ANNUAL REPORT

Environmental Review Tribunal

April 1, 2005 to March 31, 2006

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Message from the Chair

I am pleased to report on the activities and progress of the Environmental Review Tribunal for fiscal year 2005-2006.

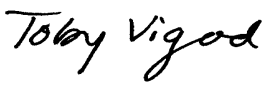
This has been a year of change. On October 28, 2005, following consultation with our Client Advisory Committee and a further public consultation period, the Tribunal released revised Rules of Practice and Practice Directions. These revisions, crafted with careful consideration, resulted in changes to our Guides and administrative processes.

Improvements to our website were also made this fiscal year including a new search engine which delivers fast, in-depth and relevant search results with different file formats and provides more comprehensive access to decisions, orders and information. To date, approximately 900 decisions of the former Environmental Appeal Board for the period 1974-1998, have been posted on the Tribunal's website.

We are pleased to report that we have exceeded our performance target for the scheduling of hearings and improved our performance standard for the rendering of timely decisions.

During this fiscal year, Jerry V. DeMarco was appointed as a Vice-Chair, Bruce Pardy was appointed as a part-time Member and the appointment of Gary Harron as a part-time Member was extended.

I would like to take this opportunity to thank all members and staff who are committed to meeting our performance targets and enabling the Tribunal to fulfill its mandate. I am certain that the commitment and dedication of members and staff in meeting our goals will further strengthen our performance in the coming year.



Chair

June, 2006

The Tribunal's Mandate

The Environmental Review Tribunal was established under the *Environmental Review Tribunal Act, 2000.*

The Tribunal functions as a quasi-judicial tribunal, subject to procedural fairness, rules of natural justice, requirements of its governing legislation and the *Statutory Powers Procedure Act.* The Tribunal adjudicates applications and appeals under the following statutes: *Consolidated Hearings Act, Environmental Assessment Act, Environmental Bill of Rights, 1993, Environmental Protection Act, Niagara Escarpment Planning and Development Act, Nutrient Management Act, 2002, Ontario Water Resources Act, Pesticides Act,* and *Safe Drinking Water Act, 2002.* Although an appeal was filed under the *Nutrient Management Act, 2002,* the Tribunal has not yet held any hearings under this Act. An overview of the legislation is provided in Appendix A, page 50.

Under the *Niagara Escarpment Planning and Development Act*, members of the Tribunal are appointed by the Minister of Natural Resources as Hearing Officers to conduct hearings. The Hearing Officers make recommendations concerning appeals of decisions of the Niagara Escarpment Commission ("NEC") regarding development permit applications. Members of the Tribunal are also appointed by the NEC as Hearing Officers to conduct public hearings for the purpose of making recommendations regarding proposed amendments to a review of the Niagara Escarpment Plan ("NEP").

The Environmental Review Tribunal has the administrative responsibility for hearings requested under the *Consolidated Hearings Act.* Such hearings are conducted under the designation of the Office of Consolidated Hearings. Under the authority of the *Consolidated Hearings Act,* a Joint Board is established in order to eliminate a multiplicity of hearings before different tribunals under various acts on matters relating to the same undertaking. A Joint Board usually consists of members of the Environmental Review Tribunal and the Ontario Municipal Board. A Joint Board is empowered to hold a hearing to consider all of the matters under all of the acts to which the undertaking is subject and for which hearings are required.

The principal task of Tribunal members, who are Lieutenant Governor-in-Council appointees, is to conduct fair, efficient and impartial hearings. Tribunal members must consider all the evidence presented, and make decisions (or recommendations) with written reasons based on that evidence, in a manner that protects the environment and is consistent with the Tribunal's governing legislation. A profile of the Tribunal members is found at Appendix B, page 59.

Core Functions of the Tribunal

The Environmental Review Tribunal has four main functions which are:

1. **Pre-Hearings, Hearings and Decision Making**
2. **Staff Processing of Hearings**
3. **Mediation**
4. **Public Access to the Tribunal**

1. PRE-HEARINGS, HEARINGS AND DECISION MAKING

Responsibility for this component rests with the Tribunal members, all of whom are Order-in-Council appointees, and includes the conduct of hearings and the issuance of written decisions.

All recommendations/decisions made on appeals under the *Niagara Escarpment Planning and Development Act* of development permit applications are required by legislation to be issued within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application recommendations must be rendered no more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on leave to appeal applications under the *Environmental Bill of Rights, 1993* are to be issued within 30 days of the filing date of the application, unless the Tribunal determines that, due to unusual circumstances, a longer period is required. In all other types of decisions, Tribunal members have endeavoured to render their decision within 60 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

2. STAFF PROCESSING OF HEARINGS

The processing of appeals/applications includes all administrative steps necessary to schedule and resolve an appeal/application from the date of filing to the closing of the file. The Tribunal hears appeals/applications pursuant to nine different statutes. When an appeal/application is received, it is dealt with through the administrative processes specific to its type. However, each process includes:

- screening for compliance with the Act under which the appeal/application was filed;
- assigning the appropriate hearing process;
- scheduling the hearing;
- monitoring and administering the process through to the rendering of the written decision.

3. MEDIATION

The use of mediation in the hearing process encourages the parties to discuss issues in an attempt to narrow or settle their differences. The results often remove the need to proceed to a hearing entirely or may reduce the scheduled number of hearing days.

Most of the Tribunal's members have received certified training in mediation. Mediation, which is offered in all appeal and application hearings (except in matters under the NEPDA) is conducted after a preliminary hearing and usually, 30 days before the commencement of a hearing. Should the parties choose not to participate, at that stage, mediation services are offered by the Tribunal throughout the Hearing process, upon request.

4. PUBLIC ACCESS TO THE TRIBUNAL

The Tribunal's outreach function consists of a number of initiatives. The Tribunal distributes guides that explain its role and procedures, upon request. The website provides current information regarding the activities of the Tribunal such as appeals received, scheduled hearings, decisions, orders and forms, relevant statutes and the Tribunal's Rules of Practice and Practice Directions.

The Tribunal's outreach function also includes staff responses to questions from parties, public information and education sessions delivered by senior staff or Tribunal members, and stakeholder consultation. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters. The Tribunal seeks feedback regarding new Rules, policies, procedures and general operational issues. The public can also provide feedback to the Tribunal by completing the form provided on the Tribunal's website.

The Tribunal's Rules of Practice and Practice Directions

The Tribunal's Rules of Practice and Practice Directions remain open to review and revision as circumstances and new legislation may dictate in order to reflect the changing needs of the Tribunal and the public. The Tribunal's Rules of Practice and Practice Directions are available on the Tribunal's website or by paper copy, upon request.

In-House Learning Program

The Tribunal has continued to conduct an in-house Learning Program for its members and staff. The Learning Program provides an opportunity for members and staff to hear guest speakers and to receive information on environmental issues of relevance to the Tribunal. This fiscal year, the Tribunal hosted a number of outstanding speakers and visitors. The Tribunal extended invitations to attend to other organizations, which included: the Environmental Commissioner's Office, the Ministry of the Environment, the Ministry of Natural Resources and the Niagara Escarpment Commission. For a complete list of Learning Program events held in this fiscal year, refer to Appendix C.

Tribunal Activities

Case Type	No. of Unresolved Cases Carried Forward into 05-06 Fiscal Year	No. of New Cases Received in 05-06 Fiscal Year	No. of Cases Resolved in 05-06 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 05-06 Fiscal year by Tribunal Approved Settlements	No. of Cases Closed in 05-06 Fiscal Year by Other Means*	No. of Cases Carried Forward into 06-07 Fiscal Year	No. of Hearing Days held in 05-06 Fiscal Year**	No. of Hearing Days held on Motions in 05-06 Fiscal Year	No. of Tribunal Days held on Mediation in 05-06 Fiscal Year	No. of Tribunal Days held on Pre-Hearing Conferences in 05-06 Fiscal Year ****
ENVIRONMENTAL PROTECTION ACT										
Appeals	35	41	26	7	16	27	53	13	10	N/A
NUTRIENT MANAGEMENT ACT, 2002										
Appeals	0	1	0	0	1	0	0	0	0	N/A
ONTARIO WATER RESOURCES ACT										
Appeals	12	15	11	1	8	7	14	5	3	N/A
PESTICIDES ACT										
Appeals	0	1	0	0	1	0	1	0	0	N/A
SAFE DRINKING WATER ACT, 2002										
Appeals	3	0	1	0	1	1	3	0	6	N/A
NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT										
Development Permit Appeals	17	82	54	0	32	13	23	3	0	19
Plan Amendment Applications	1	4	0	0	4	1	1	0	0	N/A
CONSOLIDATED HEARINGS ACT										
Applications	6	2	3	0	0	5	6	3	0	N/A
ENVIRONMENTAL BILL OF RIGHTS, 1993***										
Leave to Appeal Applications	2	8	7	0	1	2	0	0	0	N/A
Total	76	154	102	8	64	56	101	24	19	19

