

Assessment Review Board

RULES OF PRACTICE AND PROCEDURE (made under section 25.1 of the *Statutory Powers Procedure Act*)

Effective April 1, 2009

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There are comments for some of the Rules, which further explain them or provide examples. These are written in italics. The Rules also have headings for easier reading. Neither the headings nor the comments are part of the Rules.

(Note: Whenever possible, use the Board's forms. For the most up-to-date version of the forms in current use, please check with the Board directly or on the Board's website.)

RULES OF THE ASSESSMENT REVIEW BOARD

GENERAL

1. Application

a) The Rules apply to all proceedings before the Assessment Review Board. The forms referred to herein are available on the Board's website and may be changed administratively from time to time.

Deemed Appeals

b) All Statements, Notices, Orders and Decisions apply to deemed appeals unless otherwise ordered by the Board or requested by the parties.

Practice Directions

c) The Board may issue practice directions from time to time which may be posted on the Board's website and available on request.

2. Definitions

"A.D.R. event" means an alternative dispute resolution procedure held by the Board or pursuant to the direction of the Board at any stage of a proceeding.

"affidavit" means evidence provided in writing and made under oath or affirmation;

"alternative dispute resolution" and "A.D.R." include mediation, settlement conferences and other forms of resolving issues between parties;

"appeal" includes an application or appeal to the Board;

"appellant" means a person who makes an appeal to the Board;

"bilingual proceeding" means a proceeding involving a party who speaks French who requests that it be conducted in French and in English as a bilingual proceeding.

"Board" means the Assessment Review Board;

"case managed stream" means the stream by which a matter is intended to proceed including at a minimum statements of issues and responses;

“case management plan” means a plan of pre-hearing procedure in the case managed stream, which at a minimum sets out dates for release of assessment data, statement of issues, statement(s) of responses, productions, last date for motions arising out of productions. A case management plan should also include an estimate of the time required until a certificate of readiness will be filed.

“Chair” means Chair of the Assessment Review Board or a Vice-Chair designated by the Chair.

“commencement of hearing” means once a party makes an opening statement and/or introduces evidence;

“deliver” includes sending by ordinary mail, leaving with the Board or a party, and depositing in a mailbox or receptacle at the residence or place of business, and includes facsimile transmission or e-mail to the residence or place of business;

“direct hearing stream” means the stream by which a matter is intended to proceed without statements of issues and responses;

“document” means written and visual material, and includes written, audio and visual evidence in a hearing event;

“electronic hearing” means a hearing event held by telephone conference or some other form of electronic technology allowing all the parties to hear one another;

“expert report” or “expert evidence” means evidence expressing an opinion based on education, training or professional experience;

“file” means to send to the Registrar of the Board, and requires that the material is either deemed to be or has actually been received by the Board;

“hearing event” means a procedure held by the Board at any stage of a proceeding, and includes a hearing, pre-hearing conference, motion, and A.D.R. event, whether these are held in the form of an oral hearing, electronic hearing or written hearing;

(NOTE: Holidays for municipalities may be different from those below.)

“holiday” means a Saturday or Sunday or other days that the Board offices are closed, such as the statutory holidays of 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 in Council. Where New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday; where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday.

“mediation” means a meeting with the parties in which a person, usually a Member of the Board, acts as (1) a neutral third party in meeting separately with the parties and suggesting to each their likelihood of success; or (2) a facilitator in meeting with all the parties together and identifying the interests of each and encouraging resolution of the matter, or (3) some combination of these methods;

“Minister” means the Minister of Finance or delegate;

“motion” means a request by a person that the Board make a decision or issue an order;

“moving party” means the person who makes the motion;

“notice” means any notice required by these Rules or a Board Order to be given in writing personally or by mail, fax or email.

“oral hearing” means a hearing at which the parties or their representatives attend before the Board Member(s) in person;

“participant” means a person who may not wish to take part fully in the hearing, but who wishes to make a statement to the Board. (Note: Persons to whom the Board has granted participant status whether for themselves or as a representative of an unincorporated group will be allowed to make statements to the Board only at such time as the Board may set, are not entitled to receive notice of a mediation or conference calls on procedural matters and cannot ask for a review of the decision.)

“party” includes a person entitled by the governing statute to be a party, and also those persons whom the Board accepts as parties, and who take part fully in the hearing by such activities as exchanging documents, providing testimony, presenting and cross-examining witnesses, and making submissions to the Board;

“person” includes a corporation, partnership, bridge authority, agent or trustee, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law; (Note: An unincorporated group is not a person within the meaning of these Rules and must act through an identified individual who shall act as the representative of the group.)

“practice direction” means a direction, notice, guide or similar publication for the purpose of governing, subject to these rules, the practice for proceedings.

“preliminary hearing” means those portions of a pre-hearing conference in which binding procedural or substantive decisions are made by the Board (*these usually are recorded in the Board order that follows the conference*);

“proceeding” means a matter before the Board;

“representative” means a person licenced by the Law Society of Upper Canada or other person who is legally authorized to represent a person in the proceedings;

“request for reconsideration” means an application under section 39.1 of the *Assessment Act*,

“responding party” means a person, other than the Board Registrar, who is served with a notice of motion by the moving party;

“Rules of Civil Procedure” means the Rules in effect for the Court of Appeal and the Superior Court of Justice;

“serve” means delivery of any document contemplated by these Rules;

“settlement conference” means a conference held to attempt to resolve all or part of a matter by discussion, and includes any part of a pre-hearing conference in which such discussions take place;

“stream” means the process by which an application or appeal is to be resolved and may be either the direct hearing stream or the case managed stream;

“visual evidence” means images intended to be introduced into evidence at a hearing event, and includes computer-generated images, photographs, maps, videos, plans, surveys, models and overlays;

“witness statement” means a short written outline of the person’s background, experience and interest in the matter; a list of issues, which he or she will discuss, and the witness’ opinions (if an expert) on those issues; and a list of reports that the witness will rely on at the hearing;

“written evidence” means material intended to be introduced into evidence at a hearing event, and includes reports, studies, documents, photographs, maps, overlays, letters, charts, graphs, books of account and information recorded or stored by means of any device;

“written hearing” means a proceeding held in the nature of a hearing by means of the exchange of documents whether in written form (hard copy) or by electronic means.

3. Interpretation of the Rules

These Rules shall be liberally interpreted to ensure the just, most expeditious and least expensive determination of every proceeding on its merits.

4. Matters Not Dealt With in These Rules

If these Rules do not provide for a matter of procedure, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on any matter before it including applying the Rules of Civil Procedure.

5. Technical Objections

Substantial compliance with requirements respecting the content of forms notices or documents under these rules or any Act is sufficient.

RELIEF FROM RULES

6. Consent For Exceptions From Procedural Requirements In Statutes Or Regulations

The parties must consent before the Board can permit exceptions from procedural requirements contained in statutes or regulations.

7. Board May Exempt From Rules

The Board may grant all necessary exceptions from these Rules or a procedural order, or other relief as it considers appropriate, to ensure that the real questions in issue are determined in a just manner.

NON-COMPLIANCE

Comments on Non-Compliance

When considering motions for non-compliance, including motions to dismiss, the Board usually will consider the issues of prejudice and abuse of process. On motions to dismiss, the Board will provide the defaulting party an opportunity to cure the default and where the default is cured before the return of the motion to dismiss, the Board may choose to dismiss the motion.

8. Failure to Comply With Rules

If a party or participant refuses or fails, without reasonable excuse, to comply with these Rules or a Board Order, direction or ruling, or to attend any hearing event, the Board may, on its own motion or the motion of any party, after giving the defaulting party or participant such opportunity to cure the default as the Board considers just in the circumstances,

- (a) make an order limiting the extent to which the party or participant may take part in the proceedings,
- (b) dismiss the matter where the defaulting person is the applicant, , or
- (c) make such other order as the Rules and the governing statute or regulation allow.

9. Considerations on Motions for Non-Compliance

In considering motions with respect to non-compliance, the Board shall consider issues of prejudice and abuse of process as appropriate.

10. Dismissal for Non-Attendance

Despite Rule 8, in cases of non-attendance, without reasonable excuse, by an applicant or other party initiating a matter, the Board may, where it deems appropriate, dismiss the matter summarily.

REPRESENTATIVES

11. Appearance in Person or by Authorized Representative

A party may attend a proceeding in person or by a representative. Representatives who are not licenced by the Law Society of Upper Canada must obtain written authorization and may be asked to provide this authorization to the Board at any time. If representation changes, the party and the representative shall immediately notify the Board and the other parties.

12. Notices of Proceedings Provided to Representatives

Any notice given to a representative is deemed to have been given to the party for whom the representative acts.

