



Environment and Land Tribunals Ontario

# Environmental Review Tribunal

A Guide to Applications for Leave to Appeal  
under the *Environmental Bill of Rights, 1993*

This guide provides a general overview of leave to appeal applications under the [Environmental Bill of Rights, 1993](#) 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 [Environmental Review Tribunal's website](#) or by contacting:

Environmental Review Tribunal  
Environment and Land Tribunals Ontario  
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Toronto, Ontario M5G 1E5

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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 for leave to appeal made under the [Environmental Bill of Rights, 1993](#) for certain types of decisions made under the [Environmental Protection Act](#), the [Ontario Water Resources Act](#), the [Pesticides Act](#) and the [Safe Drinking Water Act, 2002](#).

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](#).

## **What is the Environmental Bill of Rights, 1993?**

The [Environmental Bill of Rights, 1993](#) (“EBR”) provides the public with a number of rights that permit them to play a full and meaningful role in protecting the environment. For example, the EBR requires that the public is given advance notice of government proposals (e.g. laws, regulations, policies, programs and approvals) which can have a significant impact on the environment so they can know about – and have an opportunity to comment on – those proposals.

## **What is Leave to Appeal?**

In addition to the right to comment on environmentally significant proposals, the EBR also provides the public with the right to request permission to appeal the issuance or approval of a Class I or II instrument to the Tribunal. This is called seeking “leave to appeal”.

## **What is a Class I or II instrument?**

[Ontario Regulation 681/94](#) lists the types of decisions made by the Ontario government that are categorized as Class I or II instruments. Some examples include an environmental compliance approval for the release of contaminants into the air (issued under section 9 of the [Environmental Protection Act](#)), a permit for the taking of water (issued under section 34 of the [Ontario Water Resources Act](#)), and an order to remove waste from a site (issued under section 43 of the [Environmental Protection Act](#)). Please refer to [Ontario Regulation 681/94](#) for a complete list of Class I and Class II instruments.

## **Can I file an Application for Leave to Appeal?**

If you wish to file an application for leave to appeal, you must:

- Be a resident of Ontario; and
- Have an “interest” in the decision regarding the Class I or II instrument.

Any person who has exercised their right under the *EBR* to comment on the instrument when it was proposed on the Environmental Registry of Ontario has demonstrated an “interest” in the decision. Furthermore, any person who could be affected by the decision can also be said to have an “interest” in the decision.

A person who files an application for leave to appeal is referred to as the “Applicant”.

## **What is the Environmental Registry of Ontario?**

The Environmental Registry of Ontario is a website used by ministries of the Ontario government to give public notice of proposals and decisions that impact the environment and provides a platform for the public to comment on those proposals. It also provides information on which decisions can be appealed by the public through the application for leave to appeal process.

The Tribunal does not operate or maintain the Environmental Registry of Ontario. The Ministry of the Environment, Conservation and Parks is responsible for overseeing the government’s obligations under the *EBR*, including the Environmental Registry of Ontario.

## **What is the deadline for filing an Application for Leave to Appeal?**

An application for leave to appeal must be filed with the Tribunal within 15 calendar days after the decision for the instrument is posted on the Environmental Registry.

If an application is submitted late, the Tribunal does not have the legal authority to consider the application.

## **What information must an Application for Leave to Appeal contain?**

An application for leave to appeal must include:

- a copy of the Environmental Registry posting and the instrument that is the subject of the application;
- a copy of all documents and a statement of all facts and evidence, upon which the Applicant relies on in support of the application;
- a copy of:

- any comments that were submitted by the Applicant on the original proposal or, if comments were not submitted, a statement describing the Applicant's interest in the decision to issue the instrument; and,
- any facts that the Applicant wants taken into account in deciding whether the Applicant has an interest in the decision;
- the portions of the instrument that the Applicant is seeking the leave to appeal for;
- the grounds for granting leave to appeal on which the Applicant intends to rely;
- the reason why it appears there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
- the reason why it appears that the decision could result in significant harm to the environment; and,
- the Applicant's name, address, telephone number, fax number and email address, and the contact information of anyone representing the Applicant.

Applicants are strongly encouraged to review the [Environmental Bill of Rights, 1993](#), the statute governing the decision that is the subject of the application and the [Rules of Practice and Practice Directions of the Environmental Review Tribunal](#) before filing an application.

### **How do you file an Application for Leave to Appeal?**

There is no required form for an application for leave to appeal. An application for leave to appeal should be provided in a letter format, with numbered paragraphs, and filed with the Tribunal by one of the following methods:

- email ([erttribunalsecretary@ontario.ca](mailto:erttribunalsecretary@ontario.ca)); or
- fax (416-326-5370, toll free 1-877-849-2066); or
- mail/courier (655 Bay Street, Suite 1500, Toronto, ON M5G 1E5)

A copy of the application for leave to appeal **must** be served on the Minister of the Environment, Conservation and Parks, the person who issued the instrument and the Instrument-holder, on or before the day on which the application is filed with the Tribunal. An affidavit of service must also be filed with the Tribunal when the application is filed.