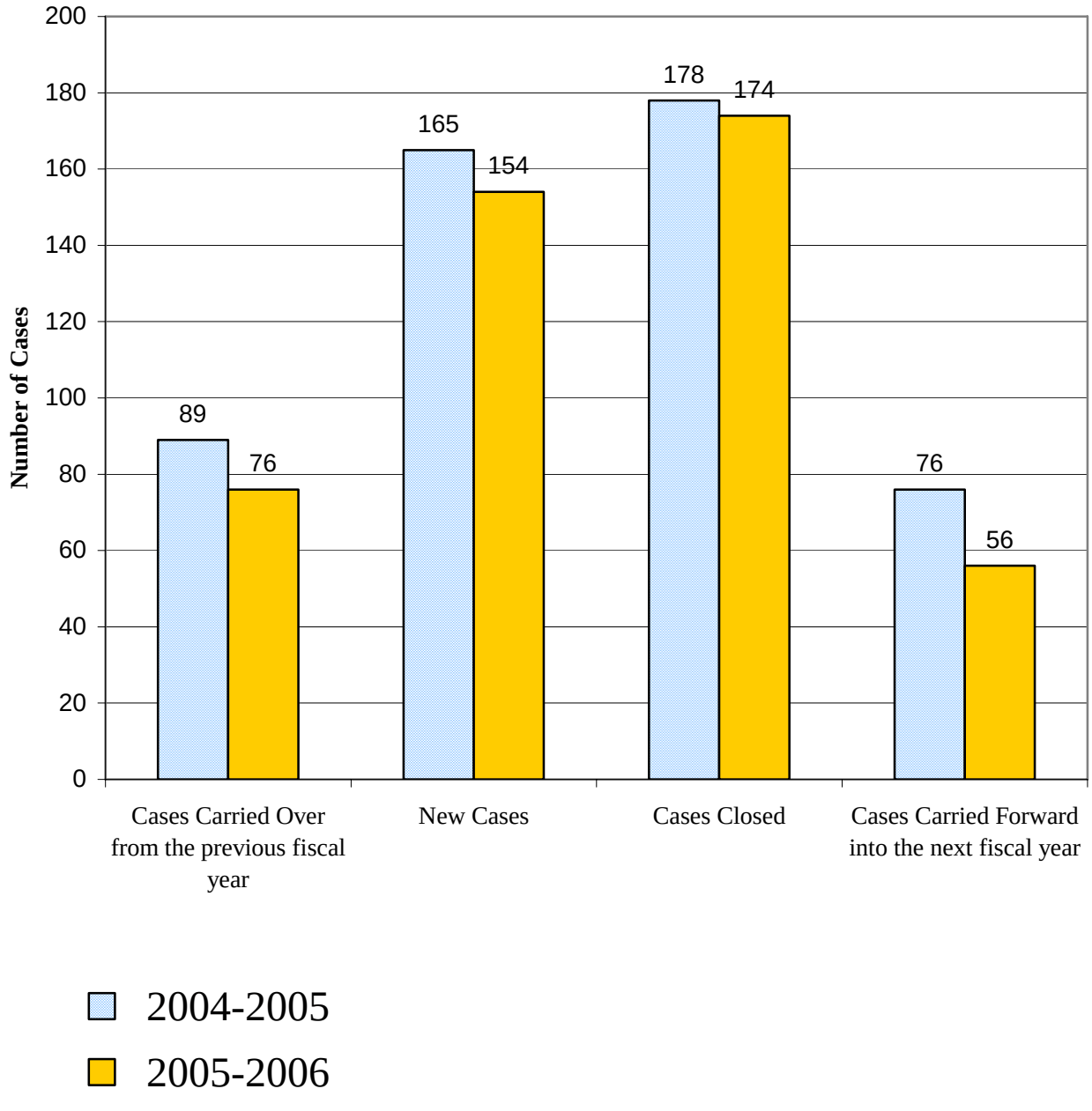
* Withdrawal by applicant/appellant; case abandoned; settlement reached after mediation, etc.

** Includes preliminary hearings.

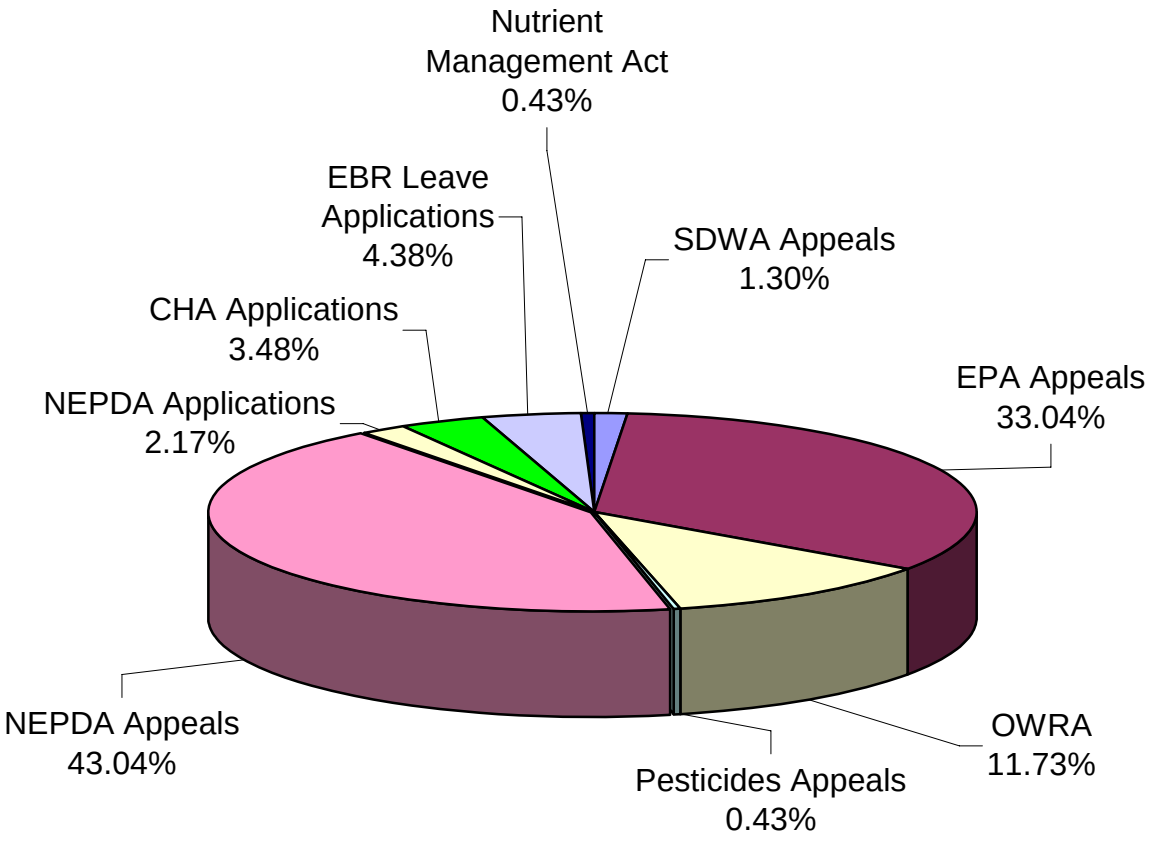
*** Written hearings.

**** Applies to Development Permit Appeals only.

Total Resolved Cases - 2004-2005 vs. 2005-2006



Total Cases in 2005-2006 by Case Type



Note: There were no applications referred under the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Environmental Assessment Act.*

Total Number of Appeals Received

Fiscal Years 2001 – 2002 to 2005 – 2006

	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006
***Environmental Bill of Rights,* 1993**	**36**	**13**	**21**	**11**	**8**
Environmental Protection Act	**57**	**72**	**63**	**49**	**41**
***NEPDA* – Development Permits**	**65**	**69**	**84**	**74**	**82**
Nutrient Management Act, 2002***	**N/A**	**N/A**	**0**	**0**	**1**
Ontario Water Resources Act	**33**	**40**	**30**	**11**	**15**
Ontario Regulation 459 (Walkerton)*	**52**	**47**	**3**	**N/A**	**N/A**
Pesticides Act	**2**	**0**	**0**	**0**	**1**
Safe Drinking Water Act,* 2002*	**N/A**	**N/A**	**18**	**15**	**0**

***** **Date Revoked June 1, 2003**
****** **Date Proclaimed June 1, 2003**
******* **Date Proclaimed July 1, 2003**

Total Number of Requests for Hearing Received

Fiscal Years 2001 – 2002 to 2005 – 2006

	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006
Consolidated Hearings Act	**1**	**2**	**4**	**5**	**2**
***NEPDA* – Plan Amendments**	**1**	**1**	**1**	**0**	**4**

Consolidated Hearings under the *Consolidated Hearings Act*

The Environmental Review Tribunal has administrative responsibility for the *Consolidated Hearings Act* ("CHA"). This administrative responsibility is conducted under the designation of the Office of Consolidated Hearing. This fiscal year, there was a total of eight requests for a Consolidated Hearing, of which six had been carried forward from the previous fiscal year.

The following table sets out the legislation relevant to potential hearings that the Joint Board[1] was requested to consolidate.

Case Name and Number	***NEPDA*[2]** (Plan Amendment)	***Environmental Protection Act***	***NEPDA*[2]** (Development Permit)	***Planning Act***	***Ontario Planning & Development Act***	***Aggregate Resources Act***	***Expropriations Act***
Central Milton Holdings Ltd./665497 Ontario Limited (99-036)	•			•			
Rock Garden Farms (05-027)			•	•			
Embee Properties Limited et al. (02-244)	•			•	•		
Creekbank Developments Limited (05-109)				•	•		
Dufferin Aggregates, a Division of St. Lawrence Cement Inc. (03-086)	•		•	•		•	
Hamilton General Homes (04-044)	•			•			
Stephens and Rankin (04-036)	•	•	•				
The Corporation Of the Municipality of Clarington (04-164)				•			•

[1] For further information, refer to The Tribunal's Mandate on page 2 of this report.
[2] *Niagara Escarpment Planning and Development Act*

Summaries of Selected Decisions

The following are summaries of all cases heard this fiscal year, except those cases where the Appellant or Applicant withdrew before a Hearing.

Consolidated Hearings Act

Dufferin Aggregates, a Division of St. Lawrence Cement Inc.

Dufferin Aggregates, a Division of St. Lawrence Cement Inc., ("Appellant") filed for a Hearing before a Joint Board pursuant to section 3 of the *Consolidated Hearings Act* regarding a proposal to proceed with an undertaking to secure access to additional aggregate resources north of its existing operation.

Seven Applications were filed in total: two for Development Permits and five for Plan Amendments. All seven Applications were approved with conditions by the Joint Board. These were:

1. An Application to amend the Niagara Escarpment Plan designation of the subject land from Escarpment Rural Area to Mineral Resource Extraction Area.
2. A Development Permit Application to permit extraction following re-designation of the lands within the Niagara Escarpment Development Control Area.
3. An Application for a Class A license for the extraction of aggregate from the site pursuant to the *Aggregate Resources Act*.
4. An Application to amend the Halton Region Official Plan designation of the subject land from Escarpment Rural Area, Agricultural Rural Area, and Greenlands "A" and "B" to Mineral Resource Extraction Area.
5. An Application to amend the Town of Milton Official Plan designation of the subject land from Escarpment Rural Area, Rural Area, and Greenlands "B" to Mineral Resource Extraction Area.
6. An Application to amend a Town of Milton Zoning By-Law to rezone the land from Open Space Rural and Rural to Extractive Industrial.
7. An Application to amend the Town of Halton Hills Official Plan designation of the east extension to Mineral Resource Extraction Area.

