Audit Finance and Administration Committee
2018-2022 Term
Orientation Package for Development Charge Complaint Hearing

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IN THIS DOCUMENT:

DEVELOPMENT CHARGE COMPLAINT HEARING ORIENTATION

INTRODUCTION

The *Development Charges Act, 1997* ("DC Act") requires Council to hold a hearing in respect of a complaint filed by a person pursuant to section 20 of the DC Act. Council has delegated the responsibility of the holding of the hearing to the Audit Finance and Administration Committee ("AF&A")

Section 20 of the DC Act states:

20 (1) A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,
(a) the amount of the development charge was incorrectly determined;
(b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or
(c) there was an error in the application of the development charge by-law.

The complaint must be made within 90 days of the development charge ("DC") or any part if it is payable and the complaint must be in writing. Notice of the hearing must be provided by the Clerk of the City at least 14 days prior to the hearing.

PROCEDURES

In conducting a hearing pursuant to subsection 20(4) of the DC Act, AF&A follows the procedures set out in the Council Procedure By-law and the *Statutory Powers Procedure Act* ("SPPA"). The Council Procedure By-law applies to Council and, with necessary modifications, to all Committees/Tribunals of Council. The SPPA applies to the exercise of a statutory power of decision such as a hearing of a complaint pursuant to subsection 20(4) of the DC Act.

BEFORE THE HEARING

1. Parties

There are two parties to the hearing of a DC Complaint, the City and the Complainant. The City's Finance Division is responsible for administering the DC By-law and a solicitor from the Legal Division will represent the City at the hearing. The complainant may choose to be represented by a lawyer or an agent (who, in accordance with the *Law Society Act* and its regulations may provide representation). (Section 10, SPPA)

AF&A must be satisfied that the Complainant, their representative, if any, and their witnesses, if any, understand the proceedings. If they are not satisfied, they should act to remedy this, for example by adjourning the proceedings and directing the Secretary to arrange for an interpreter when the proceedings resume.

2. Notice

Subsection 20(5) of the DC Act requires that the Clerk of the City mail the complainant notice of the hearing at least 14 days prior to the hearing date.

Subsections 6(2) and (3) of the SPPA require that the notice include a reference to the statutory authority under which the hearing will be held and state the time, place and purpose of the hearing. The notice must also state that if a party does not appear, AF&A may proceed in their absence. If notice fails to meet any of the requirements contained in the DC Act and SPPA and the complainant does not appear, AF&A should order that a new notice be delivered. If the complainant does appear, AF&A should consider whether or not the failure to meet any requirement has prejudiced the complainant and, if it has, how to remedy the prejudice, for example, by acceding to a reasonable request for adjournment.

3. Allegations of Bad Character, Impropriety of Conduct and Incompetence, Grounds for Complaint

In the hearing of a DC Complaint, AF&A may have to deal with allegations of bad character, impropriety of conduct and incompetence. Section 8 of the SPPA requires that a party be furnished with reasonable information of any such allegations prior to the hearing. The grounds listed on the notice of the hearing are intended to fulfil this requirement. If AF&A is convinced at a hearing that reasonable information has not been furnished, then it may adjourn the hearing to a future date and direct Finance staff to provide additional information to the complainant.

AF&A, in conducting the hearing of a DC Complaint, is required to only consider the grounds permitted under subsection 20(1) of the DC Act namely:

a) whether the amount of the DC was incorrectly determined;

(b) whether a credit is available to be used against the DC, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or

(c) there was an error in the application of the DC by-law.

Examples of matters not relevant to the determination of a DC Complaint include but are not limited to: financial or personal hardship as a resulting from the DC; using a complaint as a way to provide assistance (bonusing) to a commercial enterprise contrary to section 106 of the *Municipal Act, 2001;* , lack of knowledge of the applicability of the DC, failure of municipal officials to inform applicants of deadline in relation to a change in DC quantum[1], and the appropriateness of a DC By-law. As stated by the LPAT the grounds set out in the DC Act are very specific and quite focused. They do not include a request to be exempt from a DC otherwise applicable pursuant to a DC By-law nor do they include a request to create a new category of development not found in a DC By-law. [2] A DC Complaint cannot be used to amend the DC By-law to alter the DC rate otherwise validly applicable or to add a credit or exemption not already within the DC By-law.[3]

THE HEARING

1. Disclosure

AF&A may make an order regarding disclosure in response to a motion made by a party.

2. Conflict of Interest and Bias

[1] A. Pigeau Construction, Re, 1993 CarswellOnt 4878, 30 O.M.B.R. 210
[2] Stone v. Hamilton (City), 2019 CanLII 16512 (ON LPAT)
[3] Szilveszter. V. Barrie (City) 2004 CarswellOnt 5919, 48 O.M.B.R. 63

As members of Council, the members of AF&A, in their capacity in hearing a DC Complaint, are subject to municipal conflict of interest requirements under the *Municipal Conflict of Interest Act*. The members also must be mindful of any actual or perceived conflict of interest or bias as members of AF&A.

Many administrative tribunals adopt Codes of Professional Conduct that state, amongst other things, that their members must strive at all times to make their decisions independently, fairly, objectively, impartially and without bias. A Code of Professional Conduct has not been adopted by AF&A for the purpose of a DC Complaint hearing but Council has its own Code of Conduct which continues to apply. However, an AF&A member's duty goes beyond ensuring that there is no actual bias. They must conduct themselves in a manner that will not give rise to an appearance of unfairness, partiality or bias. Each member presiding over a matter must decide whether they have a conflict of interest or whether their past or present activities, associations, or interests may rise an apprehension of bias.

The test applied by the courts has been "what would an informed person, viewing the matter realistically and practically – and having thought the matter through conclude that it is more likely or not that the decision-maker, whether consciously or unconsciously, would not decide fairly."

If an AF&A member feels that they should not be hearing a particular matter, the member may inform AF&A that they will not participate, giving a general or specific reason why not, e.g. one of the witnesses is a relation.

An alternative, particularly when the conflict of interest is less obvious, is for the AF&A member to explain their concern to the parties, hear what the comments are and then make their decision. For example, and in the context of a licensing tribunal hearing, a councillor who was approached at a public event by a licensee the weekend before that licensee's licensing tribunal hearing explained he could not speak to the licensee about the hearing. The councillor then disclosed the conversation at the outset of the hearing. The hearing went forward with the councillor continuing to sit. The matter went to judicial review, but there was never any question raised about the councillor having a conflict of interest.

The courts have applied a different test for disqualifying bias for councillors sitting as members of an administrative tribunal who have previously commented, in their role as councillors, on a matter before them. The test is whether or not the councillor has an open mind such that they are capable of giving a fair hearing and a fairly decided decision. It is the duty of a councillor to disqualify themselves if they are

not open to being able to be persuaded in favour of either party. Members of AF&A should refrain from commenting on a matter while it is before them as this makes any allegation of bias much more credible.

3. Maintenance of Order at Hearings

Subsection 9(2) of the SPPA gives AF&A the authority to maintain order at a hearing. If any person disobeys or fails to comply with an order made by AF&A, the Chair or another member may call upon a peace officer to enforce this order.

