

Rules of Procedure for the Agriculture, Food and Rural Affairs Appeal Tribunal

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Rules of Procedure

Rule 1 - Interpretation

Citation

- 1.01 These rules may be cited as the "Rules of Procedure for the Agriculture, Food and Rural Affairs Appeal Tribunal" (the Tribunal).

Reference

- 1.02 These rules of procedure may also be used by the Board of Negotiation.

General

- 1.03 The Tribunal may exercise any of its powers under these rules on its own initiative or at the request of a party to an appeal.
- 1.04 The Tribunal may issue general or specific procedural directions at any time.
- 1.05 If a party to an appeal seeks a remedy or order that the Tribunal cannot grant without submissions from the other parties, the party seeking the remedy or order should first seek the consent of the other parties and advise the Tribunal if such consent was granted or denied.

Definitions

- 1.06 In these rules, unless the context requires otherwise,

"SPPA" means the Statutory Powers Procedure Act, RSO 1990, c. S.22, as amended;

"appeal" means a proceeding whereby the Tribunal is requested to determine any matter but does not include a preliminary motion;

"appellant" means a person who files an appeal with the Tribunal;

"business day" means any Monday, Tuesday, Wednesday, Thursday and Friday that is not a statutory holiday

"clerk of the Tribunal" means the clerk of the initiating municipality in an appeal under the Drainage Act.

"document" includes information recorded or stored by means of a sound recording, video recording, photograph, motion picture, microfiche, chart, graph, map, plan, survey, model, book of account or other means;

"electronic hearing" means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another;

"hearing" includes a hearing of a motion, a pre-hearing conference and an informal hearing;

"initiating municipality" means a local municipality undertaking the construction, improvement, repair or maintenance of a drainage works to which the Drainage Act applies;

"insurer" means AgriCorp or its successor.

"motion" means an application for relief in an appeal;

"moving party" means a person who makes a motion;

"oral hearing" means a hearing at which the parties and/or their counsel or agents attend before the Tribunal in person;

"person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law but does not include an unincorporated association of persons except as provided in subsection 1(2) of the SPPA;

"proceeding" means an appeal;

"responding party" means a person who is served with a notice of motion;

"service" means the effective delivery of a notice of hearing or other document in a proceeding to any person or to that person's legal counsel or agent.

"statutory holiday" means New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day and any special holiday proclaimed by the Governor General or the Lieutenant Governor, and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or a Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or a Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

"Tribunal" means the Agriculture, Food and Rural Affairs Appeal Tribunal or the Board of Negotiation taken in the context of the rule or sub-rule;

"written communication" includes a notice of hearing and a notice of motion;

"written hearing" means a hearing held by means of an exchange of documents whether in written form or by electronic means.

Liberal interpretation of rules

1.07 These rules shall be liberally interpreted in order to obtain the most just, most expeditious and most cost effective determination of every appeal before the Tribunal.

Conflict

1.08 If there is a conflict between these rules and the Statutory Powers Procedure Act, the SPPA will prevail.

Matters not provided for by these rules

1.09 Where any matter of procedure is not provided for by these rules, the Rules of Civil Procedure may be followed where the Tribunal determines they are appropriate.

Rule 2 - Non-Compliance with Rules

Effect of non-compliance

2.01 A failure to comply with these rules is an irregularity and does not necessarily render an appeal or any component of an appeal a nullity.

2.02 The Tribunal may grant all necessary amendments or other relief, including the setting aside of a component of an appeal, on such terms as the Tribunal may determine, in order to correct a failure to comply with these rules.

Tribunal may dispense with compliance

2.03 The Tribunal may, in order to secure the most just, most expeditious and most cost effective determination of any appeal, dispense with compliance with any rule at any time.

Rule 3 Technical Objections

3.01 No appeal shall be defeated or delayed solely by any technical objection or by any objection based upon defects in form.

Rule 4 - Time

Computation of time

4.01 In the computation of time under these rules or in an order of the Tribunal, except where a contrary intention appears,

- a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;
- b) where a period of less than seven days is prescribed, the time shall be measured in business days (statutory holidays, Saturdays and Sundays shall not be counted);
- c) where the time for doing an act under these rules expires on a statutory holiday a Saturday or a Sunday, the act may be done on the next day that is not a statutory holiday, a Saturday or a Sunday; and
- d) a written communication in an appeal which is served after 4:00 p.m. or any time on a holiday, a Saturday or a Sunday shall be deemed to have been served on the next day or the next day which is not a holiday, a Saturday or a Sunday, as the case may be.

Local time

- 4.02 Where a time of day is mentioned in these rules or in a written communication in an appeal, the time referred to shall be the local time at the place where the hearing is to be or is being held or Guelph, Ontario as the context requires.

Extension or abridgement of time

- 4.03 The Tribunal may extend or abridge any time prescribed by these rules, on such terms as the Tribunal may determine.
- 4.04 A motion for an order extending time may be made before or after the expiration of the time prescribed.
- 4.05 A time prescribed by these rules for serving a written communication may be extended or abridged by the consent in writing of those to be served.

Rule 5 - Tribunal Documents

Copies of Tribunal documents

- 5.01 A person may examine any document filed with the Tribunal and, upon payment of the Tribunal's fee, take copies of such document unless a statute, regulation, order of a court or order of the Tribunal provides otherwise.

Confidential documents

- 5.02 Subject to subsection 9(1.1) of the SPPA the Tribunal may order that any document filed with an appeal or at a hearing be treated as confidential, be sealed and not form part of the public record.

Rule 6 - Notices

Notice to be in writing

6.01 Where these rules or an order of the Tribunal requires notice to be given, it shall be given in writing.

Notice may be given by a party

6.02 The Tribunal may direct a party to an appeal to give notice of a hearing to any person or class of persons who may have an interest in the appeal and may direct the manner of giving such notice.

Rule 7 - Service of Notices and Documents

Method of service

7.01 Service may be affected by delivering the notice or document,

- a) by personal service;
- b) by prepaid regular, certified or registered mail addressed to the person's last known address;
- c) by courier addressed to the person's last known address;
- d) by facsimile transmission to the person's last known facsimile number but only if the notice or document, inclusive of the cover sheet, does not exceed 16 pages or, if longer, the recipient consents; or
- e) by electronic mail transmission to an address identified by the recipient, but only if the notice or document, inclusive of the cover sheet, does not exceed 16 pages or, if longer, the recipient consents; or
- f) by any other means authorized or permitted by the Tribunal.

Effective date of service

7.02 Service is deemed to be effective,

- a) on the fifth day after the notice or document is mailed using the regular, certified or registered mail services of Canada Post Corporation;
- b) on the day of transmission if sent by facsimile transmission before 4:00 p.m. or the day after transmission if sent by facsimile transmission after 4:00 p.m.; or
- c) on the third day which is not a holiday or a Saturday or a Sunday following the day on which the notice or document was given to a courier service for delivery: or
- d) on the day personal service is made.

Service after 4:00 p.m.

7.03 A notice or other document which is delivered to the person to whom it is addressed after 4:00 p.m. or on a statutory holiday or a Saturday or a Sunday shall be deemed to have been served on the next day which is not a statutory holiday or a Saturday or a Sunday.

Affidavit proving service of notice

7.04 Where the Tribunal has directed a party to an appeal to give notice in accordance with Rule 6.02 an affidavit proving the giving of notice shall be filed with the Tribunal at the commencement of the hearing.

Proof that service not made

7.05 person shall be deemed to have been served with a notice or document delivered in accordance with this rule unless that person establishes to the satisfaction of the Tribunal that the notice or document was not received until a later date or was never received due to absence, accident, illness or other cause beyond the control of that person.

Rule 8 – Consolidation or Hearing Together

Where order may be made

- 8.01 Where the Tribunal considers that two or more appeals are related to each other by common facts, issues, questions of law or for any other reason, the Tribunal may,
- a) with the consent of the parties, order the appeals to be consolidated or heard at the same time; or
 - b) hear one immediately after the other, or stay or adjourn any matter until the determination of any other matter.

Discretion of presiding members

8.02 Where the Tribunal has made an order that appeals be heard at the same time or one immediately after the other, the Tribunal or division thereof at the hearing, nevertheless, has jurisdiction to order otherwise.

