



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

Latest Revision: April 12, 2021

These Rules are adopted pursuant to section 25.1 of the [Statutory Powers Procedure Act](#), section 3 of the [Tribunal Adjudicative Records Act, 2019](#) and section 14(9) of the [Ministry of Agriculture, Food and Rural Affairs Act](#). The Rules pertaining to costs are adopted pursuant to section 17.1(4) of the [Statutory Powers Procedure Act](#). The members whose appointments indicate that they are entitled to hear matters under the [Agricultural Employees Protection Act](#) have adopted these Rules with respect to proceedings under that Act.

These Rules are effective as of April 30, 2021 and replace the Rules adopted in June 2006. These Rules apply to all proceedings, including further steps taken in proceedings that were commenced prior to April 30, 2021.

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RULE 1 INTERPRETATION

1.01 Citation

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

1.02 Purposes of these rules

The purposes of these Rules are to provide a fair, open, accessible and understandable process for Parties and other interested persons; to facilitate and enhance access and public participation; to encourage co-operation among Parties; to assure the efficiency and timeliness of proceedings; and to assist the Tribunal in fulfilling its statutory mandate.

1.03 General

The Tribunal may exercise any of its powers under these rules on its own initiative or at the request of a party.

- i. The Tribunal may issue general or specific procedural directions at any time.
- ii. 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.

1.04 Definitions

In these rules, unless the context requires otherwise,

"adjudicative record" has the same meaning as in the [Tribunal Adjudicative Records Act, 2019](#);

"appeal" means a proceeding whereby the Tribunal is requested to determine any matter and includes applications, complaints and references where appropriate but does not include a motion;

"appellant" means a person who files an appeal, application, or complaint with the Tribunal or whose appeal is referred to 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](#);

"deliver" means to serve all other parties and file with proof of service to the Tribunal

"delivery" has a corresponding meaning to the term "deliver";

"document" includes but is not limited to:

- a) Notices, forms, correspondence, memoranda, files, agreements, reports, charts, graphs, books of account, and any other written or pictorial communication;
- b) A sound recording, videotape, photograph, motion picture, microfiche, map, plan, survey, model, or similar thing;
- c) Information recorded or stored by means of any device, including computer files; and
- d) Facsimiles or copies of documents;

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

"hearing" is the proceeding before the Tribunal and includes a hearing of a motion, a pre-hearing conference and an informal hearing, whether by in-person oral, electronic, or written means;

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

"motion" means an application for relief in an appeal; a request for the Tribunal's ruling or decision on an issue at any stage within a proceeding;

"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;

"panel" means the member or members of the Tribunal conducting a Hearing;

"participant" means a person who is named as a Participant under Rule 8;

"particulars" include clarification of the remedy, decision or order requested; clarification of the reasons given for requesting the remedy, decision or order; and a statement or clarification of the material facts upon which a Party relies in support of any allegation;

"party" means the applicant, appellant, or complainant in a proceeding and the respondent or responding parties in a proceeding, as well as anyone else who is named as a party under Rule 8;

"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](#), section 1 of the [Ministry of Agriculture, Food and Rural Affairs Act](#) or subsection 1(2) of the [Agricultural Employees Protection Act, 2002](#);

"proceeding" refers to all matters before the Tribunal in respect of an appeal, application or complaint;

"respondent" includes a responding party and means a person against whom an application, complaint, or motion is made or an appeal is brought, as the circumstances require;

"Rules" means these Rules and includes Practice Directions issued by the Tribunal;

"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;

"SPPA" means the [Statutory Powers Procedure Act](#);

"statutory holiday" means New Year's Day, Family 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 taken in the context of the rule and includes a panel or individual member of the Tribunal;

"Tribunal Coordinator" means the Tribunal staff member responsible for co-ordinating the procedural matters of a proceeding;

"written hearing" means a hearing held by means of an exchange of documents in writing.

1.08 Interpretation of rules

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.

- i. During any proceeding, the Tribunal may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate the matter before it.

1.09 Conflict

- i. Where any of these Rules or orders issued by the Tribunal conflict with any statute or regulation, the provisions of the statute or regulation shall prevail.
- ii. The Tribunal may issue procedural orders for a proceeding that, if in conflict with these Rules, prevail over these Rules.