4. Adjournments

Adjournments may be requested by either party at the start of or during a hearing. AF&A may grant or refuse an adjournment request in light of a number of considerations including: the legitimate inability of the complainant or a witness to attend or, within reason, the counsel of their choice; or, the necessity for time to prepare before a hearing or to respond to new and unexpected issues or allegations arising in the course of a hearing. The courts are reluctant to interfere with an administrative tribunal's exercise of discretion to refuse an adjournment but will do so if they find that the refusal was unreasonable.

If both parties are in agreement that the hearing be adjourned, then AF&A should normally exercise its discretion to do so.

In considering a request for an adjournment, AF&A members should be cognizant of the right of the complainant, pursuant to subsection 22(2) of the DC Act, to appeal its complaint to the Local Planning Appeal Tribunal ("LPAT") if the AF&A does not deal with the complaint within 60 days after the complaint was made.

5. Open and Closed Proceedings / Deliberations

All proceedings are to be open to the public and the parties unless one of the exceptions under the SPPA or the *Municipal Act, 2001* applies.

Section 9(1) of the SPPA provides that a hearing may be closed to the public if: (a) a matter involving public security may be disclosed; or (b) 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 interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

If AF&A believes that such matters could be disclosed, it should ask each of the parties if this is the case. If one or both answer "yes", AF&A should further ask the party or parties answering "yes" to explain, without providing details, what harm would result from disclosure. If AF&A is convinced that the harm outweighs the desirability of the hearing being open to the public, the hearing may be closed to the public. When a hearing is closed to the public under the SPPA, only the parties and their representatives remain in attendance.

AF&A may also rely on the authority under section 239 of the *Municipal Act, 2001* in closing proceedings to the public or the public and the parties - for example, if it wishes to receive advice subject to solicitor-client privilege.[4]

In addition, records containing personal information, such as medical reports before AF&A may be protected from disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*.

AF&A may, but is not required to, retire to deliberate in the absence of the public and the parties.[5] Deliberations occur when AF&A considers the evidence and submissions in arriving at a decision. The decision itself is announced in the presence of the public and the parties. The authority for retiring to deliberate is found at common law and is referred to as the "confidentiality principle" or the "rule on deliberative secrecy". As explained in one court decision: "The purpose of the rule on deliberative secrecy is to preserve adjudicative independence so that adjudication occurs with circumspection, reflection and in freedom." On occasion, deliberations may be subject to judicial review, however, "secrecy remains the rule" and is lifted only "when the litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice."

6. Agreed Upon Statements of Fact and Joint Submissions

[4] Section 9(1) of the *SPPA* and s. 239(2)(b) of the *Municipal Act, 2001* (A meeting or part of a meeting may be closed to the public if the subject matter being considered is, . . . personal matters about an identifiable individual . . .) overlap. There is no process prescribed for closing a hearing under the authority of Section 9(1) of the SPPA, while there is a detailed process, set out in the Council Procedure By-law, prescribed for closing a meeting under the authority of Section 239 of the MA, 2001. It is advisable, in case of a challenge, for the AF&A to always follow the process set out in the Council Procedure By-law when closing a proceeding.

[5] *Ontario Ombudsman v. Hamilton (City),* 2018 ONCA 502.

From time to time the parties may submit an agreed upon statement of facts which means that they will inform AF&A that some or all of the facts relevant to the hearing are not in dispute. Agreed upon facts need not be proven and should be accepted by AF&A.

The parties may go beyond an agreed upon statement of facts to make a joint submission, asking for a final decision that is acceptable to both. AF&A must give serious consideration to a joint submission and must not reject it without good cause. While AF&A may reject all or part of a joint submission, if this is being considered, both parties must be given the opportunity to make representations before the final decision is made.

7. Witnesses

The parties may call witnesses. (Section 10.1, SPPA) At the request of a party or on its own initiative, AF&A may require the attendance of a witness to give evidence by issuing a summons. The summons is signed by the Chair, or, if they are unavailable, another member of AF&A, who should be satisfied that the summoned evidence is relevant to the subject matter of the proceeding and admissible at the hearing. The summons must be served personally. The witness is entitled to a fee, to be paid by the party who requested the summons be issued, or by the City if AF&A summoned the witness. (Section 12, SPPA)

A witness who is summoned to testify before AF&A cannot refuse to answer a proper and relevant question. Section 13 of the *Canadian Charter of Rights and Freedoms* and Section 14 of the SPPA both protect witnesses from the consequences of being compelled to evidence against themself, providing that any such evidence may not be used against the witness in any other proceeding, except in a prosecution for perjury.

It is open to AF&A to call its own witnesses. AF&A needs to be satisfied as to the relevance of the witness' testimony (and would have to consider the submissions of the parties in this regard) and that sufficient disclosure would be provided. However, under most circumstances, AF&A should be hearing only the relevant evidence of the parties' witnesses.

Witnesses should be sworn or affirmed by the Chair of AF&A prior to commencing their testimony.

Lawyers or representatives acting as an advocate for a complainant cannot be a witness.

A summary of common objections to the testimony of witnesses is attached as Appendix B. As indicated in the summary, generally objections are made by one of the parties about the manner in which the other party is presenting their case. Only in rare instances, for example if AF&A felt the fairness of the hearing were in jeopardy, should AF&A make an objection.

8. Evidence

Administrative tribunals are given much more latitude than courts with respect to the evidence which they may receive and consider in arriving at a decision. Accordingly, AF&A may receive hearsay evidence and unsworn evidence. (Section 15, SPPA) The fundamental test with respect to the admissibility of evidence is that it must be relevant to the issues which are involved in the hearing. Relevance for a DC hearing is determined by reference to the permitted grounds set out in subsection 20(1) of the DC Act and by the grounds set out in the complaint, but only if those grounds are permitted grounds. When AF&A is confronted with an objection to the admissibility of a relevant piece of evidence, the evidence should generally be admitted unless it is clearly irrelevant. AF&A should consider the objection with respect to the weight it gives to that particular evidence when arriving at its decision. The general principle is that indirect evidence (hearsay) should be given less weight than direct evidence such as a witness' own observations, unless there is a valid reason to conclude that the direct evidence is not credible.

AF&A may make a finding of credibility in considering the testimony of a witness – giving little or no weight to testimony it does not find credible. In doing so, the members should consider the following factors: ability to recall (e.g. poor or good); appearance and demeanour (e.g. responsive or evasive); ability to observe (e.g. focussed or distracted); motivation (e.g. anything to gain or lose); probability (e.g. reasonable or unreasonable); external consistency (e.g. with other testimony, documentary evidence, etc.); internal consistency (e.g. answers during examination in chief vs. answers during cross examination). An administrative tribunal may find it very difficult to indicate in a decision that a witness was not credible. It is advisable for the administrative tribunal to fully and clearly explain itself, for example, by stating X's testimony was not relied upon because they admitted to a direct financial interest in the outcome of the hearing and because their answers were influenced by this.