Rule 9 – Hearing of Appeal

The Hearing

9.01 Upon receipt of an appeal the secretary to the Tribunal shall, in consultation with the clerk of the Tribunal, consult the parties and fix a date, time and place for the holding of the hearing and shall give notice of the hearing to the parties.

Oral Hearing

9.02 Hearings of appeals by the Tribunal shall be by oral hearing, unless otherwise determined by the Tribunal.

Location of Hearing

9.03 The Tribunal may hold hearings at any place in Ontario.

Adjournments

9.04 The Tribunal may, at the request of any party to an appeal, adjourn the hearing for such periods of time and upon such terms as the Tribunal considers just.

Directions

9.05 The Tribunal, on motion by a party or on its own motion, may give directions respecting the conduct of a pending hearing in advance of the commencement of the hearing.

Rule 10 - Electronic Hearings

Electronic hearings to be public

10.01 All electronic hearings shall be open to the public except where the Tribunal determines that the appeal should be heard in the absence of the public.

Factors to be considered

10.02 In deciding whether to conduct an electronic hearing or not the Tribunal may consider any relevant factors, including,

- c) the suitability of the electronic technology to the subject matter of the hearing;
- d) whether the electronic format is suitable for the evidence to be presented at the hearing, including whether credibility is an issue and the extent to which facts are in dispute;
- e) the extent to which the matters in dispute are questions of law;
- f) the convenience of the parties;
- g) the cost, efficiency and timeliness of the proceeding;
- h) avoidance of unnecessary delay or a lengthy hearing;
- i) ensuring a fair and understandable process;
- j) the desirability or necessity of public participation in or public access to the hearing process; or

k) any other factors affecting the fulfilment of the Tribunal's statutory mandate.

Conversion to another mode

10.03 The Tribunal may convert an electronic hearing to an oral hearing whenever the Tribunal deems it appropriate or to a written hearing with the consent of all of the parties.

Notice of an electronic hearing

10.04 Notice of an electronic hearing shall include,

- a) a statement of the time and purpose of the hearing and details of the manner in which the hearing will be conducted;
- b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- c) if clause (b) is not applicable, a statement that any party may require the Tribunal to hold the hearing as an oral hearing by satisfying the Tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice and an indication of the procedure to be followed for that purpose;
- d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the Tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding;
- e) a statement that the hearing will be open to the public unless the Tribunal directs otherwise in accordance with section 9 of the SPPA; and
- f) any other information about the appeal the Tribunal considers advisable.

Objections to the electronic format

10.05 A party who objects to a hearing being held as an electronic hearing shall notify the Tribunal and all other parties to the appeal of its objection within three business days of receiving notice of the electronic hearing.

Response to notice of objection

10.06 All other parties shall send a written response to the objection to the Tribunal within six business days of receiving the objection unless the Tribunal orders otherwise.

Contents of notice of objection

10.07 In a notice of objection the objecting party shall set out the reasons why the objecting party believes that an electronic hearing is likely to cause the objecting party significant prejudice.

Procedure when objection is received

10.08 If the Tribunal receives an objection to the use of the electronic format it may,

- a) accept the objection, cancel the electronic hearing and either schedule an oral hearing or, with the consent of all the parties schedule a written hearing;
- b) if the Tribunal is satisfied that no significant prejudice will result it may reject the objection without inviting responses from the other parties and proceed with the electronic hearing; or
- c) provide the other parties with an opportunity to respond to the objection and, after considering the objection and all the responses, reject the objection and continue with the electronic hearing or accept the objection and schedule an oral hearing or, with the consent of all of the parties, schedule a written hearing.

Tribunal to provide directions

10.09 For the purposes of clause 10.08 (c) the Tribunal shall provide directions to the other parties regarding the form and content of their responses to the notice of objection and for the reply, if any of an objecting party to these responses.

Terms and conditions

10.10 The Tribunal may, in order to facilitate the holding of an electronic hearing, impose terms and conditions, including specifying who will set up the electronic hearing, and requiring a party who requests an electronic hearing to pay all or part of the cost of providing the facilities necessary for the conduct of the hearing electronically.

Participants to Remain in view of Camera

10.11 While a video conference hearing is in progress all persons at the video conference site must remain in view of the camera at all times.

Hearing in the absence of a party

10.12 If a party to an electronic hearing does not object or participate the Tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

Rule 11 - Oral Hearings

Notice of an oral hearing

11.01 Written notice of an oral hearing shall be given by the secretary to the Tribunal to the parties to an appeal and others as required by statute and to such other persons as the Tribunal considers necessary.

Contents of notice

11.02 **The notice of hearing shall include,**

- a) the date, time, place and purpose of the hearing;
- b) a reference to the statutory authority under which the hearing is to be held;
- c) a statement that where a person is properly served with the notice of hearing and does not attend at the time and place designated in the notice, the Tribunal may proceed in that person's absence and that person will not be entitled to any further notice in the proceeding;
- d) a statement that the hearing will be open to the public unless the Tribunal directs otherwise, in accordance with section 9 of the SPPA; and
- e) any other information which the Tribunal considers necessary to the proper conduct of the hearing.

Rule 12 - Conduct of Oral Hearings

Oral hearings to be public

- 12.01 All oral hearings shall be open to the public except where the Tribunal determines that an appeal should be heard in the absence of the public.

Procedure at hearing

- 12.02 Subject to these rules and any applicable statute, the procedure at an oral hearing shall be determined by the presiding members of the Tribunal.

Site View

- 12.03 Where the Tribunal takes a view of a site as part of an oral hearing, the panel members will travel together in a vehicle separate from the parties. When at the site the parties and panel will remain in a group allowing all persons present to hear all discussions. A summary of the viewing will be included in the decision of the Tribunal.

Hearing in the absence of a party

- 12.04 If a party to a hearing does not object or participate the Tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

Rule 13 - Written Hearings

Holding a written hearing

- 13.01 The Tribunal may conduct any proceeding or part of a proceeding by means of a written hearing where requested to do so, or where it determines it is appropriate to do so.

Factors to be considered

- 13.02 In deciding whether to hold a written hearing the Tribunal may consider any relevant factors, including,

- a) the suitability of the written hearing format to the subject matter of the hearing;
- b) whether the credibility of any of the parties or witnesses is an issue;
- c) the extent to which the facts of the matter are in dispute;
- d) the extent to which the issues in dispute are questions of law;
- e) the convenience of the parties;
- f) the cost, efficiency and timeliness of the hearing format;
- g) avoidance of unnecessary delay or a lengthy oral hearing;
- h) the need to provide a fair and understandable process;
- i) the desirability or necessity of public participation in or public access to the Tribunal's process; and
- j) any other considerations affecting the fulfilment of the Tribunal's statutory mandate.

Change of format

13.03 The Tribunal may continue a written hearing as an oral hearing or an electronic hearing whenever the Tribunal considers it appropriate to do so.

Notification by Tribunal

13.04 If the Tribunal decides to convert a written hearing into an oral hearing or an electronic hearing or to start the proceeding again as an oral hearing or an electronic hearing, it shall notify the parties to the proceeding of its decision and may provide directions as to the holding of that hearing and the procedures set down in these rules for that type of hearing will apply to the converted or restarted hearing.

Notice of a written hearing

13.05 The Tribunal shall provide a notice of a written hearing which shall include,

- a) a reference to the statutory authority under which the hearing is to be held;
- b) a statement of the purpose of the hearing;
- c) a statement that the parties to the proceeding will be required to exchange documents with the other parties, will have an opportunity to ask questions about the documents in writing which the other parties will be obliged to answer, will have an opportunity to make submissions and will be subject to Sub-rules 13.07 to 13.19;
- d) the text of Sub-rules 13.07 to 13.19 inclusive;
- e) a statement that a party may object to the hearing being held as a written hearing by filing an objection

with the Tribunal within three business days following service of the notice of written hearing, a statement that where an objection is filed the Tribunal will hold an oral hearing or an electronic hearing and may supply directions as to the holding of that hearing;

- f) a statement that if a party does not participate in accordance with the notice of hearing, nor object to the holding of a written hearing, then the Tribunal may proceed without the party's participation and the party will not be entitled to any further notice of the proceeding; and
- g) a statement that each party is obliged to provide with its final submissions a list of the documents that it is relying on to support its position.

