activities

Case Type	No. of Unresolved Cases Carried Forward into 99-00 Fiscal Year	No. of New Cases Received in 99-00 Fiscal Year (1)	No. of Cases Resolved in 99-00 Fiscal Year by Decision of the Board	No. of Cases in 99-00 Fiscal Year of Board Approved Settlements	No. of Cases Closed in 99-00 Fiscal Year by Other Means*	No. of Cases Carried Forward into 00-01 Fiscal Year	No. of Hearing Days Held in 99-00 Fiscal Year	No. of Board Days Held on Other Matters in 99-00 Fiscal Year**
<i>ENVIRONMENTAL ASSESSMENT ACT</i>								
Applications by Referral	1	0	1	0	0	0	0	0
<i>ENVIRONMENTAL PROTECTION ACT</i>								
Applications by Referral	1	1	2	0	0	0	10	0
Appeals	14	60	18	2	33	21	47	19
<i>ONTARIO WATER RESOURCES ACT</i>								
Applications by Referral	0	0	0	0	0	0	0	0
Appeals	1	17	0	0	14	4	2	4
<i>PESTICIDES ACT</i>								
Appeals	0	0	0	0	0	0	0	0

Case Type	No. of Unresolved Cases Carried Forward into 99-00 Fiscal Year	No. of New Cases Received in 99-00 Fiscal Year (1)	No. of Cases Resolved in 99-00 Fiscal Year by Decision of the Board	No. of Cases in 99-00 Fiscal Year of Board Approved Settlements	No. of Cases Closed in 99-00 Fiscal Year by Other Means*	No. of Cases Carried Forward into 00-01 Fiscal Year	No. of Hearing Days Held in 99-00 Fiscal Year	No. of Board Days Held on Other Matters in 99-00 Fiscal Year**
<i>NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT</i>								
Development Permit Appeals	8	90	19	0	24	55	21	1
Plan Amendment Applications	0	2	0	0	0	2	0	0
<i>CONSOLIDATED HEARINGS ACT</i>								
Applications	2	4	2	0	1	3	34	0
<i>ENVIRONMENTAL BILL OF RIGHTS, 1993***</i>								
Leave to Appeal Applications	2	11	11	0	1	1	0	2
Total	29	185	53	2	73	86	114	26

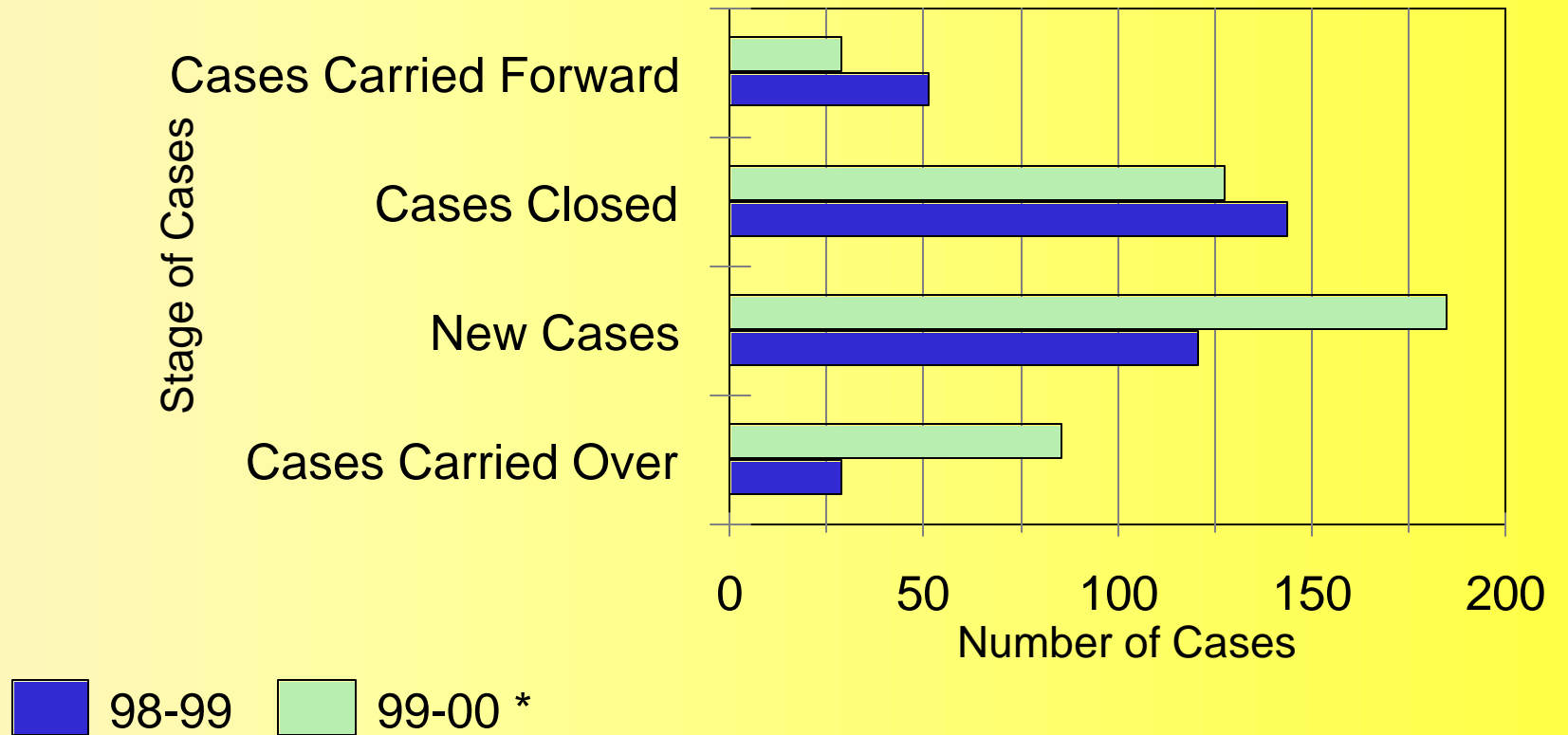
(1) In order to track cases consistently, regardless of the legislation involved, the Board is now giving each case its own number rather than grouping related cases into one number.

* Resolved by other means include: withdrawal by applicant/appellant; case abandoned; etc.

** Other matters may include: Board Days held for the hearing of motions; stay applications; etc.

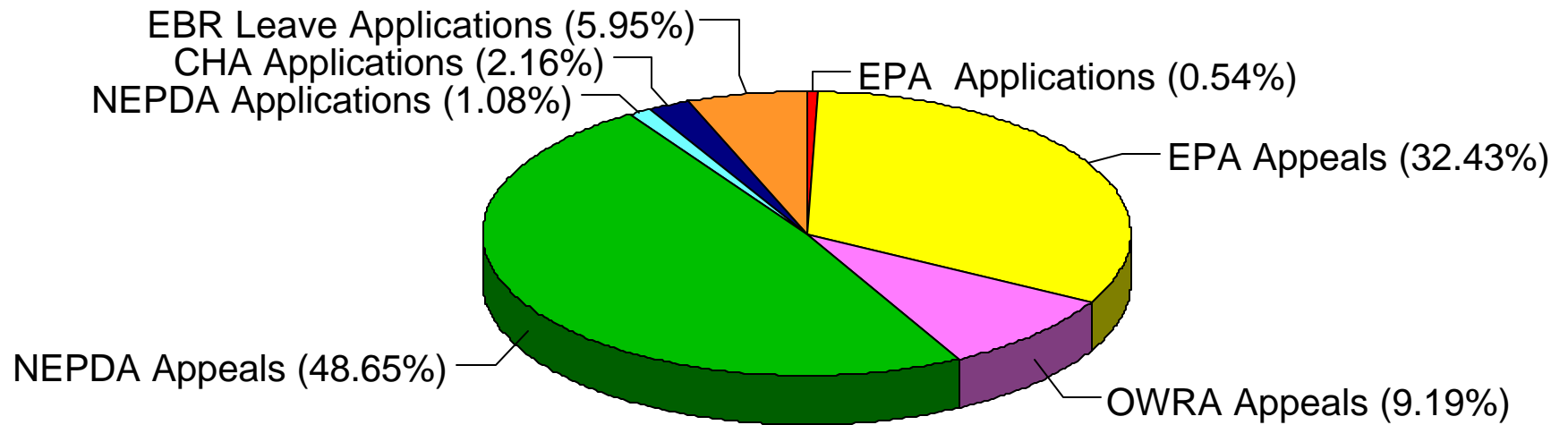
*** It is the Board's practice to hold written hearings in these matters.

Total Resolved Cases - 98-99 vs. 99-00



* In order to track cases consistently, regardless of the legislation involved, the Board is now giving each case its own number rather than grouping related cases into one number.

Total Cases in 1999-2000 by Case Type



Note: There were no applications filed under the *Environmental Assessment Act*, the *Ontario Water Resources Act* or appeals filed under the *Pesticides Act*.

Summaries of Selected Decisions

Environmental Assessment Act

Fibre Environmental and Ecology Limited (Costs Decision)

The Board issued its decision on November 27, 1998 in the matter of the proposal by the applicant, Fibre Environmental and Ecology Limited (“Fibre”), to re-open and remediate the former Quinte Sanitation Landfill Site.

In that decision, the Board set guidelines for the parties to submit any requests for the recovery of their costs. Costs were sought by the City of Quinte West (“the City”), People Opposed to Garbage from Ontario (“POGO”), and the applicant. The City claimed costs in excess of \$300,000 against the applicant and the Ministry of the Environment. POGO claimed costs in excess of \$100,000 against the applicant and the Ministry of the Environment. The applicant claimed costs of almost \$400,000 against the Department of National Defence (“DND”), and also sought an order that any costs it may be ordered to pay be paid by DND.