1.10 Matters not provided for by these rules

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

2.01 Effect of non-compliance

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.

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.

2.02 Tribunal may dispense with compliance

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

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

RULE 4 COMMUNICATION TO AND FROM THE TRIBUNAL

4.01 Not Confidential

Written communications from parties to a proceeding to the Tribunal and communications from the Tribunal to parties to a proceeding are not confidential and will be shared with all other parties to the proceeding.

4.02 Copied to all parties

All written communications with the Tribunal, including e-mail correspondence, must be copied to all other parties to the proceeding.

4.03 Oral Communication

Oral communication with a panel of the Tribunal about a current proceeding shall occur only in the presence of all Parties as arranged by the Tribunal Coordinator.

RULE 5 TIME

5.01 Computation of time

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

- i. 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;
- ii. 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);
- iii. 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
- iv. 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.

5.02 Local time

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.

5.03 Extension or abridgement of time

Except where a statute provides otherwise, the Tribunal may extend or abridge any time to commence a proceeding or do anything prescribed by these rules, on such terms as the Tribunal may determine.

- i. A motion for an order extending time may be made before or after the expiration of the time prescribed.
- ii. 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 6 SUBMITTING AN APPEAL, APPLICATION OR COMPLAINT

6.01 Commencing Proceedings before the Tribunal

Except in the case of matters under the [Drainage Act](#) or [Assessment Act](#), a person may file an appeal with the Tribunal by submitting and serving on all other known parties a signed and dated notice that includes:

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- i. a written statement of the decision, regulation, or matter at issue;
- ii. the remedy sought;
- iii. the name, address, and contact information of the party seeking the remedy;
and
- iv. the name, address, and contact information of the party against whom the remedy is being sought;

6.02 Commencing Proceedings under the [Drainage Act](#)

A person may file an appeal with the Tribunal under the [Drainage Act](#) by serving notice upon the council of the initiating municipality by submitting to the clerk of the initiating municipality a signed and dated written notice of the matter under appeal including the name, address, and contact information of the party seeking a remedy.

6.03 Commencing Proceedings under the [Assessment Act](#)

A person may file an appeal with the Tribunal concerning the placement of a property in the farm property class under the [Assessment Act](#) by first requesting a reconsideration from the Municipal Property Assessment Corporation. Appeals from the reconsideration are filed 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 appeal form by the deadline.

6.04 The Hearing

Upon receipt of an appeal the Tribunal Coordinator shall 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.

RULE 7 DECISION NOT TO PROCEED

7.01 When Decision May Be Made

The Tribunal may decide not to proceed with an appeal if,

- i. the documents are incomplete;
- ii. the documents are received after the time for commencing the proceeding has elapsed;
- iii. there is some other technical defect in the commencement of the proceeding; or
- iv. the conditions for processing the documents relating to the commencement of a proceeding as set out in another statute are not met.

7.02 Notice of Decision Not to Proceed

The Tribunal shall give notice of a decision under Rule 7.01 to the party who commenced the proceeding and to such other persons as determined by the Tribunal and, where applicable, the notice shall state the requirements for the Tribunal to resume processing the documents.

RULE 8 BECOMING A PARTY OR PARTICIPANT

8.01 Requesting Status

Any person may request to be named as a Party or Participant in a proceeding before the Tribunal by making a motion to the Tribunal.

8.02 Who is a Party

The following persons are Parties for the purpose of the Rules:

- i. persons specified as Parties by or under the statute under which the proceeding arises;
- ii. persons otherwise entitled by law to be Parties to the proceeding; and
- iii. persons who request Party status and are so specified by the Tribunal as Parties for all or part of the proceeding, and on such conditions as the Tribunal considers appropriate.

8.03 Naming of a Party

In deciding whether to name a person as a Party to the proceeding, the Tribunal may consider relevant matters including whether:

- i. a person's interests may be directly and substantially affected by the Hearing or its result;
- ii. a person has a genuine interest, whether public or private, in the subject matter of the proceeding; and
- iii. a person is likely to make a relevant contribution to the Tribunal's understanding of the issues in the proceeding.