Other information may be included

13.06 The Tribunal may include any other information which it considers advisable in the notice of written hearing.

Objections

13.07 A party to a proceeding who receives a notice of written hearing may file with the Tribunal and serve on each of the other parties to the proceeding an objection to the hearing being held as a written hearing within three business days after being served with the notice of written hearing.

Conversion to oral hearing

13.08 If the Tribunal receives an objection from a party to a proceeding who receives a notice of written hearing the Tribunal shall convert the hearing to an oral or electronic format if the objecting party satisfies the Tribunal that there is good reason for the format change.

Supporting documents

13.09 The appellant shall file with the Tribunal and serve on the other parties to the appeal the evidence that supports the remedy or order requested within three business days after receiving confirmation from the Tribunal that no one objected to the holding of the written hearing.

Additional information may be required

13.10 The Tribunal may require the appellant to provide further information regarding its case and this information shall be supplied to the other parties and such other persons as the Tribunal may direct.

Disclosure

13.11 A pre-hearing order by the Tribunal may determine the procedure for filing of evidence, submissions, documents and other material where a request has been made by a party for a written or electronic hearing in lieu of an oral hearing.

Evidence

- 13.12 The evidence shall be in writing or, when electronic transmission of evidence is permitted, it shall be in the form directed by the Tribunal.
- 13.13 The evidence shall identify the person giving the evidence and shall be in certified form or in affidavit form, unless the Tribunal orders otherwise.
- 13.14 Evidence shall include all documents and things a party is relying on to support the remedy or order requested.

No oral examination without permission

- 13.15 There shall be no oral examination unless ordered by the Tribunal.

Production of witnesses

- 13.16 If a party requests, the Tribunal may order that a party present a witness to be examined upon such conditions as the Tribunal directs.

Hearing in the absence of a party

- 13.17 If a party to a written hearing does not object or participate the Tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

Access to documents by parties

- 13.18 Subject to the Tribunal Rule #23 (Restricted Access Rule), all parties are entitled to receive every document that the Tribunal receives in a proceeding.

Access to documents by public

- 13.19 Subject to the Tribunal Rule #23 (Restricted Access Rule), all documents that are filed in respect of a proceeding shall be accessible to the public upon reasonable notice to the Tribunal.

Rule 14 - Filing of Documents

Method of filing documents

- 14.01 Documents may be filed with the Tribunal by any of the methods referred to in sub-rule 7.01.

Filing documents by facsimile transmission

14.02 Documents filed by facsimile transmission shall be filed before 4:00 p.m. on any day which is not a holiday and shall not exceed sixteen pages in length inclusive of the cover page without the approval of the secretary to the Tribunal.

Information to be provided by filer

14.03 A person who files a document shall include with it a statement of the person's mailing address, telephone number and the name of the proceeding to which the document relates.

Rule 15 - Language of Hearings

Hearings may be held in English or French

15.01 The Tribunal shall conduct its hearings in English or in English and French in accordance with the French Language Services Act.

Use of French

15.02 The Tribunal may permit a person to give his or her evidence in French or make submissions in French if the person so requests, in accordance with Rule 15.03.

Where French is used

15.03 An appellant, respondent or other party who wishes to give or call evidence or make submissions in French must, at least 15 business days before the hearing, request the Tribunal to provide French language translation of the evidence and submissions at the hearing. The Tribunal has the discretion, in appropriate circumstances, of providing a French speaking panel for the hearing instead of French language translation.

Interpreters for other languages

15.04 Where a party requires an interpreter in a language other than English or French, the party shall notify the Tribunal, and provide an interpreter at their own expense. An interpreter shall be competent and independent of the parties and shall swear or affirm that he/she will interpret accurately.

Rule 16 – Court Reporters

16.01 Except where required by the statute governing the appeal or application, the Tribunal does not normally provide a verbatim recording of the proceedings of the hearing.

16.02 Any party to the hearing may arrange and pay for verbatim recording of the proceedings by a qualified verbatim reporter.

- 16.03 Where a party wishes to provide a verbatim recording that party will notify the Tribunal at least five business days in advance of the scheduled date of the hearing so arrangements can be made to accommodate the recorder at the hearing room.
- 16.04 The first party to order a transcript shall pay the cost of transcribing and shall file a copy of the Transcript with the Tribunal as part of the record. The first party to order a partial transcript shall pay the cost of transcribing and shall file a copy of the partial transcript with the Tribunal as part of the record.
- 16.05 Upon ordering a transcript or partial transcript, the first party to order the transcript or partial transcript shall notify the other parties to the proceeding that the transcript or partial transcript is being transcribed.

Rule 17 - Audio and Visual Recording of Hearings

No audio or visual recording of hearings without authorization

- 17.01 No person shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing an audio or visual reproduction by electronic or other means at a Tribunal hearing unless authorized by the Tribunal.

Exceptions to the general rule

- 17.02 Nothing in rule 17.01,
- a) prohibits a person from unobtrusively making handwritten notes or sketches at a Tribunal hearing;
 - b) prohibits a duly certified court reporter retained by the Tribunal, or a party, from recording the hearing for the purpose of providing an accurate transcript; or

Requests for authorization

- 17.03 A request for authorization under Rule 17.01 may be made to the Chair or the Vice-Chair presiding at a hearing at the commencement of a hearing or, after a hearing has commenced.

Representations to Tribunal permitted

- 17.04 The Tribunal shall afford the parties and other participants at a hearing an opportunity to make representations to the Tribunal in respect of any application under Rule 17.01 or to vary any authorization previously granted by the Tribunal.

Factors to be considered

- 17.05 On an application for authorization under Rule 17.01, the Tribunal shall consider,
- a) the likelihood of disturbance or disruption of the hearing;

- b) the likelihood of undue discomfort for any participant;
- c) whether there is a public interest in having procedures which are accessible to all those interested or affected; and
- d) such other matters as the Tribunal deems appropriate.
- e) Rules for recording of hearings

17.06 In making a recording authorized by the Tribunal under Rule 17.01,

- a) no equipment which produces a distracting sound or light shall be used during the hearing;
- b) the person authorized to make the recording shall not move around the hearing room unnecessarily while the hearing is in progress;
- c) the recording equipment shall be positioned unobtrusively in one location approved by the Tribunal and shall not be moved while the hearing is in progress; and
- d) the authorized recording or photographic activity will occur only at times and within portions of the hearing determined by the Tribunal.

Authority may be withdrawn

17.07 Any authorization given under Rule 17.01 may be withdrawn by the Tribunal before or during the hearing,

- a) if the Tribunal's rules are breached;
- b) if any unforeseen circumstances interfere with the ability and duty of the Tribunal to conduct a full and fair hearing; and
- c) if the Tribunal considers it appropriate to withdraw the authorization after reconsidering any of the factors set out in Rule 17.05.

Temporary withdrawal of authority

17.08 A withdrawal of authorization may be temporary or limited to accommodate any witnesses who may suffer undue discomfort or prejudice if recording or media coverage is permitted.

Rule 18 - Compelling Attendance of Witnesses

By Summons to witness

18.01 A party who requires the attendance of a person as a witness at a hearing may serve the person with a summons to witness which shall be in Form 1 requiring him or her to attend the hearing at the time and place stated in the summons, and the summons may also require the person to produce at the hearing the documents or other things in his or her possession, control or power relating to the matters in question in the appeal that are specified in the summons. Form 1 is appended to these rules of procedure.

Summons Request

18.02 On the request of a party or a solicitor or agent representing a party, the chair or a vice-chair of the Tribunal may sign and issue, or in the case of urgency, the secretary to the Tribunal may sign and issue a summons to witness. Before the summons is signed, the party or solicitor or agent shall complete the summons and include the name of the witness.

Service and attendance money

18.03 A summons to witness shall be served on the witness by the party requesting the summons, personally and, at the time of service, attendance money in the amount provided under the Rules of Civil Procedure shall be paid or tendered to the witness.