Although unaffirmed or unsworn evidence is admissible, testimony to AF&A should be given under affirmation or oath. Each witness should be affirmed or sworn immediately before giving their testimony. A witness should be asked whether they prefer to be sworn or affirmed. The unrepresented complainant

is acting in two capacities, both as their own representative and as a witness. When they are acting as a witness – for example, telling AF&A what did or did not happen – they should be under affirmation. The affirmation may be administered by any member of AF&A or delegated to be administered by the Legislative Coordinator in attendance at the hearing.

The parties may examine their own witnesses and cross-examine other witnesses. (Section 10.1, SPPA) AF&A may also question witnesses. Generally, this should be done after the parties have finished questioning the witness. The Chair or Vice Chair presiding should allow each party to ask any further questions of the witness they may have arising from questions posed by a member of AF&A.

The onus is on the complainant to satisfy AF&A that the DC amount was incorrectly determined, that a credit should have been issued against the DC, that a credit was incorrectly applied, or there was an error in the application of the DC by-law. [6]

9. Note-taking

Courts and tribunals have recognized that judges and members of administrative tribunals "must have total freedom in terms of recording what [they] find noteworthy during the ongoing hearing". Adjudicative independence requires that adjudicators be able to reach their decisions without interference and this includes making notes which are not subsequently subject to scrutiny. It also includes the ability to retire and reach decisions in the absence of the public and the parties. As a result, courts and tribunals have refused to order the disclosure of notes when asked to do so. An exception may be made if there is "sufficient evidentiary basis for alleging a breach of the rules of natural justice and procedural fairness, such as improper consultations". It is because of this possible exception that notes should be kept for a reasonable period of time, enough time for whatever appeal right there may be to be exercised.

A problem arises when protection of privacy and freedom of information legislation applies. In the case of the *Municipal Freedom of Information and Protection of Privacy Act*, there is no exception made for the notes of members sitting on a municipal tribunal such as AF&A hearing a DC Complaint. As a consequence, if the City, in this case Clerks, has custody or control of the notes, these notes may be subject to disclosure under MFIPPA. In addition, the notes arguably would be subject to the Records Retention By-law and could only be destroyed in accordance with that By-law. Consequently, to ensure

[6] Lofaro v. Toronto (City), 2018 CanLII 112933 (ON LPAT)

that adjudicative independence can be maintained, it is recommended that if an AF&A member chooses to take notes, they:

- do so for the purposes of helping (i) them to remember and understand what occurred during a hearing; and (ii) to make a decision in respect of a hearing;
- keep their notes confidential, not allowing any other person to see, read or use the notes for any purpose;
- maintain responsibility for the care and safe-keeping of their notes;
- store their notes at their office or home; and
- destroy their notes after some reasonable period of time such as one year.

10. Decisions

AF&A, in the context of a DC Complaint hearing, makes two types of decisions: procedural decisions such as adjourning the hearing to another date; and final decisions concerning whether: the amount of the DC was correctly determined, a credit was available, a credit was correctly determined or there was an error in the application of the DC By-law. An alteration of the amount of the DC payable can only be made if the DC By-law has been applied incorrectly.[7] The procedural decision or final decision of the majority of the members of AF&A is the procedural decision or final decision of AF&A, allowing for a vote with dissent. However, it is recommended that AF&A operate on a consensual basis in respect of DC Complaint decisions.

As indicated above, AF&A may retire to deliberate in the absence of the public and the parties. At the conclusion of its deliberations, AF&A gives its procedural decision or final decision on the matter in the presence of the parties and the public. AF&A is not required to give reasons for a procedural decision that is made with the consent of the parties. Otherwise, AF&A must give oral and/or written reasons for a procedural decision. AF&A may make a final decision orally in the presence of the parties and the public, however, AF&A must make its decision in writing to the complainant and/or their legal counsel or agent within a reasonable time subsequent to the completion of the hearing.

Subsection 17(1) of the SPPA requires a written decision to include reasons for the decision only if a party to the complaint requests reasons. If reasons are requested the decision should summarize the facts and

[7] Modelaire Enterprises Inc. v. Oshawa (City) 1997 CarswellOnt 6227, 34 O.M.B.R. 412 (O.M.B.)

arguments presented by the parties, the findings of fact made by AF&A In addition, the jurisprudence indicates that reasons must be more that “merely a recital of allegations followed by bald conclusions”. AF&A’s decision must explain the relationship between the evidence and its conclusions, including why evidence was rejected or given little credibility.

AF&A members should refrain from expressing opinions on the merits or strength of a case until after all of the evidence and submissions have been heard and they are giving their decision. They must avoid commenting to the media or to other members of the public about a case, particularly while it is before AF&A. The Federal Court, in considering the conduct of Mr. Justice John Gomery when conducting the inquiry into the federal sponsorship scandal, found that “the media is not an appropriate forum in which a decision-maker is to become engaged while presiding over a commission of inquiry, a trial, or any other type of hearing or proceeding.”

AF&A must ensure that at all times it has a quorum. In addition to being present, AF&A members must take care to listen to the presentation of all evidence and submissions during the hearing. They must avoid talking amongst themselves. All cell phones, tablets or other communication devices should be turned off. This applies not only to AF&A members but to all those in attendance at a hearing. A recess should be requested for any matter requiring an AF&A member’s immediate attention such as responding to a phone call in respect of a family emergency.

One of the City’s Solicitors is available to provide legal advice to AF&A during a hearing and deliberations. This practice is permissible provided that the Solicitor does not take part in making findings of fact or in making the ultimate decision on the matter.

It is important that AF&A provides clear instructions to the Legislative Coordinator for AF&A about the decisions it makes, however, it is acceptable for the Legislative Coordinator to prepare a draft decision for approval by AF&A.

Appeal

The DC Act requires notice of the decision of AF&A to be mailed within 20 days after the day the decision is made. The decision of AF&A is subject to appeal by the complainant to the LPAT. An appeal must be made no later 40 days after the day the decision is made. The appeal is an appeal *de novo* which means LPAT is not required to consider AF&A’s reasons in its decision regarding an appeal.

APPENDIX A

Common Objections to Testimony[8]

Generally, objections are made by one of the parties about the manner in which the other party is presenting their case. In most instances, an objection will be made when a party is questioning a witness, although it may also occur during submissions, for example, if a party misstates evidence while summing up. When an objection is made, the tribunal is called upon to do one of three things:

(a) Allow the party to continue ("overruling" the objection). For example, deciding, contrary to an objection, that a question is relevant and may be asked;

(b) Allow the party to continue but instructing them to adjust. For example, instructing a questioner to rephrase a leading question; or

(c) Require the party to stop (agreeing with the objection). For example, agreeing with an objection that a question has been asked and answered and instructing the questioner to move on.

AF&A may, if it is of the opinion that something objectionable is happening, act as set out in (b) and (c) above on its own initiative. Care should be taken not to pre-empt either of the parties and to ensure that members of AF&A are in agreement.

1. Irrelevant Question

- A tribunal may admit evidence of dubious relevance.
- A tribunal may ask for an explanation of the relevance of a question and, if the explanation is plausible, should allow the question. If the explanation is not plausible, the tribunal may ask the questioner to move on.