Key factors in the approvals included:

- the long-term rehabilitation plans and the transfer of lands owned by the Appellant at the north-west corner of the Niagara Escarpment Plan ("NEP") planning area assured a continuous natural corridor in the NEP planning area
- the final rehabilitated site would add to the NEP park system, provide a greenbelt and provide reservoirs and extensive wetlands
- the clear need for aggregate in close proximity to the Greater Toronto Area

- in balancing the public interest in the preservation of the Niagara Escarpment as a continuous natural corridor and the public interest in having a supply of aggregate as close to the market as possible, the removal of aggregate from the expansion area is in the public interest when the advantages from the final rehabilitation of the site are considered
- the intent of the municipal and regional plans was respected
- section 20 of the *Aggregate Resources Act* empowers the Ministry of Natural Resources to revoke a license if there are contraventions to the Act, the regulations, the Site plan or the conditions of the license
- the agreement to retain certain areas of environmental significance (e.g. habitat of threatened species) outside the extraction boundary
- the measures to implement and maintain the groundwater recharge system, maintain Provincial Water Quality Objective Standards, and the agreement to test residential wells
- the improvements to the design of the pillars and buttresses of the lakes and the monitoring and required reporting in regards to same
- the addressing of archaeological concerns
- the operating conditions with respect to dust and noise
- the rehabilitation of the haul route and the burying of the water pipes post-extraction
- the mitigation measures would assist in the remediation of the concerns of residents
- the public participation process required by the *Planning Act* and the *Aggregate Resources Act* was followed
- Dufferin's positive track record of rehabilitation of the Milton Quarry

Decision released: June 8, 2005 (Case No.: 03-086)
Two petitions to Cabinet were filed on June 20 and June 29, 2005.

Stephens and Rankin Inc.

The Joint Board considered a proposal by Stephens and Rankin Inc. ("Proponent") to expand an existing asphalt plant within the Vineland Quarry. The undertaking had three aspects: a Niagara Escarpment Plan Amendment Application to recognize the existing asphalt plant in its historic location and to allow for the operation, expansion and improvement of the plant; a Development Permit Application regarding the proposed expansion of the plant; and an Application for a Certificate of Approval (Air) ("CofA") for the proposed expansion.

The plant had been in operation since 1984 under multiple CofA's but without a Development Permit. An Application for a further CofA regarding the proposed expansion of the plant was refused by the Ministry of the Environment ("MOE") because, while the MOE supported the Application in principle, the Proponent did not have a valid Development Permit as is required by subsection 24(3) of the *Niagara Escarpment Planning and Development Act* ("*NEPDA*"). The Proponent's Application for a Development Permit was refused by the Niagara Escarpment Commission because, as a Development Permit was not obtained at the time of the installation of the asphalt plant, the plant did not qualify as an "existing use" as that term is defined by the Niagara Escarpment Plan ("NEP"). The Proponent then applied for an amendment to the NEP.

The Plan Amendment and the Development Permit were supported by the NEC and the CofA was supported by the MOE. According to the NEC and the MOE, the issuance of the Development Permit would follow the approval of the Plan Amendment and the issuance of the CofA would follow the issuance of the Development Permit. The only objectors to the Plan Amendment Application were nearby owners of property.

The Joint Board held that the proposed Plan Amendment met the objectives of the NEP and the *NEPDA* and thus should be approved. The evidence demonstrated that the expansion of the plant would yield environmental benefits and that there would be no significant environmental impact from the plant. The Joint Board also held that the approval of the Plan Amendment meant that the Development Permit could be issued, and in turn, the issuance of a Development Permit meant that the CofA could be issued. All three aspects of the undertaking were, therefore, approved.

Decision released: December 1, 2005 (Case No.: 04-036)

Embee Properties Limited et al.

This Joint Board proceeding concerned the proposal by Embee Properties Limited, Marie Baker Holdings Limited, Hilite Holdings Limited, Land Syndicate (Burlington) Limited and Chain Gate Developments Limited ("Proponent") to establish a Special Study Area ("SSA") on lands owned by them as well as on nearby lands. The SSA was to act as a freeze on the consideration of land use designations pending a final determination of the route that the proposed Niagara to Toronto highway was to take. Also listed on the Proponents' Notice of Undertaking were a number of referrals and deferrals relating to land use designations, Niagara Escarpment Plan Amendment 71 and three Parkway Belt West Plan files. The lands in question can be considered as those lands that are now, since the passage of the *Greenbelt Act, 2005*, governed by the Niagara Escarpment Plan ("NEP") (the Link Lands) and those lands governed by the Parkway Belt West Plan (the Gap Lands).

The Joint Board considered a motion brought by the Niagara Escarpment Commission, the Ministry of Municipal Affairs and Housing, the City of Burlington and the Region of Halton to dismiss the Proponents' SSA applications and related matters. Paletta International Corporation and James Fisher (land owners in the proposed SSA) were added as Parties.

The Joint Board held that the amendments to the *Niagara Escarpment Planning and Development Act* ("*NEPDA*"), made pursuant to the *Greenbelt Act, 2005*, apply to those matters dealing with the Link Lands. The amendments to the *NEPDA* include a prohibition on amendments to the NEP if the proposal seeks any amendment to permit urban uses within certain land use designations. As the Proponents stated the eventual goal of the SSA Applications was urban development, the Applications were statute barred. Alternatively, the SSA Applications were held to be without merit as there was no need for a freeze on the determination of land use designations as the designations had already been made. Order-in-Council 2296/2004, made subsequent to the passage of the *Greenbelt Act, 2005*, assigned land use designations to the Link Lands.

The SSA Applications as they relate to the Gap Lands were dismissed as being not in the provincial interest because the underpinnings of the Applications, including the studies of the area as a whole, the original environmental assessment (the terms of reference of which had since been withdrawn) and the legal and policy environment (which had since changed with the passage of the *Greenbelt Act, 2005*), had been seriously eroded.

The other matters listed in the Notice of Undertaking were also dismissed as not being in the public or provincial interest, not having a planning justification or being moot. The Joint Board granted the motion.

Decision released: December 23, 2005 (Case No.: 02-244)

Environmental Bill of Rights, 1993

Anne Vallentin on behalf of Haldimand Against Landfill Transfers (HALT) and Six Nations of the Grand River v. Director, Ministry of the Environment

An application for Leave to Appeal was filed by Anne Vallentin on behalf of Haldimand Against Landfill Transfers ("HALT") and Six Nations of the Grand River ("Six Nations") pursuant to the *Environmental Bill of Rights, 1993* ("*EBR*"), with respect to the decision of the Director ("Director"), Ministry of the Environment to issue a Provisional Certificate of Approval to increase the rate of fill at the Edwards Landfill Site.

With respect to Six Nations:

A preliminary issue was raised as to whether a Notice of Constitutional Question was required to be filed by Six Nations pursuant to section 109 of the *Courts of Justice Act*. With respect to this preliminary issue, the Tribunal held that the Notice of Constitutional Question requirements of the *Courts of Justice Act* were not applicable as Six Nations was not challenging the constitutional "validity, applicability or operability" of any section of the *EBR*, but rather was arguing that due to a failure to consult, the test for Leave to Appeal in section 41 of the *EBR* had not been met.

Six Nations pursued a single ground in their application for Leave to Appeal, namely the failure of the Director to consult with them on behalf of the Province of Ontario. With respect to this issue, the Tribunal found that the Tribunal had the authority to address the issues of aboriginal rights, that the Director did in fact have such a duty that flowed from section 35 of the *Constitution Act, 1982*, and that the Director failed to discharge that duty. Thus, the first prong of the section 41 of the *EBR* test had been met. The Tribunal further held that as the failure to consult is a fundamental issue that must be addressed before the decision to increase the rate of fill can be implemented, and that the remedy available to the Tribunal was granting the leave, that leave should be granted. In the alternative, the Tribunal held that the increase in the rate of

fill could result in significant environmental harm and thus the second prong of the section 41 test had been met. Leave to Appeal was thus granted to Six Nations.

With respect to HALT:

Vallentin raised six grounds in her application for Leave to Appeal. Her contentions that the site owner was too inexperienced to be granted approval and that the site owner failed to comply with previous conditions were rejected on the facts. Her arguments that the Site Decommissioning Plan was inadequate, that the site was unsuitable and that the approval process was flawed were rejected because those arguments related to a previous notice for which an application for Leave to Appeal was not filed and the Tribunal, therefore, lacked jurisdiction. Her sixth argument that the increase in truck traffic was not adequately addressed by the Director because the approval was granted with an open–ended condition that the road in question be the object of future study was accepted. Leave to Appeal was granted on that ground.

Decision released: June 21, 2005 (Case No.: 04-156/04-157)

Wayne and Joanne Simpson and Brenda Johnson on behalf of Environment Hamilton v. Director, Ministry of the Environment

This matter involved an Application filed by Wayne and Joanne Simpson and Brenda Johnson on behalf of Environment Hamilton ("Applicants"), pursuant to section 38 of the *Environmental Bill of Rights, 1993,* for Leave to Appeal the issuance of a Certificate of Approval (Air) ("CofA"). The CofA was issued by the Director, Ministry of the Environment ("MOE") to BIOX Canada Ltd. ("BIOX") on September 22, 2005, pursuant to section 9 of the *Environmental Protection Act*, for the operation of a proposed biodiesel plant. The Applicants argued three grounds to demonstrate that no reasonable person could have made the decision that the Director made: the lack of conditions in the CofA requiring stack testing to determine actual emissions of pollutants, the omission in the CofA of any reference to emission or odour control equipment, and the lack of information on the safe handling and storage of residual waste.

The Tribunal granted Leave to Appeal on the first ground and limited the scope of the Appeal to this ground. While BIOX and the MOE had agreed that BIOX would seek two amendments to the CofA regarding stack testing, these amendments had not been made at the time of the Application. The Tribunal held that monitoring and follow-up are methods that confirm modeling information and that monitoring and follow-up are consistent with a precautionary approach. Thus, no reasonable person could have issued the CofA without a stack testing requirement. With regard to the second part of the Leave to Appeal test, the Tribunal held that the absence of information on actual emissions means that emitted pollutants are unknown and thus, significant environmental harm could result.