Lack of seal

18.04 The lack of a seal does not render a summons to witness invalid.

Rule 19 - Particulars

Order for particulars

19.01 At any time in a proceeding the Tribunal may order any party to provide to any other party and the Tribunal such further particulars, information or documents as the Tribunal considers necessary to enable the other party or the Tribunal to obtain a full and satisfactory understanding of the subject of the proceeding.

Right to information

19.02 Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished with reasonable information of any such allegations at least 10 business days before the hearing commences.

Contents of particulars

- 19.03 Particulars shall include a statement of what remedy or order is being asked for, the basis for the request and the background facts of the request.

Rule 20 - Disclosure of Documents

List of documents or things

- 20.01 The Tribunal may require that each party to an appeal disclose to all other parties the existence of every document or thing that it will refer to or give in evidence at the hearing at least eight business days before the day of the hearing or as otherwise ordered by the Tribunal.

Disclosure of documents

- 20.02 The Tribunal may require each party to an appeal to deliver to all other parties, and to the secretary of the Tribunal, copies of all documents that the party will produce or enter as evidence at the hearing at least seven days before the day of the hearing or as otherwise ordered by the Tribunal. In the case of an electronic hearing all documents to be introduced at the hearing must be filed with the Tribunal and the parties at least five business days before the day of the hearing. If a document is not filed prior to the hearing the Tribunal will only allow filing with the consent of all parties.

Order for disclosure of documents

- 20.03 The Tribunal may at any stage of a proceeding order a party to disclose to any other party the existence of all documents and things that the party will refer to or enter as evidence at the hearing.

Inspection of things

- 20.04 A party to an appeal shall make available for inspection by any other party all things, other than documents, that the party intends to produce or enter as evidence at the hearing at least five business days before the day of the hearing.

Order for inspection or testing

- 20.05 The Tribunal may, at any stage in a proceeding, order a party to make available for inspection or testing anything, other than a document, that the party will produce or enter in evidence at the hearing subject to such terms and conditions and within such period of time as the Tribunal deems advisable.

Failure to disclose

20.06 If a party fails to comply with any of the requirements of Rule 19 the party may not refer to a document or thing which it has failed to disclose or introduce it into evidence at the hearing without the consent of the Tribunal which may be granted on such terms and conditions as the Tribunal considers just.

Rule 21 - Witness Statements

Witness statements may be required

21.01 The Tribunal may require a party to an appeal to provide to each other party to the proceeding, and to the Tribunal, a signed witness statement for each witness the party intends to call at the hearing or, if a witness statement is not available for a witness, a written summary of the evidence to be given by the witness at the hearing at least five business days prior to the commencement of the hearing, or such other time as the Tribunal may direct.

Order for witness statements

21.02 If a party fails to comply with a direction from the Tribunal pursuant to Rule 21.01 in a timely way the Tribunal may, at the request of any other party to the appeal, order the party in default to deliver witness statements to the other parties and to the Tribunal within such period of time as the Tribunal considers just.

Content of witness statements

21.03 A witness statement or statement of evidence that a witness will give at the hearing shall contain,

- a) the substance of the evidence of the witness;
- b) a list of the documents and things, if any, that the witness will refer to in his or her evidence; and
- c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.

Failure to provide a witness statement

21.04 If a party to an appeal fails to provide a witness statement or a statement of the evidence a witness will give at the hearing in a timely way or in response to an order of the Tribunal, the party in default may not call the person as a witness without the consent of the Tribunal which consent may be subject to such terms and conditions as the Tribunal considers just.

Incomplete witness statements

21.05 A party may not call a witness to testify to matters not disclosed in the person's witness statement without the consent of the Tribunal.

Rule 22 - Expert Witnesses

Delivery of expert's report

22.01 A party who intends to call an expert witness at a hearing shall provide each other party and the Tribunal with a copy of a written report signed by the expert and containing the name and address of the expert, a statement of his or her qualifications and experience and the substance of the evidence which he or she will give at the hearing including a list of all the documents and things to which he or she will refer at least five business days prior to the commencement of the hearing.

Failure to provide expert's report

22.02 If a party fails to comply with Sub-rule 22.01, the party will not be permitted to call the expert witness to give evidence at the hearing without the consent of the Tribunal which consent may be subject to such terms and conditions as the Tribunal considers just.

Rule 23 - Requests for Restricted Access

Request by a party

23.01 A party to an appeal may, prior to or upon the filing of a document, request that all or part of the document,

- a) not be accessible to the public; or
- b) not be accessible to another party except in accordance with an order made under Sub-rule 23.16 (a)(iii).

Denial of public access

23.02 a request that a document not be accessible to the public shall,

- a) state,
 - (i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document was accessible to the public; and
 - (ii) any objection to filing an abridged version of the document, and the reasons for such objection; and
- b) be filed with the Tribunal and served on the parties.

Tribunal Must Decide

23.03 Where a party has made a request under Sub-rule 23.02, the document shall not be made accessible to the public until the Tribunal decides otherwise.

Denial of access to the public and other parties

23.04 A request that a document not be disclosed to the public and to the other parties to the appeal shall,

a) state,

(i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document was disclosed to the public and to the other parties; and

(ii) any objection to filing an abridged version of the document and the reasons for such objection; and

b) be filed with the Tribunal and served on the other parties.

23.05 Where a party has made a request under Sub-rule 23.04, the document shall not be accessible to the public or any other party until the Tribunal decides otherwise.

Objections

23.06 Any person may object to a request for restricted accessibility by filing with the Tribunal and serving on the parties a notice of objection to the request within three business days of becoming aware of the request. Before the hearing of the matter, the Tribunal shall consider the document and determine if any other person should be made a party to the hearing of the request.

Contents of Notice

23.07 A notice of objection shall state the reasons for the objection and why access would be in the public interest.

Time for Reply

23.08 The party seeking restricted access shall have three business days following receipt of the notice of objection to file and serve a reply to it.

Criteria for granting restricted access

23.09 In considering a request for restricted access, the Tribunal shall consider whether the document may disclose,

a) information related to public security; or

- b) intimate financial or personal information or other information of such a nature, having regard to all the circumstances, that the desirability of denying disclosure thereof in the interests of any person affected or in the public interest, outweighs the desirability of adhering to the principle that information related to an appeal be made available to the public or another party to the appeal.

Application of criteria

- 23.10 If the criteria set out in Sub-rule 23.09 are not met, the Tribunal shall order that the document or documents for which a request for restricted access was made be accessible to the public within five business days unless the party who requested restricted access chooses to withdraw the document.

Freedom of Information and Protection of Privacy Act

- 23.11 The Tribunal shall also consider the provisions of the Freedom of Information and Protection of Privacy Act.

Withdrawal of Document

- 23.12 Where the party chooses to withdraw the document or documents it or they shall be returned to the party by the Tribunal and the other parties and their counsel or agents to whom the document or documents may have been provided.

Third parties

- 23.13 The Tribunal will not make information marked "CONFIDENTIAL" about non-parties accessible to the public, without notice to the third party. The onus is on the party seeking release of confidential documents to give proof of notice to the affected non-party and the Tribunal.

Contents of order

- 23.14 If the criteria set out in Sub-rule 23.09 are met, the Tribunal may order,
- a) that the document or documents not be accessible to the public;
 - b) that the document or documents not be accessible to the public or to the other parties to the appeal;
 - c) that an abridged version of the document or documents be made available to the public or to the other parties to the appeal; or
 - d) that the document or documents be made accessible to the public or the other parties to the appeal subject to such conditions as the Tribunal considers appropriate.

Limited access to confidential documents

23.15 Where the Tribunal orders that a document or documents not be made accessible to the other parties to the appeal the document or documents shall be disclosed to the other parties' counsel or agents subject to such conditions as the Tribunal considers appropriate.