2. Privilege

[8] Adapted from a paper entitled "Evidence in Administrative Proceedings: A Practical Primer" by Andrew K. Lokan given at the Canadian Institute's "Fundamentals of Administrative Law & Practice", April 28 & 29, 2008.

- Under s. 15(2) of the *Statutory Powers Procedure Act* a tribunal cannot hear privileged evidence: for example, evidence subject to solicitor/client, litigation, husband/wife, priest/penitent or settlement discussion privilege.

3. Hearsay

- Hearsay is evidence of an unsworn, out-of-court statement offered as proof of the truth of its contents.
- A tribunal usually admits hearsay evidence, deciding what weight to give it once it has been admitted. However, hearsay evidence of no value should not be admitted.
- In respect of both the admission and weighing of hearsay evidence, a tribunal considers reliability, reasonableness, unfairness and prejudice.

4. Leading the Witness in Chief

- A leading question is any question whose contents suggest the answer. It is only an issue in respect of contentious matter: for example, suggesting in a question to a municipal law enforcement officer that they are employed by the City of Hamilton is not an issue.
- A tribunal should try to ensure that the evidence is contained in the witness's answers, not in the questions being asked.
- Leading can normally be cured by a tribunal asking the questioner to rephrase the question so that the answer is not contained in the question.
- Leading is permissible in cross-examination.

5. Calls for Opinion from an Unqualified Witness

- Expert opinions may only be given by expert witnesses. All witnesses may give opinions on matters of general knowledge: for example, any witness may estimate height or distance.
- In making its ruling, a tribunal needs to consider whether or not the opinion being asked for is an expert opinion.

6. Calls for Legal Argument

- While testimony, particularly testimony from an enforcement officer, may explain how a law was applied, it should not include legal argument. Submissions, however, may and often do contain legal argument, for example an explanation of how a law is to be interpreted.
- A tribunal may ask for parties to address a legal argument in their submissions rather than during the testimony of witnesses.

7. Question Misstating Previous Evidence

- Questioners should accurately recount previous evidence when asking subsequent questions.
- A tribunal should ensure that previous evidence is accurately recounted, either in questions or in submissions.

8. Repetitious Questions

- This may occur either in chief, to bolster the case by having the witness repeat the “right” answer, or in cross, to badger the witness.
- A tribunal may require that a questioner asking repetitious questions move on.

9. Interrupting the Witness

- While a tribunal should not allow a questioner to interrupt a witness’s answer, the questioner is entitled to have their question answered.

APPENDIX B

Français

Statutory Powers Procedure Act

R.S.O. 1990, CHAPTER S.22

Consolidation Period: From November 3, 2015 to the e-Laws currency date.

Last amendment: 2015, c. 23, s. 5.

Legislative History: 1993, c. 27, Sched.; 1994, c. 27, s. 56; 1997, c. 23, s. 13; 1999, c. 12, Sched. B, s. 16; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. B, s. 21; 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2006, c. 21, Sched. C, s. 134; 2006, c. 21, Sched. F, s. 136 (1); 2009, c. 33, Sched. 6, s. 87; 2015, c. 23, s. 5.

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Interpretation

1. (1) In this Act,

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

"hearing" means a hearing in any proceeding; ("audience")

"licence" includes any permit, certificate, approval, registration or similar form of permission required by law; ("autorisation")

"municipality" has the same meaning as in the *Municipal Affairs Act*; ("municipalité")

"oral hearing" means a hearing at which the parties or their representatives attend before the tribunal in person; ("audience orale")

"proceeding" means a proceeding to which this Act applies; ("instance")

"representative" means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* to represent a person in that proceeding; ("représentant")

"statutory power of decision" means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not; ("compétence légale de décision")

"tribunal" means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute; ("tribunal")

"written hearing" means a hearing held by means of the exchange of documents, whether in written form or by electronic means. ("audience écrite") R.S.O. 1990, c. S.22, s. 1 (1); 1994, c. 27, s. 56 (1-3); 2002, c. 17, Sched. F, Table; 2006, c. 21, Sched. C, s. 134 (1, 2).

Meaning of "person" extended

(2) A municipality, an unincorporated association of employers, a trade union or council of trade unions who may be a party to a proceeding in the exercise of a statutory power of decision under the statute conferring the power shall be deemed to be a person for the purpose of any provision of this Act or of any rule made under this Act that applies to parties. R.S.O. 1990, c. S.22, s. 1 (2).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (1-3) - 1/04/1995

2002, c. 17, Sched. F, Table - 1/01/2003

2006, c. 21, Sched. C, s. 134 (1, 2) - 1/05/2007

Liberal construction of Act and rules

2. This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. 1999, c. 12, Sched. B, s. 16 (1); 2006, c. 19, Sched. B, s. 21 (1).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (1) - 14/02/2000

2006, c. 19, Sched. B, s. 21 (1) - 22/06/2006

Application of Act

3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. R.S.O. 1990, c. S.22, s. 3 (1); 1994, c. 27, s. 56 (5).

Where Act does not apply

(2) This Act does not apply to a proceeding,

(a) before the Assembly or any committee of the Assembly;

(b) in or before,

(i) the Court of Appeal,

(ii) the Superior Court of Justice,

(iii) the Ontario Court of Justice,

(iv) the Family Court of the Superior Court of Justice,

(v) the Small Claims Court, or

(vi) a justice of the peace;

(c) to which the Rules of Civil Procedure apply;

(d) before an arbitrator to which the *Arbitrations Act* or the *Labour Relations Act* applies;

(e) at a coroner's inquest;

(f) of a commission appointed under the *Public Inquiries Act, 2009*;

(g) of one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make; or

(h) of a tribunal empowered to make regulations, rules or by-laws in so far as its power to make regulations, rules or by-laws is concerned. R.S.O. 1990, c. S.22, s. 3 (2); 1994, c. 27, s. 56 (6); 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2009, c. 33, Sched. 6, s. 87.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (5, 6) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1, 2, 4) - 22/06/2006

2009, c. 33, Sched. 6, s. 87 - 1/06/2011

Waiver

Waiver of procedural requirement

4. (1) Any procedural requirement of this Act, or of another Act or a regulation that applies to a proceeding, may be waived with the consent of the parties and the tribunal. 1997, c. 23, s. 13 (1).

Same, rules

(2) Any provision of a tribunal's rules made under section 25.1 may be waived in accordance with the rules. 1994, c. 27, s. 56 (7).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (7) - 1/04/1995; 1997, c. 23, s. 13 (1) - 28/11/1997

Disposition without hearing

4.1 If the parties consent, a proceeding may be disposed of by a decision of the tribunal given without a hearing, unless another Act or a regulation that applies to the proceeding provides otherwise. 1997, c. 23, s. 13 (2).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (2) - 28/11/1997

Panels, certain matters

4.2 (1) A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal. 1994, c. 27, s. 56 (8).

Assignments

(2) In assigning members of the tribunal to a panel, the chair shall take into consideration any requirement imposed by another Act or a regulation that applies to the proceeding that the tribunal be representative of specific interests. 1997, c. 23, s. 13 (3).