The argument regarding emission or odour control equipment failed as the emissions were within the regulated limits and no other evidence was presented to show that the emissions would cause a threat to health, comfort or reasonable use or enjoyment of property. The issue of residual

waste was held to be outside the matters governed by section 9 approval and, therefore, the third argument also failed.

Decision released: November 9, 2005 (Case Nos.: 05-078/05-079)

The Corporation of the County of Grey, the Corporation of the Town of the Blue Mountains and the Corporation of the Municipality of Grey Highlands v. Director, Ministry of the Environment

Pursuant to section 38 of the *Environmental Bill of Rights, 1993* ("*EBR*"), the Corporation of the County of Grey, the Corporation of the Town of the Blue Mountains and the Corporation of the Municipality of Grey Highlands ("Applicants") filed an Application for Leave to Appeal the decision of the Director, Ministry of the Environment, to issue a renewed Permit to Take Water ("PTTW"), pursuant to section 34 of the *Ontario Water Resources Act*, to Gibraltar Springs. The PTTW allowed the taking of water from three wells for a commercial water bottling operation.

The Applicants raised a number of grounds as to why the section 41 *EBR* test had been met. Before analyzing the arguments of the Applicants, the Tribunal engaged in an extensive canvassing of authorities and a principled interpretation of the section 41 test to answer the contentious issue of whether each ground advanced by the Applicants must simultaneously meet both parts of the section 41 test or whether separate arguments could be put forward for each part of the section 41 test. The Tribunal held that while the test is conjunctive in that both parts of the test must be met in order for Leave to Appeal to be granted, nothing in the *EBR* or in the case law requires that each argument raised satisfy both parts of the test.

The Tribunal further held that the decision to issue the PTTW was not one that a reasonable person would have made as it permitted the taking of water in an amount that was essentially a reserve for possible future use, contrary to MOE guidelines. The Tribunal also held that the decision could cause significant harm to the environment because of the magnitude of the water taking, the sensitive area in which the water taking occurs and the lack of adequate information on impacts. The Tribunal granted Leave to Appeal, but limited the appeal to exclude any arguments regarding the issue of bulk water transfers as the Director and Gibraltar Springs satisfactorily addressed that issue with their evidence and submissions.

Decision released: December 30, 2005 (Case Nos.: 05-072/05-073/05-074)
A motion to review this decision was filed with the Tribunal on January 13, 2006.

Environmental Protection Act

A.F. White Limited v. Director, Ministry of Environment

A.F. White Limited ("Appellant") appealed a Director's Order under section 140 of the *Environmental Protection Act.* The Director's Order confirmed a Provincial Officer's Order

regarding the terms and conditions of various Certificates of Approval for waste processing, mobile systems, waste management systems, air, and municipal and private sewage works.

Subsequent to the appeal being filed, the Appellant's shares were sold to P.C.B. Containment Technology (Kitchener) Limited. The new owners requested a withdrawal of the appeal at the commencement of the Hearing in an effort to mutually resolve the items stated in the Order. The Director consented to the withdrawal. The Tribunal ruled that the withdrawal would not prejudice any of the Parties or be contrary to the public interest and allowed the withdrawal pursuant to Rule 55 of the Rules of Practice of the Tribunal.

Decision released: April 6, 2005 (Case No.: 04-070)

Grenville Fish and Game Club v. Director, Ministry of the Environment

Grenville Fish and Game Club ("Appellant") appealed an Order issued by the Director of the Ministry of the Environment under section 157.3(5) of the *Environmental Protection Act* regarding potential lead contamination in the soil. The Order required the delineation of the extent of the lead contamination in the soil at the site. The Order was stayed by the Tribunal pending completion of the Hearing of the appeal.

Counsel for the Appellant indicated that an agreement of purchase and sale regarding the site had been executed with the previous owners and that the site was now part of the Appellant's lands. Counsel for the Director indicated that the Ministry takes a different approach to on-site contamination as opposed to off-site contamination and that the Director was prepared to revoke the Order and that a Provincial Officer would be meeting with the Appellant to discuss ways that the contamination on the property could be addressed.

The Appellant and the Director, along with the previous owners, agreed that the Order was to be revoked and the appeal withdrawn. The Tribunal found that the public interest would be served by the revocation of the Order and the withdrawal of the appeal as the issue of lead contamination would continue to be addressed. Upon receipt of notice of withdrawal from the Appellant, the matter would be considered closed.

Decision released: April 6, 2005 (Case No.: 04-142)

Rail Cycle Inc. et al. v. Director, Ministry of the Environment

Rail Cycle Inc., 310 Waste Ltd., 2020700 Ontario Inc., 2020780 Ontario Ltd., Edmond Hanna and Robert Sansone appealed an Order issued by the Director under sections 17, 18, 44, 132, 196 and 197 of the *Environmental Protection Act* regarding the discharge of contaminants into the natural environment and the removal of waste. Following the initial Preliminary Hearing, the Tribunal issued an Order requiring the Appellants to correct the deficient Notice of Appeal and conform to the requirements of section 142 of the *Environmental Protection Act* by stating each section of the Order being appealed and the grounds to be relied on at the Hearing. The

Tribunal's Order also stated that non-compliance would result in the Tribunal dismissing the appeals pursuant to Rule 47 of the Tribunal's Rules of Practice.

The Tribunal's Order was not complied with and the Tribunal dismissed the appeals.

Decision released: May 6, 2005 (Case No.: 04-122)

Imperial Oil Limited and 172965 Canada Limited v. Director, Ministry of the Environment

Imperial Oil Limited and 172965 Canada Limited appealed an Order issued by the Director, Ministry of the Environment, under section 157.3(5) of the *Environmental Protection Act* regarding site remediation and off-site petroleum hydrocarbon and related contamination. The Parties reached an agreement as to an amended Order. The Tribunal was satisfied that the public interest had been protected and issued the amended Order.

Decision released: May 13, 2005 (Case No.: 04-052/04-053)

The Corporation of the Township of Howick v. Director, Ministry of the Environment

The Corporation of the Township of Howick ("Appellant") appealed an Amended Certificate of Approval issued by the Director, Ministry of the Environment, regarding the conditions for the use and operation of a landfill site.

The first issue before the Tribunal was the appropriate volume capacity of the landfill. Based on a review of the past history of the site and the comments of MOE personnel, there was a clear indication that the approval was restricted to the limited area as argued by the MOE and not the more expansive area as argued by the Appellant. The second issue was whether waste placed above grade was acceptable. The Tribunal disagreed with the Appellant on this issue as well, finding no evidence that the MOE approved or commented positively in regard to above grade capacity. The appeal was dismissed and the Amended Certificate of Approval was approved with revised conditions clarifying the appropriate capacity of the site.

Decision released: June 30, 2005 (Case No.: 04-130)

Ryan and 1353837 Ontario Incorporated v. Director, Ministry of the Environment

Lawrence Ryan and 1353837 Ontario Inc. appealed a Director's Order issued pursuant to section 157.3(5) of the *Environmental Protection Act*. The Order dealt with the possibility of asbestos and lead paint being within a building property and the proposed activities that may cause the release of those contaminants into the natural environment.

A settlement agreement was reached by the Parties and the Appellants agreed to withdraw their appeals. The Tribunal held that no Party would be adversely affected by the withdrawal and that the withdrawal would not be contrary to the public interest. The Tribunal accepted the settlement agreement and dismissed the appeals.

Decision released: July 11, 2005 (Case Nos.: 04-104/04-105) (decision amended on January 18, 2006)

Carsmetics Inc. and Jim Finley v. Director, Ministry of the Environment

Carsmetics Inc. and Jim Finley ("Appellants") appealed an Order, issued by the Director, Ministry of the Environment, pursuant to section 157.3(5) of the *Environmental Protection Act*. The Order directed the cessation of the discharging of contaminants into the natural environment from mobile paint spray units. The Parties reached a settlement and the Appellants subsequently withdrew their appeals. The Tribunal was not alerted to any public interest concerns regarding the settlement and dismissed the appeals.

Decision released: August 25, 2005 (Case Nos.: 04-033/04-034)

Gesa Reicher v. Director, Ministry of the Environment

Gesa Reicher ("Appellant") appealed a Director's Order issued pursuant to section 196(2) of the *Environmental Protection Act*. The Order directed that access to the Appellant's property be permitted to contractors retained by a neighbouring property owner to do remediation work regarding a domestic fuel oil spill. The Appellant was concerned that the methodology proposed for the remediation work was too destructive of the physical integrity of terraces and the landscaping on both properties. The Appellant believed that a less intrusive method of cleaning up the spill without disturbing the existing terraces and trees, such as the use of new biotechnology, could be employed.

The Tribunal amended the Order on consent of the Parties to give the neighbouring property owner an opportunity to develop a new work plan with possibly a new methodology. The Appellant would have the opportunity to comment on this new plan. With the changes to the Order, the Parties consented to the dismissal of the appeal. The Appellant withdrew her appeal and the Tribunal dismissed the appeal.

Decision released: September 12, 2005 (Case Nos.: 05-029)

Wanda Kociuk v. Director, Ministry of the Environment

Wanda Kociuk ("Appellant") filed two separate appeals, pursuant to section 140 of the *Environmental Protection Act*, of Orders issued by the Director, Ministry of the Environment, under section 157.3(5) of the *Environmental Protection Act*. The first appeal was filed on March 7, 2005 regarding an Order to allow contractors and consultants access to the Appellant's property to remediate the effects of an oil spill that occurred on a neighbouring property and had migrated into the tiles of the Appellant's basement. The second appeal was filed on April 6, 2005 regarding an Order requiring the Appellant to retain the services of a qualified consultant to undertake remedial work at the Appellant's property.

The Appellant alleged that her home had been significantly damaged by the contractor named in the Order and that she should not have to be placed in the position of being responsible for the amelioration of an oil spill caused on another property.

The Parties agreed that the first Order would be amended to replace the contractor and to specify the work to be done. The Appellant agreed to withdraw her appeals and the Director agreed to revoke the second Order. The Tribunal reviewed the Minutes of Settlement and was satisfied that the agreement was not adverse to the public interest. The Tribunal dismissed the appeals.