Conditions of a restricted access order

23.16 Where the Tribunal directs that access to a document or documents be restricted,

- a) The document or documents shall be,
 - (i) marked "CONFIDENTIAL";
 - (ii) kept separate from the public record of the appeal; and
 - (iii) accessible only by order of the Tribunal or as authorized by law.
- b) the document or documents may be made available to,
 - (i) staff of the Tribunal;
 - (ii) the parties to the appeal unless an order has been made under Sub-Rule 23.14 (b);
 - (iii) the counsel or agent for a party to the appeal;
 - (iv) a consultant employed by a party to assist counsel or an agent, at the discretion of the Tribunal;
 - (v) such other person or persons as the Tribunal considers appropriate; and
- c) The Tribunal may impose such conditions upon access to a document or documents as it considers appropriate.

Declarations and undertakings

23.17 All persons who are permitted to receive a document or documents that are not accessible to the public, except members of the staff of the Tribunal, shall complete, execute and file with the Tribunal a Declaration and Undertaking in Form 2. Form 2 is appended to these rules of procedure.

23.18 All persons who are permitted to receive a document or documents that are not accessible to the public or to the other parties to the appeal, except members of the staff of the Tribunal, shall complete, execute and file with the Tribunal a Declaration and Undertaking in Form 2. Form 2 is appended to these rules of procedure.

Others not allowed to disclose

23.19 All persons who are permitted to receive a document or documents that are not accessible to the public are required to ensure that the document(s) are kept confidential and to ensure that no other individual shall copy or disclose the document(s).

Submissions containing references to restricted documents

23.20 If submissions contain references to the information contained in a restricted document or documents the portion of the submission describing the content of the restricted document or documents shall be submitted separately, marked "CONFIDENTIAL", kept separate from the public record of the appeal and access to such material shall only be granted by order of the Tribunal or as required by law.

Rule 24 - Pre-Hearing Conferences

Direction to attend

- 24.01 The Tribunal, at the request of any person, or on its own initiative, may direct the parties to an appeal and their counsel or agents, as the case may be, to attend one or more pre-hearing conferences for the purpose of considering any matter related to the appeal including,
- a) identification of parties and other interested persons and the scope of their participation in the hearing;
 - b) issues related to disclosure and the exchange of information;
 - c) identification and simplification of issues;
 - d) identification of preliminary motions to be undertaken;
 - e) procedural issues including the dates by which any steps in the proceeding are to be taken or begun and the date on which the hearing will begin;
 - f) identification of facts or evidence that may be agreed upon;
 - g) settlement of any or all of the issues in dispute;
 - h) the possibility of obtaining admissions which may facilitate the hearing;
 - i) the estimated duration of the hearing; and
 - j) any other matters which may assist in the just and most expeditious disposition of the appeal.

Notice of a pre-hearing conference

24.02 Notice of a pre-hearing conference shall be given to the parties and such other persons as the Tribunal may direct.

Contents of notice

24.03 The notice shall include,

- a) the date, time, place and purpose of the pre-hearing conference;
- b) whether the parties are required to exchange or file documents or pre-hearing submissions as prescribed by Sub-rule 24.04 of these rules and, if so, the issues to be addressed and the date by which they are required;
- c) whether parties are required to attend in person, and
- d) if so, that they may be represented by counsel or an agent; or
- e) if not, that their counsel or agent must be given authority to make agreements and undertakings on their behalf respecting matters to be addressed at the pre-hearing conference;
- f) a statement that if a person other than a party does not attend the pre-hearing conference that person will not be entitled to any further notice in the proceeding; and
- g) a statement that the members of the Tribunal presiding at the pre-hearing conference may make orders with respect to the conduct of the proceeding which will be binding on all parties.

Exchange of documents

24.04 The Tribunal, or member(s) of the Tribunal designated to preside at a pre-hearing conference, may direct the parties to file and exchange, by a specified date, documents or pre-hearing submissions; may prescribe the issues to be addressed; and may direct that such documents or submissions are not to be made available to the public or the hearing panel.

Format of pre-hearing conferences

24.05 A pre-hearing conference may be held in person, in writing or electronically.

No public access

24.06 A pre-hearing conference shall be closed to the public unless the Tribunal directs that it be open to the public.

Settlement

24.07 If settlement of any or all of the issues in dispute is a purpose of the pre-hearing conference, the member(s) of the Tribunal designated to preside at the pre-hearing conference should meet with each party separately to encourage settlement.

Limits on use of settlement discussions

24.08 If settlement of any of the issues in dispute is discussed at the pre-hearing conference,

- a) statements made without prejudice at a pre-trial conference shall not be communicated to the hearing panel;
- b) The members of the Tribunal who preside at the pre-hearing conference shall not preside at the hearing of the appeal unless the parties consent in writing or on the record;
- c) An agreement to settle any or all of the issues in dispute binds the parties to the agreement but is subject to approval by the Tribunal; and
- d) All agreements, orders and decisions which dispose of an appeal shall be made public unless the Tribunal orders otherwise.

Orders, agreements and undertakings

24.09 Orders, agreements and undertakings made at a pre-hearing conference shall be recorded in a memorandum prepared by or under the direction of the members of the Tribunal who presided at the pre-hearing conference.

Distribution of memorandum

24.10 Copies of this memorandum shall be provided to the parties and to the Tribunal members presiding at the hearing of the appeal and to such other persons as the members of the Tribunal presiding at the pre-hearing conference directs.

Use of information in memorandum

24.11 The orders, agreements and undertakings in the memorandum shall govern the conduct of the appeal and be binding upon the parties to the appeal unless otherwise ordered by the Tribunal.

Rule 25 - Motions

Notice of motion

25.01 Except for a motion made at a hearing, a motion shall be initiated by a notice of motion.

Hearing date

25.02 Except for a motion made at a hearing, the moving party shall obtain a hearing date from the secretary to the Tribunal before a notice of motion is served.

Contents of notice of motion

25.03 A notice of motion shall,

- a) identify the moving party;
- b) set out the date, time and place for the hearing of the motion;

- c) state the precise relief sought by the moving party;
- d) specify the grounds to be argued, including a reference to any statutory provision or rule, if any, to be relied upon;
- e) be accompanied by an affidavit of a person having, knowledge, or information and belief, regarding the facts deposed to;
- f) list the documents to be referred to at the hearing of the motion;
- g) state whether the moving party will seek leave of the Tribunal to adduce oral evidence at the hearing of the motion and identify the nature of that evidence;
- h) identify the names and addresses of all parties other than the moving party, and any other person to whom the Tribunal has directed notice be given; and
- i) identify by name, address and telephone number the moving party's solicitor or the moving party.
- j) contain a notice that if a party does not attend at the hearing of the motion the Tribunal may proceed in their absence and that party is not entitled to any further notice in the proceedings.

Service of notice of motion

- 25.04 Unless otherwise directed by the Tribunal, the notice of motion shall be served at least seven business days before the date on which the motion is to be heard.
- 25.05 Where a motion is made on notice, a notice of motion shall be served upon all of the other parties to the appeal, any person to whom the Tribunal has directed notice be given and the secretary of the Tribunal. Where there are more than five parties to an appeal, the moving party may seek direction from the Tribunal as to alternate methods of service.

Proof of service

- 25.06 Where a motion is made on notice, proof of service of the notice of motion shall be filed with the Tribunal prior to or on return of the motion.

Reply of responding party

- 25.07 A responding party who intends to rely upon,
- a) grounds other than those to be relied upon by the moving party;
 - b) an affidavit;
 - c) documents other than those to be relied upon by the moving party; or
 - d) oral evidence to be adduced at the hearing of the motion with leave of the Tribunal
- e) shall serve a reply.

Contents of the reply

25.08 The reply referred to in rule 25.07 shall,

- a) identify the responding party;
- b) specify the grounds other than those to be relied upon by the moving party, in support of or in opposition to the motion, including a reference to any statutory provision or rule to be relied upon;
- c) be accompanied by an affidavit of a person having,
 - (i) knowledge; or
 - (ii) information and belief, regarding the facts deposed to if such information is to be used at the hearing of the motion;
- d) list any additional documents to be used at the hearing of the motion;
- e) state whether the responding party will seek leave of the Tribunal to adduce oral evidence at the hearing of the motion and identify the nature of the evidence; and
- f) identify by name, address and telephone number the responding party's solicitor or the responding party.

Service of reply

25.09 Unless otherwise directed by the Tribunal, the reply referred to in rule 25.08 shall be served at least two business days prior to the date upon which the motion is to be heard.