8.04 Role of a Party

A Party to the proceeding before the Tribunal may:

- i. bring motions;
- ii. be a witness at the Hearing;
- iii. be questioned by the Parties when acting as a witness;
- iv. call witnesses at the Hearing;
- v. cross-examine witnesses;
- vi. make submissions to the Tribunal, including final argument;
- vii. receive copies of all documents exchanged or filed by the Parties; and
- viii. claim costs or be liable to pay costs where permitted by law.

8.05 Naming of a Participant

The Tribunal may name persons to be Participants in all or part of a proceeding on such conditions as the Tribunal considers appropriate.

- i. In deciding whether to name a person as a Participant, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's would be.
- ii. A person who may otherwise qualify as a Party may request Participant status.

8.06 Participant Not a Party

A Participant to a proceeding is not a Party to the proceeding.

8.07 Role of a Participant

A Participant in a Hearing may:

- i. be a witness at the Hearing;
- ii. be questioned by the Parties when acting as a witness;
- iii. make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing; and
- iv. upon request, receive a copy of documents exchanged by the Parties that are relevant to the Participant's interests.

A Participant in a Hearing may not:

- i. raise issues that have not already been raised by a Party;
- ii. call witnesses;
- iii. cross-examine witnesses;
- iv. bring motions; and
- v. claim costs or be liable for costs.

RULE 9 REPRESENTATIVES

9.01 Appointing a Representative

Any party to a proceeding before the Tribunal may appoint a person to act as their representative before the Tribunal.

9.02 Duties of Representative

Representatives have both duties to the Tribunal and the party they are representing. Representatives must provide up-to-date contact information to the Tribunal and be available to be contacted promptly. Representatives are responsible for conveying Tribunal communications and directions to their client. Representatives should be familiar with Tribunal rules and procedures, communicate the Tribunal's expectations to their client, and provide timely responses to the other parties and the Tribunal.

9.03 Witness May Not Act as Representative

Unless a party is self-represented, a witness may not act as a representative.

9.04 Party to Notify Tribunal

When a party retains a representative to represent him or her in a proceeding before the Tribunal, the party must notify the Tribunal and all other parties in writing.

9.05 Contents of Notification

This notification must include the representative's name, postal address, telephone number(s), and email address and must explicitly state that the party authorizes the

Tribunal to communicate with the representative regarding the party's interest in the proceedings.

9.06 When Representative No Longer Acting

If a representative ceases to act for a party, the party or the representative must promptly file a written notice with the Tribunal and send a written notice to every other party. This written notice must be provided at least two working days before a scheduled hearing date.

9.07 Duty of Respect

All persons who attend before the Tribunal, including representatives, must be respectful to all parties, Tribunal members, staff, and attendees.

RULE 10 TRIBUNAL DOCUMENTS

10.01 Copies of Tribunal documents

A person may examine any adjudicative record in the possession of the Tribunal and, subject to rules 10.02 to 10.07, be provided with copies of such adjudicative record unless a statute, regulation, order of a court or order of the Tribunal provides otherwise.

10.02 Confidential documents

Pursuant to section 2 of the [Tribunal Adjudicative Records Act, 2019](#), the Tribunal may order that any adjudicative record or part of an adjudicative record be treated as confidential, be sealed and not form part of the public record.

10.03 Fees

The Tribunal may charge a fee for providing copies of adjudicative records.

10.04 Rates

Fees payable under rule 10.03 are:

- (i) For photocopies and computer printouts, 20 cents per page
- (ii) For records provided on a memory device, \$10 for each device
- (iii) For costs incurred in locating, retrieving, processing, copying or sending adjudicative records, \$15 for each 15 minutes spent by any person

10.05 Payment

Fees under rule 10.03 shall be paid by cheque payable to the Minister of Finance.

10.06 Transcripts

Where a transcript in the possession of the Tribunal is requested, the Tribunal shall provide the requester with the name and contact information of the court reporter who prepared the transcript.

10.07 Deposit

Where an estimated amount payable under this rule for adjudicative records is greater than \$100, the Tribunal may require a deposit of 50% of the estimate be paid before further steps are taken to respond to the request.

10.08 Signing documents

A document to be signed on behalf of the Tribunal may be signed by the Chair, a Vice-Chair, a member of the Tribunal, or by a Tribunal Coordinator.