13. Witness and/or Advocate

Unless the Board orders otherwise, at any hearing event, in the direct hearing stream a party and/or a representative excluding a lawyer appearing as counsel may be both an advocate and witness. In the case managed stream no representative may be both advocate and witness unless the Board orders otherwise and the representative is not a lawyer appearing as counsel. If a representative (except a lawyer appearing as counsel) is applying to be both a witness and an advocate notice in writing must be given to the other parties at least 21 days prior to the hearing event in the case managed stream.

TIME

Comments on Time Requirements

Note: Time limits in legislation may provide for different rules than these Rules. The Board cannot extend a time given in a statute such as the Assessment Act except as set out in the Rules for Late Appeals. Therefore applications must be filed with the Board at the latest on the day established in the appeals sections of the applicable legislation as the last day for appealing.

Here is an example of how the Board would compute a period of, for example, 30 days. (This method of counting is based on the Rules of Civil Procedure and legislation.) The Board would consider the day **after** the decision or action as **day one**. The following days, including Saturdays, Sundays and holidays would be counted, up to the 30th day. Documents could be filed or delivered up to **5 p.m.** on the 30th day. Where this day falls on a Saturday, Sunday or holiday, documents may be filed **up to 5p.m.** on the next day that is not a Saturday, Sunday or holiday. The Board's offices are open until 5 p.m. **Please note that no matter what the legal rule may be for the time that a day ends, it is advisable to file or serve documents within office hours to ensure receipt on the required day.**

14. Time

Time is computed under these Rules or in a Board order under the applicable law, unless it is stated to be computed differently.

15. Extension or Reduction of Time

The Board may extend or reduce any time required in these Rules or in a Board order, with any terms or conditions. A request for a change in time requirements may be made by bringing a motion, or the Board may change a time requirement on its own initiative, with or without a hearing, either before or after the time period expires.

16. Time for Delivery of Documents

Time for delivery of a document may be extended or reduced if all those who must be served consent to this in writing.

17. No Proceeding for Period if Party is Absent

- (a) At an in-person hearing event the Board will not proceed for at least 30 minutes after the time given for the commencement of a hearing event if one or more of the parties have not yet appeared, unless they have given notice that they will not appear at that time.
- (b) At a hearing event by Teleconference or Videoconference the Board will not proceed for at least 10 minutes after the time given for the commencement of a hearing event if one or more of the parties have not yet appeared, unless they have given notice that they will not appear at that time.

EXTENSION OF TIME FOR REQUEST FOR RECONSIDERATION

18. Extension of Time for Request for Reconsideration

The Board may extend the time for filing a request for reconsideration with MPAC if in the Board's view, the circumstances set out in the request by the appellant, provide sufficient reasons.

INITIATING PROCEEDINGS

19. Form of Appeal

Unless any Act or these Rules provide for other methods or the Board otherwise directs, an appeal may be commenced by letter or an Appeal Form and shall:

- (a) be addressed to the Board Registrar;
- (b) provide the appellant's name, telephone, fax and e-mail address (if any) numbers and street address, and postal code;
- (c) identify the property at issue by roll number;
- (d) state the nature of the appeal and the reasons for it;
- (e) include the appropriate fee for the appeal or other matter;
- (f) inform the Board of a request for a bilingual or French proceeding or a sign language interpreter; -
- (g) be signed by the appellant or his/her representative;
- (h) if an appellant is represented other than by a person licenced by the Law Society of Upper Canada, a declaration the person has received written confirmation of authorization to act for the appellant, signed by the appellant;
- (i) include a copy of the request for reconsideration decision if applicable or date of release of decision; and
- (j) for third party appeals confirmation of service of the Notice of Appeal on the assessed person.

Note: A similar Appeal Form from the Board's website can be filed electronically.

20. Exceptions to Rule 19

- (a) Persons filing appeals for many persons and/or many properties must file them in accordance with the directions of the Board;
- (b) Appeals under the *Municipal Act, 2001*, *City of Toronto Act, 2006* and *Provincial Land Tax Act, 2006*:
 - (i) must be filed with the Board by the legislated filing deadline;
 - (ii) one copy of the appeal must be served by the legislated filing deadline on the municipality or Minister if the property owner is the appellant or on the property owner if the municipality or the Minister is the appellant;
 - (iii) must be accompanied by the requisite supporting documentation depending on the sections of the legislation;
 - (iv) must be accompanied by the requisite filing fee as determined by the Board; and
 - (v) must identify the section in the *Municipal Act, 2001*, *City of Toronto Act, 2006* and *Provincial Land Tax Act, 2006* pursuant to which the appeal is filed.

21. Where No Fee Paid

Unless the Board directs otherwise, the Board will not consider a matter or schedule a hearing event unless the appropriate fee has been paid.

SCREENING OF APPEALS

Comments on Screening of Appeals

Screening of appeals by the Board can be administrative (by staff) and adjudicative (by Board Members). Administrative screening is the process in which staff may decide to stop processing because the information submitted is not complete, until the technical defect is corrected.

Adjudicative screening is the process for dismissing an appeal without a full hearing.

22. Administrative Screening

The Board shall conduct administrative screening of appeals submitted to the Board to determine whether,

- (a) the required fees have been paid;
- (b) grounds for the appeal are set out in writing;
- (c) the appeal has been E Filed or signed;
- (d) the appellant has responded to a request for further information within the time specified by the Board;
- (e) an appeal has been filed within the statutory deadline; or
- (f) if the appeal concerns the assessment of another person that the appellant has mailed or delivered to the person a copy of the appeal within the time prescribed by the *Assessment Act* or any other legislated deadline.

23. Incomplete Information

The Board will stop processing an appeal if the information submitted is not complete. Once the application is considered complete according to the Board's established requirements, staff will continue to process it. Discretionary judgments and legal interpretations shall be referred to a Board Member.

24. Notice Before Rejecting

Before rejecting an incomplete application, the Board will notify the appellant or the appellant's representative, and provide an opportunity to respond within the time stated in the Board's notification. If no response is received in that time, the Board may reject the application.

25. Board May Dispense with Requirement

At the request of the appellant, the Board may cancel a request for further information where it is satisfied that there is good reason.

26. Appellant to Serve Additional Materials Requested

If a Notice of Appeal was provided to the other parties before the Board notifies the appellant of an incomplete appeal the appellant shall provide a copy of the amended appeal and further materials required to all other parties as well as to the Board.

27. Completed Matter Deemed Filed on Original Date

If the defect set out in a notice of incomplete appeal is resolved within the time stated in the Board's letter, the appeal is deemed to have been properly filed on the day it was first received, rather than the day the amendment was received.

28. Adjudicative Screening By Board Member

A Board Member may screen matters and may dismiss them without holding a hearing event, or after a hearing event, if,

- (a) the Board is satisfied that it is without jurisdiction to hear the appeal;
- (b) the Board is of the opinion that the proceeding is frivolous or vexatious, is commenced in bad faith or only for the purpose of delay;
- (c) the Board is of the opinion that the reasons set out in the appeal do not disclose any apparent statutory ground on which the Board can make a decision; or
- (d) the appellant has not responded to a request by the Board for further information within the time specified by the Board.

29. Notice before Dismissal

Before dismissing a matter, the Board will notify the appellant and provide the appellant with an opportunity to respond within the time stated in the Board's notification. If no response is received in that time, the matter will be dismissed without a hearing.

LATE APPEALS

30. Circumstances where Late Appeals May Be Considered

The Board may accept an appeal received after the time set out in any statute or regulation provided that:

- (a) the appellant provides the Board with an affidavit satisfying the Board that,
 - i. the appeal was mailed within the time set out,
 - ii. in the case of an appeal under the *Assessment Act*, the applicant did not receive the required notice and filed the appeal with the Board within 30 days after the applicant became aware of the assessment or classification or designation of school support that is the subject of the appeal, or
 - iii. in the case of an appeal under the *Municipal Act, 2001*, *City of Toronto Act, 2006* or *Provincial Land Tax Act, 2006* the applicant did not receive the required notice of the decision of council or the Minister and filed the appeal with the Board within 30 days after the applicant became aware of council's or the Minister's decision;
- (b) the affidavit states, in the case of paragraph 30 (a)(ii) or (iii), above, that the notice was not received and provides the date on which the applicant or the applicant's representative became aware of the assessment, classification, designation or decision, as the case may be.

NOTICE

31. Notices

Any notices required by these Rules or a Board Order shall be given in writing, unless otherwise directed by the Board.

32. Notice of Hearing or Other Proceeding

The Board may direct a party to give notice of a hearing event or other proceeding to any person or class of persons, and may direct the method of providing the notice. An affidavit must be filed at the beginning of the proceeding to prove that notice was properly given.