The rates submitted for time spent by counsel, by expert witnesses and for disbursements all conformed to the Board’s guideline on cost award applications, and accordingly, the Board accepted the quantum of costs filed by all parties.

The Board first addressed the issue of entitlement to costs. The Board found that POGO was entitled to its costs under several headings of Section 9 of the Board’s guideline. The Board concluded that POGO’s participation in the hearing met all of the criteria required by the Board’s guideline and accordingly qualified POGO for an award of costs. The Board also found that the City of Quinte West’s participation was not a duplication of representation, and that while POGO brought local concerns to the proposal, the City addressed the regional concerns. The Board also found that a high level of co-ordination and co-operation existed among counsel for POGO, the City and DND. Accordingly, the Board found that the City was also entitled to its costs.

As to the claim for costs by the applicant, Fibre, the Board concluded that DND did not have a closed mind to the undertaking, but instead found that, taken in its totality, the evidence indicated that DND participated in the hearing with an open mind and in an effort to assist the Board in holding a meaningful public hearing. As well, the Board found that the position of the applicant on the pivotal issue of remediation was less than forthright, and as a result the Board denied the applicant any award of its costs.

As to the actual award of costs, considering the applicant’s lack of success in establishing a need to remediate the site, the various procedural delays caused by the applicant’s conduct, and the termination of the proceedings by the applicant’s withdrawal, the Board ordered Fibre to pay the costs claimed by POGO and the City.

As to the award of costs against the Ministry of the Environment claimed by both POGO and the City, the Board, upon weighing several factors including the evidence of individual witnesses called by the Ministry of

the Environment, concluded that the Ministry should bear some measure of responsibility for the costs incurred by POGO and the City.

The Board was faced with the acknowledgment by all parties that the applicant, Fibre, was insolvent and had not yet paid the costs ordered by the Board in its November 1998 decision, and with the issue of how to apportion the amount of POGO's costs and the City's costs, which should be paid by the Ministry.

Taking into account a number of factors, the Board concluded that it would apportion 25% of the total costs ordered as a fair estimation of the deficiency in the Ministry's Review, and made an order accordingly.

Issue: Should an order for costs be issued, and if so, in what amount and to be borne by which party?

Decision: An order for costs to be paid was issued in favour of POGO and the City of Quinte West to be paid proportionately by Fibre and the Ministry of the Environment.

Released: July 7, 1999 (Case No.: 97-X14)

Notre Development Corporation (Judicial Review Decision)

As reported in last year's annual report, the Board approved the "hydraulic containment" design proposed by the applicant, Notre Development Corporation, for use at a landfill located in a decommissioned iron mine near the Town of Kirkland Lake. The applicant proposed that the landfill, over a 20-year period, will receive 20 million tonnes of solid wastes, non-hazardous municipal, industrial, commercial and institutional wastes. One of the parties at this hearing brought an application for judicial review to the Ontario Divisional Court. Numerous grounds were advanced to overturn the Board's decision.

Issue: Should the Board's decision be quashed?

Decision: No. The Divisional Court dismissed the application for judicial review. The Court of Appeal for Ontario refused to grant leave to appeal.

Released: July 20, 1999 [Ontario Divisional Court]; October 14, 1999 [Court of Appeal for Ontario] (Case No.: 97-X40)

Environmental Protection Act

Green Lane Landfill v. Director, Ministry of the Environment

Since 1978, Green Lane Landfill (“GLL”), a division of St. Thomas Sanitary Collection Service Limited and Green Lane Environmental Group Ltd., has owned and operated a landfill site located in the Township of Southwold, County of Elgin, Ontario.

In February 1999, the Director, Ministry of the Environment, granted a request by GLL to amend its Certificate of Approval under Section 39 of the *Environmental Protection Act* to expand the landfill site by the addition of 5.85 million cubic metres of air space volume for waste disposal. GLL appealed several conditions included with the Certificate of Approval. GLL also sought to add a condition to the Certificate of Approval that would permit it to dispose of an additional 2.9 million cubic metres of waste in a Contingency Expansion Area.

The Board heard an interim motion to determine whether it had the authority to add the requested condition. Subsequently the Board adjourned its proceedings to allow the parties to attempt to mediate the resolution of the conditions under appeal which related to the use of an on-site inspector, reporting to the Director, paid by GLL.

- Issues:**
1. Does the Board have the authority to add the requested condition to the Certificate of Approval?
 2. Should GLL be required to pay for an on-site inspector?

- Decision:**
1. The Board does not have the jurisdiction to add the requested condition to the Certificate of Approval.
 2. The Board adopted a set of conditions proposed by the Director, after consultation with GLL, that required GLL to pay a maximum of \$50,000 for the cost of an on-site environmental inspector. The Board recommended that the Ministry of the Environment consider including a similar condition in all Certificates of Approval for landfills issued under the *Environmental Protection Act*.

Released: Interim Decision - August 18, 1999
Final Decision - November 1, 1999 (Case No.: 98-118)

Material Resource Recovery SRBP Inc.

Material Resource Recovery SRBP Inc. (“MRR”) operates a waste incineration facility in the City of Cornwall’s Industrial Park. This facility processes and incinerates mercaptan wastes and light ballasts containing less than 50 ppm (parts per million) by weight of polychlorinated biphenyls (“PCBs”) pursuant to a Certificate of Approval issued by the Ministry of the Environment (“the Ministry”) under Section 30 of the *Environmental Protection Act*.

In September 1998, MRR submitted an application to the Ministry, under Section 30 of the *Environmental Protection Act*, to amend its Certificate of Approval to process and incinerate a broader range of wastes at this facility: PCB wastes (whole light ballasts, including their capacitors) containing less than 30,000 ppm PCB by weight (i.e. 3% of PCB by weight) but excluding free-flowing liquid PCB waste; non-PCB electrical equipment waste; containers and debris containing residues of crankcase oils and lubricants; pharmaceuticals (e.g. off-specification or outdated products); waste compressed gases, including cylinders; chlorofluorocarbons; and controlled substances (e.g. confiscated narcotics).

MRR’s application to amend its Certificate of Approval was referred to the Board for a hearing which primarily focused on MRR’s request to incinerate whole light ballasts containing less than 30,000 ppm PCB by weight. PCB test burns, conducted in November 1998, showed that the levels of PCBs, dioxin and furans emitted by the proposed activity were below government guidelines. Further PCB test burns in March 1999, using only capacitors containing 200,000 ppm of PCBs by weight, indicated that the facility’s furnace destroys over 99.9999% of PCBs.

A chemical engineer testifying for the Ministry expressed some reservations regarding the March 1999 test burn and recommended that MRR be required, as a condition of approval, to redo these tests under Ministry supervision. A chemistry professor challenged the reliability of the test burns, dismissing them as “too good to be true.”

An air pollution meteorologist who prepared an air dispersion model outlining the plume of the emissions from the facility testified that the levels of air contamination for a variety of substances that would be emitted (e.g. particulate matter, PCBs, hydrogen chloride, dioxins and furans) were below Ontario regulatory standards.

A toxicologist who prepared a health risk assessment using very conservative assumptions determined that there would be no measurable adverse health effects associated with the incineration of materials containing 30,000 ppm PCBs by weight. Another toxicologist testifying on behalf of the Ministry came to a similar conclusion.

The Board heard from the engineers who had conducted the test burns and determined their results were reliable. The Board also accepted the Ministry’s position that further tests be conducted, and this requirement was incorporated as a condition of the draft Certificate of Approval provided to the Board.

Issue: Does the proposal present a risk to the health of the local residents?

Decision: The Board decided that MRR’s application to amend its Certificate of Approval should be granted, excluding chlorofluorocarbons. Sixty-four conditions were imposed to safeguard the health of the residents of the Cornwall area. The Board accepted the evidence of the two toxicologists and determined

that this facility, when operated in accordance with the conditions, would not worsen the health of local residents.

The Board added two conditions not included in the draft Certificate of Approval submitted at the hearing by the Ministry. First, in response to Akwesasne First Nation concerns about possible contamination of the St. Lawrence River, the Board ruled that the scrubber water must meet the requirements of the Ministry's *1999 Model Sewer Use By-Law* before it is discharged. Second, the Board ruled that MRR must retain a consultant, acceptable to the Ministry and to MRR's Public Liaison Committee, to conduct a technical review of the facility to verify that the facility's processing of PCBs complied with regulatory requirements and guidelines, and to ensure its safe operation.

The Board determined that chlorofluorocarbons should not be processed at this site in light of concerns expressed by an engineer testifying for the Ministry, and because of the substantial modifications that would be required to process this type of waste.

Released: November 1, 1999 (Case No.: 98-123)

Consolidated Maybrun Mines Limited and J. Patrick Sheridan v. Director, Ministry of the Environment

In March 1999, the Director, Ministry of the Environment, issued an Order to Pay Costs in the amount of \$131,862.61 against the appellants, Consolidated Maybrun Mines Limited and J. Patrick Sheridan. The costs had been incurred by the Director after the appellants failed in 1987 to take certain steps to prevent the spread of PCBs at an abandoned mine in Northwestern Ontario. The appellants did not comply with the preventative order, and thus the Director incurred the costs under appeal by having the work done at the Ministry's expense.

The Board found that the appellants had not met the legal test set out in Section 152 of the *Environmental Protection Act*, which provides that the Board shall only consider whether the costs relate to a thing that the person was required to do by an order made and secondly, whether the costs were or were not unreasonable having regard to what was done. The Board concluded that the costs were in fact related to the preventative work that had been ordered to be done but not carried out. The Board also found that the costs were reasonable having regard to what was done. While the Board's conclusion on the evidence was straightforward, the case is of interest for other reasons.

