



Environment and Land Tribunals Ontario

Office of Consolidated Hearings

A Guide to Hearings under the
Consolidated Hearings Act

This guide provides a general overview of hearings before the Joint Board under the [Consolidated Hearings Act](#) and should not be relied upon as an authoritative text. The statutes, regulations and, where adopted by the Joint Board, the [Rules of Practice and Practice Directions of the Environmental Review Tribunal](#) prevail.

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

Office of Consolidated Hearings
Environment and Land Tribunals Ontario
655 Bay Street, Suite 1500
Toronto, Ontario M5G 1E5

Telephone: (416) 212-6349 Toll Free: 1 (866) 448-2248
Fax: (416) 326-5370 Toll Free: 1 (877) 849-2066
TTY: 1 (800) 855-1155 via Bell Relay
Email: ERTTribunalSecretary@ontario.ca

What is a Joint Board?

A Joint Board is established under the authority of the [Consolidated Hearings Act](#) (“CHA”) by the Chair of the Environmental Review Tribunal (“ERT”) and the Local Planning Appeal Tribunal (“LPAT”). A Joint Board may be established to combine different hearings arising under one or more acts where separate hearings by more than one tribunal would otherwise be required. The Secretary of the ERT acts as the Hearings Registrar for Joint Board hearings.

The Joint Board may adopt the Rules of Practice of the ERT or LPAT. This guide sets out an overview of the process where the Joint Board has adopted the [Rules of Practice and Practice Directions of the ERT](#). Where the Joint Board adopts the [Rules of Practice and Procedure of LPAT](#), the proceeding will be conducted in accordance with LPAT’s Rules.

The Members of the ERT and the LPAT 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’ biographies are found on the [Public Appointments Secretariat’s website](#).

Who can request a Joint Board hearing?

The person engaging in an undertaking under one or more of the acts applicable to the CHA is referred to as the “Proponent”. A Proponent who requires, or may require, two or more hearings related to the undertaking, and wishes to have these hearings combined, may make a request for a Joint Board hearing.

The hearings must be related to a matter arising out of an act listed in the CHA’s schedule and the hearings can only be combined if they deal with matters relating to the same undertaking.

The schedule of acts under the CHA is as follows:

- [City of Toronto Act, 2006](#)
- [Clean Water Act, 2006](#)
- [Environmental Assessment Act](#)
- [Environmental Protection Act](#)
- [Expropriations Act, sections 6, 7, and 8](#)
- [Municipal Act, 2001](#)
- [Niagara Escarpment Planning and Development Act](#)
- [Local Planning Appeal Tribunal Act, 2017](#)
- [Ontario Planning and Development Act, 1994](#)
- [Ontario Water Resources Act](#)
- [Planning Act](#)

What information must a request for a Joint Board hearing contain?

A request for a Joint Board hearing is made by submitting a Notice of Undertaking to the Hearings Registrar.

A Notice of Undertaking must include:

- the general nature of the undertaking;
- the hearings that are required (or that may be required); and
- the Acts under which the hearings are required (or may be required).

Upon receipt of a notice that meets these requirements, the Hearings Registrar will refer the matter to the Chair of the Environmental Review Tribunal and Local Planning Appeal Tribunal to establish a Joint Board.

How do you file a Notice of Undertaking?

There is no required form to request a Joint Board hearing. A Notice of Undertaking should be provided in a letter format, with numbered paragraphs, and filed with the Joint Board by one of the following methods:

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

How can neighbours and other interested people participate?

Neighbours and other people who are interested in the hearing may apply to the Joint Board for permission to participate in the hearing.

If you receive notice of the pre-hearing conference and hearing, you may write to the Joint Board, 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 hearings before the Joint Board.

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

The Joint Board has different levels of participation so that anyone interested in the hearing can be involved. The Joint Board 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 who are specified as Parties by the Act(s) under which the proceeding arises, or are otherwise entitled to be a Party by law, are automatically Parties to the proceeding. If a person requests Party status, the Joint Board 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 hearing; and
- if the person is likely to make a relevant contribution to the Joint Board's understanding of the issues in the hearing.

What is the role of a Party?

Those who request and receive Party status from the Joint Board 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 Joint Board. 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 Joint Board.

