



Environment and Land Tribunals Ontario

Environmental Review Tribunal

A Guide to Hearings arising from
Applications under the *Environmental
Assessment Act, Environmental
Protection Act, and Ontario
Water Resources Act*

This guide provides a general overview of applications under the [Environmental Assessment Act](#), the [Environmental Protection Act](#) and the [Ontario Water Resources Act](#) and should not be relied upon as an authoritative text. The statutes, regulations and [Rules of Practice and Practice Directions](#) of the Environmental Review Tribunal prevail.

Information about specific cases is available on the [Hearings page](#) and/or [Decisions & Orders page](#) on the Environment Review [Tribunal's website](#) or by contacting:

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What is the Environmental Review Tribunal?

The Environmental Review Tribunal (“Tribunal”) is an independent and impartial tribunal established by provincial legislation. The Tribunal holds public hearings on appeals and applications made under various provincial statutes.

This guide deals with applications that are referred to the Tribunal for a hearing under the [Environmental Assessment Act](#), the [Environmental Protection Act](#) and the [Ontario Water Resources Act](#) to assess the environmental impacts of a proposed undertaking or order.

Under the *Environmental Protection Act* and the *Ontario Water Resources Act*, the Tribunal also conducts hearings where a person appeals a decision made by a government official. These appeal hearings are different from the application hearings covered under this guide. For information on the appeal hearings, please refer to [“A Guide to Appeals under the Clean Water Act, 2006, Environmental Protection Act, Nutrient Management Act, 2002, Ontario Water Resources Act, Pesticides Act, Resource Recovery and Circular Economy Act, 2016, Safe Drinking Water Act, 2002, Toxics Reduction Act, 2009 and Waste Diversion Transition Act, 2016”](#).

The Members of the Tribunal are appointed by the Lieutenant Governor in Council for the Province of Ontario to conduct hearings and make decisions on appeals and applications. The Members have a variety of experience and include environmental lawyers, academics, planners and mediators. The Members of the Tribunal are not employees of the Ministry of the Environment, Conservation and Parks. The Members’ biographies are found on the [Public Appointments Secretariat’s website](#).

Why is a matter referred to the Tribunal for a hearing under the *Environmental Assessment Act*?

Under the [Environmental Assessment Act](#) (“EAA”), certain projects, also referred to as **undertakings**, are required to go through an environmental assessment and receive approval by the Minister of the Environment, Conservation and Parks. The environmental assessment evaluates the environmental impacts of the proposed undertaking.

All provincial and municipal undertakings are required to go through an environmental assessment, unless specifically exempted by the EAA. Private sector undertakings are not subject to the requirements of the EAA, unless specifically designated by regulation. Common types of undertakings that must be approved under the EAA include applications for the establishment (or expansion) of a landfill or the construction of a highway.

The environmental assessment process begins long before a Tribunal hearing. Under the EAA, a **Proponent** (the person proposing an undertaking) submits an environmental assessment document to the Minister describing the environmental impacts of the undertaking in accordance with the terms of reference approved by the Minister.

After an environmental assessment has been reviewed by the government and the public, the Minister may, on their own initiative or at the request of any person, refer the application, or any part of the application, to the Tribunal for a hearing.

If an application is referred for a hearing, the Tribunal must determine whether to approve the undertaking, approve the undertaking subject to conditions, or refuse to grant approval.

Why is a matter referred to the Tribunal for a hearing under the *Environmental Protection Act*?

Under the [Environmental Protection Act](#) (“EPA”), a person who wishes to engage in an activity that discharges contaminants into the environment, or a person who wishes to establish or operate a waste disposal site or waste management system, must apply to the Director of the Ministry of the Environment, Conservation and Parks for an environmental compliance approval. Before making a decision, the Director may require the Tribunal to hold a hearing on the application.

If the location or operation of a proposed waste disposal site is affected by a municipal by-law, the Director may also require the Tribunal to hold a hearing to consider whether or not the by-law should apply to the proposed waste disposal site.

If a hearing is held, the Tribunal will decide whether to deny or grant the application for approval or whether or not the by-law applies. The Director is then required to implement the Tribunal’s decision.

Why is a matter referred to the Tribunal for a hearing under the *Ontario Water Resources Act*?