The Board had occasion to rule on other matters, including a series of requests for adjournments based upon the particular circumstances of the personal appellant. The Board held that the medical evidence brought forward by the appellant's counsel was insufficient to justify an adjournment of the matter *sine die*. The Board reviewed the medical evidence submitted by way of affidavit and also considered the application of the *Substitute Decisions Act*.

The decision is of further interest as a result of the appellant's attack on the validity of the Minister's Order and, subsequently, the Director's Order. The Board found that this argument was not appropriate or permitted, as it was a collateral attack. The Board also ruled that the issue of retroactive application of Section 143 of the previous statute did not apply since the remedial work, which was started under the repealed Section 143, continued on for a number of years under the current legislation.

Issue: Should the Director's Order to Pay Costs be struck down?

Decision: The Order to Pay Costs was proper and within the jurisdiction of the Director to issue under the provisions of the current *Environmental Protection Act*. The collateral and other attacks brought by the appellant to the Order were found to have no merit, and the appeal was dismissed.

Released: February 11, 2000 (Case No.: 99-017)

Environmental Bill of Rights, 1993

Federation of Ontario Naturalists et al. v. Director, Ministry of the Environment

The applicants, Federation of Ontario Naturalists, sought leave to appeal a decision of the Regional Director, Eastern Region, Ministry of the Environment, to issue an Order to Norampac Inc. on April 29, 1999, pursuant to Section 18 of the *Environmental Protection Act*, that would permit the application of a liquid, called Dombind, on various roads across the Province of Ontario.

Dombind is used as a dust suppressant on country roads and as a "binder/stabilizer" in road construction. Dombind is a material consisting of spent pulping liquor or evaporator concentrate or a mixture of these two streams produced at Norampac's pulp and paper mill.

Issues:

1. Has the applicant satisfied the test for leave to appeal?
2. Should the automatic stay be lifted?

Decision:

1. Yes. The Board ruled that one of the seven grounds advanced by the applicants met the requirement for leave to appeal. The Board accepted the submission that the Director acted unreasonably in failing to provide for adequate enforcement of the rules for the application of Dombind as a dust suppressant and this failure could cause significant environmental harm.
2. Yes. Norampac requested that, in the event that leave to appeal was granted, the Board lift the automatic statutory stay. In deciding whether the stay should be lifted, the Board ruled that it should exercise its discretion in a manner that serves to protect the environment and minimize, if not eliminate, the economic harm that would otherwise be created. The Board's decision to lift the stay was subject to several conditions, including the requirement that all

applications of Dombind be restricted to 50 metres from all waters and watercourses as defined in the Order and Users' Guide.

Released: August 27, 1999 (Case No.: 99-012)

Walter Schneider et al. v. Director, Ministry of the Environment

A golf course operator was granted a Permit To Take Water ("PTTW") by a Director exercising authority under Section 34 of the *Ontario Water Resources Act* ("OWRA"). The ten-year PTTW allowed the golf course operator to take 3.3 million litres of water per day, for 180 days per year, from a lake for the purpose of irrigating two new golf courses. A consultant's report, provided with the PTTW application, indicated that the water quality of the lake would not be negatively affected if the golf courses were established in accordance with the golf course operator's best management practices, which included "environmentally-sound computerized and customized fertilizer regimes." The appellants, several area residents who rely on the lake for potable water, were concerned that the fertilizers and other chemicals applied to the golf courses would contaminate the lake through runoff. These individuals filed an application for leave to appeal under the *Environmental Bill of Rights, 1993* on the basis that the Director erred in not including conditions in the PTTW that would require the golf course operator to adhere to the construction and operation protocols described in the consultant's report.

Issue: Should leave to appeal be granted ?

Decision: Yes. The appellants demonstrated that there was good reason to believe that the Director's refusal to impose terms and conditions in the PTTW addressing the water quality impacts consequent upon the granting of the PTTW, as described in a study placed before him/her, was an unreasonable decision. It was unreasonable both in terms of his/her narrow interpretation of the scope of Section 34 of the *OWRA* and in his/her application of the Ministry's guidelines calling for the Director to consider an ecosystem approach and prevent pollution in order to protect, preserve and sustain the province's water resources.

The consultant's report made certain recommendations that would prevent adverse water quality impacts caused by the main reason for seeking the PTTW, i.e. the use of a tremendous amount of water to irrigate a golf course. None of these recommendations were incorporated into the PTTW, and the golf course operator had made no assurances that such recommendations would be followed. Accordingly, the Director's decision to grant the PTTW for the stated purpose of irrigating the proposed golf course could result in significant harm to the environment.

Released: August 31, 1999 (Case No.: 99-026)

Noble, Felske & Holmes and Anders v. Director, Ministry of the Environment

Four individual applicants sought leave to appeal a decision by the Director, Ministry of the Environment, under Section 34 of the *Ontario Water Resources Act* to issue a Permit To Take Water ("PTTW") to

Artemesia Waters Ltd., for a bottled water operation to be located in the Township of Artemesia, County of Grey.

All four individuals were found to have sufficiently demonstrated an interest in seeking leave to appeal the Director's decision.

As a preliminary matter, Mr. Noble, one of the applicants, raised a constitutional issue and argued that the *Ontario Water Resources Act* ("OWRA") is inconsistent with Section 92A of the *Constitution Act, 1982*. He argued that since ground and service water is a renewable resource, the Federal Crown had never surrendered its exclusive right in this area, and accordingly, the Provincial Crown did not have jurisdiction in the matter. Upon hearing submissions from all parties, the Board ruled that the OWRA is not inconsistent with the Constitution, and consequently the Board had the jurisdiction to proceed with the matter.

Two of the parties raised the issue that the Director's issuance of the PTTW was contrary to the moratorium announced by the provincial Minister of the Environment. Upon hearing argument on this issue, the Board found that the Director is the designated person who has the jurisdiction and discretion to issue a PTTW, and that the Director's decision was not 'in conflict' with the statements by elected provincial representatives.

The applicants argued that the Director had not, in the decision to issue the PTTW, sufficiently taken into account issues of ecological conditions as well as technical concerns and considerations. Upon considering the evidence, the Board concluded that the Director had included specific conditions in the PTTW in order to provide assurance that the water supply for residences and farmers would not be in jeopardy, and that the protection of the natural environment would continue. Accordingly, the Board found that the Director had made a reasonable decision based on the information available and had not only provided specific conditions, but had also required extensive monitoring and a two-year expiry date.

The Board found that issues of value and enjoyment of property appeared to be outside the decision-making jurisdiction of the Director.

The Board concluded that the Director's decision was reasonable, having regard for the relevant law and government policies.

- Issues:**
1. Is the *Ontario Water Resources Act* consistent with Section 92A of the *Constitution Act, 1982*?
 2. Did the applicants satisfy the requirements for leave to appeal?

- Decision:**
1. No. The *Ontario Water Resources Act* is not inconsistent with the *Constitution Act*, and the Director, Ministry of the Environment, has the jurisdiction to issue orders under that act.
 2. No. The applicants did not meet the test required for the leave to appeal set out under the *Environmental Bills of Rights, 1993*. The Board ruled that the decision of the Director was a reasonable one having regard for the relevant law and government policies.

Kolodziejski v. Director, Ministry of the Environment

The applicant, Alex Kolodziejski, sought leave to appeal a decision by the Director, Ministry of the Environment, under the provisions of the *Ontario Water Resources Act* to issue a Permit To Take Water (“PTTW”) to Mansfield Ski Club Inc. (“Mansfield”), located in the Township of Mulmur in the County of Dufferin. The purpose of the PTTW is to allow Mansfield to use the water to make snow for its ski runs.

The PTTW combines two previous PTTWs into a single permit. The history of the matter shows that Mansfield was first issued a PTTW in 1996. The PTTW in issue varies the conditions attached to previous permits and expires in March 2004.

The applicant’s concerns included loss of topsoil and damage to fences as a result of the runoff of the melted snow during the spring thaw caused by excessive water taking, and adverse ecological impact upon the Pine River as a result of the runoff.

Some of the evidence submitted to the Board indicated that the conditions of the current PTTW were less specific and encompassing as to the requirement for reports concerning measurements than previous PTTWs.

More important to the Board’s consideration was the effect on Pine River of melt water from the ski hill. The evidence indicated that the artificially-made snow created a runoff in the spring exceeding the runoff that would have occurred naturally as a result of normal winter snowfall. The evidence also indicated that the applicant’s property had suffered from extensive flooding in some years, which the applicant stated was the effect of the snow which had been artificially made from the water taken by the Ski Club under the provisions of its PTTW.

The evidence indicated that the Ski Club had prepared a report in 1994 concerning the runoff’s impact on the Pine River. The applicant argued that the report was the result of a single day of sampling, with no baseline data and limited site selection. As well, the evidence indicated that the amount of water taken has increased significantly since the report was completed in 1994.

While the Board recognized the constraints of the *Ontario Water Resources Act* with respect to drainage works regulated under the *Drainage Act*, it remained concerned with the runoff and sedimentation impacting upon the Pine River. The Board concluded that the sedimentation conditions (so significant as to require dredging), will cause or have the potential to cause environmental harm to the Pine River’s water quality.

Issue: Should leave to appeal be granted?

Decision: Yes. The Board concluded that there is good reason to believe that there exists the potential for significant harm to the environment, in particular to the Pine River. Further, the Board found that there is

good reason to believe that the runoff will affect the quality and quantity of the water in the Pine River, and accordingly leave to appeal the permit was granted.

Released: February 14, 2000 (Case No.: 99-104)

Niagara Escarpment Planning and Development Act

Ross et al. v. NEC

One of the appellants, Minette Ross, resides in a house on an estate lot, about 11 acres in size, located in the Escarpment Protection Area of the Niagara Escarpment Plan. Minette Ross applied to the NEC for a development permit to allow the conversion of a barn to a temporary second dwelling - often referred to as a “granny flat” (about 1,260 square feet in size) to be used by her elderly parents. The NEC refused this application on the ground that the creation of a second residential dwelling was not permitted under the Niagara Escarpment Plan in the Escarpment Protection Area.