Decision released: November 10, 2005 (Case Nos.: 04-160/05-003)

Gunther Mele Limited and Douglas King, Pepperseed Developments Inc. and the Estate of Edward V. Mele v. Director, Ministry of the Environment

Gunther Mele Limited and Douglas King, Pepperseed Developments Inc. and the Estate of Edward V. Mele appealed, under section 140 of the *Environmental Protection Act*, an Order issued by the Director, Ministry of the Environment, pursuant to section 157.3(5) of the *Environmental Protection Act*, regarding contamination of the groundwater and air and the dumping of contaminants. At the Preliminary Hearing, all Parties (except Gunther Mele Limited and Douglas King, who were not in attendance) informed the Tribunal that their outstanding issues had been resolved and settled, including compliance with the Order. The Tribunal was satisfied that the dismissal of the appeals would not adversely affect the interests of any of the Parties nor would it be contrary to the public interest.

The Tribunal, in an Order dated October 25, 2005, conditionally dismissed the appeals. Gunther Mele Limited and Douglas King were given seven days to make submissions objecting to the dismissal. No submissions were received and the appeals were dismissed.

Decision released: November 22, 2005 (Case Nos.: 03-196/03-197/03-199)

Essroc Canada Inc. v. Director, Ministry of the Environment

Essroc Canada Inc. appealed a Certificate of Approval, pursuant to section 139 of the *Environmental Protection Act*, issued by the Director, Ministry of the Environment ("MOE"), under section 9 of the *Environmental Protection Act*, regarding source testing and an updated emission summary. An agreement between the Parties was reached and, at the Preliminary Hearing, the Parties presented new terms and conditions to the Tribunal for approval.

The Tribunal, based on the evidence of a chemical engineer for the MOE who testified that the revised conditions complied with all MOE requirements, approved the revisions and dismissed the appeal.

Decision released: November 23, 2005 (Case No.: 05-004)

Greg Hart and 836724 Ontario Limited v. Director, Ministry of the Environment

Greg Hart and 836724 Ontario Limited appealed an Order pursuant to section 140 of the *Environmental Protection Act*, issued by the Director ("Director"), Ministry of the Environment under section 157.3(5) of the *Environmental Protection Act*, regarding the assessment, inventory, tracking, storage and disposal of wastes. The issue in this matter was when Mr. Hart was effectively served with the Order. The Order was issued on August 30, 2005 and, as alleged by the Director, was served on the same day. Mr. Hart's Notice of Appeal was received by the Tribunal on September 16, 2005, beyond the statutory time limit for filing an appeal. The *Environmental Protection Act* stipulates that notice requiring a Hearing must be served within 15 days after service of the Order being appealed (section 140). An extension may only be granted if service of the Order did not give the person notice of the Order (section 141).

The Tribunal heard oral arguments regarding when service of the Order was effective and held that service was effective on August 30, 2005 and that section 141 did not apply. The Notice of Appeal was, therefore, served late and the Tribunal had no jurisdiction to hear the appeal. The Tribunal accepted the evidence of the Director that service was made by two Provincial Officers who attended at the offices of Mr. Hart and 836724 Ontario Limited on August 30, 2005. Prior notification of the attendance was given by telephone. On instructions from an employee of Mr. Hart, the Order was left with a receptionist. There was evidence that this procedure, including the leaving of an Order with the receptionist, was followed in the past without objection from Mr. Hart. The Tribunal held that it did not matter that the Order was not given to Mr. Hart personally. While he may not have received the Order until a few days later, Mr. Hart was aware that he was being served on August 30, 2005 and had given the instructions to the employees to receive the Order.

Decision released: December 22, 2005 (Case Nos.: 05-063/05-064)

Spruce Falls Inc. v. Director, Ministry of the Environment

Spruce Falls Inc. appealed an Order, pursuant to section 140 of the *Environmental Protection Act*, issued by the Director, Ministry of the Environment, under section 157.3(5) of the *Environmental Protection Act*, regarding the operation of combustors at the Spruce Falls mill. Following a series of teleconferences, the Parties agreed to replace the condition under appeal with a new term requiring an action plan to demonstrate compliance.

The Tribunal reviewed the settlement agreement and concluded that the agreement was in accord with the Tribunal's Practice Direction on the Consideration of Agreements. The appeal was allowed in part.

Decision released: December 30, 2005 (Case No.: 04-143)

Donald Lee v. Director, Ministry of the Environment

Donald Lee ("Appellant") filed an appeal pursuant to section 140 of the *Environmental Protection Act* of an Order issued by the Director ("Director"), Ministry of the Environment, under sections 17, 18 and 43 of the *Environmental Protection Act* regarding the release of contaminants from buried barrels of paint on the site of R.E. Paint Company Limited, a former paint and solvent manufacturing factory. In a decision dated January 6, 2004, the Tribunal held that Mr. Lee did not have management or control of R.E. Paint Company Limited, the corporate owner of the factory at the time the barrels were likely buried on the property, and that Mr. Lee was not responsible for burying the barrels of paint subsequent to the 1978 fire at the factory. The Tribunal revoked the Order issued to Mr. Lee.

This decision was appealed to Divisional Court by the Director. The Divisional Court set aside the decision of the Tribunal, re-instated the Order, and remitted the matter back to the Tribunal for a re-hearing on the merits.

The Appellant then indicated his desire to withdraw his appeal. The Director requested that the file not be closed as the Director had requested from the Appellant and his wife information pertinent to the settlement of the matter. The Appellant did eventually provide this information, while, according to the Director, his wife did not. The Tribunal asked the Parties for submissions as to why the file should not be closed. No submissions were received and the Tribunal closed the file.

Decision released: February 21, 2006 (Case No.: 04-162)

Oxy Vinyls Canada Inc. v. Director, Ministry of the Environment

Oxy Vinyls Canada Inc. ("Appellant") was issued a Certificate of Approval (Air) ("CofA") under section 9 of the *Environmental Protection Act* by the Director ("Director"), Ministry of the Environment, regarding modifications to a polyvinyl chloride plant with the objective of reducing air emissions of vinyl chloride monomer. The Appellant appealed the requirement in the CofA for the development of a testing protocol to measure emissions of polyvinyl chloride from the manufacturing plant.

During the Preliminary Hearing, the Parties reached an agreement as to the testing protocol. The Appellant withdrew its appeal and the Director consented to the withdrawal. The Tribunal dismissed the appeal.

Decision released: March 1, 2006 (Case No.: 04-021)

Johnson v. Director, Ministry of the Environment

Margaret Johnson ("Appellant") appealed an Order issued by the Director, Ministry of the Environment ("Director"), pursuant to section 157.3(5) of the *Environmental Protection Act*. The Order related to the discharge of wood smoke from a sauna located on the Appellant's

property. The Order was issued following an investigation launched at a request made under Part V of the *Environmental Bill of Rights, 1993* by Sheila McNamara, a neighbour of the Appellant. Ms. McNamara was added as a Party following the Preliminary Hearing.

The Tribunal, in its Order of February 28, 2006, held that an agreement reached between the Appellant and the Director failed to address the potential of adverse effects (this Order is also summarized in this Annual Report). Following the issuance of that Order, the Parties (including Ms. McNamara) reached an agreement and resolved all outstanding issues, including the withdrawal of the appeal. The Tribunal dismissed the appeal.

Decision released: March 15, 2006 (Case No.: 05-031)

Clean Harbors Canada, Inc. v. Director, Ministry of the Environment

Clean Harbors Canada, Inc. ("Appellant") appealed a Director's Order under section 140 of the *Environmental Protection Act*. Pursuant to section 157.3(5) of the *Environmental Protection Act*, the Director's Order confirmed certain portions and altered other portions of a Provincial Officer's Order requiring the Appellant to undertake remedial measures to eliminate any off-site adverse odour impacts caused by the acceptance on the site of wastes containing naphthalene compounds.

Following mediation facilitated by the Tribunal, the Parties agreed on the terms of a Consent Order, which, they assured the Tribunal, would ensure that there would be little or no adverse odour impacts caused by the receipt of naphthalene compounds at the site.

Being satisfied that the Consent Order represented the combined interests of the Appellant and the Ministry of the Environment and accorded with the Tribunal's Practice Direction on Consideration of Agreements, the Tribunal accepted the Consent Order and dismissed the appeal pursuant to Rule 137 of the Tribunal's Rules of Practice and Practice Directions.

Decision released: March 16, 2006 (Case No.: 05-133)

The Corporation of the Municipality of West Grey v. Director, Ministry of Environment

The Corporation of the Municipality of West Grey ("Appellant") appealed a Director's Order under s. 140 of the *Environmental Protection Act.* Pursuant to section 157.3(5) of the *Environmental Protection Act*, the Director's Order amended and confirmed a Provincial Officer's Order requiring the Appellant to retain a consultant to submit a plan detailing a schedule of the steps to be taken to prevent South Saugeen River bank instability from impacting on the sewage lagoons situated at the Neustadt Sewage Works.

At the request of both Parties, the Tribunal ordered that the Director's Order be stayed until June 12, 2006.

The Parties reached a settlement agreement and requested that the Tribunal issue an order containing the terms of the agreement and dismissing the proceedings.

Pursuant to Rule 172 of the Tribunal's Rules of Practice and Practice Directions, the Tribunal reviewed the agreement and determined that it was consistent with the Director's Order, the relevant provisions of the *Ontario Water Resources Act* and the public interest in environmental protection. Being satisfied that the agreement represented the combined interests of the Appellant and the Ministry of Environment and in accordance with the Tribunal's Practice Direction on Consideration of Agreements, the Tribunal accepted and adopted the settlement agreement, lifted the stay and dismissed the appeal.

Decision released: March 22, 2006 (Case No.: 05-134)

Ontario Water Resources Act

The Municipality of West Nipissing v. Director, Ministry of the Environment

This was an appeal by The Municipality of West Nipissing of an Amended Certificate of Approval issued by the Director, Ministry of the Environment, under section 53 of the *Ontario Water Resources Act*, regarding the approval of the proposed upgrades to the existing municipal sewage works.

The Tribunal adjourned the Hearing with the consent of both Parties in order for the Parties to finalize a settlement agreement. Subsequent to the adjournment, the appeal was withdrawn. The file was closed.

Decision released: April 20, 2005 (Case No.: 04-092)

Inco Limited v. Director, Ministry of the Environment

Inco Limited filed an appeal pursuant to section 100 of the *Ontario Water Resources Act*, regarding a Certificate of Approval ("CofA") issued by the Director, Ministry of the Environment, pursuant to section 53 of the *Ontario Water Resources Act*, regarding the collection of mine water, mine seepage water and storm water run-off from a mine and waste water treatment plant.