Under the [Ontario Water Resources Act](#) (“OWRA”), the Director of the Ministry of the Environment, Conservation and Parks may make an order to define and designate an area as an area of public water or sewage service if it is in the public interest to do so. Before making such an order, the Director must require the Tribunal to hold a hearing.

If the Director requires a hearing, the Tribunal will provide notice of the hearing to the public. Any person objecting to the proposed order must file a Notice of Objection with the Tribunal within 15 days of being served with the notice of hearing. The Notice of Objection must contain reason(s) supporting the objection. If no one from the public objects to the proposed order, the Tribunal is not required to hold a hearing.

If a hearing is held, the Tribunal will decide whether or not the Director should issue the order and the Director must implement the Tribunal’s decision.

How can neighbours and other concerned people participate?

Neighbours and other people who feel that they are affected by the subject matter of the hearing may apply to the Tribunal to participate in the hearing.

If you receive notice of the pre-hearing conference and hearing, you may write to the Tribunal, at least seven days before the date of the pre-hearing conference and request to be included in the pre-hearing conference. At that time, you can request the member to add you as a Party, Participant or Presenter. A person may also attend the hearing and request to be added as a Party, Participant or Presenter. However, if the matter settles at the pre-hearing conference a hearing will not take place and the person will have missed their chance to offer input in the matter.

Requests for status must be relevant to the subject matter of the hearing before the Tribunal.

What is the difference between a Party, Participant, and Presenter?

The Tribunal has different levels of participation so that anyone interested in the hearing can be involved. The Tribunal encourages participation in its hearings. As set out below, the three options for participation (i.e. Party, Participant, and Presenter) address different needs and interests.

Who can be a Party?

Persons that are specified as Parties by the statute under which the proceeding is commenced, or are otherwise entitled to be a Party by law, are automatically Parties to the proceeding. If a person requests Party status, the Tribunal may also name that person as a Party after considering:

- if the person's interests may be directly and greatly affected by the hearing or its result;
- if the person has a genuine interest, public or private, in the subject matter of the appeal; and
- if the person is likely to make a relevant contribution to the Tribunal's understanding of the issues in the appeal.

What is the role of a Party?

Those who request and receive Party status from the Tribunal take on the fullest range of rights and responsibilities. Most Parties are represented by a lawyer or another type of representative, but Parties may act on their own behalf by representing themselves. A Party can be either one person (including a corporation) or a group of persons. Generally speaking, unincorporated associations are not considered to be legal persons who can receive status before the Tribunal. Therefore, an individual who can bring forward the interests of an unincorporated association may seek status on behalf of the association.

An added Party may not raise a new issue without permission of the Tribunal.

A Party may:

- be a witness at the hearing;

- be questioned by the Tribunal and the Parties;
- bring motions;
- call witnesses at the hearing;
- cross-examine witnesses called by other Parties;
- make submissions to the Tribunal, including opening statements and final argument;
- receive copies of all documents exchanged or filed by the Parties;
- participate in mediation;
- attend site visits; and
- claim costs and be liable for costs, where permitted by law.

Who can be a Participant?

A person who has an interest in the subject matter of the hearing may be named as a Participant. The Tribunal may decide to name a person as a Participant, rather than as a Party, if the person's connection to the subject matter of the hearing is more remote than a Party's would be. A person who may otherwise qualify as a Party may request Participant status.

What is the role of a Participant?

A Participant has the right to observe and present their views at a hearing. They may also:

- be questioned by the Tribunal and the Parties;
- make submissions to the Tribunal, including opening statements and final argument;
- receive a copy of the documents exchanged by the Parties that are relevant to the Participant's interests (upon request); and
- attend site visits.

However, a Participant cannot:

- raise issues not already raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions;
- participate in mediation (unless allowed to do so by the Tribunal); or
- claim costs or be liable for costs.

Who can be a Presenter?

A person who has an interest in the subject matter of the hearing may be named as a Presenter. The Tribunal may decide to name a person as a Presenter, rather than as a Party or Participant, if the person's connection to the subject matter of the hearing is

more remote than a Party's or Participant's would be. A person who may otherwise qualify as a Party or Participant may request Presenter status.

What is the role of a Presenter?