Decision of panel

(3) The decision of a majority of the members of a panel, or their unanimous decision in the case of a two-member panel, is the tribunal's decision. 1994, c. 27, s. 56 (8).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (8) - 1/04/1995; 1997, c. 23, s. 13 (3) - 28/11/1997

Panel of one, reduced panel

Panel of one

4.2.1 (1) The chair of a tribunal may decide that a proceeding be heard by a panel of one person and assign the person to hear the proceeding unless there is a statutory requirement in another Act that the proceeding be heard by a panel of more than one person.

Reduction in number of panel members

(2) Where there is a statutory requirement in another Act that a proceeding be heard by a panel of a specified number of persons, the chair of the tribunal may assign to the panel one person or any lesser number of persons than the number specified in the other Act if all parties to the proceeding consent. 1999, c. 12, Sched. B, s. 16 (2).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (2) - 14/02/2000

Expiry of term

4.3 If the term of office of a member of a tribunal who has participated in a hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose. 1997, c. 23, s. 13 (4).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (4) - 28/11/1997

Incapacity of member

4.4 (1) If a member of a tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision. 1994, c. 27, s. 56 (9).

Other Acts and regulations

(2) Subsection (1) does not apply if another Act or a regulation specifically deals with the issue of what takes place in the circumstances described in subsection (1). 1997, c. 23, s. 13 (5).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (9) - 1/04/1995; 1997, c. 23, s. 13 (5) - 28/11/1997

Decision not to process commencement of proceeding

4.5 (1) Subject to subsection (3), upon receiving documents relating to the commencement of a proceeding, a tribunal or its administrative staff may decide not to process the documents relating to the commencement of the proceeding if,

(a) the documents are incomplete;

(b) the documents are received after the time required for commencing the proceeding has elapsed;

(c) the fee required for commencing the proceeding is not paid; or

(d) there is some other technical defect in the commencement of the proceeding.

Notice

(2) A tribunal or its administrative staff shall give the party who commences a proceeding notice of its decision under subsection (1) and shall set out in the notice the reasons for the decision and the requirements for resuming the processing of the documents.

Rules under s. 25.1

(3) A tribunal or its administrative staff shall not make a decision under subsection (1) unless the tribunal has made rules under section 25.1 respecting the making of such decisions and those rules shall set out,

(a) any of the grounds referred to in subsection (1) upon which the tribunal or its administrative staff may decide not to process the documents relating to the commencement of a proceeding; and

(b) the requirements for the processing of the documents to be resumed.

Continuance of provisions in other statutes

(4) Despite section 32, nothing in this section shall prevent a tribunal or its administrative staff from deciding not to process documents relating to the commencement of a proceeding on grounds that differ from those referred to in subsection (1) or without complying with subsection (2) or (3) if the tribunal or its staff does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Dismissal of proceeding without hearing

4.6 (1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

(a) the proceeding is frivolous, vexatious or is commenced in bad faith;

(b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or

(c) some aspect of the statutory requirements for bringing the proceeding has not been met.

Notice

(2) Before dismissing a proceeding under this section, a tribunal shall give notice of its intention to dismiss the proceeding to,

(a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (1) (b); or

(b) the party who commences the proceeding if the proceeding is being dismissed for any other reason.

Same

(3) The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Right to make submissions

(4) A party who receives a notice under subsection (2) may make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Dismissal

(5) A tribunal shall not dismiss a proceeding under this section until it has given notice under subsection (2) and considered any submissions made under subsection (4).

Rules

(6) A tribunal shall not dismiss a proceeding under this section unless it has made rules under section 25.1 respecting the early dismissal of proceedings and those rules shall include,

(a) any of the grounds referred to in subsection (1) upon which a proceeding may be dismissed;

(b) the right of the parties who are entitled to receive notice under subsection (2) to make submissions with respect to the dismissal; and

(c) the time within which the submissions must be made.

Continuance of provisions in other statutes

(7) Despite section 32, nothing in this section shall prevent a tribunal from dismissing a proceeding on grounds other than those referred to in subsection (1) or without complying with subsections (2) to (6) if the tribunal dismisses the proceeding in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Classifying proceedings

4.7 A tribunal may make rules under section 25.1 classifying the types of proceedings that come before it and setting guidelines as to the procedural steps or processes (such as preliminary motions, pre-hearing conferences, alternative dispute resolution mechanisms, expedited hearings) that apply to each type of proceeding and the circumstances in which other procedures may apply. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Alternative dispute resolution

4.8 (1) A tribunal may direct the parties to a proceeding to participate in an alternative dispute resolution mechanism for the purposes of resolving the proceeding or an issue arising in the proceeding if,

(a) it has made rules under section 25.1 respecting the use of alternative dispute resolution mechanisms; and

(b) all parties consent to participating in the alternative dispute resolution mechanism.

Definition

(2) In this section,

"alternative dispute resolution mechanism" includes mediation, conciliation, negotiation or any other means of facilitating the resolution of issues in dispute.

Rules

(3) A rule under section 25.1 respecting the use of alternative dispute resolution mechanisms shall include procedural guidelines to deal with the following:

1. The circumstances in which a settlement achieved by means of an alternative dispute resolution mechanism must be reviewed and approved by the tribunal.
2. Any requirement, statutory or otherwise, that there be an order by the tribunal.

Mandatory alternative dispute resolution

(4) A rule under subsection (3) may provide that participation in an alternative dispute resolution mechanism is mandatory or that it is mandatory in certain specified circumstances.

Person appointed to mediate, etc.

(5) A rule under subsection (3) may provide that a person appointed to mediate, conciliate, negotiate or help resolve a matter by means of an alternative dispute resolution mechanism be a member of the tribunal or a person independent of the tribunal. However, a member of the tribunal who is so appointed with respect to a matter in a proceeding shall not subsequently hear the matter if it comes before the tribunal unless the parties consent.

Continuance of provisions in other statutes

(6) Despite section 32, nothing in this section shall prevent a tribunal from directing parties to a proceeding to participate in an alternative dispute resolution mechanism even though the requirements of subsections (1) to (5) have not been met if

the tribunal does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Mediators, etc.: not compellable, notes not evidence

Mediators, etc., not compellable

4.9 (1) No person employed as a mediator, conciliator or negotiator or otherwise appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism shall be compelled to give testimony or produce documents in a proceeding before the tribunal or in a civil proceeding with respect to matters that come to his or her knowledge in the course of exercising his or her duties under this or any other Act.

Evidence in civil proceedings

(2) No notes or records kept by a mediator, conciliator or negotiator or by any other person appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism under this or any other Act are admissible in a civil proceeding. 1999, c. 12, Sched. B, s. 16 (3).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

Parties

5. The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises or, if not so specified, persons entitled by law to be parties to the proceeding. R.S.O. 1990, c. S.22, s. 5.

Written hearings

5.1 (1) A tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding. 1997, c. 23, s. 13 (6).

Exception

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

Same

(2.1) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters. 1999, c. 12, Sched. B, s. 16 (4).