A differently constituted Tribunal, in a decision dated December 1, 2003, found that the limits in the CofA regarding effluents went beyond the effluent limits set out in Regulation 560/94, Schedule 1 and that this was not permitted as the Regulation bestowed no residual discretion on the Director to require more stringent limits. In a decision dated October 6, 2004, the Divisional Court overturned this decision, reinstated the CofA, and remitted the matter back to the Tribunal. The Divisional Court held that neither the Regulation nor section 176 of the *Environmental Protection Act* prohibited the Director from imposing more stringent limits on effluents in the public interest.

In a letter dated November 21, 2005, the Tribunal was advised by Inco that the MOE was providing a new CofA that was acceptable to Inco and that Inco was withdrawing its appeal. The Tribunal dismissed the appeal.

Decision released: December 1, 2005 (Case No.: 04-146)

Trent Talbot River Property Owners Association, Marchand Lamarre and Jodi MacIntosh v. Director, Ministry of the Environment

Trent Talbot River Property Owners Association, Marchand Lamarre and Jodi MacIntosh ("Appellants") filed an appeal on January 23, 2003, pursuant to section 100 of the *Ontario Water Resources Act*, regarding a Permit to Take Water ("PTTW") issued by the Director, Ministry of the Environment, pursuant to section 34 of the *Ontario Water Resources Act*, regarding the dewatering of a proposed quarry. The Appellants also filed, on February 13, 2004, an appeal pursuant to section 100 of the *Ontario Water Resources Act*, regarding a Certificate of Approval (sewage) ("CofA") issued by the Director, Ministry of the Environment, pursuant to section 53 of the *Ontario Water Resources Act*, regarding an industrial sewage works for the discharge of waste water from the same quarry. The Tribunal granted Leave to Appeal the issuance of the PTTW and the CofA to the Appellants under the *Environmental Bill of Rights, 1993* on January 8, 2003 and January 29, 2004 respectively.

Regarding the PTTW, the Tribunal found that the water taking under the PTTW would negatively impact the wells of the Appellants, as well as three other nearby wells, but would not impact the quantity of water in other wells within a one kilometre radius. The Tribunal also held that the quality of water in the domestic wells would not be impacted by the taking under the PTTW. Regarding the CofA, the Tribunal found that there was no or little potential for adverse effects upon the aquatic life in the discharge stream and the Talbot River from the discharge of water from the quarry. The Tribunal also found that there was almost no potential for adverse effects upon the quality of water in the Talbot River from the discharge from the quarry. In reaching these conclusions, the Tribunal ruled that the conditions requiring monitoring, testing and remedial measures would address the concerns of the Appellants. The Tribunal did allow the appeal in part by adding terms and conditions to the PTTW and the CofA to strengthen the monitoring and review processes regarding the water taking and discharge.

Decision released: December 7, 2005 (Case Nos.: 02-214/02-217/03-188/03-189) (decision amended on January 26, 2006)

Two appeals were filed with the Minister of the Environment on January 10 and January 20, 2006. A motion to review was filed with the Tribunal on December 12, 2005 and was heard on March 8, 2005.

The Corporation of the Township of Atikokan and the Ontario Clean Water Agency v. Director, Ministry of the Environment

The Corporation of the Township of Atikokan ("Township") and the Ontario Clean Water Agency ("OCWA") filed appeals pursuant to section 100 of the *Ontario Water Resources Act* of Orders issued by the Director ("Director"), Ministry of the Environment regarding the reduction of sewage system surcharging that had resulted in sewage backups in Atikokan, Ontario. The Township and the OCWA were both considered owners of different portions of the sewage system. The ownership of the entire sewage system was transferred to the Township and the Director issued a new Order to the Township alone, revoking the two previous Orders and requiring the Township to develop and implement a contingency plan to address the sewage system surcharging, install stand-by power at certain pumping stations and undertake a river water quality monitoring program. The Township appealed this new Order. The OCWA was added as a Party to the Township's appeal of this third Order.

This third Order was revoked by the Director as a result of progress made by the Township and the Ministry in resolving the sewage issues. The appeal was dismissed. In dismissing the appeal, the Tribunal noted that the revocations did not adversely affect the interests of any Party and were in the public interest.

Decision released: January 27, 2006 (Case Nos.: 03-163/03-167/04-158)

Environmental Protection Act and *Ontario Water Resources Act*

McNalty v. Director, Ministry of the Environment

Vicki and James McNalty appealed, pursuant to section 139 of the *Environmental Protection Act* and section 100(4) of the *Ontario Water Resources Act*, an Order issued by the Director, Ministry of the Environment pursuant to sections 157 and 196 of the *Environmental Protection Act* and section 16 of the *Ontario Water Resources Act* regarding the clean up, monitoring and assessment of ground water and soil contamination occurring as a result of a residential fuel oil spill.

The Parties reached an agreement and the appeal was withdrawn. The Tribunal held that the settlement adequately served the public interest and thus the withdrawal was accepted.

Decision released: June 17, 2005 (Case No.: 04-147)

McColl-Frontenac Inc., 172965 Canada Limited, Imperial Oil Limited, McColl-Frontenac Petroleum Inc.; and Suncor Energy Inc., Suncor Energy Products Inc., and Pioneer Petroleums Management Inc. v. Director, Ministry of the Environment

McColl-Frontenac Inc., 172965 Canada Limited, Imperial Oil Limited, and McColl-Frontenac Petroleum Inc. ("Imperial Oil") and Suncor Energy Inc., Suncor Energy Products Inc., and Pioneer Petroleums Management Inc. ("Suncor") appealed an Order of the Director, Ministry of the Environment, pursuant to section 140 of the *Environmental Protection Act* and section 100 of the *Ontario Water Resources Act*. The Order was issued pursuant to section 157.3(5) of the *Environmental Protection Act* and section 16.4(5) of the *Ontario Water Resources Act* regarding contamination on the properties of Imperial Oil and Suncor.

The Parties successfully negotiated compliance with the Order and agreed upon the required aspects of the clean up. Imperial Oil and Suncor withdrew their appeals and the Director consented to the withdrawal. The Tribunal determined that the settlement agreement was not adverse to the public interest and dismissed the appeals.

Decision released: August 24, 2005 (Case Nos.: 03-191/03-192/03-193/03-194/03-200/03-201/03-202)

Niagara Escarpment Planning and Development Act

Moss-Thachuk and Gastmeier v. Niagara Escarpment Commission

Josephine Moss-Thachuk and Richard and Catherine Gastmeier ("Appellants") filed for a Hearing pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") to appeal the Development Permit conditionally approving Alison Davies' application to construct a single dwelling. The Niagara Escarpment Commission ("NEC") requested that the appeals be reviewed pursuant to section 25(8.1) of the *NEPDA* on the grounds that Ms. Moss-Thachuk did not respond to the Hearing Officer's Order to provide representations as to why the Hearing Officer should not refuse to conduct the Hearing.

Specifically, the Appellant Ms. Moss-Thachuk was Ordered by the Hearing Officer to provide the Niagara Escarpment Hearing Office with a planning justification for her appeal. The Appellant failed to do so and her appeal was dismissed pursuant to section 25(8.1)(c) of the *NEPDA*. The Gastmeiers and the NEC reached an agreement and the original decision of the NEC on the Development Permit application, with revised conditions, was deemed to be confirmed pursuant to section 25(12.1) of the *NEPDA.*

Decision released: April 14, 2005 (Case Nos.: 04-121/04-126)

Wolfinger and Prodoehl v. Niagara Escarpment Commission

Hedi Wolfinger and Caroline Prodoehl appealed, pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act* ("*NEPDA*"), a decision of the Niagara Escarpment

Commission ("NEC") to conditionally approve a Development Permit application made by Terry Hunter to permit the spreading of hauled septage. The Parties reached an agreement regarding revised conditions and the decision of the NEC, with the revised conditions, was deemed to be confirmed pursuant to section 25(12.1) of the *NEPDA.*

Decision released: April 25, 2005 (Case Nos.: 04-101/04-102)

Wiley v. Niagara Escarpment Commission

Pamela Wiley ("Appellant") filed an appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act* with respect to the decision of the Niagara Escarpment Commission ("NEC") to refuse her Development Permit application to convert a portion of an existing barn/storage building into a permanent residence for the accommodation of farm help. The appeal was dismissed and the NEC decision deemed confirmed as the proposed construction was not a permitted use under the Niagara Escarpment Plan or the Town of Mono Official Plan. Specifically, the Appellant did not substantiate her assertion that the lands in question comprised a separate lot of record despite ample opportunity to do so and the application did not support the assertion that the building was an accessory to a bona fide agricultural use.

Decision released: May 5, 2005 (Case No.: 04-133)

Kocsis v. Niagara Escarpment Commission

Steve Kocsis ("Appellant') filed an appeal pursuant to section 25(5) of the *Niagara Escarpment Planning and Development Act ("NEPDA")* with respect to the decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a Development Permit application regarding the merger of two properties and the following winery-related conversions: a hospitality building converted to a tasting bar, servery and seating area; a storage building converted to a wine inventory; and a barn on the lot to be added to a storage for wine and bottles.

The Niagara Escarpment Hearing Office held that the intended uses were permitted by the Niagara Escarpment Plan ("NEP") as they met the definition of small-scale commercial uses as accessories to agriculture. The merger of farmlands was held to be within the jurisdiction of the NEC and this particular merger was desirable and met the objectives of the NEP. There was no intensification of non-agricultural uses nor was there impact on the Appellant's property or his use and enjoyment of his property. Thus, the decision of the NEC to issue the Development Permit was confirmed pursuant to section 25(12) of the *NEPDA.*

Decision released: May 6, 2005 (Case No.: 04-107)

Scarsellone v. Niagara Escarpment Commission

Mauro Scarsellone ("Appellant") filed an appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act* regarding the decision of the Niagara Escarpment Commission to refuse to issue a Development Permit to allow a change in the use of the

hospitality area of an approved winery to include the operation of a forty seat area that serves light meals. The service of light meals is required by the *Liquor License Act* to allow the winery to sell wine by the glass.