A Presenter only needs to attend the hearing when they are presenting their evidence. In addition to the right to observe and present their views at a hearing, a Presenter may:

- be a witness and present their views either during the regular daytime sessions or at a special evening session (if scheduled);
- be questioned by the Tribunal and the Parties;
- provide the Tribunal with a written statement to support their oral testimony; and
- receive a copy of documents exchanged by the Parties that are relevant to the Presenter's interests (upon request).

However, a Presenter cannot:

- raise issues not already raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions;
- make submissions to the Tribunal, including opening statements and final argument;
- participate in a mediation (unless allowed to do so by the Tribunal);
- claim costs or be liable for costs; or
- attend site visits (unless allowed to do so by the Tribunal).

What is a pre-hearing conference?

The purpose of the pre-hearing conference is to prepare for the hearing by:

- identifying Parties, Participants and Presenters, and the scope of their participation in the hearing;
- determining the length, schedule and location of the hearing;
- determining whether the hearing will be conducted orally, electronically or in writing;
- hearing preliminary motions;
- identifying, defining or narrowing issues;
- developing an agreed statement of facts and evidence;
- determining whether any or all issues can be settled or withdrawn;
- where applicable, establishing dates for the exchange of a common document book and a list of all documents in the possession, power and control of the Parties;
- establishing dates for the exchange among Parties and with the Tribunal, of all documents relevant to the proceeding, witness lists, witness statements and resumes of any expert witnesses;

- determining the order of presentation of evidence and submissions; and
- considering any other matters that may assist in the just and efficient determination of the issues.

Is mediation available?

Tribunal-assisted mediation is offered to all Parties and is voluntary. Mediation takes place after the pre-hearing conference. The Member of the Tribunal who conducts the mediation will not conduct the hearing unless all Parties consent.

This service is provided at no cost to the Parties. The mediator may exclude everyone but the Parties from mediation. All documents submitted and all statements made during mediation are confidential and without prejudice. Any settlement agreement will be reviewed by the mediator to ensure that it follows Rules 156 to 160 of the Tribunal's [Rules of Practice and Practice Directions](#). If the settlement agreement is accepted by the mediator, a decision dismissing the proceedings will be issued.

How does one prepare for a hearing?

The key to effective participation in a hearing is being well informed and prepared to present your views and evidence. The Tribunal can only consider the information that is presented at the hearing. The evidence intended to be relied upon should be relevant to the issues before the Tribunal.

Parties, Participants and Presenters are strongly encouraged to review the statute under which the hearing was brought to the Tribunal and the Tribunal's [Rules of Practice and Practice Directions](#).

What are the disclosure requirements?

All Parties must provide a copy of every relevant document that is in their possession, control or power to all other Parties without charge. This must be done no later than the date the Tribunal sets for the exchange of these documents. Participants and Presenters may request to receive a copy of all documents relevant to their interests. Privileged documents are exempt from disclosure requirements.

All documents intended to be relied upon at the hearing must be filed with the Tribunal. The Tribunal must be given two or more copies of all documents filed, or as many as the Tribunal directs. Documents filed with the Tribunal

Documents filed with the Tribunal become part of the public record and may be viewed by public.

The obligation to disclose is ongoing throughout the hearing process. All relevant documents discovered during the course of the hearing must be provided to the other Parties and, if the document is to be relied upon at the hearing, to the Tribunal.

What is a witness statement?

Witnesses may be trained professionals, members of the community, academic specialists or individuals with specific knowledge who can give the Tribunal relevant information.

A witness statement is a written statement of the evidence a witness intends to present.

A witness statement should be direct and to the point. It should also be complete, meaning that the witness should not have to add anything new to the evidence at the hearing. However, the witness is entitled to explain more fully anything contained in the statement.

A witness statement should contain the following information:

- the name, address and telephone number of the witness;
- if the evidence will be factual evidence or, if the witness is a qualified expert, opinion evidence;
- a resume of their qualifications and a signed copy of [Form 5, Acknowledgement of Expert's Duty](#), for each proposed expert witness;
- whether or not the witness has an interest in the hearing and, if so, the nature of the interest;
- a summary of the witness' opinions, conclusions and recommendations;
- references to other documents that form an important part of the witness' opinions, conclusions and recommendations;
- a summary of answers to any interrogatories (i.e. pre-hearing examination of the witness) that will be relied on at the hearing;
- a discussion of proposed conditions of approval that are in controversy among the Parties or agreed upon conditions that may be related to issues in dispute (where applicable);
- the date of the statement; and
- the signature of the witness.