Issue: Is proposed conversion permissible within the terms of the Niagara Escarpment Plan?

Recommendation: No. Notwithstanding the compassionate grounds underlying this application, allowing additional dwelling units in this manner would set a precedent which could cumulatively place the integrity of the Niagara Escarpment environment in jeopardy.

In the event that the circumstances of this case lead to a conditional approval of the granny flat, a set of draft conditions of approval were included with the Report that would provide substantial assurance of the indispensable feature of this type of residence -- its temporariness.

Released: July 29, 1999 (Case No.: 98-126)

Report on Performance Measures

Fiscal Year 1999-2000

Pursuant to the directive of Management Board of Cabinet and MPP Bill Grimmett's Special Review Committee, the Board prepared its 1999-2000 Performance Measures. These were submitted to the Minister of the Environment and to Management Board of Cabinet for review and approval in December 1998. In March 1999, the Special Review Committee's Report was received and its suggestions were incorporated.

The Board identified four Core Businesses:

1. Outreach
2. Alternative Dispute Resolution
3. Staff Processing of Hearings
4. Hearings and Decision Making

Performance Target Areas:

The Board determined that, for fiscal year 1999-2000, four primary goals would be targeted as high priority:

1. Accessibility in Outreach
2. Fairness in Alternative Dispute Resolution
3. Transparency and Timeliness in Staff Processing of Hearings
4. Courtesy and Timeliness in Hearing and Decision Making

The Board met or exceeded the performance measures in each of the four targeted areas.

1. Accessibility in Outreach

In the first targeted area, Accessibility in Outreach, the Board used a number of measures to monitor performance.

Brochures and other print publications were screened for the use of plain language. The Board received feedback from the public that the brochures and flyers are useful. These publications are also available in electronic format on the Board's Internet site. The Board has not received any complaints concerning plain language in its publications.

Decisions of the Board are posted on the Board's Internet site within 24 hours of their release and are available in full-text downloadable format. If members of the public do not have Internet access, the Board will provide copies of decisions by mail free-of-charge.

Questionnaires were developed and distributed at the completion of every Public Information Session in order to garner responses from the audience on the content and delivery of the Information Session. In the 74

responses received, the Board scored 94% overall satisfaction with the Public Information Sessions, which exceeded the quantified target of 60% or better.

The Board's Internet site has an online feedback form available for visitors' use. The Board has responded to each visitor who completed a feedback form in order to assist or discuss the suggestions made concerning the Board's website or policies.

Standards for response times for enquiries were established for staff. Staff return telephone inquiries within 24 hours of receipt, return e-mails within 24 hours, and respond to regular correspondence within five days. This is in contrast to the government's stated 15-day standard for response to e-mail and regular correspondence.

Staff were provided with standardized information developed to ensure high quality and consistent "messages" when communicating to the public by telephone, particularly when responding to frequently asked questions.

Internet site logs were maintained to measure the number of visits to various pages on the Board's Internet site and to determine the number of times that decisions, the Board's Rules of Practice and enabling statutes were downloaded. When receiving requests for hard copies of these documents, staff first advise the requester that this information is available in downloadable format on the Internet site. The Board's logs indicate that the number of downloads of these documents from the Internet site (in the tens of thousands) far exceeded the number of paper copies distributed (less than 200). The number of requests for paper copies has been significantly reduced since the launching of the Board's Internet site, resulting in the use of less staff time and a significant reduction in costs associated with processing.

2. Fairness in Alternative Dispute Resolution

In order to assess its Fairness in conducting Alternative Dispute Resolution ("ADR") sessions, the Board used a number of measurables.

Senior staff and Board members who conducted ADR services were screened for potential allegations of bias or conflict of interest in each particular case. The Board did not receive any complaints concerning bias or conflict of interest. Senior staff and Board members who conducted the ADR services were certified through an accredited course.

All participants in individual ADR sessions were sent a questionnaire at the end of the session, which included questions on their perception of fairness in the process by the staff member/Board member who provided the ADR services. In 21 responses received, the Board scored 75% in overall satisfaction with the ADR process, which exceeded the quantified target of 60%.

The Board offered ADR services to all parties of hearings scheduled in this fiscal year. In 26 cases, parties participated in ADR prior to the formal hearing process.

The costs associated with ADR were tracked, including the salary/per diem components and travel and other expenses. The average cost per case to conduct an ADR session was \$199.00.

3. Transparency and Timeliness in the Staff Processing of Hearings

In order to assess performance under this targeted area, a number of measurables were identified. Manuals were produced for staff which detail the step-by-step processes for each appeal/application received by the Board under the various statutes. The manuals clearly define what steps are to be taken, and in what sequence. The manuals form the basis of the information transmitted to the members of the public who access the Board's processes, in order to explain to them what steps their application will take throughout the entire process.

The Board adopted a 30-day timeliness standard to issue a Notice of Hearing, counting from the day on which the application/appeal is received. The Board has met this timeframe. The average time to schedule the application from the date of receipt was 17 days. The average time staff took to schedule an application/appeal after the parties provided all necessary documentation was 7 days.

4. Courtesy and Timeliness in Hearing and Decision Making

Measurables were identified in order to assess the fourth targeted area.

Feedback forms were developed and given (along with a self-addressed stamped envelope) to every party, every representative of a party and every participant at a hearing, commencing on April 1, 1999. These questionnaires were and will continue to be used for a variety of purposes, in order to improve the Board's processes. The questionnaires included questions related explicitly to the perception of the parties and their representatives concerning the courtesy of Board members during the hearing process. Of the 76 responses received, the Board scored 93.5% in overall satisfaction. Another measurable used was the observations of Board members and of senior staff in attendance at hearings, in order to continually improve the level of courtesy extended to members of the public during the hearing process. The Board developed a formal policy and process for complaints received from the public. The Board received one formal complaint about a Board member, during the fiscal year, which was investigated by the Chair in accordance with the Board's Complaint Policy. Corrective action was taken.

The Board successfully met the average of a 30-day time frame to release its decisions/recommendations after the completion of the hearing. On average, the Board released its decisions/recommendations within 16 days.

Cost of Hearings

In addition to the four targeted areas noted above, and as a new initiative, the Board tracked the cost of hearings and the cost of Pre-hearing Conferences conducted by senior staff.

The components of Pre-hearing Conference costs were the cost of senior staff costed at a calculated per-diem rate, and any out-of-pocket expenses, such as long-distance telephone charges for conference calls. The components of hearing costs were the cost of members, calculated at the actual per-diems paid to part-time members, or the calculated per-diem rate for full-time Vice-Chairs, plus out-of-pocket expenses, such as travel, accommodation and meal charges.

The Board's general overhead costs, such as staff salaries and benefits, technology expenses, and general office expenses (paper, postage, etc.) were not factored into the cost of hearings exercise, as these are general operating costs which include non-hearing business functions.

Only hearings that were completed in fiscal 1999-2000 and in which members devoted hearing time were factored into the calculation. Thus, hearings that either began in a previous fiscal year (in which case, the time spent and expenses incurred were obtained from the records of previous years) and ended in fiscal year 1999-2000, or hearings that both began and ended in fiscal 1999-2000 were used for the calculation. Hearings which began in fiscal 1999-2000, but which remained ongoing at April 1, 2000 will be included in the cost results of the fiscal year in which they are completed.

The average cost of a hearing completed in fiscal 1999-2000 was \$2,291.60 and the average cost per day was \$347.02.

Appendix A

Profile of Board Members

Chair and Full-time Vice-Chairs

Carl F. Dombek, Chair

- Chair of the Environmental Assessment and Appeal Boards since December 1997
- graduate of Brock University and Dalhousie University Law School
- practiced law in the private and public sectors
- over 20 years' experience as a Legal Director for various Ministries and Agencies
- Former Chief Administrative Officer of a provincial Law Society and Director of Business Development Branch for a provincial Commission
- significant experience in managing change, improving quality and client service, and in risk management

Pauline Browes

- appointed as a Vice-Chair in October 1995
- received Bachelor of Arts (Political Science) from York University, Toronto and holds an Elementary Teaching Certificate from Toronto Teachers' College
- Member of Federal Parliament from 1984 to 1993; Cabinet Minister and Privy Councillor (1991-1993); Minister of Indian Affairs and Northern Development (1993); Minister of State - Employment and Immigration (1993); Minister of State - Environment (1991-1993)
- Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981-1984)
- Committee member, Chiropractic Review Committee, Government of Ontario (1976-1981)
- Member of Board of Governors, Scarborough Hospital (1994-1999)
- Founder and Curator of an Art Gallery at Rice Lake, Ontario (1999)

Len Gertler

- appointed as a Vice-Chair in May 1990
- Distinguished Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners
- combines an interest in planning, development, and environmental management in both an urban and regional context in Canada and abroad
- co-ordinator and author of the Niagara Escarpment Study, commissioned by Premier John Robarts, which eventually led to the establishment of the *Niagara Escarpment Planning and Development Act* in 1973
- foreign assignments include work in Southeast Asia and the Caribbean for United Nations agencies and Canadian International Development Agency
- author and editor of several books on environmental and planning issues

Knox M. Henry

- originally appointed as a part-time Member to the Pesticides Appeal Board in 1975, which was merged with the Environmental Appeal Board in 1978
- part-time Member until appointed the full-time Vice-Chair of the Environmental Appeal Board in 1991
- cross-appointed as member of the Ontario Rental Housing Tribunal, 1999
- strong background as one of Canada's leading horticulturalists
- guest lecturer on propagation, management and environmental issues at various universities and colleges
- cross-appointed as a Deputy Mining and Lands Commissioner for the period 1995 to 1997
- appointed as a Member and an elected Director of the Canadian National Exhibition Association for over 25 years