SPECIAL NOTICES

NOTICE OF HIGHER ASSESSMENT AND/OR HIGHER TAX RATE PROPERTY CLASS

33. Special Notice by Party of Request for Higher Assessment and/or Higher Tax Rate Property Class

- (a) If a party intends to request a change in property class to a class with a higher tax rate or an assessment that would result in a higher assessment than that fixed by the Municipal Property Assessment Corporation, it must give notice in writing of its intention to all other parties and the Board. This notice must include the amount of the assessment and the class requested. This notice must be given at least 50 days before the hearing of the matter, unless otherwise directed by the Board. If this notice of higher assessment is not served, the Board may refuse to consider the request.
- (b) Where a municipality objects to a settlement under section 39.1 of the *Assessment Act* it is not required to give notice of higher assessment unless it is seeking an assessment higher than that originally returned by the Municipal Property Assessment Corporation or a class that produces a higher tax rate.
- (c) Where a municipality has not had notice of an appeal in time to allow for 50 days' notice and where it wishes to seek a higher assessment or class change, the Board shall abridge the time for service of the notice of higher assessment or class change. At the request of any of the other parties, the Board may adjourn the matter.

34. Notice after Statement(s)

Where a party has already delivered a Statement of Issues or a Statement of Response in a proceeding, the Rule regarding amendment of documents shall be deemed to apply to its notice of intention to request a higher assessment as if the notice were an amendment of document in the case managed stream.

NOTICE TO SHIFT BURDEN OF PROOF (Reverse Onus)

35. Special Notice by MPAC to Shift Burden of Proof

If MPAC requests that the Board make a finding to have the burden of proof rest with the appellant as to the correctness of the current value of the land pursuant to section 40(18) of the *Assessment Act*, it must give notice in writing of same to the other parties and file this notice with the Board at least 21 days prior to the hearing.

NOTICE OF ISSUE ESTOPPEL

Issue estoppel may bar a party from re-arguing an issue determined in an earlier hearing. It sometimes arises in assessment appeals because one valuation day is used for more than one year; the issue(s) remain(s) the same; the parties to the proceedings remain the same; and the Board's decision for a previous taxation year which applies the same valuation day is final.

36. Special Notice by Party of Issue Estoppel

If a party intends to raise issue estoppel at a hearing it must give notice in writing to the other parties at least 21 days prior to the hearing.

SERVICE

37. Permitted Methods of Service

A party may serve a notice or document on another party or person by any of the following methods with their corresponding effective dates:

- (a) by mail (effective on posting and deemed received on the fifth day after mailing);
- (b) by courier (effective on the second business day after the day given to the courier);
- (c) by fax (effective the date imprinted on fax unless after 5 pm);
- (d) by e-mail only on the consent of the party being served;
- (e) by personal service; and
- (f) personal service is required when serving a non-party with a motion unless otherwise ordered by the Board.

38. Service

Where any document is required to be served, delivered or filed, including one commencing a proceeding or a motion or providing notice, it shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented by a representative, that party directly;
- (c) where that party is a corporation and is not represented by a representative, the corporation's head office directly to the attention of an individual with apparent authority to receive the document;
- (d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, an individual with apparent authority to receive the document;
- (e) where the party is the Municipal Property Assessment Corporation, its manager of case management;
- (f) where the party is a municipality, its municipal clerk;
- (g) where the party is the Minister, the Minister or delegate;
- (h) under the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, the treasurer.

39. Proof of Service

Where proof of service is required in the first instance it may be by correspondence to the Board indicating the method and date of service. The Board may require a formal affidavit of service in appropriate circumstances.

*The Rules of Civil Procedure allow service by fax, as do the Board's Rules. The Rules of Civil Procedure deem service made BY FAX **after 5p.m.** to be made on the next day. The Board's Rules deem it to be made on the next **business** day.*

40. If Faxed or Emailed After 5 p.m.

Any document served by fax or e-mail after 5p.m. is deemed to have been served on the next business day.

41. Permission to Fax if More Than 12 Pages

If a document is more than 12 pages including the cover page, it must not be served by fax unless the person receiving the document has given permission in advance.

DOCUMENTS, DISCLOSURE, EXHIBITS, FILING

42. Amendment of Documents

Documents served on parties and/or filed with the Board cannot be amended except as follows:

- (a) an appellant may amend his or her Statement of Issues as of right at any time before being served with a Statement of Response;
- (b) in all other cases, a party may not amend a document unless the parties consent or the Board orders it.

43. Motions for Amendment of Documents

A party seeking an order under Rule 42(b) shall do so by way of a motion, with notice to all other parties, where,

- (a) the matter is in the direct hearing stream and the Board has required the party to do so by way of an order; or
- (b) the matter is in the case managed stream.

44. Prerequisites to Orders for Amendment of Documents

In determining whether to grant an order under Rule 42(b), with or without such conditions as the Board considers just in the circumstances, the Board shall take into consideration the degree, if any, to which any party would be prejudiced by such an order.

45. Filing of Documents

In addition to all other requirements, two copies of each document must be filed with the Board at the hearing unless the Board directs otherwise.

46. Filing of Statements

In the case managed stream, where a party has served a Statement of Issues, a Statement of Response, or an amended Statement of Issues or of Response, the party must file that document with the Board at the time of filing the Certificate of Readiness or at least 14 days prior to the hearing if the Certificate of Readiness is waived.

47. Exchange or Filing of Documents

In addition to the requirements of any other Rule, the Board may direct the parties to exchange and file documents or submissions at any time, either at a party's request or on its own initiative.

48. Disclosure Prior to a Hearing Event

Unless the Board orders otherwise, if a party intends to present documentary evidence at a hearing, at least 21 days before the hearing, the party must provide one copy of each document to each party. If documentary evidence is not exchanged at least 21 days before the hearing, the Board may refuse to accept the documents at the hearing. Material in response must be exchanged 14 days prior to the hearing and other parties may respond 7 days prior to the hearing.

49. Expert Reports

In the case managed stream, at least 60 days before the hearing, unless the Board orders otherwise, the parties must provide one copy of any expert report to every other party. If a party intends to call an expert witness without a report, the party must provide a written statement of the opinion to be given, the facts upon which the opinion is based and the qualifications of the expert witness at least 60 days before the hearing.

50. Reply Reports

In the case managed stream, at least 30 days before the hearing, unless the Board orders otherwise, a party who intends to provide a reply report must provide one copy of any reply report to every other party.

51. Supplemental Reports

In the case managed stream, at least 15 days before the hearing, unless the Board orders otherwise, a party who intends to provide a supplemental report must provide one copy of any supplemental report to every other party.

52. Written Argument

Unless the Board orders otherwise, if a party presents argument in writing at an in person hearing, the party must provide one copy of the written argument for each panel member, and one copy for each other party.

53. Copies of Board Documents

A person may examine and make copies of any document filed with the Board, and may view any visual evidence, unless an Act or a court or Board order provides otherwise. There is a fee for copying documents.

54. Confidential Documents

The Board may order that any document filed with an application or at a hearing be treated as confidential, be sealed and not form part of the public record.

55. Return of Exhibits

Parties are encouraged to file true copies of exhibits rather than originals. Exhibits (*written or visual evidence*) of all types introduced at a hearing will be kept for 120 days after the Board decision is issued or is mailed. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, it becomes the property of the Board and may be archived. **Exhibits will not be returned on the day of the hearing under any circumstances.**

DISCOVERY

56. Order for Discovery

The Board may grant an order for discovery where needed in order for a party to obtain necessary information from another party. This will only be granted where the party has requested the information and it has been refused, or no answer was received. This order must be requested by notice of motion, together with an affidavit, which sets out the efforts made to obtain the desired information, and the reasons why the requested information is needed. The Board may make an order for:

- (a) any person (*usually only a party*) to provide an affidavit containing a list of relevant documents which that person possesses;
- (b) the delivery of documents;
- (c) the examination for discovery of any party;
- (d) an examination for discovery by written questions;
- (e) the inspection, photographing and testing of property;
- (f) the examination of a witness before the commencement of a proceeding (under the Rules of Civil Procedure); or
- (g) any other form of discovery.

The Board may impose conditions concerning the timing, manner and scope of discovery. If an order for discovery is obtained, the Rules of Civil Procedure concerning discovery apply to Board proceedings unless the Board orders otherwise.

NOTE: Inspection in paragraph (e) above is different from inspection in sections 10 and 11 of the *Assessment Act*, which refer to an inspection for preparation of the assessment roll.

MOTIONS

57. Date for Motion and Notice of Motion

A person making a motion must first obtain from the Board's scheduler a hearing date, if an oral or electronic motion. Once a date or permission is obtained, a notice of motion must be provided to the other parties. The notice of motion must be submitted with an affidavit setting out a clear and brief statement of the facts by a person with either first-hand knowledge or information and belief about the facts. A party may cross-examine on an affidavit filed on a motion provided the party proceeds with reasonable diligence.