If the witness statement does not contain all of the above information, Parties may risk their right to have the evidence admitted or may delay the hearing.

Witnesses will normally attend in person to give oral evidence and be subject to cross-examination. A Party who wishes to have witnesses present opinion evidence must have them accepted as experts by the Tribunal before their evidence can be admitted.

Witness statements should be exchanged between the Parties and filed with the Tribunal within the time directed by the Tribunal, which is usually no later than 15 days before the start of the hearing.

Can the Tribunal require a witness to attend a hearing?

The Tribunal has the power to summon a witness to attend a hearing to give evidence and to bring relevant documents and materials. A summons can be issued because the

Tribunal wants to hear from the witness or because a Party has requested that the Tribunal require the person to act as a witness.

The Party calling a witness is responsible for paying for the witness' attendance costs at the same rate that a person summoned to appear before the Superior Court is paid. For more information on attendance costs for summoned witnesses, please see Tariff A of the Ontario [Rules of Civil Procedure](#) under the [Courts of Justice Act](#).

It is the responsibility of the Party calling a witness to obtain and serve the summons ([Form 3, Summons to Witness – Oral Hearing](#) or [Form 4, Summons to Witness – Electronic Hearing](#)) as soon as possible before the start of the hearing. For more information on summons to a witness, please see Rules 191 to 196 of the Tribunal's [Rules of Practice and Practice Directions](#).

Can a hearing be postponed or adjourned?

Once a date has been set for a hearing, the hearing will proceed on that date except in exceptional circumstances, such as the sudden illness of a Party. If a Party cannot attend a pre-hearing conference or hearing, they may request, in advance, an adjournment to change the date. If a person has been notified of the time, date and place of a pre-hearing conference or hearing and fails to attend, the Tribunal may proceed with the pre-hearing conference or hearing and make its decision in the absence of that person.

For more information on adjournments, please see Rules 104 to 107 of the Tribunal's [Rules of Practice and Practice Directions](#).

How does the Tribunal conduct a hearing?

The Tribunal may conduct a hearing by a panel of one, two or three members. A hearing will normally be conducted by way of an oral hearing. It might sometimes be conducted electronically (i.e. by telephone), through written submissions, or by a combination.

At an oral or electronic hearing, each Party will have an opportunity to present evidence and submissions, call and cross-examine witnesses and explain their case to the Tribunal.

At a written Hearing, all Parties will be provided with the opportunity to make written submissions and to comment on other Parties' written submissions.

What is the order of presentation at a hearing?

Parties and Participants may give brief opening statements stating what they feel are the issues in the case before the Tribunal, a brief summary of the evidence they intend to present, the names of the witnesses that they intend to call, and the amount of time they feel they will need to present their case.

The Tribunal can direct the order of the presentation of evidence, which can vary depending on the type of hearing. However, the Proponent – or the Ministry in the case of a hearing under the [Ontario Water Resources Act](#) – will usually present their case first. After the examination of each witness, the other Parties are given the chance to cross-examine the witness. After the cross-examination of each witness, the Proponent or Ministry can re-examine the witness on any issue that arose for the first time during the cross-examination of the witness.

When the Proponent or Ministry's evidence has been presented, the other Parties whose interests or concerns are similar to those of the Proponent or Ministry will have the chance to present their case following the same procedures.

The Parties opposing the undertaking or order will then have a chance to present their case and call their witnesses. Cross-examination and re-examination will be allowed regarding any evidence presented.

Participants and Presenters also have the chance to present their evidence, and may be subject to cross-examination by the Parties.

The Proponent or Ministry then has a chance to present any additional evidence that comes out of the evidence of the other Parties. This reply will be limited to evidence that they could not have reasonably expected during the initial presentation of evidence.

When all the evidence has been heard, each Party and Participant can make a final submission. This submission gives the Parties and Participants a chance to summarize the important facts that they are relying on, to summarize any points of law or policy that they think are relevant for the Tribunal's consideration, and to persuade the Tribunal to accept their argument or position.

At any time during the hearing the Tribunal may ask questions of Parties, Participants, Presenters, witnesses, lawyers or representatives.

What principles govern the Tribunal's hearings?