RULE 11 NOTICES

11.01 Notice to be in writing

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

11.02 Notice may be given by a party

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 12 SERVICE OF NOTICES AND DOCUMENTS

12.01 Serving Parties

Parties to a proceeding are responsible for serving all other parties and/or their representative with a copy of any and all documents they intend to use or rely on during any step in a proceeding.

12.02 Method of service

Service may be effected by delivering the notice or document,

- i. by personal service;
- ii. by prepaid regular, certified or registered mail addressed to the person's last known address;
- iii. by courier addressed to the person's last known address;
- iv. 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 25 pages or, if longer, the recipient consents; or
- v. if agreed to by the recipient, 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 25 pages or, if longer, the recipient consents; or
- vi. by any other means authorized or permitted by the Tribunal.

12.03 Effective date of service

Service is deemed to be effective,

- i. on the fifth day after the notice or document is mailed using the regular, certified or registered mail services of Canada Post Corporation;
- ii. on the day of transmission if sent by electronic mail or facsimile transmission before 4:00 p.m. or the day after transmission if sent by electronic mail or facsimile transmission after 4:00 p.m.; or
- iii. 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
- iv. on the day personal service is made.

12.04 Service after 4:00 p.m.

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.

12.05 Affidavit proving service of notice

Where a party has served a document in accordance with Rule 12.01, an affidavit of service shall be filed with the Tribunal at or before the commencement of the hearing.

12.06 Proof that service not made

A 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.

12.07 Filing Documents with the Tribunal

Parties are responsible for filing with the Tribunal five (5) hard copies of materials they wish to use during their hearing.

12.08 Method of filing documents with the Tribunal

Documents maybe filed with the Tribunal by any of the methods referred to in rule 12.02, including by electronic means, provided that hard copies follow within 48 hours.

12.09 Information to be provided by filer

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 13 CONSOLIDATION OR HEARING TOGETHER

13.01 Where order may be made

Where the Tribunal considers that two or more appeals are related to each other by common facts, issues, questions of law or policy, the Tribunal may,

- i. with the consent of the parties, order the appeals to be consolidated or heard at the same time; or
- ii. hear one immediately after the other or stay or adjourn any matter until the determination of any other matter.

13.02 Discretion of presiding members

Despite the Tribunal having made an order under Rule 13.01, the presiding members at the hearing may order otherwise.

RULE 14 SPOKESPERSONS

14.01 Similar Interests

The Tribunal may direct persons who have similar interests to designate one person to act as their spokesperson or to co-ordinate their participation in the proceeding.

14.02 Group May Appoint Spokesperson

A group of two or more persons appearing before the Tribunal with a common interest may appoint one person from within the group to act as spokesperson for the group.

14.03 Spokespersons

Spokespersons must be parties to the proceedings.

RULE 15 HEARING LOGISTICS

15.01 Location of Hearing

The Tribunal may hold hearings at any place in Ontario.

15.02 Adjournments

The Tribunal may, on motion by a party or on its own motion, adjourn the hearing for such periods of time and upon such terms as the Tribunal considers just.

15.03 Directions

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 16 ORAL HEARINGS

16.01 Appeals heard by oral hearing

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

16.02 Notice of an oral hearing

Except in a [Drainage Act](#) matter, written notice of an oral hearing shall be given by the Tribunal to the parties to an appeal and others as required by statute and to such other persons as the Tribunal considers necessary.

16.03 Oral hearings to be public

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 pursuant to rule 28.

16.04 Procedure at hearing

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

RULE 17 WRITTEN HEARINGS

17.01 Holding a written hearing

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.

17.02 Factors to be considered

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

- i. the suitability of the written hearing format to the subject matter of the hearing;
- ii. whether the credibility of any of the parties or witnesses is an issue;
- iii. the extent to which the facts of the matter are in dispute;
- iv. the extent to which the issues in dispute are questions of law;
- v. the convenience of the parties;
- vi. the cost, efficiency and timeliness of the hearing format;
- vii. avoidance of unnecessary delay or a lengthy oral hearing;
- viii. the need to provide a fair and understandable process;
- ix. the desirability or necessity of public participation in or public access to the Tribunal's process; or
- x. any other considerations affecting the fulfilment of the Tribunal's statutory mandate.

17.03 No Written Hearing

The Tribunal shall not hold a written hearing if the party satisfies the Tribunal that there is good reason for not doing so.