Documents

(3) In a written hearing, all the parties are entitled to receive every document that the tribunal receives in the proceeding. 1994, c. 27, s. 56 (10).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (10) - 1/04/1995; 1997, c. 23, s. 13 (6) - 28/11/1997; 1999, c. 12, Sched. B, s. 16 (4) - 14/02/2000

Electronic hearings

5.2 (1) A tribunal whose rules made under section 25.1 deal with electronic hearings may hold an electronic hearing in a proceeding. 1997, c. 23, s. 13 (7).

Exception

(2) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

Same

(3) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters.

Participants to be able to hear one another

(4) In an electronic hearing, all the parties and the members of the tribunal participating in the hearing must be able to hear one another and any witnesses throughout the hearing. 1994, c. 27, s. 56 (10).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (10) - 1/04/1995; 1997, c. 23, s. 13 (7) - 28/11/1997

Different kinds of hearings in one proceeding

5.2.1 A tribunal may, in a proceeding, hold any combination of written, electronic and oral hearings. 1997, c. 23, s. 13 (8).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (8) - 28/11/1997

Pre-hearing conferences

5.3 (1) If the tribunal's rules made under section 25.1 deal with pre-hearing conferences, the tribunal may direct the parties to participate in a pre-hearing conference to consider,

(a) the settlement of any or all of the issues;

(b) the simplification of the issues;

(c) facts or evidence that may be agreed upon;

(d) the dates by which any steps in the proceeding are to be taken or begun;

(e) the estimated duration of the hearing; and

(f) any other matter that may assist in the just and most expeditious disposition of the proceeding. 1994, c. 27, s. 56 (11); 1997, c. 23, s. 13 (9).

Other Acts and regulations

(1.1) The tribunal's power to direct the parties to participate in a pre-hearing conference is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (10).

Who presides

(2) The chair of the tribunal may designate a member of the tribunal or any other person to preside at the pre-hearing conference.

Orders

(3) A member who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

Disqualification

(4) A member who presides at a pre-hearing conference at which the parties attempt to settle issues shall not preside at the hearing of the proceeding unless the parties consent. 1994, c. 27, s. 56 (11).

Application of s. 5.2

(5) Section 5.2 applies to a pre-hearing conference, with necessary modifications. 1997, c. 23, s. 13 (10).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (11) - 1/04/1995; 1997, c. 23, s. 13 (9, 10) - 28/11/1997

Disclosure

5.4 (1) If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,

(a) the exchange of documents;

(b) the oral or written examination of a party;

(c) the exchange of witness statements and reports of expert witnesses;

(d) the provision of particulars;

(e) any other form of disclosure. 1994, c. 27, s. 56 (12); 1997, c. 23, s. 13 (11).

Other Acts and regulations

(1.1) The tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (12).

Exception, privileged information

(2) Subsection (1) does not authorize the making of an order requiring disclosure of privileged information. 1994, c. 27, s. 56 (12).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (12) - 1/04/1995; 1997, c. 23, s. 13 (11, 12) - 28/11/1997

Notice of hearing

6. (1) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

Statutory authority

(2) A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

Oral hearing

(3) A notice of an oral hearing shall include,

(a) a statement of the time, place and purpose of the hearing; and

(b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Written hearing

(4) A notice of a written hearing shall include,

(a) a statement of the date and purpose of the hearing, and details about the manner in which the hearing will be held;

(b) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;

(c) a statement that if the party notified neither acts under clause (b) 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. 1994, c. 27, s. 56 (13); 1997, c. 23, s. 13 (13); 1999, c. 12, Sched. B, s. 16 (5).

Electronic hearing

(5) A notice of an electronic hearing shall include,

(a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;

(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) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and

(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. 1994, c. 27, s. 56 (13).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (13) - 1/04/1995; 1997, c. 23, s. 13 (13) - 28/11/1997; 1999, c. 12, Sched. B, s. 16 (5) - 14/02/2000

Effect of non-attendance at hearing after due notice

7. (1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

Same, written hearings

(2) Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

Same, electronic hearings

(3) Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (5) (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 is not entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (15).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (14, 15) - 1/04/1995

Where character, etc., of a party is in issue

8. 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 prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

Hearings to be public; maintenance of order

Hearings to be public, exceptions

9. (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed; or

(b) 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. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Written hearings

(1.1) In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

Electronic hearings

(1.2) An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

(a) it is not practical to hold the hearing in a manner that is open to the public; or

(b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

Maintenance of order at hearings

(2) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose. R.S.O. 1990, c. S.22, s. 9 (2); 1994, c. 27, s. 56 (18).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (16-18) - 1/04/1995; 1997, c. 23, s. 13 (14) - 28/11/1997

Proceedings involving similar questions

9.1 (1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

(a) combine the proceedings or any part of them, with the consent of the parties;

(b) hear the proceedings at the same time, with the consent of the parties;

(c) hear the proceedings one immediately after the other; or

(d) stay one or more of the proceedings until after the determination of another one of them.

Exception

(2) Subsection (1) does not apply to proceedings to which the *Consolidated Hearings Act* applies. 1994, c. 27, s. 56 (19).

Same

(3) Clauses (1) (a) and (b) do not apply to a proceeding if,

(a) any other Act or regulation that applies to the proceeding requires that it be heard in private;

(b) the tribunal is of the opinion that clause 9 (1) (a) or (b) applies to the proceeding. 1994, c. 27, s. 56 (19); 1997, c. 23, s. 13 (15).

Conflict, consent requirements

(4) The consent requirements of clauses (1) (a) and (b) do not apply if another Act or a regulation that applies to the proceedings allows the tribunal to combine them or hear them at the same time without the consent of the parties. 1997, c. 23, s. 13 (16).

Use of same evidence

(5) If the parties to the second-named proceeding consent, the tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (1) (b). 1994, c. 27, s. 56 (19).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (19) - 1/04/1995; 1997, c. 23, s. 13 (15, 16) - 28/11/1997

Right to representation

10. A party to a proceeding may be represented by a representative. 2006, c. 21, Sched. C, s. 134 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (20) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (3) - 1/05/2007

Examination of witnesses

10.1 A party to a proceeding may, at an oral or electronic hearing,

(a) call and examine witnesses and present evidence and submissions; and

(b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (20).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (20) - 1/04/1995

Rights of witnesses to representation

11. (1) A witness at an oral or electronic hearing is entitled to be advised by a representative as to his or her rights, but such representative may take no other part in the hearing without leave of the tribunal. 2006, c. 21, Sched. C, s. 134 (4).

Idem

(2) Where an oral hearing is closed to the public, the witness's representative is not entitled to be present except when that witness is giving evidence. R.S.O. 1990, c. S.22, s. 11 (2); 1994, c. 27, s. 56 (22); 2006, c. 21, Sched. C, s. 134 (5).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (21, 22) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (4, 5) - 1/05/2007

Summonses

12. (1) A tribunal may require any person, including a party, by summons,

(a) to give evidence on oath or affirmation at an oral or electronic hearing; and

(b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal,

relevant to the subject-matter of the proceeding and admissible at a hearing. R.S.O. 1990, c. S.22, s. 12 (1); 1994, c. 27, s. 56 (23).