The Tribunal conducts its hearings to ensure the just, most efficient and cost effective hearing of the application. The Tribunal is committed to open, accessible and understandable hearing procedures that enhance access to justice and public participation.

The Tribunal's objective is to consider all the evidence presented and make a decision with written reasons in a manner that is consistent with the act under which the hearing is being heard, and that fulfills the core values of accessibility, fairness, transparency, timeliness, integrity, professionalism and independence.

Who can attend Tribunal hearings?

Tribunal hearings are open to the public, unless ordered otherwise by the Tribunal. The Tribunal may order a hearing closed to the public on its own initiative or at the request

of a Party. The Tribunal will only order a hearing closed to the public when the Tribunal determines that intimate financial, personal or other matters may be disclosed at a hearing.

When will the Tribunal make a decision?

The Tribunal usually issues a written decision and its reasons within 60 days after the hearing. However, for hearings under the [Environmental Assessment Act](#), the Tribunal must make a decision by the date determined by the Minister.

A copy of the decision is sent to all Parties, Participants and Presenters. The Tribunal's decisions are available on the [Tribunal's website](#) usually within 24 hours of its release, and are also available on the publicly accessible legal database, [CanLII](#).

Can the Tribunal award costs?

Participating in a hearing usually involves some costs. These costs may include:

- fees for lawyers, representatives or agents;
- fees for expert assistance and witnesses;
- travel and accommodation expenses; and/or
- costs for materials used for presentations (e.g. photographs, graphics, etc.).

Costs may be awarded by the Tribunal in order to:

- cover the costs of participation incurred by the Parties, other than the Proponent, Director and government decision makers; and
- where it is determined that there has been improper conduct by a Party

For more information on costs, please see Rules 212 to 231 of the Environmental Review Tribunal's [Rules of Practice and Practice Directions](#).

Can the Tribunal's decision be appealed or reviewed?

The appeal and/or review procedures vary accordingly to the statute under which the hearing was brought to the Tribunal. .

For hearings under the [Environmental Assessment Act](#) (EAA), the Tribunal's decision can only be reviewed or reconsidered by the Minister of the Environment, Conservation and Parks.

For hearings under the [Environmental Protection Act](#) (EPA), the Tribunal's decision can be appealed to the Divisional Court on a question of law or, for certain types of proceedings, to the Minister of the Environment, Conservation and Parks, on a question other than a question of law.

For hearings under the [Ontario Water Resources Act](#) (OWRA), the Tribunal's decision can be appealed to the Divisional court on a question of law.

A review (i.e. reconsideration) of a Tribunal's decision may also be done by the Tribunal itself under limited circumstances, as set out in Rules 235 to 243 of the [Tribunal's Rules of Practice and Practice Directions](#).

In some cases, an application for judicial review of the Tribunal's decision may also be filed with the Divisional Court. An appeal or judicial review application to the Divisional Court must be filed in accordance with the [Rules of Civil Procedure](#) under the [Courts of Justice Act](#).

Is a lawyer needed?

You can represent yourself or you can have someone else represent you. If you choose a representative, then you must give your representative signed written authorization. A representative, who can be either a lawyer or non-lawyer, must be authorized under the [Law Society Act](#), which means that they must be licensed or exempt under the Act or by-laws. There is an exemption that allows for persons who are not in the business of providing legal services to occasionally provide assistance to a friend or relative for no fee. For information on licensing and exemptions, please see the [Law Society of Ontario's website](#).

How is accommodation provided?

Parties, Participants, Presenters, witnesses and representatives are entitled to accommodation by the Tribunal for needs related to the [Human Rights Code](#), such as a disability. Those requiring accommodation should notify the assigned Case Coordinator or the Tribunal Secretary as soon as possible.

What language services are available?

Those who require the pre-hearing conference or hearing to be translated into French should write to the Case Coordinator at least 25 days before the event to make their request.

Who can access Tribunal documents?

All documents filed with the Tribunal and all communications to and from the Tribunal are part of the Tribunal's public record, and are available for reasonable access by the public (unless the Tribunal orders otherwise).

For more Information:

For more information, please refer to the statute under which the application was referred to the Tribunal for a hearing (i.e. the [Environmental Assessment Act](#), the [Environmental Protection Act](#), or the [Ontario Water Resources Act](#)), the Tribunal's [Rules of Practice and Practice Directions](#) and the [Tribunal's website](#).