58. Serving the Notice of Motion

Unless the Board agrees to a lesser time, the notice of motion and all supporting documents must be served at least 10 days before the date for the hearing of the motion. A notice of motion must be served on all parties, the Board Registrar, and any other person as directed by the Board. An affidavit stating that this was done must be filed with the Board before or at the hearing of the motion.

59. Notice by Responding Party

A responding party must serve a notice of response if that party intends,

- (a) to rely on any grounds (*reasons*) or documents not provided by the moving party; or
- (b) to use an affidavit as evidence (in which case the affidavit must be attached to the notice of response and include a clear and brief statement of the facts, by a person with either first-hand knowledge or information and belief about the facts,).

60. Service of the Notice of Response for Hearings

Unless the Board agrees to a shorter time, the notice of response shall be served at least five days before the hearing of the motion; and shall be served on all parties, any other person directed by the Board and on the Board Registrar. An affidavit proving service and two copies of the notice of response shall be provided to the Board Member at the hearing in addition to serving the Registrar.

61. Oral Evidence

Generally, oral evidence is not required at a motion. If oral evidence is required, permission must be requested from the Board upon filing the motion or response. The Board will make a determination prior to the motion.

62. Oral Submissions

A party bringing a motion and those responding to it may make oral submissions at the hearing of a motion, whether the hearing is held in person or by electronic hearing.

63. Motions Made at Oral Hearing

A motion may be made at an oral hearing only if the need for the motion arises out of events at the hearing. The motion will be heard or decided in accordance with any procedures ordered by the presiding Member. If the moving party is aware of the need for a motion before the hearing, the moving party should respect the other parties' right to notice and serve a notice of motion under the Rules and request that the Board reduce the time required for service of the notice, if necessary.

64. Parties and Participants

Any person, other than the applicant and any person made a party by statute, who wishes to take part in a proceeding either as a party or a participant must:

- (a) bring a motion to be added as a party or a participant, as the case may be;
- (b) give written notice to the Board and every party of that person's intention to bring the motion; and
- (c) where required to do so by the Board, provide proof of having given such notice.

SETTLEMENT BEFORE BOARD PROCEEDINGS

65. Procedure if Settlement Before Board Hearing Event

Where the parties reach a settlement before any hearing event is held, the Board may hold a brief hearing into the terms of the settlement. If all statutory requirements are satisfied, the Board may issue a decision approving the settlement, with any necessary amendments. The Board at an electronic hearing may not accept recommendations or settlements and require the parties to appear at an in person hearing or in the alternative submit Minutes of Settlement to the Board.

66. Minutes of Settlement

Minutes of Settlement must be signed by all participating parties including statutory parties, unless submitted at a hearing of which notice was given to all parties and a party failed to appear. In this case it is not necessary to obtain the signature of the party who did not appear. Minutes of Settlement must indicate the decision to be recorded for each appeal number. Minutes of Settlement must contain the following, if applicable:

- (a) name of assessed person;
- (b) roll number(s);
- (c) appeal number(s);
- (d) municipal address(es);
- (e) taxation year(s), including commencement dates for appeals of notices of assessment under sections 32, 33 or 34 of the *Assessment Act*;
- (f) assessment for each roll number and taxation year dealt with in the settlement;

- (g) if a supplementary assessment, the total assessment and a breakdown (if necessary) of the property class change and improvement increase;
- (h) changes (other than the amount) which the parties wish the Board to order;
- (i) a statement that the parties certify that the contents relate wholly to matters that are properly before the Board, and contain all the information that should be in the Board's order; and
- (j) the property's class(es).

WITHDRAWAL OF APPEALS

67. Withdrawal of Appeal, etc.

An appellant may, by notice of withdrawal to the Board and the other parties, withdraw the appeal, as follows:

- (a) in the case of an appeal under the *Assessment Act* where another party has given notice of its intention to request a higher assessment and/or higher tax rate property class with leave of the Board;
- (b) in all other cases, including when an applicant has filed an appeal, as of right until a hearing has commenced. Once a hearing has commenced an appeal cannot be withdrawn without leave of the Board.

68. Disposition of Motion to Withdraw

On hearing a motion to withdraw under these Rules, the Board may:

- (a) grant the request to withdraw, with or without conditions;
- (b) refuse the request to withdraw and proceed immediately to hear the appeal; or
- (c) adjourn the matter and set a new hearing date.

COMPELLING ATTENDANCE OF WITNESS BY SUMMONS

69. Summons from Board

A party who wishes to require a witness in Ontario to attend an oral or electronic hearing may serve a summons in a form available from the Board Registrar, for the fee set by the Board. The party should obtain a request for summons form from the Board, and return the completed form. The summons will be signed and issued by the Chair or delegate. However, the Board may refuse to issue a summons unless an affidavit is provided indicating how the witness' evidence is relevant to the matter. If the Board is not satisfied from the affidavit that the evidence is relevant, it will hold a motion to determine the question. It may cancel a summons for valid reasons. Board Members may also issue a summons without the witness' name in urgent cases. The party or representative must then complete the form and insert the name(s) of the witnesses required.

(A summons may be refused if, after hearing a motion, the Board decides that witness' testimony is not material to the matter, or admissible in evidence at a hearing. Once issued, the summons will require the witness to attend the hearing at a time and place stated in the summons, or as arranged with the person issuing the summons, and may require the witness to bring relevant documents and other items set out in the summons.)

70. Delivering the Summons

A summons must be delivered to the witness **personally** at least five (5) days before the time for attendance. At the same time, the attendance money that is paid for attendance before the Superior Court of Justice shall be paid or tendered to the witness.

LANGUAGE OF PROCEEDINGS

71. Use of English, French and Sign Language

The Board may conduct proceedings in English, in French or bilingually or where requested, with sign language interpretation.

72. Where French or Sign Language is Used

A person who wishes a proceeding be conducted in French or bilingually or requiring sign language interpretation must notify the Registrar at least twenty-five (25) days before the hearing.

73. Where Interpreter is Required

A person who requires interpretation services in a language other than English, French, or a recognized sign language in order to participate in a hearing must provide a qualified interpreter at his or her own expense. Similarly, if an interpreter is required for a witness whose language is not English, French or a recognized sign language, the party calling the witness must provide a qualified interpreter at his or her own expense.

74. Presiding Member or Panel

French language or bilingual proceedings shall be presided over by a Member or panel who speaks English and French.

75. Documents in English or French

A party may file pleadings and other documents in French or English. Where written evidence or a submission is provided in either English or French, the Board shall provide translation into English or French if a party requests it and the Board considers it necessary for the fair determination of the matter.

76. Decisions

Written reasons (if requested) and decisions of the Board for French language or bilingual proceedings will be issued in English and French.

STREAMING

Comments on Streaming

There are two types of streams: 1) Direct Hearing Stream and 2) Case Managed Stream. Pre-hearing conferences may be conducted in either stream.

The Direct Hearing Stream is for: (a) appeals where the appellant has completed the request for reconsideration process; (b) appeals scheduled into the direct hearing stream by the Board; and (c) appeals transferred to the direct hearing stream. The features of the direct hearing stream are disclosure, a party and/or a representative (excluding a lawyer appearing as counsel) may be both an advocate and a witness, and an adjournment on terms if the parties are not ready to proceed.

The Case Managed Stream is for: (a) appeals scheduled into the case managed stream by the Board; and (b) appeals transferred to the case managed stream. The features of the case managed stream are disclosure of assessment data, a representative may not be both an advocate and a witness unless the Board orders otherwise and the representative is not a lawyer appearing as counsel, and the requirement of Statements of Issues and Responses and Certificates of Readiness.

In choosing the appropriate stream, the Board will consider any factor it considers relevant, including: nature of the dispute; value of the property; property code; property classification; novelty of the issues; complexity of the issues; facts and evidence; applicant representation; complexity and quality of the documents; likelihood of settlement; number of parties involved; likely number of witnesses and/or expert witnesses; number of procedural steps that may be needed to narrow the issues and expedite resolution; estimated duration of the hearing; remedies requested; parties' preferences for a particular stream; and potential for any jurisdictional challenges.

77. Types of Streams

The Board may schedule a matter into either the direct hearing stream or the case managed stream.

78. Request for Reconsideration

If there has been a request for reconsideration completed, an appeal will be streamed into the direct hearing stream.

79. Transfer to a Different Stream

Prior to the first hearing event, in order to transfer to a different stream parties may apply to the Board by letter with reasons and copied to the other parties no later than 30 days from the issuance of the first Notice of Hearing. After this time, transfer to a different stream is not permitted unless the Board determines that it is appropriate. Consent of the parties is only one factor the Board will consider.