Form and service of summons

(2) A summons issued under subsection (1) shall be in the prescribed form (in English or French) and,

(a) where the tribunal consists of one person, shall be signed by him or her;

(b) where the tribunal consists of more than one person, shall be signed by the chair of the tribunal or in such other manner as documents on behalf of the tribunal may be signed under the statute constituting the tribunal. 1994, c. 27, s. 56 (24).

Same

(3) The summons shall be served personally on the person summoned. 1994, c. 27, s. 56 (24).

Fees and allowances

(3.1) The person summoned is entitled to receive 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. 1994, c. 27, s. 56 (24); 2006, c. 19, Sched. C, s. 1 (1).

Bench warrant

(4) A judge of the Superior Court of Justice may issue a warrant against a person if the judge is satisfied that,

(a) a summons was served on the person under this section;

(b) the person has failed to attend or to remain in attendance at the hearing (in the case of an oral hearing) or has failed otherwise to participate in the hearing (in the case of an electronic hearing) in accordance with the summons; and

(c) the person's attendance or participation is material to the ends of justice. 1994, c. 27, s. 56 (25); 2006, c. 19, Sched. C, s. 1 (1).

Same

(4.1) The warrant shall be in the prescribed form (in English or French), directed to any police officer, and shall require the person to be apprehended anywhere within Ontario, brought before the tribunal forthwith and,

(a) detained in custody as the judge may order until the person's presence as a witness is no longer required; or

(b) in the judge's discretion, released on a recognizance, with or without sureties, conditioned for attendance or participation to give evidence. 1994, c. 27, s. 56 (25).

Proof of service

(5) Service of a summons may be proved by affidavit in an application to have a warrant issued under subsection (4). 1994, c. 27, s. 56 (26).

Certificate of facts

(6) Where an application to have a warrant issued is made on behalf of a tribunal, the person constituting the tribunal or, if the tribunal consists of more than one person, the chair of the tribunal may certify to the judge the facts relied on to establish that the attendance or other participation of the person summoned is material to the ends of justice, and the judge may accept the certificate as proof of the facts. 1994, c. 27, s. 56 (26).

Same

(7) Where the application is made by a party to the proceeding, the facts relied on to establish that the attendance or other participation of the person is material to the ends of justice may be proved by the party's affidavit. 1994, c. 27, s. 56 (26).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (23-26) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

Contempt proceedings

13. (1) Where any person without lawful excuse,

(a) on being duly summoned under section 12 as a witness at a hearing makes default in attending at the hearing; or

(b) being in attendance as a witness at an oral hearing or otherwise participating as a witness at an electronic hearing, refuses to take an oath or to make an affirmation legally required by the tribunal to be taken or made, or to produce any document or thing in his or her power or control legally required by the tribunal to be produced by him or her or to answer any question to which the tribunal may legally require an answer; or

(c) does any other thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court setting out the facts and that court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court. R.S.O. 1990, c. S.22, s. 13; 1994, c. 27, s. 56 (27).

Same

(2) Subsection (1) also applies to a person who,

(a) having objected under clause 6 (4) (b) to a hearing being held as a written hearing, fails without lawful excuse to participate in the oral or electronic hearing of the matter; or

(b) being a party, fails without lawful excuse to attend a pre-hearing conference when so directed by the tribunal. 1997, c. 23, s. 13 (17).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (27) - 1/04/1995; 1997, c. 23, s. 13 (17) - 28/11/1997

Protection for witnesses

14. (1) A witness at an oral or electronic hearing shall be deemed to have objected to answer any question asked him or her upon the ground that the answer may tend to criminate him or her or may tend to establish his or her liability to civil proceedings at the instance of the Crown, or of any person, and no answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. R.S.O. 1990, c. S.22, s. 14 (1); 1994, c. 27, s. 56 (28).

(2) REPEALED: 1994, c. 27, s. 56 (29).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (28, 29) - 1/04/1995

Evidence

What is admissible in evidence at a hearing

15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing

(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

Copies

(4) Where a tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Photocopies

(5) Where a document has been filed in evidence at a hearing, the tribunal may, or the person producing it or entitled to it may with the leave of the tribunal, cause the document to be photocopied and the tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a member of the tribunal.

Certified copy admissible in evidence

(6) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a copy thereof by a member of the tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document. R.S.O. 1990, c. S.22, s. 15.

Use of previously admitted evidence

15.1 (1) The tribunal may treat previously admitted evidence as if it had been admitted in a proceeding before the tribunal, if the parties to the proceeding consent. 1994, c. 27, s. 56 (30).

Definition

(2) In subsection (1),

"previously admitted evidence" means evidence that was admitted, before the hearing of the proceeding referred to in that subsection, in any other proceeding before a court or tribunal, whether in or outside Ontario.

Additional power

(3) This power conferred by this section is in addition to the tribunal's power to admit evidence under section 15. 1997, c. 23, s. 13 (18).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (30) - 1/04/1995; 1997, c. 23, s. 13 (18) - 28/11/1997

Witness panels

15.2 A tribunal may receive evidence from panels of witnesses composed of two or more persons, if the parties have first had an opportunity to make submissions in that regard. 1994, c. 27, s. 56 (31).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (31) - 1/04/1995

Notice of facts and opinions

16. A tribunal may, in making its decision in any proceeding,

(a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge. R.S.O. 1990, c. S.22, s. 16.

Interim decisions and orders

16.1 (1) A tribunal may make interim decisions and orders.

Conditions

(2) A tribunal may impose conditions on an interim decision or order.

Reasons

(3) An interim decision or order need not be accompanied by reasons. 1994, c. 27, s. 56 (32).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (32) - 1/04/1995

Time frames

16.2 A tribunal shall establish guidelines setting out the usual time frame for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. 1999, c. 12, Sched. B, s. 16 (6).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (6) - 14/02/2000

Decision; interest

Decision

17. (1) A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party. R.S.O. 1990, c. S.22, s. 17; 1993, c. 27, Sched.

Interest

(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated. 1994, c. 27, s. 56 (33).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991; 1994, c. 27, s. 56 (33) - 1/04/1995

Costs

17.1 (1) Subject to subsection (2), a tribunal may, in the circumstances set out in rules made under subsection (4), order a party to pay all or part of another party's costs in a proceeding. 2006, c. 19, Sched. B, s. 21 (2).

Exception

(2) A tribunal shall not make an order to pay costs under this section unless,

(a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and

(b) the tribunal has made rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Amount of costs

(3) The amount of the costs ordered under this section shall be determined in accordance with the rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Rules

(4) A tribunal may make rules with respect to,

(a) the ordering of costs;

(b) the circumstances in which costs may be ordered; and

(c) the amount of costs or the manner in which the amount of costs is to be determined. 2006, c. 19, Sched. B, s. 21 (2).