17.04 No objection to written format for procedural hearings

Rule 17.03 does not apply if the only purpose of the hearing is to deal with procedural matters.

RULE 18 ELECTRONIC HEARINGS

18.01 Holding an electronic hearing

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

18.02 Factors to be considered

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

- i. the suitability of the electronic technology to the subject matter of the hearing;
- ii. 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;
- iii. the extent to which the matters in dispute are questions of law;
- iv. the convenience of the parties;
- v. the cost, efficiency and timeliness of the proceeding;
- vi. avoidance of unnecessary delay or a lengthy hearing;
- vii. ensuring a fair and understandable process;
- viii. the desirability or necessity of public participation in or public access to the hearing process; or
- ix. any other factors affecting the fulfilment of the Tribunal's statutory mandate.

18.03 No Electronic Hearing

The Tribunal shall not hold an electronic hearing if the party satisfies the Tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

18.04 Procedural matters

Rule 18.03 does not apply if the only purpose of the hearing is to deal with procedural matters.

RULE 19 CONVERSION BETWEEN HEARING FORMATS

- i. The Tribunal may, in a proceeding, hold any combination of written, electronic and oral hearings.
- ii. Any party to a proceeding may file a motion requesting that all or part of the hearing be held in a different format.

RULE 20 LANGUAGE OF HEARINGS

20.01 Hearings in English, French, or English and French

The Tribunal shall conduct its hearings in English or in French or in any combination of the two in accordance with the [French Language Services Act](#).

20.02 Where French is used

An appellant, respondent or other party who wishes to give or call evidence or make submissions in French must, at least 30 business days before the hearing, request the Tribunal to provide French language translation of the oral 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.

20.03 Translation of Documents

Where French language services are being provided by the Tribunal in a proceeding, the Tribunal will provide all of its correspondence, orders and decisions in French and English, but will not translate documents that are filed by parties or their representatives from French to English or from English to French.

20.04 Interpreters for other languages

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 21 VERBATIM REPORTERS

21.01 Verbatim recordings not provided by Tribunal

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

21.02 Arranging a verbatim recording

- i. Any party to the hearing may arrange and pay for verbatim recording of the proceedings by a qualified verbatim reporter.
- ii. Where a party wants a verbatim recording of the proceedings that party shall 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 verbatim reporter at the hearing room.
- iii. The first party to order a transcript or partial transcript shall pay the cost of transcribing and shall file a copy of the transcript or partial transcript with the Tribunal as part of the record.
- iv. 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 22 AUDIO AND VISUAL RECORDING OF HEARINGS

22.01 No audio or visual recording of hearings without authorization

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.

22.02 Exceptions to the general rule

Nothing in rule 22.01,

- i. prohibits a person from unobtrusively making handwritten notes or sketches at a Tribunal hearing; or
- ii. prohibits a duly certified verbatim reporter retained by the Tribunal or a party from recording the hearing for the purpose of providing an accurate transcript.

22.03 Requests for authorization

A request for authorization under Rule 20.01 may be made to the Chair of the Panel presiding at a hearing at the commencement of a hearing or after a hearing has commenced.

22.04 Representations to Tribunal permitted

The Tribunal shall afford the parties at a hearing an opportunity to make representations to the Tribunal in respect of any application under Rule 20.01 or to vary any authorization previously granted by the Tribunal.

22.05 Factors to be considered

On an application for authorization under Rule 22.01, the Tribunal shall consider,

- i. the likelihood of disturbance or disruption of the hearing;
- ii. the likelihood of undue discomfort for any participant;
- iii. whether there is a public interest in having procedures which are accessible to all those interested or affected; and
- iv. such other matters as the Tribunal deems appropriate.

22.06 Rules for recording of hearings

In making a recording authorized by the Tribunal under Rule 22.01,

- i. no equipment which produces a distracting sound or light shall be used during the hearing;
- ii. the person authorized to make the recording shall not move around the hearing room unnecessarily while the hearing is in progress;
- iii. 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
- iv. the authorized recording or photographic activity will occur only at times and within portions of the hearing determined by the Tribunal.