A Party may:

- be a witness at the hearing;
- be questioned by the Joint Board and the Parties;
- bring motions;
- call witnesses at the hearing;
- cross-examine witnesses called by other Parties;
- make submissions to the Joint Board, 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 Joint Board 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 or issues in dispute 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 Joint Board and the Parties;
- make submissions to the Joint Board, 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 Joint Board); 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 Joint Board 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 or issues in dispute 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 Joint Board and the Parties;
- provide the Joint Board 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 Joint Board, including opening statements and final argument;
- participate in a mediation (unless allowed to do so by the Joint Board);
- claim costs or be liable for costs; or
- attend site visits (unless allowed to do so by the Joint Board).

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 Joint Board, 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 adjudication of the issues

Is mediation available?

Mediation assisted by the Joint Board is offered to all Parties and is voluntary. Mediation takes place after the pre-hearing conference. The Member of the Joint Board 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 Environmental Review 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 provide one's views and evidence. The Joint Board can only consider the information provided at the hearing. The evidence intended to be relied upon should be relevant to the issues before the Joint Board.

Parties, Participants and Presenters are strongly encouraged to review the statutes relevant to the undertaking, the *Consolidated Hearings Act* and the Rules of Practice and Practice Directions of the Environmental Review Tribunal.

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 Joint Board 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 Joint Board. The Joint Board must be given two or more copies of all documents filed, or as many as the Joint Board directs.

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 Joint Board.

What is a witness statement?

Witnesses may be trained professionals, members of the community, academic specialists, or individuals with specific knowledge who can provide the Joint Board with 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 Joint Board before their evidence can be admitted.

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

Can the Joint Board require a witness to attend a hearing?

The Joint Board 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 Joint Board wants to hear from the witness or because a Party has requested that the Joint Board 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 Environmental Review 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 Joint Board conduct a hearing?

The Joint Board may conduct a hearing by a panel of one, two or three members. A hearing may be conducted through 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 Joint Board.

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 Joint Board, 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.

While the Joint Board can direct the order of the presentation of evidence, the Proponent will usually present their case first. At the conclusion of the examination of each of the Proponent's witnesses, the other Parties have the chance to cross-examine the witness. After the cross-examination of each witness, the Proponent can re-examine their witness on any issue that arose for the first time during the cross-examination of the witness.

When all of the Proponent's evidence has been presented, the other Parties in support of the Proponent will have the chance to present their case following the same procedures.

Parties opposing the Proponent's appeal or application will then have the 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 then has the chance to present any additional evidence that comes out of the evidence of the other Parties. This reply will be limited to evidence that the Proponent could not reasonably have been expected to anticipate 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 on which they are relying, to summarize any points of law or policy which they think are relevant for the Joint Board's consideration, and to persuade the Joint Board to accept their argument or position.

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

What principles govern the Joint Board's hearings?

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

The Joint Board's objective is to consider all the evidence presented and make a decision with written reasons in a manner that is consistent with the acts 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 Joint Board hearings?

Joint Board hearings are open to the public, unless ordered otherwise by the Joint Board. The Joint Board may order a hearing closed to the public on its own initiative, or at the request of a Party. The Joint Board will only order a hearing closed to the public when it determines that intimate financial, personal or other matters may be disclosed at a hearing.

What type of decision can the Joint Board make?

The Joint Board may grant or deny the appeal and/or application made by the Proponent. The Joint Board may also impose terms and conditions where it decides to grant the Proponent's appeal and/or application.

When will the Joint Board make a decision?

The Joint Board usually issues a written decision and its reasons within 60 days after the hearing.

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

Can the Joint Board 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 Joint Board 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 Joint Board's decision be appealed or reviewed?

An application for judicial review of the Joint Board's decision may be made to the Divisional Court. This application must be filed in accordance with the [Rules of Civil Procedure](#) under the [Courts of Justice Act](#).

A review (i.e. reconsideration) of the Joint Board's decision by the Joint Board itself may also be done under the limited circumstances set out in Rules 235 to 243 of the [Environmental Review 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 Joint Board for needs related to the [Human Rights Code](#), such as a disability. Those requiring accommodation should notify the assigned Case Coordinator 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 the Joint Board's documents?

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

For More Information:

For further information, please refer to the [Consolidated Hearings Act](#), as well as the statute(s) governing the Proponent's application and/or appeal (e.g. the [Planning Act](#), the [Niagara Escarpment Planning and Development Act](#), etc.), the [Rules of Practice and Practice Directions of the Environmental Review Tribunal](#) or the Rules of Practice of the [Local Planning Appeal Tribunal](#) (depending on which set of rules applies to a given proceeding), and the [Environmental Review Tribunal's website](#).