David Hutcheon

- appointed as a Vice-Chair in June 1999
- Deputy Mayor, Budget-Chief, and executive member Toronto City Council (1994-1997); introduced Ontario's first municipal tree by-law and clean-air legislation
- Commissioner, Toronto Harbour Commission (1994-1997)
- Director, Runnymede Chronic Care Hospital (1994-1997)
- Director, Humber Watershed Alliance and Task Force (1993-present); Humber granted Heritage River status; Canadian Institute of Planners S. George Rich 1998 award recipient
- Director and founding member of the Canadian Urban Institute, Toronto (1993-present)
- Vice-Chairman, City of Toronto Planning Advisory Committee (1985-1989)
- Bachelor of Arts, Henry Rutgers Scholar (History), Rutgers College, Rutgers University, New Jersey; presently part-time Master of Public Administration student at University of Western Ontario

Part-time Board Members

William Balfour

- appointed in May 1999
- Principal of Gartner Lee Ltd., Environmental Consultants since 1989
- is a civil engineer and has a Master of Business Administration from the University of Toronto
- formerly held senior positions in the Ministry of the Environment and the Ministry of Health

Nathalie Des Rosiers

- appointed in 1988
- an Associate Professor, Faculty of Law, at the University of Western Ontario specializing in Constitutional Law, Administrative Law and Social Welfare, and Comparative Law
- previously in private legal practice and earlier served as a law clerk at the Supreme Court of Canada

Bruce T. Hyer

- appointed in 1990
- member or officer of Environment North, Pollution Probe, the Algonquin Wildlands League, the Thunder Bay Field Naturalists, the Lake Superior Binational Forum, and other outdoors and conservation organizations
- taught outdoors skills courses, ecology and biology, and received awards for citizenship and conservation activities
- undergraduate degrees in biology and English, and is currently studying for a Master's Degree in Forestry at Lakehead University
- owner of WildWaters Nature Tours and Expeditions Ltd., which provides canoe outfitting and operates a fly-in fishing lodge

Franco R. Mariotti

- appointed in 1987
- a biologist and manager of the Biosphere Exhibit area at Science North, he has travelled widely in North and South America, Iceland, and the Galapagos
- a founder of the Sudbury Naturalists' Club; active in social and environmentally-concerned groups

George W. Ozburn

- appointed in 1975
- Bachelor of Science degree in Agriculture (McGill); spent a year studying at Imperial College of Science and Technology in London (UK) prior to gaining his Ph.D. (Entomology and Toxicology) at McGill, and prior to joining the Faculty of Science at Lakehead University in Thunder Bay
- worked in pesticide research for three years in West Africa, followed by a university appointment in Michigan
- for many years was responsible for a major study of chronic and acute toxicity of many families of chlorinated organic compounds
- as Professor Emeritus, is now associated with a laboratory at Lakehead University which carries out regulatory and chronic toxicity testing for industry

David A. B. Pearson

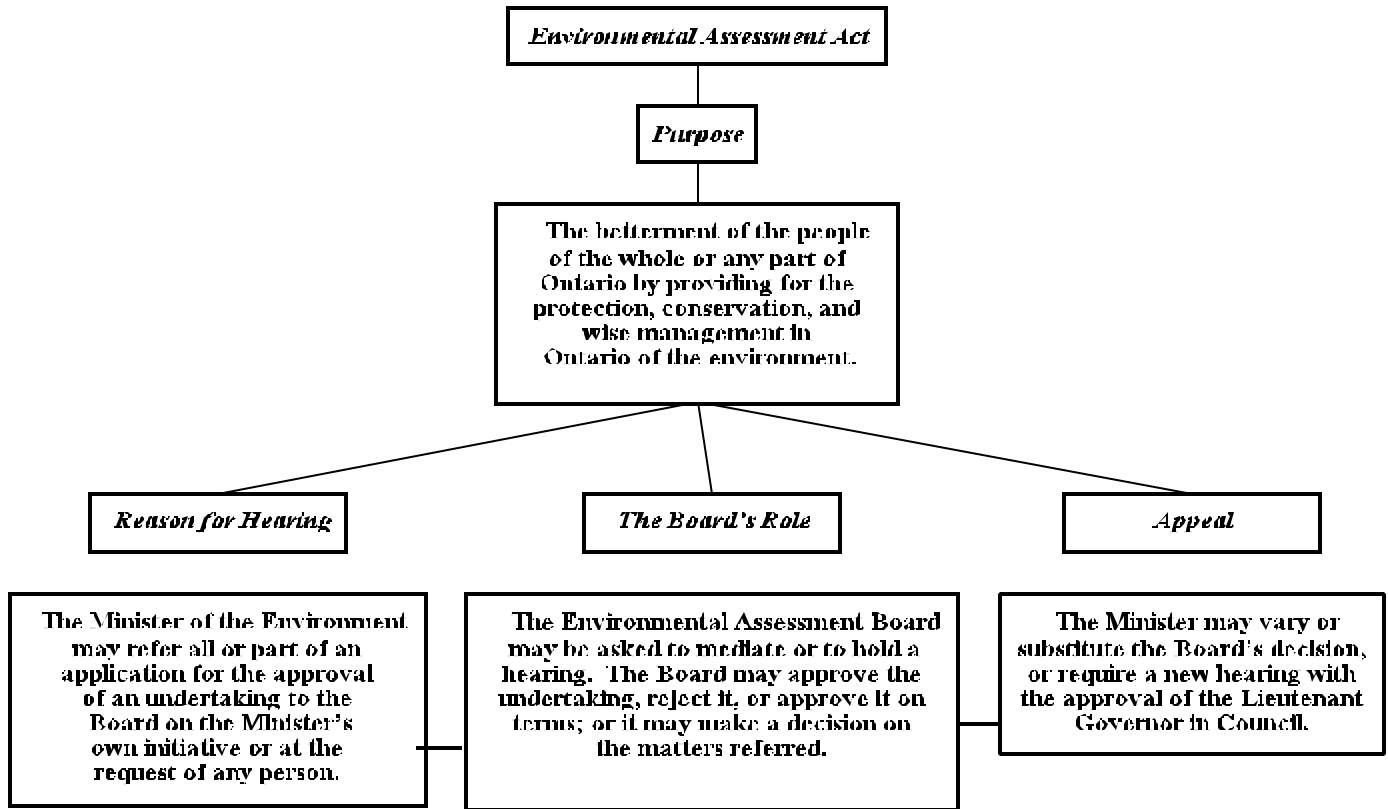
- appointed in 1987
- an Associate Professor of Earth Sciences at Laurentian University
- currently involved in research into lake restoration and is coordinator of the University's Environmental Earth Science program
- as Project Director, was responsible for the development of Science North, where he continues as Associate Director
- active as a host of radio and T.V. science programs