80. Consolidated Hearings or Hearing Matters Together

When the Board considers that two or more matters are related to each other by common facts, issues, questions of law or for any other reason, the Board may:

- (a) with the consent of the parties, order that the matters be **consolidated or heard at the same time**;
- (b) order that the matters be heard one after the other; or
- (c) stay or adjourn any matter until the determination of any other matter.

81. Effect of Consolidated Proceedings

When two or more proceedings are consolidated,

- (a) statutory procedural requirements for any of the original separate proceedings apply, where appropriate, to the consolidated proceeding;
- (b) parties to each of the original separate proceedings are parties to the consolidated proceeding; and
- (c) evidence to be presented in each of the separate proceedings is evidence in the consolidated proceeding.

82. Effect of Hearing Matters Together

Where two or more proceedings are heard together, but not consolidated,

- (a) statutory requirements for each proceeding apply only to that particular proceeding and not to the others;
- (b) parties to the hearing are parties to their individual proceedings only and not parties to the other proceedings; and
- (c) unless otherwise ordered by the Board, evidence in the hearing is evidence in each proceeding to which it could apply.

83. Board May Reconsider Decision for Combined or Other Proceedings

The Board may separate proceedings or matters heard together at any time when in its opinion the proceedings have become unduly complicated, delayed or repetitive, or a party is unduly prejudiced.

DIRECT HEARING STREAM PROCEDURES

Comments on Appeals in the Direct Hearing Stream

Appeals in the direct hearing stream will be scheduled for a hearing. Adjournments of hearings in this stream to allow parties to prepare for the hearing will be on terms. Parties requesting an adjournment for the reason that they are not prepared should include in the request the terms of adjournment they are seeking and whether or not the other parties are agreeable. The Board may issue a procedural order setting out the terms of the adjournment. Prior to an adjournment, the parties may request or the Board may require a pre-hearing conference.

84. Direct Hearing Stream Pre-Hearing Conferences

A limited number of pre-hearing conferences may be held in the Direct Hearing stream without the appeal(s) being transferred to the Case Managed stream. Appeals shall only be transferred if the Board issues an order to so do. Pre-Hearing conference rules apply but in the Direct Hearing Stream Statements of Issues and Responses are not required.

85. If Party Requests a Pre-Hearing Conference

A party may request that the Board hold a pre-hearing conference either prior to the hearing or on the date of the hearing. Unless there is/are good reason(s), the pre-hearing conference will be held on the date set for the hearing. A request made prior to the hearing must be in writing to the Registrar, and copied to all parties (*applicants, respondents, the Municipal Property Assessment Corporation, the Minister, and the municipality, or their representatives*). The request must include the roll number and address of the property, and state in detail the reasons for the request and the issues to be addressed. Consent of the parties is only one factor the Board will consider in determining if a request for a pre-hearing conference will be granted. Requests made less than 21 days in advance of the hearing will be considered at the hearing.

CASE MANAGED STREAM PROCEDURES

86. Preparation for First Pre-hearing Conference

Prior to the first pre-hearing conference, the parties must do one of the following:

(a) Where the Board has not issued a Notice of First Pre-Hearing Conference, any party may provide notification of readiness for a pre-hearing. The notice must contain confirmation of the following:

- (i) MPAC has released the assessment data requested;
- (ii) the appellant has served a Statement of Issues on all parties;
- (iii) the other parties have served their respective Statement(s) of Response.

(b) Where the Board has issued a Notice of First Pre-hearing Conference, the parties must exchange documents, evidence, and statements as follows:

- (i) not more than 60 days after the Board has issued a Notice of First Pre-hearing Conference, MPAC has released assessment data that may be requested without further Board order to the appellant;
- (ii) not more than 90 days after the provision of MPAC's assessment data, the appellant must serve a Statement of Issues on the parties;
- (iii) not more than 90 days after the Statement of Issues has been served, the respondent(s) shall serve their respective Statement(s) of Response on the appellant and all other respondents.

(c) Not more than 30 days after the Board issues a Notice of First Pre-hearing Conference, where any party considers that the timelines for the exchange of documents, evidence and statements are too short, the party may apply to the Board, with supporting reasons, for an extension of time and provide a copy to each of the other parties. The requesting party must submit a proposed Case Management Plan prior to the first pre-hearing conference, which the Board may accept, reject or modify. Alternatively, the Board may on its own initiative extend the timelines or dispense with them entirely.

87. First Pre-hearing Conference

The purpose of the first pre-hearing conference is for the Board to give direction. The Board will inquire as to the status of the appeals, give direction and issue procedural orders as appropriate.

FORM OF STATEMENTS

Comments on Form of Statements

Statements of Issues and of Response are to be used to bring focus to matters in the Case Managed Stream and are to include the required information. Parties to a hearing are usually the assessed person, MPAC and the municipality but may also include the Minister, the City of Toronto and any parties added by the Board

88. Statement of Issues and Responses

Statements of Issues and Responses shall contain at least the following information, as applicable:

If the issue is current value:

- (a) the current value requested and how it is calculated;

- (b) a full statement of every issue that the party intends to raise, including identification of similar property to be referred to by the appellant, if any;
- (c) identification of the vicinity claimed by the party; and
- (d) a listing of the information/documentation known at the time of disclosure and to be produced in evidence at the hearing.

If the issue is the equity of the assessment under s. 44(3) of the *Assessment Act*:

- (a) the assessment requested;
- (b) identification of the vicinity claimed by the party;
- (c) identification of similar property in the vicinity to be relied on by the appellant.

If the issue is the classification of the property:

- (a) the classification requested;
- (b) a full statement of the grounds to support this classification; and
- (c) a listing of the information/documentation known at the time of disclosure and to be produced in evidence at the hearing.

If the issue is the cancellation, reduction or refund of taxes pursuant to the Board's authority under the *Municipal Act*; *Municipal Act, 2001*; *City of Toronto Act, 2006*; or *Provincial Land Tax Act, 2006*:

- (a) the amount of taxes that have been paid or are owing;
- (b) the proposed amount of the refund or reduction;
- (c) a full statement of the grounds to support the cancellation, reduction or refund of taxes; and
- (d) a listing of the information/documentation known at the time of disclosure and to be produced in evidence at the hearing.

89. Notification to the Board

The Board requires written notification by letter that Statements of Issues and Responses have been served.

90. Show Cause Hearings

- (a) If MPAC has not provided the assessment data requested prior to the first pre-hearing conference pursuant to these Rules, MPAC shall show cause to the Board at the first pre-hearing conference why it is in default and the Board may make an order as appropriate.
- (b) If an appellant has not served a Statement of Issues as required pursuant to these Rules and provided notification to the Board, the Board may convene a hearing on 14 days' notice for an appellant to show cause why the Statement of Issues has not been served. The Board may make an order as appropriate allowing the appellant to cure the defect. The order may provide that the appeal may be dismissed if a Statement of Issues is not served and notification provided to the Board as required by the order.
- (c) If a respondent has not served a Statement of Response as required pursuant to these Rules and provided notification to the Board, the Board may convene a hearing on 14 days' notice for a respondent to show cause why the Statement of Response has not been served. The Board may make an order as appropriate including limiting any respondent's right of participation or any respondent's ability to lead evidence.

91. Subsequent Pre-Hearing Conferences

At subsequent pre-hearing conferences the Board may inquire of the parties what is required in terms of productions and other discoveries in order for the matter to proceed as expeditiously as possible. The Board may make an order dealing with further matters.

92. Scheduling of Subsequent Pre-hearing Conferences

Following the first pre-hearing conference:

- (a) the parties may continue the process without a further pre-hearing conference so long as they communicate in writing with the Board as to the status of the appeals(s) and seek direction as necessary; or.
- (b) the parties may request a further pre-hearing conference; or
- (c) the Board may direct a further pre-hearing conference.

CERTIFICATES OF READINESS AND OBJECTION

Comments on Certificates of Readiness

Once a Certificate of Readiness is filed, the Board may convene a Teleconference Call (TCC) to set a hearing date, determine the length of the hearing and determine what documentation should be filed in advance of the hearing.

93. Certificate of Readiness

In a matter in the Case Managed Stream, each party shall file with the Board a Certificate of Readiness or Certificate of Objection, as the case may be, in the form prescribed by these Rules, as follows:

- (a) where a party is of the opinion that the matter is ready to proceed, the party may file a Certificate of Readiness with proof of service on the other parties;
- (b) where a party has been served with a Certificate of Readiness and the party objects to the matter being certified for hearing, the party must, within 10 days of the receipt of the Certificate of Readiness, file a Certificate of Objection with proof of service on the other parties. In the event that a party has not served and filed a Certificate of Objection within ten (10) days of the date of receipt of the Certificate of Readiness as evidenced in the proof of service filed under clause (a) and has not, within that time, brought a Motion for an Extension of Time to file a Certificate of Objection, the party shall be deemed to have filed a Certificate of Readiness.