25.10 A copy of the reply shall be served on the moving party, all other parties, any person to whom the Tribunal has directed notice of motion must be given and the secretary of the Tribunal. Where there are more than five parties to an appeal, the responding party may seek direction from the Tribunal as to alternate methods of service.

Proof of service

25.11 Proof of service of the reply shall be filed with the Tribunal prior to or on return of the motion.

Oral representations at hearing of motion

25.12 A moving party and a responding party may make oral representations at the hearing of the motion.

Rule 26 - Discovery

Application for order for discovery

26.01 A party to an appeal may apply to the Tribunal for an order for discovery.

Response to application

26.02 In response to such an application the Tribunal may order,

- a) the discovery of documents;
- b) the examination for discovery of any party;
- c) an examination for discovery by written questions (see Rule 20);
- d) the inspection of property; and
- e) the examination of a witness before the commencement of a hearing under Rule 39.03 of the Rules of Civil Procedure.

Contents of affidavit

26.03 The affidavit in support of an application for discovery under rule 26.01 shall disclose the efforts made to secure the information sought by discovery and the reasons why access to such information is necessary in advance of the hearing.

Order for questions

26.04 The Tribunal may order the examination of a party by another party by way of oral or written questions and may establish the date by which such questions are to be asked and answered.

Payment of expenses

26.05 If the questions are oral, the Tribunal may by order designate which party is to pay the cost of an oral examination and the transcript thereof.

Questions not answered

26.06 If a party is unable or unwilling to answer a question, the party shall,

- a) if the party contends that the question is not relevant to the proceeding, set out in writing its reasons in support of that contention;
- b) if the party contends that the information necessary to answer the question is not available or can not be made available with reasonable effort, provide a response that sets out the reasons for the unavailability of the information and provide in the alternative any other information which the party considers would be of assistance to the party asking the question;
- c) if the party contends that the information is of a confidential nature and should not be disclosed, provide a response which sets out the reasons why the information is considered confidential; or
- d) otherwise explain why an answer cannot be provided.

Use of questions and answers

- 26.07 Except for purposes of impeaching a witness, written questions and answers and transcripts of oral questions and answers are not to be referred to or given as evidence at a hearing without the consent of the Tribunal which consent may be subject to such terms and conditions as the Tribunal considers just.

Rule 27 - Notice of Constitutional Questions

Notice must be served

- 27.01 Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the Canadian Charter of Rights and Freedoms, notice of a constitutional question shall be served on the other parties and the Tribunal as soon as the circumstances requiring notice become known and, in any event, at least 15 calendar days before the question is to be argued.

Rights of Attorneys General

- 27.02 Where the Attorneys General for Canada and Ontario are entitled to notice, they are entitled to adduce evidence and make submissions to the Tribunal regarding the constitutional question.

Form of notice

- 27.03 Notice of a constitutional question shall be given in the form prescribed by the Rules of Civil Procedure.

Rule 28 - Costs

Comments on Costs:

Costs are a sum of money ordered to be paid from one party to another party in order to cover only this party's expenses incurred for preparation and attending the proceeding. This may include such things as preparation and hearing time for counsel, consultant and witness fees, and travel expenses. It does not include business or personal financial losses. If the party's conduct caused such losses, however, this conduct may be included in considering a cost order.

A cost order may be made if a party requests it, if one party has in the Tribunal's opinion acted inappropriately, as in Rule 28.04. Such orders and the amount awarded are to discourage conduct that wastes a great deal of the Tribunal's and parties' time as well as other resources. Note that for matters under the Drainage Act, costs are awarded only as provided in that Act.

An order for costs is very rare. Recovery of costs is not standard as in court proceedings. It is only where the Tribunal finds that a party wrongly brought the appeal or participated unacceptably in preparation or hearing events, that an award of cost will be made. Only a party may make a request for costs. Participants, witnesses or others without official party standing can request or receive costs only in the most unusual circumstances.

THERE MUST BE NO THREATS TO POTENTIAL APPELLANTS THAT COSTS WILL BE REQUESTED. This could prevent opponents who have different but sincerely held opinions from exercising their right to appeal. The governing legislation provides this appeal right. If this is abused there are other remedies available, such as dismissal without a hearing. The Tribunal will use a test for "clearly unreasonable" conduct which was described in this way: "...would a reasonable person, having looked at all of the circumstances of the case, the conduct or course of conduct of a party proven at the hearing and the extent of his or her familiarity with the Tribunal's procedure, exclaim, "that's not right; that's not fair; that person ought to be obligated to another in some way for that kind of conduct."

Who May Request an Order for Costs

28.01 Where a party believes that another party has acted clearly unreasonably, frivolously, vexatiously or in bad faith considering all of the circumstances, it may ask for an award of costs.

Period Eligible for Costs Order

28.02 The Tribunal may make a costs award for conduct at any time during a proceeding.

Powers of Tribunal

28.03 The Tribunal may deny or grant the request or award a different amount.

Circumstances in which Costs Order May be Made

28.04 Clearly unreasonable, frivolous, vexatious or bad faith conduct can include, but is not limited, to:

- a) Failing to attend a hearing event or to sending a representative when properly given notice, without contacting the Tribunal;
- b) Failing to give notice or adequate explanation or lack of co-operation during pre-hearing proceedings, changing a position without notice, or introducing an issue or evidence not previously mentioned;
- c) Failing to act in a timely manner or to comply with a procedural order or direction of the Tribunal where the result was undue prejudice or delay;
- d) Conduct necessitating unnecessary adjournments or delays or failing to prepare adequately for hearing events;
- e) Failing to present evidence, continuing to deal with issues, asking questions or taking steps that the Tribunal has determined to be improper;

- f) Failing to make reasonable efforts to combine submissions with parties of similar interest;
- g) Acting disrespectfully or maligning the character of another party; and
- h) Knowingly presenting false or misleading evidence.

The Tribunal will consider the seriousness of the misconduct. If a party requesting costs has also conducted itself in an unreasonable manner, the Tribunal may decide to reduce the amount awarded. (The Tribunal will not consider factors arising out of a mediation or settlement conference except where, for example, it finds that a request for change to a settlement is unreasonable.)

Interest on Award

28.05 Awards of costs will bear interest in the same manner as those made under section 129 of the Courts of Justice Act.

Rule 29 - Review of a Decision

Application

- 29.01 The Tribunal may at any time correct a typographical error, grammatical error, error of calculation, misstatement, ambiguity, technical error or other similar error which appears in a decision or order of the Tribunal without recourse to this Rule and without prior notice to the parties to an appeal.
- 29.02 This rule applies to reviews conducted under subsection 21.2(1) of the SPPA.
- 29.03 Before a final decision or order is issued, any application to review an interim order or procedural ruling of the Tribunal shall be made by motion to the panel of the Tribunal hearing the appeal and not under this Rule.
- 29.04 The Tribunal may review a final decision or order at the request of a party to an appeal or on its own initiative.
- 29.05 Any person, other than a party to an appeal, may request the Tribunal to review a final decision or order with leave of the Tribunal.
- 29.06 A request under Sub-rule 29.05 shall comply with Sub-rule 29.07.

Contents of a request for review

- 29.07 A request for review of a final decision or order of the Tribunal shall,
 - a) be in writing;
 - b) state the interest of the requester in the subject matter of the appeal;

- c) state the reasons for requesting the review;
- d) state the desired outcome of the review;
- e) attach any documents which support the request;
- f) state the full name, mailing address, telephone number and facsimile number (if any) of the requester;
- g) if the requester has counsel or an agent, state the full name, mailing address, telephone number and facsimile number (if any) of the counsel or agent; and
- h) be signed by the requester.

Action by Tribunal

29.08 Upon receipt of a request for review which complies with Sub-rule 29.07 the Tribunal shall send a copy of the request to each party to the appeal.

Evaluation of a request for review

29.09 In deciding whether it is advisable to conduct a review of all or any part of a final decision or order, the Tribunal may consider any relevant circumstances including,

- a) whether there is significant new evidence which was not available at the time of the original appeal;
- b) whether the Tribunal made a material error of law or fact such that the Tribunal would likely have reached a different decision;
- c) the extent to which any party to the appeal or any other person has relied upon the final decision or order;
- d) the extent to which any party to the appeal or any other person will be affected by the review process; and
- e) whether the public interest in finality of decisions is outweighed by the alleged prejudice to the requester.