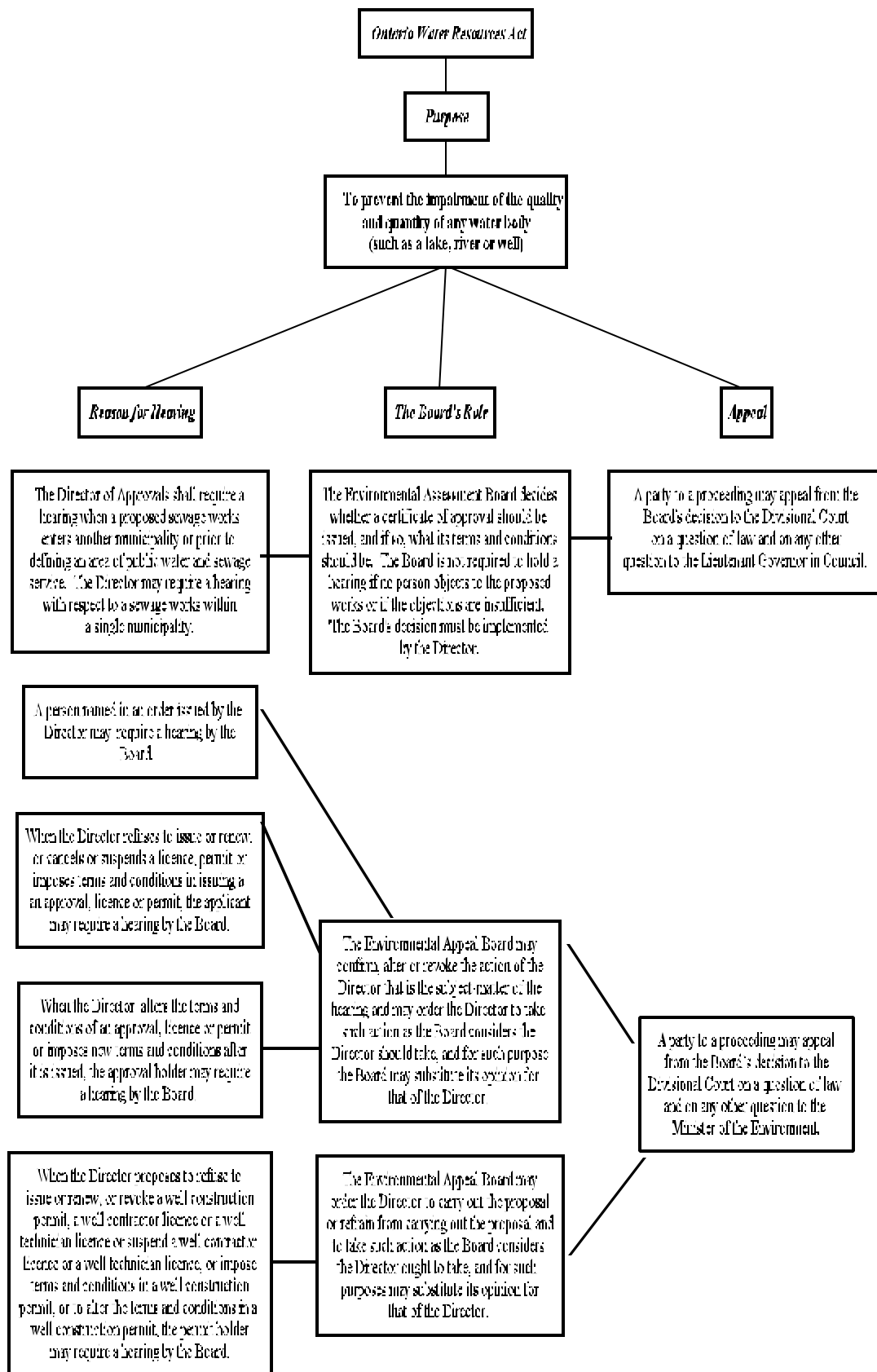
Mary C. Schwass

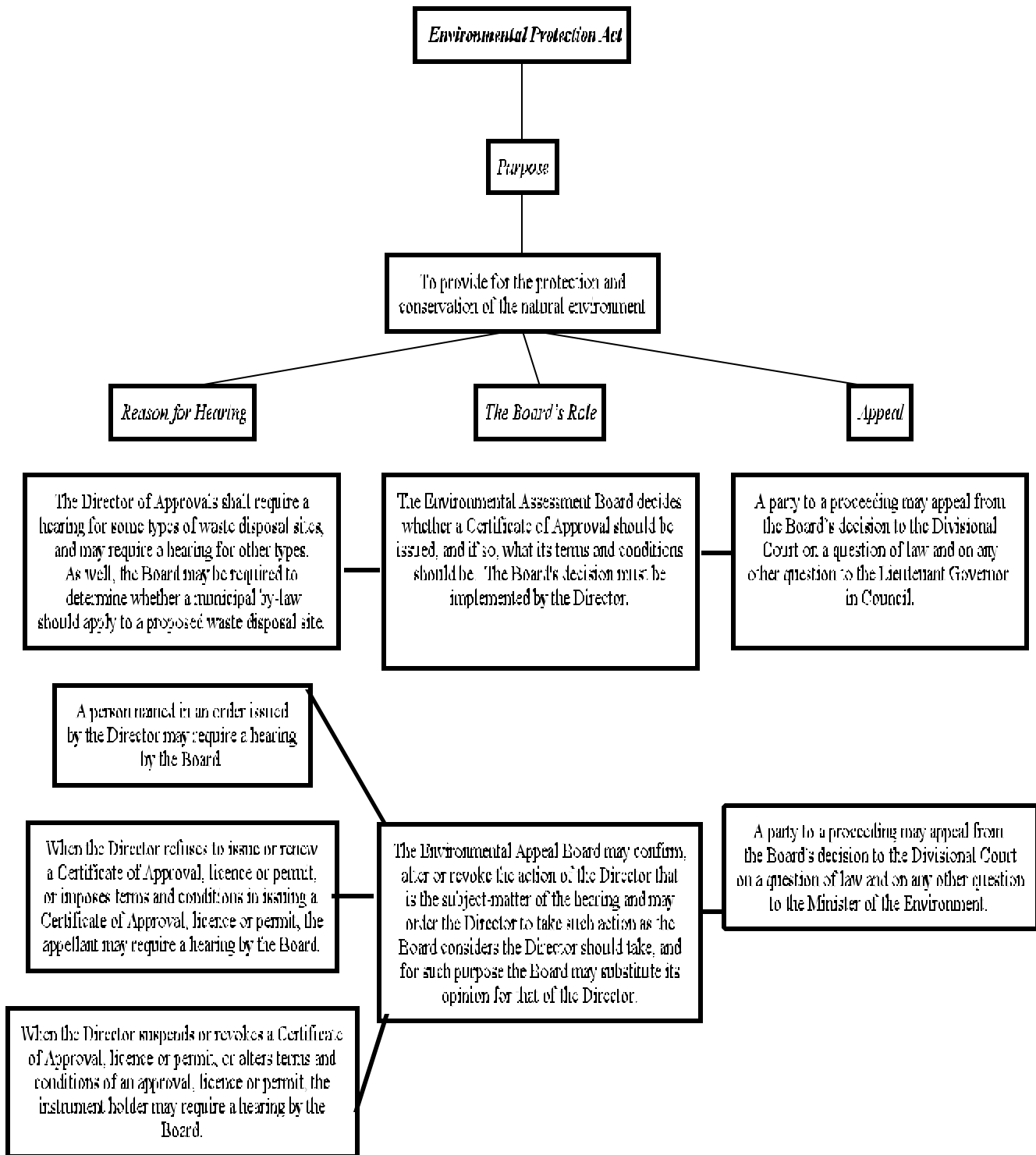
- appointed in 1987
- President of Canadian International Consulting Economists Ltd., a firm specializing in developing long-term strategic planning, policies and priorities for private sector companies and governments throughout North America, Africa and Asia