22.07 Authority may be withdrawn

Any authorization given under Rule 20.01 may be withdrawn by the Tribunal before or during the hearing,

- i. if the Tribunal's rules are breached;
- ii. if any unforeseen circumstances interfere with the ability and duty of the Tribunal to conduct a full and fair hearing; or
- iii. if the Tribunal considers it appropriate to withdraw the authorization after reconsidering any of the factors set out in Rule 22.05.

22.08 Temporary withdrawal of authority

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.

22.09 Presiding Members May Record Hearings

The presiding member(s) may record hearings for the purpose of supplementing the members' notes.

22.10 Recording not part of record

Where a hearing is recorded for the purpose of supplementing the presiding members' notes, the recording does not form part of the Tribunal's record of proceedings.

RULE 23 COMPELLING ATTENDANCE OF WITNESSES

23.01 By Summons to witness

A party who requires the attendance of a person as a witness at a hearing may serve the person with a summons to witness 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.

23.02 Summons Request

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 Tribunal Coordinator 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. See "[Form 1 – Summons](#)" form, which can be found on the Ontario Central Forms Repository.

23.03 Service and attendance money

A party requesting a summons to witness shall arrange for personal service of the summons on the witness 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.

23.04 Affidavit of Service Required

An affidavit proving the service of the summons on the witness shall be filed with the Tribunal.

RULE 24 DISCLOSURE

24.01 Disclosure of documents

Each party to an appeal shall deliver to all other parties and to the Tribunal copies of all documents that the party will produce or seek to have entered as evidence at the hearing as ordered by the Tribunal.

24.02 Order for disclosure of documents

The Tribunal may at any stage of a proceeding order a party to disclose to any other party documents and things relevant to the issues in the proceeding.

24.03 Inspection of things

Where a party to an appeal intends to rely on any thing, other than documents, that party shall give notice to all other parties and the Tribunal and make the thing(s) available for inspection or testing by any other party that the party intends to produce or seek to have entered as evidence at the hearing at least fourteen days before the day of the hearing or as otherwise directed by the Tribunal.

24.04 Failure to disclose

If a party fails to comply with any of the disclosure requirements of these Rules, the party may not refer to any document(s) or thing(s) that has not been disclosed without the consent of the Tribunal, which may be granted on such terms and conditions as the Tribunal considers just.

RULE 25 PARTICULARS

25.01 Order for particulars

On a motion by a party, 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.

RULE 26 WITNESS STATEMENTS

26.01 Witness Statements Required

A party to an appeal shall serve on each party to the proceeding, and file with the Tribunal, a signed witness statement for each witness the party intends to call at the hearing or, if a signed witness statement is not available for a witness, a written summary of the evidence to be given by the witness at the hearing as directed by the Tribunal.

26.02 Failure to Provide

If a party fails to provide a witness statement in accordance with Rule 26.01, the party may not call that person as a witness without the consent of the Tribunal.

26.03 Content of witness statements

A witness statement or statement of evidence that a witness is anticipated to give at the hearing shall contain,

- i. the substance of the anticipated evidence of the witness;
- ii. a list of the documents and things, if any, that the witness will refer to in his or her evidence; and
- iii. 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.

RULE 27 EXPERT WITNESSES

27.01 Delivery of expert's report

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, unless otherwise directed by the Tribunal.

27.02 Failure to provide expert's report

If a party fails to comply with Rule 27.01, 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.

27.03 Duty of expert witnesses

Every expert report shall include a signed "Acknowledgement of Expert's Duty" form to be filed with the Tribunal ([Form 53](#) on the Ontario Central Forms Repository).

RULE 28 REQUESTS FOR RESTRICTED ACCESS

28.01 Hearings Open to Public

Tribunal hearings shall be open to the public, unless the Tribunal is of the opinion that,

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- i. matters involving public security may be disclosed; or
- ii. intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the Tribunal may hold the hearing in the absence of the public.

28.02 Restricted access

(i) Rule 28.01 does not apply to electronic hearings where holding an electronic hearing open to the public would be impractical.

(ii) Rule 28.01 is subject to rules 29.03 and 29.04(iii).

28.03 Request by a party

A party to an appeal may, at any time, make a motion to the Tribunal requesting restricted access.

28.04 Tribunal Order

The Tribunal may, at any time, make an order for restricted access on its own motion.