### **What happens if the Applicant is unable to submit all the required information at the time of filing?**

If the Applicant is unable to submit all the required information at the time of filing, the Applicant should state this in the application. The Applicant will have five days for filing the additional information. If the Applicant explains in writing why it would be impossible to meet this five-day deadline, the Tribunal may then grant an extension. If there is any information missing, the Tribunal will send a letter explaining the deficiencies. The

application may be dismissed if the deficiencies are not corrected within the time frame provided by the Tribunal.

### **What type of decision can the Tribunal make?**

The Tribunal may grant permission to appeal all or part of the decision that is the subject of the application, or it may dismiss the application and refuse to grant permission.

It is important to note that the Tribunal is not deciding the merits of the decision to issue the instrument, but is only making a preliminary decision as to whether to grant the applicant **permission to appeal** the instrument. In making its decision, the Tribunal must apply the two-part test set out in section 41 of the [EBR](#):

**Part 1** – Does it appear that there a good reason to believe that no reasonable person, having regard to the relevant law and any relevant government policies, could have made the decision?

**Part 2** – Does it appear that the decision being appealed could result in significant harm to the environment?

If the applicant can provide submissions and evidence to show that their application meets **both** parts of the test, the Tribunal will grant leave (permission) to appeal.

You may wish to review the following case law for information on the Tribunal's past decisions in leave to appeal applications. The first decision provides an example where permission was granted by the Tribunal and the second decision provides an example where permission was denied.

- [Case No. 12-003: Concerned Citizens Committee of Tyendinaga and Environs v. Ontario \(Ministry of the Environment\), issued March 30, 2012](#)
- [Case No. 13-046: Wong-Tam v. Ontario \(Ministry of the Environment\), issued July 8, 2013](#)

To review more decisions on leave to appeal applications, you may search the Tribunal's [Decisions/Orders page](#) or search the Tribunal's decisions on [CanLII](#), a publicly available legal database.

### **What is the significance of obtaining leave to appeal?**

If the Tribunal grants leave to appeal, the Applicant has the right to file a Notice of Appeal with the Tribunal within 15 days from the date the Applicant receives the Tribunal's decision. The Notice of Appeal must be filed in accordance with Rule 26 of the [Tribunal's Rules of Practice and Practice Directions](#).

Where leave has been granted and a Notice of Appeal is filed, the Tribunal will conduct a hearing to receive submissions and evidence, and decide whether the decision under appeal should be overturned or upheld or, if warranted, whether any additional conditions should be attached to the decision under appeal.

For more information on the Tribunal's process for Rule 26 appeals, please consult the Tribunal's "[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](#)".

### **Is the instrument suspended if leave to appeal is granted?**

Yes – a decision by the Tribunal to grant leave to appeal automatically suspends the operation of the Class I or II instrument under appeal until the disposition of the appeal (unless the Tribunal orders otherwise).

### **How does the Tribunal hear an Application for Leave to Appeal?**

The Tribunal will assign a panel of one, two or three members to decide an application for leave to appeal. These applications are dealt with wholly in writing.

### **What principles govern the Tribunal's hearing?**

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

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

### **When will the Tribunal make a decision?**

The Tribunal is required to make its decision within 30 days after the application is filed, unless it determines that, because of unusual circumstances, a longer period is required. If a longer period is needed, the Tribunal will issue a letter to inform the parties of the new date by which the decision will be issued.

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

## **Is mediation available?**

Although the Tribunal's Members are available to provide mediation services to help resolve disputes, mediation is not normally requested by Parties involved in this type of application because of the speedy hearing process required for these types of applications. Should the Tribunal grant leave to appeal, mediation services could be requested prior to the appeal hearing. The member of the Tribunal who conducts the mediation will not conduct the hearing unless all Parties consent.

## **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 rare circumstances, but only where there has been improper conduct by a Party. For more information on costs, please see Rules 212 to 220 and 225 to 231 of the [Tribunal's Rules of Practice and Practice Directions](#).

## **Can the Tribunal's decision be appealed or reviewed?**

No – the *EBR* does not provide a right of appeal of the Tribunal's decision. However, an application for judicial review of the Tribunal's decision can be filed with the Divisional Court. A judicial review application to the Divisional Court must be filed in accordance with the [Rules of Civil Procedure](#) under the [Courts of Justice Act](#).

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

## **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 wish a proceeding to be conducted wholly or partly in 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 [Environmental Bill of Rights, 1993, Ontario Regulation 681/94](#), as amended, and [Ontario Regulation 73/94](#), as amended, as well as the statute governing the decision that is the subject of the application for leave to appeal, the [Tribunal's Rules of Practice and Practice Directions](#) and the [Tribunal's website](#).