Time limits

29.10 A request for review shall be filed within thirty calendar days of the date of the final decision or order.

29.11 A request for review received after the expiry of the thirty calendar day period may be considered if the Tribunal is satisfied that there is a good reason for the delay.

Multiple requests for review

29.12 Except with leave of the Chair, the Tribunal will consider only one request for review of a final decision or order by any person.

Consideration of requests for review

- 29.13 The Chair of the Tribunal, or a Vice-Chair designated by the Chair, shall consider each request for review of a final decision or order and decide whether a review should be conducted.
- 29.14 The Chair, or the Vice-Chair who considers the request, may consult with the member or members of the Tribunal who participated in the hearing of the appeal or motion which resulted in the final decision or order which is the subject of the request for review.
- 29.15 The Chair may request the member or members of the Tribunal who participated in the hearing of the appeal or motion which resulted in the final decision or order which is the subject of the request for review to consider the request and make the decision to review or not to review it.
- 29.16 The Chair, Vice-Chair or other member or members of the Tribunal who considers a request for review may have regard to the record of the hearing of the appeal or motion in addition to any material filed by the requester and any other party to the appeal.
- 29.17 The Tribunal may refuse a request to review a final decision or order without seeking submissions from any other party to the appeal.
- 29.18 If the Tribunal decides to receive and consider submissions from the other parties to the final decision or order which is the subject of a request for review it shall notify the other parties of the request for review and allow them seven business days to respond.
- 29.19 The Tribunal shall send a copy of any response it receives from another party to the appeal to the requester and the requester shall be allowed three business days to reply.
- 29.20 A copy of the requester's reply shall be sent by the requestor to each of the other parties and to the Tribunal.
- 29.21 The Tribunal shall not accept any further submissions without its permission.
- 29.22 A request for review may be granted in whole or in part.
- 29.23 If the Tribunal decides to review one of its final decisions or orders it may attach conditions, add other parties or make procedural directions to govern the review process.

Procedure for a review

- 29.24 Unless otherwise ordered, a review of a final decision or order of the Tribunal shall be conducted orally.
- 29.25 A review shall be conducted by a panel of the Tribunal designated by the Chair.

29.26 On a review the Tribunal may confirm, vary, suspend or cancel the final decision or order under review.

Rule 30 - Order of Presentation at a Hearing

Adding parties

30.01 Where persons who are not parties to a proceeding wish to make submissions, the Tribunal will, by way of preliminary matters, determine the issues that these persons wish to address and establish the time in the proceedings that the Tribunal will hear these persons, but no such person will be heard unless willing to undergo cross examination by the parties to the hearing.

Opening Statements

30.02 Unless the Tribunal directs otherwise, each party at the beginning of the hearing may give a brief opening statement that describes the issues that the party will address during the hearing. The statement should include a brief outline of the evidence the party intends to call, a list of witnesses and the desired outcome of the hearing.

Order of presentation

30.03 Unless specified otherwise in the statute or otherwise directed by the Tribunal at the start of a hearing, the order of presentation at the hearing will be

- the presentation of the evidence of the appellant,
- cross examination by the parties,
- questions from the Tribunal,
- presentation of evidence by the respondent,
- cross examination by the appellant,
- questions from the Tribunal,
- reply evidence from the appellant (if any),
- cross examination on the reply by the respondent,
- questions from the Tribunal,
- summation by the appellant
- summation by the respondent, and reply by the appellant to any unexpected issue raised in the summation of the respondent.

Variation for appeals under Drainage Act

30.04 At hearings of appeals made under the Drainage Act, at the commencement of the hearing, a brief overview may be presented by the engineer who prepared the report under appeal.

Rule 31 - Appeals under The Drainage Act

Method of commencement

31.01 An appeal to the Tribunal shall be commenced by serving a notice of appeal on the council of the initiating municipality.

31.02 A notice of appeal shall contain a statement of the matter being appealed and the name, mailing address, including postal code, and telephone number of each appellant.

Action by Clerk

31.03 The clerk of the Tribunal shall forthwith record the notice and, except as otherwise provided in these rules or the Drainage Act, send a copy of the notice to the Tribunal and to all persons assessed for the drainage works. (Drainage Act, s. 99)

Parties

31.04 The parties to an appeal to the Tribunal shall be the person making the appeal and such other persons as the Tribunal may specify. (Drainage Act, ss. 51(2))

Notice of hearing

31.05 Upon receipt of a notice of appeal, the secretary to the Tribunal shall, in consultation with the clerk of the Tribunal, set a date for the hearing and cause a notice of hearing to be sent to the Clerk of the Tribunal with instruction to serve the notice on the parties to the appeal setting out the date, time and place at which the appeal will be heard.

Stay

31.06 An appeal to the Tribunal operates as a stay in the matter under appeal subject to the right of the Tribunal to limit or define the scope of the stay.

Notice of decision

31.07 The Clerk of the Tribunal will send by facsimile copy or by regular pre-paid mail addressed to the parties to any proceeding who took part in the hearing, at their addresses last known to the Tribunal, a copy of its final decision and order, if any, in the proceeding.

Assessment of costs

31.08 The costs of any proceeding before the Tribunal shall be apportioned between the parties in such a manner as the Tribunal considers proper. (Drainage Act, ss. 98(10), part)

Enforcement of order for costs

31.09 When the Tribunal orders a party or parties to any proceeding to pay costs, the order for payment thereof may be filed with the Small Claims Court and is enforceable as an order of that court. (Drainage Act, ss. 98(10), part)

What costs chargeable

31.10 The costs chargeable to or to be awarded in any proceeding may include the costs of witnesses and of procuring their attendance, the costs of secretarial staff and such other costs as the Tribunal may direct. (Drainage Act, ss. 98(11))

Costs for stenographic services

31.11 The Tribunal may fix the fees for stenographic reporters employed and such fees shall be included in the costs of the hearing and shall be borne and paid as the Tribunal may direct. (Drainage Act, ss. 98(7), part)

Effect of Decision

31.12 Subject to the power of review, in any proceeding under sections 8, 10, 48, 49, 50, 54, 64, 65, 66 and 75 of the Drainage Act, the decision of the Tribunal is final.

Rule 32 - Crop Insurance Appeals

Method of commencement

32.01 Unless otherwise provided in these rules or in a statute a crop insurance appeal shall be commenced by notice addressed to the secretary of the Tribunal at 1 Stone Road West, Guelph, Ontario, N1G 4Y2, within one year from the date of filing of the proof of loss documents.

32.02 A notice of appeal shall contain a statement of the matter being appealed and the name, mailing address, including postal code, and telephone number of each appellant.

Copy of Notice to Respondent

32.03 The appellant shall send a copy of its notice of appeal to the respondent.

Action by the secretary to the Tribunal

32.04 Upon receipt of a request for an appeal, the secretary to the Tribunal shall, in consultation with the parties, set a date for the hearing and issue a notice of hearing.

Stay

32.05 An appeal to the Tribunal operates as a stay in the matter under appeal subject to the right of the Tribunal to limit or define the scope of the stay.

Parties

32.06 The insured or insureds under a policy of crop insurance and the insurer are the parties to an appeal.

Decision

32.07 The Tribunal shall send notice of its decision and reasons, if any, to all parties to the appeal within twenty calendar days after the hearing is completed.

Effect of Decision

32.08 A decision of the Tribunal in an appeal is final.

Rule 33 - Appeals under The Farm Products Marketing Act, The Milk Act And Licensing Appeals

Method of commencement

33.01 Unless otherwise provided in these rules or in a statute an appeal shall be commenced by notice addressed to the secretary of the Tribunal at 1 Stone Road West, Guelph, Ontario, N1G 4Y2.

33.02 A notice of appeal shall contain a statement of the matter being appealed and the name, mailing address, including postal code, and telephone number of each appellant.