RULE 29 PRE-HEARING CONFERENCES

29.01 Direction to attend

Unless the Tribunal decides otherwise, the Tribunal shall direct the parties to an appeal and/or their representative, to attend one or more pre-hearing conferences for the purpose of considering any matter related to the appeal including,

- i. identification of parties and other interested persons and the scope of their participation in the hearing;
- ii. issues related to disclosure and the exchange of information;
- iii. identification and simplification of issues;
- iv. identification of preliminary motions to be undertaken;
- v. 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;
- vi. identification of facts or evidence that may be agreed upon;
- vii. settlement of any or all of the issues in dispute;
- viii. the possibility of obtaining admissions to facilitate the hearing;
- ix. the estimated duration of the hearing; or
- x. any other matters that may assist in the just and most expeditious disposition of the appeal.

29.02 Settlement

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

29.03 Settlement Conference closed to public

Any settlement conference portion of a pre-hearing conference shall be closed to the public.

29.04 Limits on use of settlement discussions

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

- i. statements made without prejudice at a pre-hearing conference shall not be communicated to the hearing panel unless the parties consent in writing or on the record;
- ii. 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;
- iii. such documents or submissions are not to be made available to the public, other parties or the panel hearing the substantive appeal.

RULE 30 MOTIONS

30.01 Notice of motion

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

30.02 Hearing date

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

30.03 Contents of motion record

A motion record shall,

- i. identify the moving party;
- ii. set out the date, time and place for the hearing of the motion;
- iii. state the precise relief sought by the moving party;
- iv. specify the grounds to be argued, including a reference to any statutory provision or rule, if any, to be relied upon;
- v. be accompanied by an affidavit of a person having knowledge or information and belief regarding the facts deposed to, if such information is to be used at the hearing of the motion;
- vi. list the documents to be referred to at the hearing of the motion;
- vii. state whether the moving party will seek leave permission of the Tribunal to adduce oral evidence at the hearing of the motion and identify the nature of that evidence;
- viii. 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;
- ix. identify by name, address and telephone number the moving party's solicitor or the moving party; and

- x. 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.

30.04 Service of notice of motion

Unless otherwise directed by the Tribunal, the notice of motion shall be served at least ten business days before the date on which the motion is to be heard.

30.05 Alternate service

Where a motion is made on notice, a notice of motion shall be served upon all of the other parties to the appeal and any person to whom the Tribunal has directed notice be given and filed with 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.

30.06 Response of responding party

A responding party who intends to rely upon,

- i. grounds other than those to be relied upon by the moving party;
- ii. an affidavit;
- iii. documents other than those to be relied upon by the moving party; or
- iv. oral evidence to be adduced at the hearing of the motion with permission of the Tribunal

shall serve a response.

30.07 Contents of the response

The response referred to in rule 30.06 shall,

- i. identify the responding party;
- ii. 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;
- iii. be accompanied by an affidavit of a person having,
 - a. knowledge; or
 - b. information and belief,
 - c. regarding the facts deposed to if such information is to be used at the hearing of the motion;
- iv. list any additional documents to be used at the hearing of the motion;
- v. state whether the responding party will seek permission from the Tribunal to adduce oral evidence at the hearing of the motion and identify the nature of the evidence; and
- vi. identify by name, address and telephone number the responding party's solicitor or the responding party.

30.08 Service of response

Unless otherwise directed by the Tribunal, the response referred to in rule 30.07 shall be served at least four business days prior to the date upon which the motion is to be heard.

30.09 Alternate Service

A copy of the response shall be served on the moving party, all other parties and any person to whom the Tribunal has directed notice of motion must be filed with 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.

30.10 Reply to Response

The Tribunal may, at the request of a party or on its own motion, provide an opportunity for the moving party to reply to a response to a notice of motion.

30.11 Oral representations at hearing of motion

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

30.12 Tribunal may determine

Notwithstanding the above motion rules, the Tribunal may determine that a motion be made entirely in writing unless a party establishes that there is good reason not to do so. When a motion is made entirely in writing, the Tribunal shall determine the applicable timelines.

RULE 31 NOTICE OF CONSTITUTIONAL QUESTION

31.01 Notice must be served

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, the Attorneys General for Canada and Ontario, and the Tribunal as soon as the circumstances requiring notice become known and, in any event, at least fifteen (15) calendar days before the question is to be argued, unless the Tribunal orders an alternate timeline for serving the notice.