94. Pre-hearing Conference on Objection or Motion for Extension

Upon receipt of a Certificate of Objection or a Motion for an Extension of Time, the Board shall schedule a pre-hearing conference with the parties to deal with the objection or motion, as the case may be, and may, as a result of that or any subsequent conference, issue an order declaring the matter ready to proceed.

95. Requirement for Scheduling

No hearing for the purposes of finally resolving an appeal in the Case Managed stream shall be scheduled until,

- (a) each party has filed a Statement of Issues or Response and a Certificate of Readiness, or

- (b) an order of the Board has been issued declaring the matter ready to proceed in which case the hearing date shall be a peremptory hearing date, and
- (c) the Board may schedule a pre-hearing to further determine issues and fix a hearing date.

96. Pre-hearing on Status

Where the parties have not filed their Certificates of Readiness within six (6) months of the issuance of a procedural order and the file appears to be inactive, the Board may on its own motion, hold a pre-hearing to determine the status of the matter.

ADJOURNMENTS

97. Hearing Dates Fixed

Hearing events will take place on the date set unless the Board agrees to an adjournment. The main consideration is whether an adjournment is necessary to permit a fair hearing, versus the cost of any delay for all parties.

98. Requests for Adjournment if All Parties Consent

If all of the parties consent, they may make a written request to postpone a hearing event. The request must include the reason(s), a suggested new date and an indication that all the parties consent to the adjournment. However, the Board may require that the parties attend in person to argue for an adjournment, even if all of the parties consent. If, for whatever reason, not all the parties consent, the Board may where it considers appropriate grant the adjournment subject to terms and conditions, if any.

99. Requests for Adjournment Without Consent

If a party consulted objects to an adjournment request, the party requesting the adjournment must bring a motion at least 10 days before the date set for the hearing event. If the need for an adjournment arises less than 10 days before the hearing event date, the party must give notice of the request to the Board and to the other parties, and serve their motion materials as soon as possible. If the Board refuses to consider a late request, any motion for adjournment must be made in person at the beginning of the hearing event.

100. Emergencies Only

The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Board must be informed of these emergencies as soon as possible.

101. Powers of the Board upon Adjournment Request

The Board may,

- (a) grant the request;
- (b) grant the request and fix a new date; or where appropriate, the Board will schedule a pre-hearing conference about the status of the matter;
- (c) grant a shorter adjournment than requested;
- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;

- (f) grant an indefinite adjournment if the request is made by a party and is accepted by the Board as reasonable, and the Board finds no substantial prejudice to the other parties or to the Board's schedule. In this case, a party must later make a request that the hearing be rescheduled;
- (g) convert the scheduled date to a mediation or pre-hearing conference; or
- (h) make any other appropriate order.

PRE-HEARING CONFERENCES

Comments on Pre-hearings

There can be at least three activities at a pre-hearing conference, as may be seen from the subjects which may be considered (see below). These are: a settlement conference (which is similar to a mediation), a discussion of procedure for the hearing, and a preliminary hearing. There may be no clear division between these procedures, and the Board may switch from one to another whenever it seems appropriate.

Pre-hearing Procedural Orders may deal with such matters as productions, discoveries, inspections, mediation, settlement conferences, narrowing of issues, additional hearing events and Member continuity.

The purpose of these Rules is to make the pre-hearing process as efficient and effective as possible by defining the process and the issues (usually in the first pre-hearing conference) and by dealing with motions arising out of the Procedural Order(s) and making such further orders for such matters as the exchange of expert reports and witness statements as may be required (usually in the second pre-hearing conference).

If the Board hears some evidence and/or submissions on the issues in a preliminary hearing mode at the pre-hearing, and decides that it can dispose of some or all of them, it will make formal decisions about the issues (given either during the pre-hearing or at a later date). These decisions will be set out in the written order following the pre-hearing, and would be a final order on those issues.

The Board designed pre-hearing rules based on its experience and representations by parties dealing with issues on their own. It is in all the parties' interest to be in attendance at the first pre-hearing conference to address the issues. The Board is not bound by any consent of the parties. However, if required the Board is available on a timely basis for motions on short notice.

Note: The pre-hearing Member will not necessarily conduct the hearing. In order to ensure speedy hearings, the Board may assign another Member or Members if the pre-hearing Member is not available for an early hearing.

102. Pre-hearing Conferences

On a party's request or on its own initiative, the Board may direct the parties to take part in a pre-hearing conference, which can include settlement conferences, motions or preliminary hearing matters, in order to:

- (a) identify and simplify the issues;

- (b) identify facts or evidence the parties may agree upon or on which the Board may make a binding decision;
- (c) obtain admissions that may simplify the hearing;
- (d) provide directions for pre-filing of witness lists, expert witness statements and reports; for meetings of experts; and for further disclosure where necessary;
- (e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents; and
- (h) deal with any other matter that may assist in a fair and quick resolution.

103. Results of Failure to Attend a Pre-hearing Conference

If a party fails to attend the pre-hearing conference in person or by authorized representative, the Board may proceed without that party. The Board may dismiss an appeal where a party does not attend a pre-hearing conference.

104. If Party Requests a Pre-hearing Conference

A party may request the Board hold a pre-hearing conference or convert a hearing event to a pre-hearing conference. The request must be made in writing to the Registrar, and copied to all parties (*applicants, respondents, the Municipal Property Assessment Corporation, the Minister and the municipality, or their representatives*). The request must include the roll number and address of the property, and state in detail the reasons for the request and the issues to be addressed. Similarly, if the request is to convert a hearing to a pre-hearing conference, the reasons for the request must also be provided, and it must be delivered to the Registrar at least 21 days before the hearing date.

105. Processes in Pre-hearing Conferences

The Board Member conducting a pre-hearing may conduct a procedural discussion, settlement conference or a preliminary hearing at any time, and may convert from one to another form on the consent of the parties. The Board may state in the notice of pre-hearing that the parties should arrive prepared for a procedural and settlement conference as well as a preliminary hearing where evidence or formal statements are heard.

106. Preliminary Hearing Following an A.D.R. Event

If the Board is satisfied that a party reasonably objects to the same Member presiding at a preliminary hearing portion of a pre-hearing conference after presiding at an A.D.R. event, the Board may set a later date for the preliminary hearing before another Member.

107. Board Order Following Pre-hearing

The Member conducting the pre-hearing conference may issue an order which may decide any of the matters considered at the conference, as well as provide procedural directions for any proceedings to follow.

108. Hearing Member Bound

The Member conducting the hearing is bound by the procedural order resulting from the pre-hearing conference, unless the Member is satisfied that there is good reason to vary the order.

109. Status Pre-hearing Conference

The Board may convene a status pre-hearing conference at any time.

ALTERNATIVE DISPUTE RESOLUTION

Comments On the Alternative Dispute Resolution (“A.D.R.”) Process

A.D.R. is a form of consensual dispute resolution, in which the parties meet with a Board Member (or someone else appointed by the Board) as mediator or neutral third party (rather than as adjudicator). All present try to settle the dispute in an informal way. The Member will attempt to identify the interests of each party, and explore possible settlement of the issues in an appeal.

The Board requests that the parties take part in an A.D.R. event because a discussion of the matter may produce a resolution. If one or more parties refuse to take part in the A.D.R. event, there clearly cannot be a settlement. If held early and if successful, a matter may be resolved more rapidly through A.D.R. The Board may, however, refuse requests for A.D.R. as it may resolve some disputes more quickly, but for others, it may only add an extra step to the process that a speedy hearing may better resolve.

Other benefits of an A.D.R. event include providing an opportunity for all the parties to: meet (if they have not yet done so); acquire a better understanding of the matter; reduce the length of time of the hearing by resolving at least some of the procedural and/or substantive issues, so that there are fewer issues to be adjudicated and the parties are properly prepared; or to settle the matter even after the hearing has started, thus saving hearing time and shortening the time before a decision issues.

The Board must confirm any complete settlement by reviewing it either in written form or by holding a brief hearing so that the Board is satisfied that the requirements of the governing legislation are met. Unless all parties take part in the A.D.R. event, any part of a settlement, which is outside the Board’s jurisdiction, will not be included in a Board order confirming the settlement.

110. A.D.R. Events

The Board may direct parties to take part in a mediation or settlement conference or other A.D.R. event either of its own accord or at the request of the parties. The A.D.R. event may be held in person or by electronic conferencing. The parties may be given short notice of the A.D.R. event, which means notice may be given by telephone.