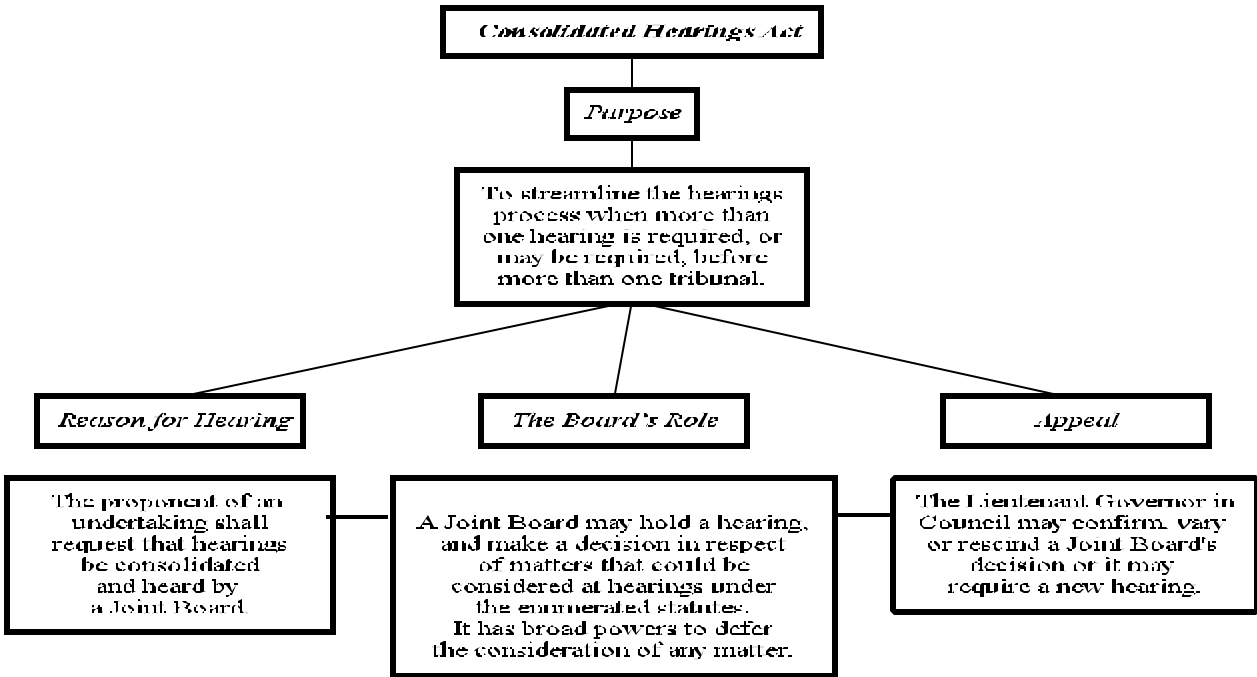
Appendix B

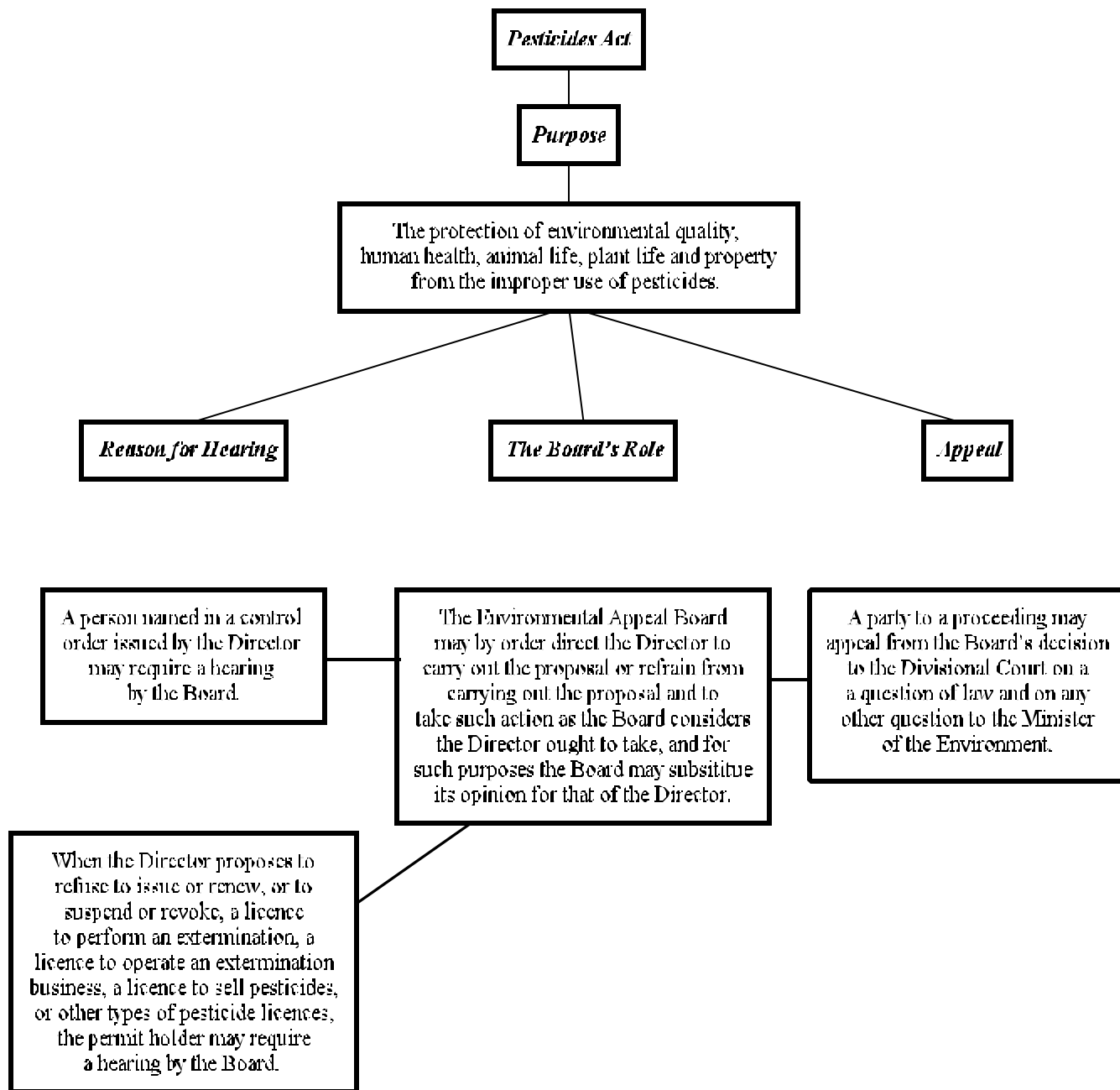
Overview of Relevant Legislation

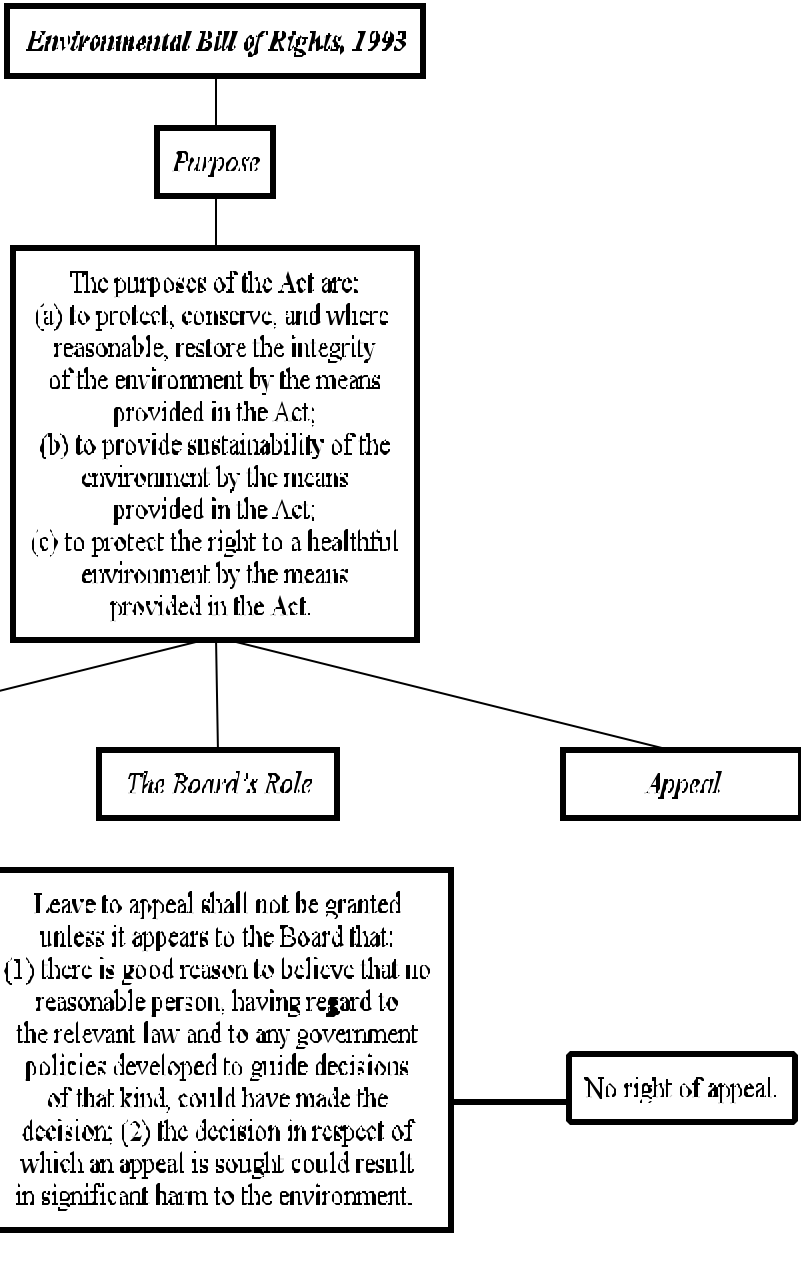


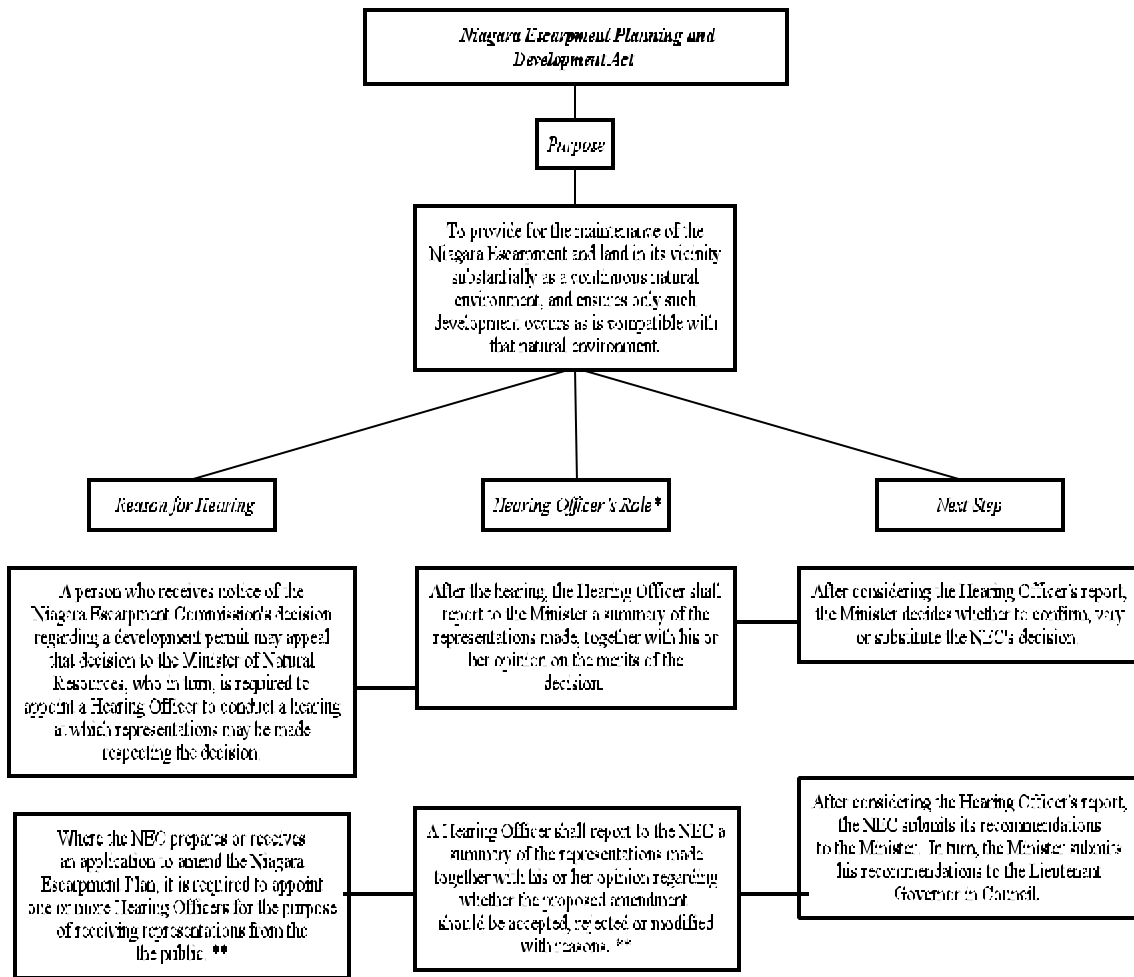












* Members of the Environmental Assessment and Appeal Boards are appointed as Hearing Officers under the Niagara Escarpment Planning and Development Act

** Refer to page 3 of this report under Board's Mandate to review changes since the proclamation of the Red Tape Reduction Act, 1999, S.O. 1999 c 12 (Bill 11)