31.02 Rights of Attorneys General

The Attorneys General for Canada and Ontario are entitled to adduce evidence and make submissions to the Tribunal regarding the constitutional question.

31.03 Form of notice

Notice of a constitutional question shall be given in the prescribed form ([Form 4B](#) on the Ontario Central Forms Repository)

RULE 32 WITHDRAWING AN APPEAL

32.01 Method of Withdrawal

Subject to Rule 34, any person who files an appeal with the Tribunal may withdraw the appeal by filing a signed and dated notice of withdrawal of the appeal with the Tribunal and serving it on the other parties and any other person who is entitled to notice.

RULE 33 TRIBUNAL MAY DISMISS MATTER WITHOUT HEARING

33.01 Dismissal without a hearing

The Tribunal may dismiss an appeal without a hearing on its own motion, if, in the Tribunal's opinion,

- i. the proceeding is frivolous, vexatious or is commenced in bad faith;
- ii. the proceeding relates to matters that are outside the jurisdiction of the Tribunal; or
- iii. some aspect of the statutory requirements for bringing the proceeding has not been met.

33.02 Dismissal under the *Ministry of Agriculture, Food and Rural Affairs Act*

In addition to the reasons for dismissing a proceeding without a hearing described in Rule 33.01, the Tribunal may dismiss a proceeding under the [Ministry of Agriculture, Food and Rural Affairs Act](#) 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 or, if in the Tribunal's opinion, the appellant does not have a sufficient interest in the subject-matter of the appeal.

33.03 Notifying parties

The Tribunal will notify all parties to the proceeding of its contemplation of dismissing a proceeding under this Rule.

33.04 Submissions

A party who receives notice of potentially dismissing a proceeding under Rule 33.03 may make written submissions with respect to the proposed dismissal within 30 days of the date of the notice, and the Tribunal shall consider any such submissions before making a decision under Rule 33.01 or 33.02.

33.05 Dismissal on motion by a party

Where a party seeks to have a matter dismissed without a hearing based upon grounds mentioned in rules 33.01 or 33.02, that party may only do so by motion.

33.06 Abandoned matters

(i) The Tribunal may consider an appeal seemingly abandoned to be frivolous.

(ii) After considering submissions received pursuant to rule 33.04, the Tribunal may dismiss an abandoned matter or set a timetable for resuming the matter.

(iii) Where a timetable for resuming a matter has been ordered, the Tribunal may dismiss a matter where the commencing party fails to adhere to the timetable.

RULE 34 COSTS

34.01 Who May Request an Order for Costs

Where a party believes that another party has acted unreasonably, frivolously, vexatiously or in bad faith considering all of the circumstances, it may ask for an award of costs within 30 days of an order being made or the matter being withdrawn or dismissed.

34.02 Period Eligible for Costs Order

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

34.03 Powers of Tribunal

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

34.04 Circumstances in which Costs Order May be Made

Unreasonable, frivolous, vexatious or bad faith conduct can include, but is not limited, to:

- i. Failing to attend a hearing event or failing to send a representative when properly given notice, without contacting the Tribunal;
- ii. 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 or included in a procedural order;
- iii. 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;
- iv. Conduct necessitating unnecessary adjournments or delays or failing to prepare adequately for hearing events;
- v. Failing to present evidence, continuing to deal with issues, asking questions or taking steps that the Tribunal has determined to be improper;
- vi. Failing to make reasonable efforts to combine submissions with parties of similar interest;
- vii. Acting disrespectfully or maligning the character of another party; and
- viii. Knowingly presenting false or misleading evidence.

34.05 Tribunal not bound

The Tribunal is not bound to order costs when any of these examples occur. 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.

34.06 Costs in a *Drainage Act* matter

While the Tribunal may consider rules 34.01-34.05 in considering the allocation of costs of a [Drainage Act](#) matter, costs may be apportioned pursuant to subsections 98(10) and (11) of that Act despite rule 34.01-34.05.

34.07 Interest on Award

Awards of costs will bear interest in the same manner as those made under section 129 of the [Courts of Justice Act](#).

RULE 35 CORRECTION OF DECISION

35.01 Tribunal may correct

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 prior notice to the parties to an appeal.