111. Choice of Process at A.D.R. Events

At an A.D.R. event, the person presiding may make use of any appropriate dispute resolution process to help the parties resolve the issues in dispute. The parties should advise the Board in writing if they feel that one method is more appropriate than another. The person presiding will explain the process, the safeguards provided, and the benefits of the process.

112. Partial Resolution and A.D.R. Report

If, in the course of an A.D.R. event, the parties do not settle all of the issues in dispute, the person presiding may assist the parties in arriving at a statement of agreed facts and remaining issues and

will prepare an A.D.R. Report which includes this statement (but not the actual terms of settlement). The statement of agreed facts and remaining issues would be placed on file for the information of the Board panel conducting the hearing on the remaining issues. In addition, where the person presiding is a Board Member, he or she may make a final order on some of the issues, if the Member is satisfied that the statutory requirements have been met. This order is binding on the parties and the Member(s) hearing the other issues, unless the Member(s) is (are) satisfied that there is good reason to vary the order.

113. Disclosure in Advance of an A.D.R. Event

Unless otherwise ordered, at least three (3) days before the date set for the A.D.R. event, the parties shall prepare and produce to the Board and to the other parties the following:

- (a) concise statements describing the nature of the appeal, the issues, the evidence expected to be called at the hearing and applicable legal principles; and
- (b) experts' reports intended to be relied upon or, if the expert reports have not yet been prepared, a statement describing the anticipated opinion of the expert, the facts upon which the opinion is based and the qualifications of the expert.

114. Procedure at an A.D.R. Event

At all A.D.R. events, the following apply:

- (a) the A.D.R. event is confidential and is to be held *in camera*;
- (b) the person presiding has the discretion to determine the manner in which the A.D.R. event is to be conducted and, without limiting the generality of that discretion, may,
 - (i) cancel the A.D.R. event if any person attending the event as a party or on behalf of a party lacks the authority to enter into a binding resolution on any matter at issue;
 - (ii) facilitate discussion between the parties;
 - (iii) meet with any party individually;
 - (iv) provide non-binding opinions on any matter at issue;
 - (v) provide an evaluation on the likelihood of success of a party on any matter at issue;
 - (vi) adjourn the A.D.R. event;
 - (vii) make a report of the results of the A.D.R. event, including any settlement reached;
- (c) where the person presiding is a Member, he or she may,
 - (i) make any order that can be made under these Rules;
 - (ii) refer any matter at issue to be scheduled for a hearing event;
 - (iii) include in the report of the results of the A.D.R. event any interim orders made;
- (d) at the end of the A.D.R. event, unless the parties otherwise agree, the person presiding shall return to the parties any documents provided by them for the purpose of the A.D.R. event which might be used as evidence in a hearing event.

115. Member to Preside at Hearing Only with Parties' Consent

A Board Member who presides at an A.D.R. event in which one or more of the issues was not resolved may not preside at the hearing of those issues unless all of the parties consent.

116. Parties' Consent

Where the person who presides at an A.D.R. event is a Member, at the conclusion of the A.D.R. event, the parties may request that the Member preside at a hearing of any unresolved issues.

117. A.D.R. Event Discussions Confidential

All documents created for or anything said in an A.D.R. event and any offer to settle shall be confidential, and cannot be introduced into evidence in the same or other proceeding without the consent of the party who created the document or made the statement or offer, and with the Board's approval. Notes made by the person presiding at the A.D.R. event shall remain confidential and shall not be released to any person or admitted into evidence in any proceeding. A person presiding at an A.D.R. event is not competent or compellable in any proceeding to give evidence regarding the discussions.

118. Possible Hearing to Examine Settlement

A settlement proposed by the parties must satisfy the requirements of the *Assessment Act* or other Act under which the proceeding arises, and if the Board is not satisfied after reviewing the terms proposed that this is the case, it will hold a hearing to hear evidence on this issue. This hearing may be held at the end of the A.D.R. event, if the parties attending the event consent and the Member is satisfied that sufficient notice has been given.

119. Hearing Priority to Matters from A.D.R. Events

When setting hearing dates, the Board may give priority to matters that have been the subject of an A.D.R. event.

METHODS OF HOLDING HEARING EVENTS

ELECTRONIC HEARINGS

120. Hearing Events by Teleconference or Videoconference

The Board may hold a hearing event by teleconference or videoconference or other automated means to determine,

- (a) any matter of procedure; and
- (b) any other matter, unless a party objects and the Board decides that holding an electronic hearing event is likely to cause significant prejudice to the party.

121. Factors the Board May Consider

In deciding whether to hold a hearing event by automated means, the Board may consider any relevant factors, such as:

- (a) the fairness and convenience to the parties;
- (b) the likelihood of the process being less costly, faster and more efficient;
- (c) whether it is a fair and accessible process for the parties;
- (d) whether the evidence or legal issues are suitable for an automated format; or
- (e) whether credibility may be an issue.

122. How to Object on Grounds of Significant Prejudice

A party who objects to an electronic hearing shall file and provide a copy to the other parties, a written objection containing a statement of its reasons for claiming significant prejudice and the facts and evidence supporting the objection, at least 10 days before the date of the hearing.

123. Board Decision on Objection

If the Board finds that an electronic hearing will not cause significant prejudice, it may confirm that it will hold an electronic hearing on the original date.

124. Protection for the Process

The Board may direct the arrangements for the electronic hearing to protect the integrity of the hearing process, including the security and confidentiality of evidence.

125. Videoconferences

All participants in videoconferences and all locations connected to the conference shall be in full view of the camera at all times, with minimal visual obstructions.

WRITTEN HEARINGS

126. Power to Hold Hearing Events by Written Submissions

The Board may conduct the whole or any part of a hearing event in writing, unless a party satisfies the Board that there is good reason for not doing so. The objection must be filed within 10 days of the date of the notice of written hearing event.

127. Factors Board May Consider

In deciding whether to hold a written hearing, the Board may consider any relevant factors, such as:

- (a) the fairness and convenience to the parties;
- (b) the likelihood of the process being less costly, faster and more efficient;
- (c) whether facts and evidence may be agreed upon;
- (d) whether most of the issues are legal issues; and
- (e) whether oral testimony is likely to be necessary.

128. How to Object

A party who objects to a written hearing shall file and provide a copy to the other parties, a written objection providing details of its claim that there is a good reason for not holding the hearing event in written form, within 10 days of the notice of written hearing.

129. Procedure for Exchange of Documents in Written Hearings

If no notice of objection is received, the appellant shall provide to the Board and the other parties copies of its affidavit and submissions within 30 days after the date of the notice of the written hearing. If an objection has been made and rejected, the submissions should be filed 30 days from the date of the Board notice that the hearing would be held in written form. The submissions shall include,

- (a) the reasons for the appeal and the order requested;
- (b) the facts relied on;
- (c) the evidence supporting the facts; and
- (d) any law relied on.

The other parties wishing to respond shall do so by copy to all parties and the Board within 20 days of the date that the appellant's submissions were served, and shall include submissions, its affidavit and evidence. If a party has no submissions or evidence on any of the issues raised, this should be stated.

The appellant may reply to the other parties' responses with a copy to the Board within 10 days after the last date for service of the responses, and the reply shall be limited to submissions on the responses.

130. Requirement for Affidavit Evidence

Evidence in a written hearing must be by affidavit, and any documents filed shall be attached to an affidavit of a person having personal knowledge of the document. The Board may permit evidence to be filed in a different form or in electronic form as approved by the Board upon request.

CONDUCT OF PROCEEDINGS

131. Hearings to be Public

All Board hearing events will be open to the public except where the Board Chair, Vice Chair or Member determines that this is not possible or practical, such as mediations, some electronic or written hearings, or that a matter should be heard in the absence of the public.

132. Procedure at a Hearing

The Board may by order fix the procedure at a hearing event unless these Rules or an Act provides differently.

133. Commencement of Hearings

At the start of a hearing, the Board will confirm the name of the appellant and, for each property and/or assessment that is the subject of the hearing, the parties must confirm:

- (a) the roll number;
- (b) the name of the assessed person;
- (c) the municipal address;
- (d) the amount of the assessment, if applicable;
- (e) the property classes as returned on the roll, if applicable; and
- (f) any other information required by the governing legislation.

134. No Re-opening Without Leave

Once a hearing event has commenced, no party or participant who has been absent or otherwise has not taken part in that hearing event is entitled to have any part of the event re-opened or recommenced without leave of the Board.

135. Media Coverage - Photographic, Audio or Video Recording

Photographic, audio or video recording of a proceeding which is open to the public will be permitted only on conditions which the Board considers appropriate.