The Appellant had agreed to limit the seating to twenty in order to meet the requirements of a Tied House license. The Hearing Officer held that approval would not intensify the use of this area, that no additions or alterations would be required, that no additional impact on the natural environment would occur and that conformity with the Town Official Plan and Regional Plans was not at issue. Thus, the Hearing Officer recommended to the Minister that the application be approved.

The decision of the Hearing Officer was confirmed with revised conditions by the Minister of Natural Resources. The conditions were revised by eliminating the prohibition against the advertising of the provision of food at the winery.

Decision released: May 21, 2003 and confirmed by the Minister on May 11, 2005 (Case No.: 02-172)

John Perry v. Niagara Escarpment Commission

The Appellant John Perry filed an appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") of the decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a Development Permit to construct a single dwelling with an attached garage.

The Hearing Officer recommended to the Minister that the decision of the NEC not be confirmed and the permit not be issued. The site was a questionable choice and the evidence of the Applicants was not credible. The land was prime farmland and its development was not in accord with the purposes of the *NEPDA*.

The Minister of Natural Resources did not concur with the Hearing Officer and directed the NEC to issue the Development Permit subject to the original Conditions of Approval.

Decision released: January 20, 2005 and not confirmed by the Minister on June 23, 2005 (Case No.: 03-076)

Reid v. Niagara Escarpment Commission

The Appellant Barry Reid was to provide the Niagara Escarpment Hearing Office ("NEHO") with confirmation that he was an assessed owner of land within 120 metres of the subject site or an agent of such an owner. Mr. Reid did not respond to the request and the NEHO closed the file. The decision of the Niagara Escarpment Commission was confirmed.

Decision released: June 24, 2005 (Case No.: 05-020)

Osyany v. Niagara Escarpment Commission

Mr. and Mrs. Osyany filed a Notice of Appeal regarding the decision of the Niagara Escarpment Commission on an application for a Development Permit but their appeal was rejected by the Niagara Escarpment Hearing Office ("NEHO") as they did not own property within 120 metres of the subject site as required by section 25(5) of the *Niagara Escarpment Planning and Development Act*. The NEHO lacked jurisdiction to hear the appeal and the file was closed.

Decision released: June 24, 2005 (Case No.: 05-022)

Brown v. Niagara Escarpment Commission

Robert Brown ("Appellant") filed an appeal of the decision of the Niagara Escarpment Commission ("NEC") refusing the issuance of a Development Permit to construct a single detached dwelling with detached garage, septic system and driveway on a proposed lot located on his property within the City of Hamilton. The Development Permit application was refused by the NEC because the proposed lot did not conform to the new lots provision for Escarpment Rural Areas in the Niagara Escarpment Plan ("NEP") and the development criteria for new lot creation in the NEP and because the proposal was not supported by the City of Hamilton due to non-compliance with the lot creation provisions of the former Town of Flamborough Official Plan and the Hamilton-Wentworth Official Plan.

The Hearing Officer confirmed the decision of the NEC pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act*. The Hearing Officer agreed with the NEC that the new lot did not conform with the provisions of the NEP as there had previously been at least 16 new lots created from the original township half lot and no new lots had been created since 1985 when the NEP was first put in place. Additionally, the Hearing Officer agreed that new lots are to be created primarily in designated Urban Areas, Minor Urban Centres and Escarpment Recreation Areas and not Escarpment Rural Areas such as where Mr. Brown's property is located. The Hearing Officer concurred that the proposal also did not conform with the lot creation provisions of the former Town of Flamborough Official Plan and the Hamilton-Wentworth Official Plan.

Decision released: July 20, 2005 (Case No.: 05-008)

Stephan and Monika Gaspar v. Niagara Escarpment Commission

Stephan and Monika Gaspar ("Appellants") filed an appeal of the decision of the Niagara Escarpment Commission ("NEC") refusing the issuance of a Development Permit to construct a single detached dwelling with detached garage, waste disposal system, outbuilding and driveway on a proposed lot located on their property within the City of Hamilton. The Development Permit application was refused by the NEC because the proposed lot to be created did not conform to the new lots provision for Escarpment Rural Areas in the Niagara Escarpment Plan ("NEP") and the development criteria for new lot creation in the NEP and because the proposal was not supported by the City of Hamilton due to non-compliance with the lot creation

provisions of the former Town of Flamborough Official Plan and the Hamilton-Wentworth Official Plan.

The Hearing Officer confirmed the decision of the NEC pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act*. Despite the economic circumstances of the Appellants, the Hearing Officer held that the provisions of the NEP and the two local Official Plans clearly prohibited this severance as more than one lot had been severed from the original half township lot. The Hearing Officer also held that new lots are to be created primarily in designated Urban Areas, Minor Urban Centres and Escarpment Recreation Areas and not Escarpment Rural Areas.

Decision released: July 21, 2005 (Case No.: 05-007)

Sutton v. Niagara Escarpment Commission

Bill Sutton ("Appellant") filed a Notice of Appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA")*, to appeal the decision of the Niagara Escarpment Commission ("NEC") to issue a Development Permit to his neighbours, John and Sherry Pottage ("Applicants"). The Development Permit allowed for the construction of a single-storey dwelling, an accessory building, a septic system and a driveway. The Appellant was concerned that the construction would impact his view of Georgian Bay, that his well may be affected, that the site was unsuitable due to the exposed bedrock and that the proposed site was too close to his barns and livestock.

During a site visit, the Appellant and Applicants agreed to a building site that addressed the Appellant's concerns about the proposed location of the house and septic system. A condition stipulating the location of the construction was added to the Development Permit by consent while the existing conditions regarding the septic system were held to adequately address the Appellant's concerns. The decision of the NEC to issue the Development Permit, with the additional conditions, was confirmed pursuant to section 25(12.1) of the *NEPDA*.

Decision released: September 1, 2005 (Case No.: 05-001)

Vander Park v. Niagara Escarpment Commission

Tony and Maria Vander Park ("Appellants") filed a Notice of Appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA")*, to appeal the decision of the Niagara Escarpment Commission ("NEC") to issue a Development Permit to the Region of Peel to allow for the reconstruction of four sections of the Forks of the Credit Road. The proposed works involve reconstruction of the embankments associated with the Credit River and a wetland area. The Appellants raised concerns about the possibility of increased erosion to their property's river front and about public safety.

The Hearing Officer held that the reconstruction would not contribute to increased erosion of the Appellant's property. The Hearing Officer also held that the reconstruction would improve

public safety along the road. The Parties agreed to add a condition to the Development Permit stipulating that the buttress near the Appellant's property would not extend more than 1.5 metres into the river, thereby addressing the concern that the construction would increase the velocity of the river and cause downstream erosion. The decision of the NEC to issue the Development Permit, with the added condition, was confirmed pursuant to section 25(12.1) of the *NEPDA*.

Decision released: September 7, 2005 (Case No.: 05-011)

Wallace Barr v. Niagara Escarpment Commission

Wallace Barr ("Appellant") filed a Notice of Appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA")*, to appeal the decision of the Niagara Escarpment Commission ("NEC") to issue a conditional Development Permit to the Appellant regarding the expansion of his dog breeding and boarding operation. The Town of Mono and several local property owners were granted Party status at the Hearing.

During a short adjournment, the Parties reached an agreement as to the conditions under appeal. These conditions primarily relate to noise studies, sound control and the requirements of a site plan and an operational plan. The decision of the NEC to issue the Development Permit, with added conditions, was confirmed pursuant to section 25(12.1) of the *NEPDA*.

Decision released: September 16, 2005 (Case No.: 05-023)

Harding v. Niagara Escarpment Commission

Graig Harding ("Appellant") appealed the decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a Development Permit to allow K.J. Turbitt ("Applicant") to construct a dwelling, storage building, septic system and driveway and, subsequent to the construction, to demolish the existing dwelling and barn.

The Appellant was concerned that the dwelling and related structures would not be used for residential purposes and that a construction business may be operated from the site in the future. A change of use post-construction had occurred on a nearby property. During the Hearing, the Appellant stated that his concerns were addressed by an explanation of the conditions attached to the permit and of the NEC's process for dealing with non-compliance and the Applicant's assurance to abide by the conditions attached to the permit. The Appellant withdrew his appeal. The decision of the NEC to issue the Development Permit was, therefore, confirmed pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act*.

Decision released: October 12, 2005 (Case No.: 05-030)

Vizzini v. Niagara Escarpment Commission

Charlie Vizzini ("Appellant") filed a Notice of Appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA")*, to appeal the decision of the Niagara

Escarpment Commission ("NEC") to issue a conditional Development Permit to Russell and Shelley Kidd to construct a two-storey barn and to demolish the two existing one-storey sheds. The Appellant was concerned with the location and appearance of the storage barn.

During the Hearing, the Parties agreed to amend a condition and add two other conditions to limit the size and location of the barn. The decision of the NEC to issue the Development Permit, with the amended and new conditions, was confirmed pursuant to section 25(12.1) of the *NEPDA.*

Decision released: December 29, 2005 (Case No.: 05-049)

Adcock v. Niagara Escarpment Commission

David and Ann Adcock ("Appellants") filed a Notice of Appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA"),* to appeal the decision of the Niagara Escarpment Commission ("NEC") to issue a conditional Development Permit to Romena Singh to construct a storage building/garage and to extend a driveway. The Appellants had concerns regarding the construction of the building, the size and visibility of the building, the upkeep of the property and an Order issued by the Town of Caledon under the *Building Code Act*.

During the Hearing, the Parties agreed to add conditions that address the concerns of the Appellants. The decision of the NEC to issue the permit, with the amended conditions, was confirmed pursuant to section 25(12.1) of the *NEPDA.*

Decision released: December 29, 2005 (Case No.: 05-054)

Cindy-Lee Dobson and the Estate of Sarah Walters v. Niagara Escarpment Commission

Cindy-Lee Dobson and the Estate of Sarah Walters ("Appellants") filed a Notice of Appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA"),* to appeal the decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a Development Permit application made by Blue Ridge Sportsmen's Club Inc. ("Applicant") to construct a storage/accessory building. The Appellants contended that the survey of the land is incorrect and that the land upon which the Blue Ridge Sportsmen's Club proposes to build is Crown land. The Appellants would not oppose the construction if it were completed further from their lot lines.