Appeals under Section 16 of the Ministry of Agriculture and Food Act

33.03 The Tribunal shall refuse to hear an appeal unless the appellant provides evidence of compliance with subsection 16(5) of the Ministry of Agriculture and Food Act.

33.04 The Tribunal may refuse to hear an appeal or, after a hearing has commenced, refuse to continue the hearing or make a decision if it relates to any order, direction, policy, decision or regulation of which the appellant has had knowledge for more than one year before the notice of appeal is filed under section 16 of the Ministry of Agriculture and Food Act or, if in the Tribunal's opinion,

- a) the subject matter of the appeal is trivial;
- b) the appeal is frivolous or vexatious or is not made in good faith; or
- c) the appellant does not have a sufficient interest in the subject matter of the appeal.

Notification of appeal

33.05 Upon receipt of a notice of appeal under subsection 16(1) or (2) of the Ministry of Agriculture and Food Act the Tribunal shall forthwith notify the Farm Products Marketing Commission, the local board, the marketing board or the Director under the Milk Act where any such body or the Director, as the case may be, has an interest in the subject matter of the appeal.

Notice of hearing

33.06 In an appeal under subsection 16(1) or (2) of the Ministry of Agriculture and Food Act the Tribunal shall within ten calendar days after the receipt of a notice of appeal serve a notice of hearing on the appellant or appellants and the body which made the order, direction, policy, decision or regulation which gave rise to the grievance setting out the date, time and place at which the appeal will be heard.

Stay

33.07 Unless otherwise specified in the Act governing the matter under appeal, an appeal to the Tribunal operates as a stay in the matter under appeal subject to the right of the Tribunal to limit or define the scope of the stay.

Parties to appeal

33.08 In an appeal under subsection 16(1) or (2) of the Ministry of Agriculture and Food Act any person entitled to receive notice of a hearing and any person having a sufficient interest in the subject matter of the appeal may be a party to the appeal.

Completion of hearing

33.09 In an appeal under subsection 16(1) or (2) of the Ministry of Agriculture and Food Act the Tribunal shall complete the hearing within forty-five calendar days after the date set for the hearing.

Notice of Decision

33.10 In an appeal under subsection 16(1) or (2) of the Ministry of Agriculture and Food Act the Tribunal shall send notice of its decision and reasons, if any, to all parties to the appeal and to the Minister of Agriculture, Food and Rural Affairs within twenty calendar days after the hearing is completed.

When decision becomes final

- 33.11 A decision of the Tribunal in an appeal under subsection 16(1) or (2) of the Ministry of Agriculture and Food Act becomes final thirty days after it is received by the Minister or at the expiration of such longer period as the Minister may determine during such thirty day period unless the Minister varies or rescinds the decision or a decision is substituted for the decision of the Tribunal or the Minister requires the Tribunal to hold a new hearing.

Rule 34 - Appeals under The Farm Registration and Farm Organizations Funding Act

Method of commencement

- 34.01 Unless otherwise provided in these rules or in a statute an application shall be commenced by notice addressed to the secretary of the Tribunal at 1 Stone Road West, Guelph, Ontario, N1G 4Y2.
- 34.02 An application for exemption shall contain the name, mailing address, including postal code, and telephone number, property roll number, exemption requested as well as a detailed statement of grounds upon which the applicant seeks exemption.
- 34.03 An application for accreditation shall contain the name, mailing address, including postal code, and telephone number of the organization seeking accreditation, the name and title of the contact person for the organization and documentation indicating how the organization meets the requirements for accreditation set out in the Act.

Action by the Secretary

- 34.04 Upon receipt of an application the secretary shall send a copy of the application to the accredited farm organizations and to the Chair and two members of the Tribunal asking whether they require the Tribunal to conduct a hearing on the application prior to making a decision. If no one objects to the application the Tribunal may make a decision based on the written application. If a hearing is required, the secretary to the Tribunal shall, in consultation with the parties, set a date for the hearing and issue a notice of hearing.

Action by the Secretary

- 34.05 Upon receipt of an application for accreditation the secretary shall, in consultation with the parties, set a date for the hearing and issue a notice of hearing.

Stay

- 34.06 Unless otherwise provided in these rules or in a statute, an appeal to the Tribunal operates as a stay in the matter under appeal subject to the right of the Tribunal to limit or define the scope of the stay.

Parties

34.07 The applicant and any other person who, in the opinion of the Tribunal, has significant interest in the subject matter of the appeal are the parties to an appeal.

Completion of hearing

34.08 The Tribunal shall complete the hearing within forty-five calendar days after the date set for the hearing.

Decision

34.09 The Tribunal shall send notice of its decision and reasons, if any, to all parties to the appeal and to the Minister within twenty days after the hearing is completed.

Effect of Decision

34.10 A decision of the Tribunal in an appeal is final.

Rule 35 - Appeals under The Assessment Act

Method of commencement

35.01 An appeal concerning the placement of a property in the farmlands property class under the Assessment Act shall be commenced by completing a complaint form and filing it with the Assessment Review Board at the address specified on the assessment notice. A non-refundable filing fee payable to the Minister of Finance must be filed along with each complaint form by the deadline.

35.02 The Assessment Review Board will forward the complaint to the secretary of the Tribunal.

Action by the Secretary

35.03 On receipt of a complaint the secretary to the Tribunal will establish a hearing date and issue a notice of hearing.

Stay

35.04 Unless otherwise provided in these rules or in a statute, an appeal to the Tribunal operates as a stay in the matter under appeal subject to the right of the Tribunal to limit or define the scope of the stay.

Parties

35.05 The complainant and any other person who, in the opinion of the Tribunal, has significant interest in the subject matter of the appeal are the parties to an appeal.

Completion of hearing

35.06 The Tribunal shall complete the hearing within forty-five calendar days after the date set for the hearing.

Decision

35.07 The Tribunal shall send notice of its decision and reasons, if any, to all parties to the appeal and to the Assessment Review Board within twenty days after the hearing is completed.

Form 1

SUMMONS

(Name of Act under which proceeding arises)

SUMMONS TO A WITNESS BEFORE (name of tribunal)

TO: (name and address of witness)

(For oral hearing)

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on (day), (date), at (time), at (place), and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: (Set out the nature and date of each document and give sufficient particulars to identify each document and thing.)

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

(For electronic hearing)

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING on (day), (date), at (time), in the following manner: (Give sufficient particulars to enable witness to participate.)

IF YOU FAIL TO PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THE SUMMONS, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

Date(Name of tribunal)

.....

(Signature by or on behalf of tribunal)

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice

Form 2

DECLARATION AND UNDERTAKING

IN THE MATTER OF an appeal by (insert name of appellants) from a decision of (insert name of respondent).

I [insert name], a(n) [employee, officer, director etc.] of/a [witness, representative, consultant, etc.] for the appellant/respondent, DECLARE THAT:

I am ordinarily resident in Canada;

I am/am not an employee, officer, director or shareholder of the party for whom I appear or any other person known by me to be a participant at this hearing;

I have read/been informed of the Rules of Procedure of the [insert name of Tribunal] and the orders of the Tribunal that relate to this hearing;

I understand that the order of the Tribunal may be filed with the Ontario Court (General Division); and

I understand that any breach of the Tribunal's orders could be the subject of contempt proceedings in the Superior Court of Justice.

AND UNDERTAKE THAT:

I will maintain the confidentiality of any information or evidence presented during that portion of the hearing held in the absence of the public and I will not disclose any such information or evidence to any person who is not entitled to know it;

I will not reproduce in any manner, without the prior written approval of the Tribunal, any information or evidence presented during that portion of the hearing held in the absence of the public, or any notes, transcripts or written submissions dealing with information received, evidence taken, and submissions made during or in respect of that portion of the hearing,

I will ensure that no other individual shall copy or disclose any information or evidence presented during that portion of the hearing held in the absence of the public, or any notes, transcripts or written submissions dealing with information received, evidence taken, and submissions made during or in respect of that portion of the hearing; and

I will personally deliver to the secretary of the Tribunal [at the end of the hearing/after the appeal period has passed] any notes, transcripts or written submissions dealing with the information received, evidence taken and submissions made during or in respect of that portion of the hearing held in the absence of the public.

Signature _____

Date: _____

Printed Name _____