136. Request to Record Proceeding

A person wishing to record a proceeding must ask for authorization from the Chair as soon as possible after notice of the proceeding; from the presiding Member at the beginning of the proceeding; or as soon as the issue arises. The parties will be given the opportunity to comment on the request, and if the Board approves it, to make a request to vary the permission at any time. In evaluating the request, the Board will consider, among other issues,

- (a) whether the proceedings will be disturbed or disrupted;

- (b) any undue discomfort for any participant; and
- (c) any public interest in having proceedings accessible to all those affected or interested.

137. Conditions of Approval

The Board may approve recording on conditions, and the following conditions shall always apply to any approval to record:

- (a) only equipment, which does not produce a distracting noise or light, may be used, and it must be placed in one location approved by the Board;
- (b) a person recording shall not move about the hearing room while the proceeding is going on; and
- (c) the activity authorized will occur only within the times and portions of the proceeding determined by the Board.

138. Withdrawal of Approval

The Board may withdraw permission to record temporarily or permanently if the conditions are not met; if any of the conditions above become relevant; or if the Board in the circumstances cannot conduct a full and fair hearing.

139. Qualified Verbatim Reporters and Transcripts

The Board will permit a proceeding to be recorded by a qualified verbatim reporter, subject to the following:

- (a) Any party may arrange for the attendance of a qualified verbatim reporter at his or her own expense for the purpose of recording all testimony, but submissions may only be recorded with leave of the Board;
- (b) Before a qualified verbatim reporter is permitted to record only part of a proceeding, the party retaining the qualified verbatim reporter must obtain the consent of the Board. The Board may withhold its consent and shall not provide its consent if such a record would unduly prejudice any party;
- (c) If a party intends to make use of a transcript or partial transcript in a proceeding, the party shall notify the Board and the other parties to the proceedings of its intention and furnish a copy to the Board and the other parties free of charge;
- (d) The Board may, at its own expense and on notice to the parties, order a transcript or partial transcript from the qualified verbatim reporter without furnishing a copy of the transcript to the parties. In any such case, the Board will advise the parties that it has ordered the transcript and, where the Board orders a partial transcript, the Board shall notify the parties as to the part of the transcript that the Board has ordered.

WRITTEN REASONS FOR DECISION

140. Request Required

A party who requires written reasons for a Board decision must make a request for written reasons at the conclusion of the hearing or in writing within fourteen (14) days of the end of the hearing. A party intending to ask for a review of the Board's decision **must request written reasons**.

BOARD DECISIONS

Comment on Conditions Imposed

Any conditions imposed in a decision must be fulfilled within a reasonable time. If not, the Board may re-open the hearing to determine whether to change its decision.

141. Issuing a Board Decision

The Board Registrar will issue a written decision, unless the Board directs otherwise. The decision is effective on the date it is released, unless it states otherwise.

CORRECTING MINOR ERRORS IN DECISIONS

Comments on Minor Changes to Decisions

The Board may correct a minor error in decisions or reasons, such as typing errors, incorrect figures or the language used, if needed. Such a correction does not change the decision reached by the Board Member(s). The Board may make such corrections without notice or on request. Corrections will be sent to all the parties. If a different type of error is claimed, see the Rules pertaining to requests for review.

142. Correcting Minor Errors

The Board may at any time and without prior notice to the parties correct a technical or typographical error, error in calculation or similar minor error made in a decision or order, and may clarify a misstatement, ambiguity or other similar problem. There is no fee if a party requests this type of correction.

143. Processing Request as a Review Request

If a party requests a correction or clarification that in the Board's opinion is a request for a substantive change in the decision, the Board will treat it as a request for review.

144. Prohibition against Unilateral Communications

Following the end of a hearing and before the issuance of a decision or written reasons, where written reasons are requested, whichever is later, no party shall undertake communications directly with the Member presiding in that hearing with respect to that hearing without notice to and consent of all other parties to that hearing.

RE-HEARING

145. Re-hearing

The Board may order that a matter be re-heard if a Notice of Hearing was not issued or a party failed to attend a scheduled hearing because of circumstances outside of the control of a party.

Note: This provision does not apply to situations in which a party is seeking a re-hearing based on grounds in support of an application to review a decision of the Board. This provision only applies to those rare situations in which a hearing could not take place because of an obvious situation where a party does not receive notice of a hearing or in situations in which a party could not attend a hearing and provide advance notice of their non-attendance because of, for example, a serious medical emergency arising just before the hearing event.

REVIEW OF A BOARD DECISION OR ORDER

Comments on Reviews and Re-hearings

The process for review of the findings in the decision is as follows:

- (1) The Board must be convinced from the written material submitted in an affidavit that it is possible that there was an error in the original decision or process. Review requests will not be successful if they merely attempt to provide the same evidence or reargue the matter. **All parties must be copied on review requests by the requester. However, the other parties may not file material in response except at the request of the Board;**
- (2) If it appears that there might have been an error in the decision or part of it, the Board may hear a motion (oral or electronic) where all parties argue the question;
- (3) If the error in the decision is patently obvious, the Board may without hearing a motion, direct that the matter be reheard;
- (4) If the Member hearing the motion decides that the claim of error is correct, either the decision is corrected or the matter is re-heard. The re-hearing may follow right after the motion hearing, or at a later date. If a party is seeking a re-hearing immediately after the motion it must be stated in the Notice of Motion served on the other parties.

Note: The Board requires very good reasons for changing a final decision. It will not review a decision if in its view the basic conclusions will not change even though there is an error in the decision. Therefore the second stage, the hearing of a motion, is not often reached.

If the reason for the request is "new evidence," the evidence must not have been available at the time of the hearing; the evidence must be credible, and material to the original result; the requester must act quickly upon becoming aware of it; and the prejudice to the requester must be far greater than the other parties' right to a final decision.

146. Board's Powers on Review

The Board may review all or part of a decision, and may confirm, vary, suspend or cancel the decision. It may order a re-hearing before a different Member.

147. Request for Review of a Board Decision

The Board may consider a request to review a decision if,

- (a) the party requesting the review **has requested written reasons for decision;** and
- (b) the information and materials required in the contents of a request Rule directly below are provided to the Board.

Note: A request for review does not automatically stay the effect of the original decision, unless the requester asks the Board to make this order and the Board does so.

148. Contents of a Request

A request for review shall be made in writing to the Chair of the Board **within 30 days** of the issue of the Board's decision, shall be copied to all parties, and shall include:

- (a) the requester's full name, address, telephone and fax number (if any) and e-mail address (if any);
- (b) the full name, address, telephone and fax number (if any) and e-mail address (if any) of the requester's representative (if any);
- (c) the requester's or representative's signature;

- (d) brief reasons for the request;
- (e) the desired result;
- (f) any documents which support the request, including copies of the original decision and new evidence that was not available at the hearing ;
- (g) whether the requester has or will submit an application for leave to appeal or for judicial review to the court;
- (h) a filing fee of \$125.00 (cheque or money order payable to the Minister of Finance); and**
- (i) an affidavit stating the facts relied upon in support of the request.**

149. Reasons for Review

The Board will hear a motion to review a decision or grant a rehearing without a motion only if the reasons provided in the request raise an arguable case that the Board,

- (a) acted outside its jurisdiction;
- (b) violated the rules of natural justice or procedural fairness, including allegations of bias;
- (c) made an error of law or fact such that the Board would likely have reached a different decision;
- (d) should consider new evidence, which was not available at the time of the hearing, but that is credible and could have affected the result; or
- (e) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and could have affected the result.

150. Initial Refusal

The Board will refuse a review motion if:

- (a) the request is filed later than 30 days after the Board decision and written reasons issue, unless the Board determines that there is good reason to extend this time;
- (b) the requester does not supply all of the information and materials required within 21 days of the Board's notice; or
- (c) it is a second request by the same party. The Board will not respond to correspondence raising the same or similar issues.

151. Procedure on Review Request

The Board will determine initially whether the request has met one or more of the eligible grounds for such a review, without providing notice to the other parties. The Board may review or grant a motion request without submissions from other parties. If the requester has not obtained a motion date or a re-hearing date within 90 days of the date of the Board letter granting a motion or rehearing, the decision to grant a motion or re-hearing will be revoked. *(This means that the requester must secure a date for the motion or re-hearing within 90 days not that the motion or re-hearing must be heard within 90 days.)* The requester must serve notice of the motion and any supporting material on the other parties who attended the hearing at least 30 days before the date set for the motion, unless the Board directs otherwise. The Rules regarding notices of response also apply to a review motion.

152. Procedure on Motion

The motion for review must follow the general procedure for motions as set out in the Rules for motions, except that the Notice of Motion must be served at least 30 days before the date set for the motion. The motion will generally be heard by a different Member than one who made the original decision, unless the request is based on new facts. At the hearing of the motion, the parties will be expected to address whether the request meets the Board's reasons for review.