Same

(5) Subsections 25.1 (3), (4), (5) and (6) apply with respect to rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Continuance of provisions in other statutes

(6) Despite section 32, nothing in this section shall prevent a tribunal from ordering a party to pay all or part of another party's costs in a proceeding in circumstances other than those set out in, and without complying with, subsections (1) to (3) if the tribunal makes the order in accordance with the provisions of an Act that are in force on February 14, 2000. 2006, c. 19, Sched. B, s. 21 (2).

Submissions must be in writing

(7) Despite sections 5.1, 5.2 and 5.2.1, submissions for a costs order, whether under subsection (1) or under an authority referred to in subsection (6), shall be made by way of written or electronic documents, unless a party satisfies the tribunal that to do so is likely to cause the party significant prejudice. 2015, c. 23, s. 5.

(8), (9) REPEALED: 2015, c. 23, s. 5.

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (7) - 14/02/2000

2006, c. 19, Sched. B, s. 21 (2) - 22/06/2006

2015, c. 23, s. 5 - 03/11/2015

Notice of decision

18. (1) The tribunal shall send each party who participated in the proceeding, or the party's representative, a copy of its final decision or order, including the reasons if any have been given,

(a) by regular lettermail;

(b) by electronic transmission;

(c) by telephone transmission of a facsimile; or

(d) by some other method that allows proof of receipt, if the tribunal's rules made under section 25.1 deal with the matter. 1994, c. 27, s. 56 (34); 1997, c. 23, s. 13 (19); 2006, c. 21, Sched. C, s. 134 (6).

Use of mail

(2) If the copy is sent by regular lettermail, it shall be sent to the most recent addresses known to the tribunal and shall be deemed to be received by the party on the fifth day after the day it is mailed. 1994, c. 27, s. 56 (34).

Use of electronic or telephone transmission

(3) If the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday. 1994, c. 27, s. 56 (34).

Use of other method

(4) If the copy is sent by a method referred to in clause (1) (d), the tribunal's rules made under section 25.1 govern its deemed day of receipt. 1994, c. 27, s. 56 (34).

Failure to receive copy

(5) If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a later date than the deemed day of receipt, subsection (2), (3) or (4), as the case may be, does not apply. 1994, c. 27, s. 56 (34).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (34) - 1/04/1995; 1997, c. 23, s. 13 (19) - 28/11/1997

2006, c. 21, Sched. C, s. 134 (6) - 1/05/2007

Enforcement of orders

19. (1) A certified copy of a tribunal's decision or order in a proceeding may be filed in the Superior Court of Justice by the tribunal or by a party and on filing shall be deemed to be an order of that court and is enforceable as such. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Notice of filing

(2) A party who files an order under subsection (1) shall notify the tribunal within 10 days after the filing. 1994, c. 27, s. 56 (35).

Order for payment of money

(3) On receiving a certified copy of a tribunal's order for the payment of money, the sheriff shall enforce the order as if it were an execution issued by the Superior Court of Justice. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (35) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

Record of proceeding

20. A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

Adjournments

21. A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held. R.S.O. 1990, c. S.22, s. 21.

Correction of errors

21.1 A tribunal may at any time correct a typographical error, error of calculation or similar error made in its decision or order. 1994, c. 27, s. 56 (36).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (36) - 1/04/1995

Power to review

21.2 (1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c. 23, s. 13 (20).

Time for review

(2) The review shall take place within a reasonable time after the decision or order is made.

Conflict

(3) In the event of a conflict between this section and any other Act, the other Act prevails. 1994, c. 27, s. 56 (36).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (36) - 1/04/1995; 1997, c. 23, s. 13 (20) - 28/11/1997

Administration of oaths

22. A member of a tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings and the tribunal may require evidence before it to be given under oath or affirmation. R.S.O. 1990, c. S.22, s. 22.

Powers re control of proceedings

Abuse of processes

23. (1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes. R.S.O. 1990, c. S.22, s. 23 (1).

Limitation on examination

(2) A tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (37).

Exclusion of representatives

(3) A tribunal may exclude from a hearing anyone, other than a person licensed under the *Law Society Act*, appearing on behalf of a party or as an adviser to a witness if it finds that such person is not competent properly to represent or to advise the party or witness, or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser. 2006, c. 21, Sched. C, s. 134 (7).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (37) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (7) - 1/05/2007

Notice, etc.

24. (1) Where a tribunal is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable,

(a) to give notice of the hearing; or

(b) to send its decision and the material mentioned in section 18,

to all or any of the parties individually, the tribunal may, instead of doing so, cause reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

Contents of notice

(2) A notice of a decision given by a tribunal under clause (1) (b) shall inform the parties of the place where copies of the decision and the reasons therefor, if reasons were given, may be obtained. R.S.O. 1990, c. S.22, s. 24.

Appeal operates as stay, exception

25. (1) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,

(a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or

(b) the tribunal or the court or other appellate body orders otherwise. 1997, c. 23, s. 13 (21).

Idem

(2) An application for judicial review under the *Judicial Review Procedure Act*, or the bringing of proceedings specified in subsection 2 (1) of that Act is not an appeal within the meaning of subsection (1). R.S.O. 1990, c. S.22, s. 25 (2).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 13 (21) - 28/11/1997

Control of process

25.0.1 A tribunal has the power to determine its own procedures and practices and may for that purpose,

(a) make orders with respect to the procedures and practices that apply in any particular proceeding; and

(b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (8) - 14/02/2000

Rules

25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

Application

(2) The rules may be of general or particular application. 1994, c. 27, s. 56 (38).

Consistency with Acts

(3) The rules shall be consistent with this Act and with the other Acts to which they relate. 1994, c. 27, s. 56 (38).

Public access

(4) The tribunal shall make the rules available to the public in English and in French. 1994, c. 27, s. 56 (38).

***Legislation Act, 2006*, Part III**

(5) Rules adopted under this section are not regulations as defined in Part III (Regulations) of the *Legislation Act, 2006*. 1994, c. 27, s. 56 (38); 2006, c. 21, Sched. F, s. 136 (1).

Additional power

(6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act. 1994, c. 27, s. 56 (38).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (38) - 1/04/1995

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

Regulations

26. The Lieutenant Governor in Council may make regulations prescribing forms for the purpose of section 12. 1994, c. 27, s. 56 (41).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (39, 41) - 1/04/1995

Rules, etc., available to public

27. A tribunal shall make any rules or guidelines established under this or any other Act available for examination by the public. 1999, c. 12, Sched. B, s. 16 (9).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (9) - 14/02/2000

Substantial compliance

28. Substantial compliance with requirements respecting the content of forms, notices or documents under this Act or any rule made under this or any other Act is sufficient. 1999, c. 12, Sched. B, s. 16 (9).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. B, s. 16 (9) - 14/02/2000

29.-**31.** REPEALED: 1994, c. 27, s. 56 (40).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (40) - 1/04/1995

Conflict

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith. R.S.O. 1990, c. S.22, s. 32; 1994, c. 27, s. 56 (42).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (42) - 1/04/1995

33.**, 34.** REPEALED: 1994, c. 27, s. 56 (43).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (43) - 1/04/1995

FORMS 1, 2 REPEALED: 1994, c. 27, s. 56 (44).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (44) - 1/04/1995

Français

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