Appendix C

Public Outreach Presentations		
Date	Presented To	Presenter
April 23, 1999	Showcase Ontario	Naren Ariarajah/Susan Dunn/ Mark Frawley
May 6, 1999	Success Business College	Knox Henry
May 13, 1999	Government of the Yukon	Carl Dombek
June 8, 1999	Canadian Bar Association (Ontario), Environmental Law Section	Carl Dombek/Mario Faieta
June 14, 1999	Regional Municipality of York	Carl Dombek
June 23, 1999	SOAR's Strengthening Our Supports Conference	Mark Frawley
June 24, 1999	City of Barrie	Mark Frawley
July 5, 1999	City of Oshawa	Mark Frawley
July 12, 1999	County of Northumberland	Mark Frawley
July 20, 1999	County of Simcoe	Mark Frawley
August 19, 1999	Health Services Appeal and Review Board	Mark Frawley
September 28, 1999	Grievance Settlement Board and the Public Service Grievance Board	Mark Frawley
October 12, 1999	Council of Canadian Administrative Tribunals Conference, Vancouver	Carl Dombek
November 18, 1999	Conference of Ontario Boards and Agencies	Mark Frawley
December 8, 1999	City of Thunder Bay	Knox Henry
February 11, 2000	Success Business College	Pauline Browes
February 17, 2000	Kingston Chamber of Commerce	Mark Frawley
February 18, 2000	Loyalist College	Mark Frawley
February 29, 2000	Ministry of the Environment, Expert Witness course	Carl Dombek

Public Outreach Presentations

March 21, 2000	Niagara College	Carl Dombek
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Appendix D

Learning Program 1999-2000

Date	Topic	Speakers
April 22, 1999	Niagara Escarpment Plan, Review Process Revisited	Frank Shaw, Director and Marion Plaunt, Supervisor, Plan Administration, Niagara Escarpment Commission
June 17, 1999	Field Visit: Industry in The City	Gary McLean, General Manager, Lubricants Refinery, Petro Canada
September 9, 1999	Climate Change: Implications for Ontario	Henry Hengeveld, Atmospheric Environment Service, Downsview; Paul Gray, Sr. Program Advisor, Ontario Parks, Ministry of Natural Resources
November 18, 1999	Environmental Issues for the 21 st Century: A Global and Local Perspective	Hon. John Fraser, former Ambassador for the Environment for Canada
January 21, 2000	The Hearing Process: Expert Witnesses The Expert's Duty to the Tribunal: The Relationship between the Legal Process and the Scientific Process	Bill Balfour, Gartner Lee (and part-time Board member) Justice Douglas Carruthers, Chair, Ontario Review Board

Appendix E

Performance Goals and Objectives for Fiscal Year 2000-2001

The Environmental Assessment and Appeal Boards' ("the Board") Performance Goals Matrix for the fiscal year 2000-2001 is attached. As found in the Matrix's left-hand column, the Board has continued to adopt the eight common goals identified by the Agency Reform Commission as critical to effective and efficient performance and service quality.

Along the top of the Matrix are the Board's Core Businesses, which are:

- 1. Outreach**
- 2. Alternative Dispute Resolution**
- 3. Staff Processing of Hearings**
- 4. Hearings and Decision Making**

1. OUTREACH

Passive Component:

Board staff provide brochures and other print material for walk-in clients and for mailing, upon request. Also, the Board's Internet site provides a wide variety of up-to-date material.

Active Component:

This includes staff's response to questions and Public Information Sessions delivered by senior staff or Board members. These Sessions are held prior to major hearings and, upon request, to inform the public about the Board's jurisdiction, process and other matters.

2. ALTERNATIVE DISPUTE RESOLUTION SERVICES

The Board's senior staff and several of its members have been certified in ADR courses, and are experienced in mediation and other ADR services. These services will be offered to all parties appearing before the Board, and before the Niagara Escarpment Hearing Office, and are generally conducted 30 days before a hearing.

3. STAFF PROCESSING OF HEARINGS

This phase includes all administrative steps necessary to process an appeal/application from the date of first filing to the beginning of the hearing, including;

- screening the application to assess its compliance with the Act under which it was filed,
- assigning it to an appropriate hearing process;
- scheduling the hearing according to the Board's practices and information specific to the appeal/application.

4. HEARINGS AND DECISION MAKING

This component is entirely in the hands of the Board members, all of whom are Order-in-Council appointees. It includes hearings held by members and their written decisions.

Performance Target Areas

The Board has targeted the following nine goals as high priority for the fiscal year 2000-2001:

Outreach:	Accessibility; Quality and Consistency
Alternative Dispute Resolution:	Fairness; Optimal Cost
Staff Processing of Hearings:	Time Lines; Transparency
Hearings and Dispute Resolution:	Time Lines; Optimal Costs; Courtesy

The Board will use the following measurables to judge its success in each of the four target areas:

Accessibility, Quality and Consistency in Outreach:

- Board's decisions will be posted on Board's Internet site;
- More downloads of Board decisions than requests for hard copies;
- On-line feedback form for response from website visitors;
- Use of Stakeholders Advisory Group to review new policies and procedures for the Board;
- Standards for timely response to queries from public by phone and e-mail (24 hrs), and mail (5 days) will be adhered to;
- Surveys evaluating Public Information Session's content and presentation should receive a positive response from at least 70% of audience respondents;
- Public Information Sessions to contain consistent visual presentation, and those conducting session will be provided with detailed description of content;
- Continuous review of brochures and other print materials to ensure they are up-to-date; and
- Website to be updated within a 24 hour business day of any change in a stage of a hearing.

Fairness and Optimal Cost in Alternative Dispute Resolution:

- All matters coming before the Board and Hearing Office to be offered ADR services;
 - All senior staff and Board members providing ADR to be certified by accredited course;
 - All those designated to provide ADR services to be screened for potential allegations of bias or conflict of interest prior to being assigned to any case;
 - Absence of complaints of bias or conflict of interest;
 - Post-ADR survey evaluating the participants' perception of fairness should receive a positive response from at least 70% of those who respond; and
-
- ADR sessions to be conducted in the most efficient and practical manner – those conducted in person to be held in a no-cost meeting room in an area of the province convenient for the majority of

participants to travel to, and for those held by teleconference, staff will use the Board's teleconferencing phone lines if possible so no hook-up charges will be incurred.

Transparency and Time Lines in Staff Processing of Hearings:

- Staff manuals to be revised as policies and procedures are modified;
- Manuals will make clear what steps are to be taken and in what sequence, including the appropriate correspondence to be sent at various stages;
- Manuals to be used as "policies and procedures" to be applied to processing of hearing applications;
- Manuals to be used to answer public's queries about what steps will be taken prior to hearing;
- Manuals will be used in the orientation of new employees; and
- Timeliness standard to be followed in issuing Notice of Appeal: 30 calendar days from date application received and 7 calendar days from date Board receives all necessary information/documentation from parties.

Courtesy, Time Lines and Optimal Cost in Hearings and Decision Making:

- 70% of hearing parties and participants completing questionnaire should show a positive response to question evaluating Board member's courtesy;
- Board members and senior staff to monitor courtesy extended to public by Board; and
- Costs associated with Hearing and Decision Making to be tracked, including salary/per diem, travel and other expenditures.

Other Performance Targets:

The Board has also set targets for areas outside of its Core Businesses: Board members and staff will participate in the Government's Agency Reform Mandate by becoming involved on committees and providing any assistance or input required. Members and staff will also participate in the greater Agency community by actively participating in the Canadian Council of Administrative Tribunals, and the Society of Ontario Adjudicators and Regulators.

**Environmental Assessment Board
Environmental Appeal Board
Fiscal 2000-2001**

Performance Goals

Matrix Table of Priorities

	OUTREACH		ADR	STAFF PROCESSING of HEARINGS	HEARINGS	DECISION MAKING
	<i>Passive</i> [Staff]	<i>Active</i> [Staff and Members]	[Staff and Members]	<i>Receipt/Screening/Streaming/Scheduling</i> [Staff]	[Members]	
FAIRNESS	MEDIUM	MEDIUM	HIGH	MEDIUM	MEDIUM	MEDIUM
ACCESSIBILITY	HIGH	HIGH	MEDIUM	MEDIUM	MEDIUM	LOW
TIME LINES	MEDIUM	MEDIUM	MEDIUM	HIGH	MEDIUM	HIGH
QUALITY AND CONSISTENCY	HIGH	HIGH	LOW	MEDIUM	MEDIUM	MEDIUM
TRANSPARENCY	MEDIUM	MEDIUM	MEDIUM	HIGH	MEDIUM	MEDIUM
EXPERTISE	MEDIUM	MEDIUM	MEDIUM	LOW	MEDIUM	MEDIUM
OPTIMAL COST	LOW	LOW	HIGH	LOW	HIGH	HIGH
COURTESY	MEDIUM	MEDIUM	MEDIUM	MEDIUM	HIGH	HIGH

Appendix F

Website Statistics – Downloads During the period April 1, 1999 to March 31, 2000

Most Popular Downloads

Details which downloadable files have been requested, and by how many visitors during the relevant period.

File Name	Downloads
<i>Environmental Protection Act</i>	22,716
<i>Ontario Water Resources Act</i>	8,425
<i>Environmental Assessment Act</i>	6,217
<i>Pesticides Act</i>	2,458
<i>Environmental Bill of Rights, 1993</i>	1,632
Assessment Brochure	1,155
1998-1999 Annual Report	994
Material Resource Recovery SRBP Inc. Decision	934
Adams Mine Decision	900
Appeals Brochure	886
Rules of Practice	788
Assessment Flyer	710
Aquatech Blue Ltd. Decision	633
Appeals Flyer	594
Gilmet Decision	565
Adams Mine Divisional Court Decision	555
Soyers Lake Ratepayers Assoc. Decision	534

Appendix G

Financial Report

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Salaries & Wages	\$ 920,400	\$ 903,400	\$ 905,021
Employee Benefits	163,400	202,000	200,069
Transportation and Communication	125,900	112,000	61,189
Services	251,200	215,000	194,256
Supplies	56,100	59,000	49,915
Total	\$1,517,000	\$1,491,000	\$1,410,450