The Hearing Officer found that the location of the proposed construction is appropriate, given the location of the septic tile bed and shooting ranges. The only survey provided as evidence clearly showed that the land belongs to the Applicants. The Hearing Officer ordered the Applicant to file a tree-planting proposal with the NEC to improve screening of the building. The decision of the NEC to issue the permit was deemed confirmed pursuant to section 25(12) of the NEPDA.

Decision released: December 30, 2005 (Case Nos.: 05-044/05-045)

Vos v. Niagara Escarpment Commission

Ralph Vos ("Appellant") filed a Notice of Appeal pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA")*, to appeal the decision of the Niagara Escarpment Commission ("NEC") to refuse a Development Permit application made by the Appellant to construct a single attached dwelling, garage, septic system and driveway. The Appellant is a commercial farmer who wished to sever a lot from his existing lot to build a retirement residence close to the farm so that he can remain active in the farm operation when it is taken over by his son.

The NEC refused the Development Permit application as the proposal was not in conformity with the new lots provision of the Niagara Escarpment Plan because six lots had been previously severed from the original half lot. A severance to allow a bona fide farmer to retire and reside is permitted but only where one previous severance from the original lot or half lot has occurred. The Hearing Officer therefore concurred with the decision of the NEC to refuse the permit and confirmed the decision of the NEC pursuant to section 25(12) of the *NEPDA.*

Decision released: December 30, 2005 (Case No.: 05-047)

Veerman v. Niagara Escarpment Commission

Joanne Veerman ("Appellant") appealed the decision of the Niagara Escarpment Commission ("NEC") to issue a conditional Development Permit to Nick McCoy ("Applicant") to construct a dwelling and private sewage disposal system. During the Hearing, the Appellant withdrew her appeal and she and the Applicant agreed to try to accurately demark the boundary line between their properties.

The decision of the NEC to issue the Development Permit was deemed confirmed pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act*.

Decision released: January 19, 2006 (Case No.: 05-076) (decision amended on January 25, 2006)

Kennedy et al. v. Niagara Escarpment Commission

Howard Derek Kennedy, Susan Kennedy, Fran Elzinga, Paul Moffatt, D. Joni Moffatt, William P. Campbell, Ron Socha, Anthony Coppolino and Darlene Coppolino ("Appellants") appealed the decision of the Niagara Escarpment Commission ("NEC") to issue a conditional Development Permit to the Hamilton Conservation Authority ("Applicants"). The Development Permit is for the construction of a service road with three associated culverts within the Christie Lake Conservation Area in order to provide an access point to the park from Middletown Road. The Appellants were concerned that increased traffic along Middletown Road would be a safety

issue. Particularly, the Appellants were concerned because the road runs through the park and is used by hikers, cyclists and other non-motorized users; the road has dangerous intersections with the area highways and features blind corners; the road is narrow with no center line or sidewalks and inconsistent shoulders; and there could be a lack of control of speeding vehicles on the road. The Appellants were also concerned about increased vandalism and litter and the possible alteration of existing drainage patterns from adjacent fields.

The Appellants, the NEC and the Applicants agreed to add conditions to the approval limiting the use of the access point, increasing public safety when the access point is in use, and maintaining existing drainage patterns. The decision of the NEC to issue the permit, with the additional conditions, was deemed confirmed pursuant to section 25(12.1) of the *Niagara Escarpment Planning and Development Act*.

Decision released: February 1, 2006 (Case Nos.: 05-075/05-080/05-081/05-082/ 05-083/05-084/05-089/05-090/05-091)

Reio v. Niagara Escarpment Commission

Rein Reio ("Appellant") appealed the decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a Development Permit application made by Gloria Paron to construct a single dwelling and septic system. The Appellant is a nearby property owner who was primarily concerned with what he perceived to be unfairness in the approvals process. The Appellant felt that it was unfair that the number of permitted dwellings did not depend on the lot size. In his testimony, he did not object to the proposed development but was concerned with the implications this approval had for his lands.

The Appellant's lot was 13 acres and he had previously been denied permission from the City of Burlington to build additional dwellings on the lot. However, the Hearing Officer concluded that comparing the Appellant's lands, which are now located within the area governed by the Niagara Escarpment Plan ("NEP"), with lands outside the NEP area where subdivision was permitted to the point of allowing one dwelling per acre is not a valid comparison. While permitting only one dwelling per lot in the NEP area may seem unfair because this policy ignores lot size, the NEP cannot overcome historical dealings that have led to varying lot sizes across the landscape. Given the history of the Escarpment landscape and the Province's objective of maintaining the environmental integrity of this landscape for future generations, the Hearing Officer concluded that the restrictions on development and subdividing land set out in the NEP are justified.

The Hearing Officer held that in order to address the concerns that the Appellant has about the restrictions of the NEP as they apply to his lands, the Appellant would need to obtain an amendment to the NEP. The Hearing Officer further held that the proposed development, subject to the conditions of approval, was in conformity with the NEP. The decision of the NEC was therefore confirmed.

Decision released: February 10, 2006 (Case No.: 05-085)

Walker v. Niagara Escarpment Commission

The Niagara Escarpment Commission ("NEC") conditionally approved a Development Permit application made by Cosimo Lizzi ("Applicant") to construct a building for livestock and the storage of straw bales on an existing lot. The application was for the same development that had previously been approved. However, the previous approval lapsed before the conditions of approval were completed. The decision of the NEC was appealed by Gary Walker ("Appellant") pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act*.

The Appellant and Glenn Young, who was granted Participant status at the beginning of the Hearing, objected to the approval as they alleged that the already built structure would not pass inspection and was a hazard. Concerns were also raised relating to noise pollution, environmental impacts from the livestock, the inhumane treatment of animals, the dumping of fill, dead livestock, the clean up of the property and a barking dog.

The Parties agreed to amend a condition of approval to address these concerns. The amended condition would mandate that the NEC consult, and meet-on site, with the Ministry of the Environment, the Ministry of Agriculture and Food, the Regional Municipality of Halton, the Town of Milton, Conservation Halton, and the Applicant to review the farming operation and to identify the best management practices to be employed by the Applicant. The amended condition directs the Applicant to ensure that best management practices are maintained and to avoid potential environmental impacts and also specifies that the identified agencies are permitted to monitor the property to ensure compliance.

The decision of the NEC to approve the Development Permit application, with the amended conditions as agreed to by the Parties, was confirmed pursuant to section 25(12.1) of the *Niagara Escarpment Planning and Development Act*.

Decision released: March 15, 2006 (Case No.: 05-121)

Rapien v. Niagara Escarpment Commission

Beate and Douglas Rapien and Dave and Ida Mae Woodburn ("Appellants") filed appeals pursuant to section 25(5) of the *Niagara Escarpment Planning and Development Act ("NEPDA")* with respect to the decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a Development Permit application made by Ken and Tanja Parsley ("Applicants") to construct a one-storey dome structure for horse training and exercising on an existing lot in the Town of Halton Hills.

Pursuant to section 25(12.1) of the *NEPDA*, the Hearing Officer confirmed the NEC's decision with the revised condition, as agreed to by the Parties, that the Applicants would plant Lombardy poplars and White Spruce trees on their property, the number and location of which would be

determined by the NEC's Landscape Architect. This landscaping would assist in mitigating the visual impact of the proposed building on the neighbours to the north and to the east.

Decision released: March 17, 2006 (Case Nos.: 05-098/05-099/05-100/05-101)

Wilson and Knapman v. Niagara Escarpment Commission

Floyd Wilson and Mark and Cheryl Knapman ("Appellants") filed appeals for a Hearing before a Hearing Officer pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act ("NEPDA")* with respect to a decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a Development Permit application made by 1528003 Ontario Inc. ("Applicant") to construct a two-storey single dwelling and an extension of Clifford Road to establish municipal road access on a proposed reconfigured lot in the Town of Grimsby.

Pursuant to section 25(12.1) of the *NEPDA*, the Hearing Officer confirmed the NEC's decision with the revised condition, as agreed to by the Parties, that the architectural design of the proposed dwelling shall have regard for the character of the established dwellings located on Cline Mountain Road.

Decision released: March 28, 2006 (Case Nos.: 05-112/-5-113)

Safe Drinking Water Act, 2002

The Corporation of the Town of North Perth v. Director, Ministry of the Environment

The Corporation of the Town of North Perth ("Appellant") applied for relief from the requirements of Schedule 1 of Ontario Regulation 170/03, made under the *Safe Drinking Water Act, 2002*. This regulation mandates the treatment equipment requirements for residential drinking water systems. The Director ("Director"), Ministry of the Environment refused the Application and the Appellant subsequently appealed this decision.

A settlement was reached between the Director and the Appellant regarding the appropriate equipment needed for the drinking water treatment system. An amended Certificate of Approval was to be prepared. The Tribunal reviewed the agreement and concluded that it was in accord with the former Guideline for Consideration of Agreements. The appeal was dismissed.

Decision released: February 2, 2006 (Case No.: 04-100)

Summaries of Selected Orders

Environmental Bill of Rights, 1993

Anne Vallentin on behalf of Haldimand Against Landfill Transfers (HALT) and Six Nations of the Grand River v. Director, Ministry of the Environment

Anne Vallentin ("Vallentin") and the Six Nations of Grand River ("Six Nations") applied to the Tribunal under section 38 of the *Environmental Bill of Rights, 1993* ("*EBR*"), for leave to appeal a decision of the Director, Ministry of the Environment, under section 39 of the *Environmental Protection Act* ("EPA") to issue an amended Provisional Certificate of Approval to Haldimand-Norfolk Sanitary Landfill Inc. ("HNSLI") to increase the rate of fill at the Edwards Landfill Site located in Haldimand County.

The City of Hamilton ("Hamilton") requested Participant status in the applications for leave to appeal. The Director and HNSLI opposed the request.

The Tribunal denied Hamilton's request. In its findings, the Tribunal examined the provisions of sections 47(7) and 46 of the *EBR* and section 5 of the *Statutory Powers Procedure Act* ("*SPPA*") to determine whether the Tribunal had jurisdiction to grant Hamilton Participant status, before determining whether such status ought to be granted in this matter.

The Tribunal found that section 47 of the *EBR* superimposed additional notice and procedural requirements upon the appeal procedures already prescribed in the substantive statutes, including section 47(7), which addresses the participation of other persons in a leave application or appeal under another Act. The Tribunal concluded that section 47(7), which states that the appellate body may permit any person to participate in the application or appeal, as a Party or otherwise, is not applicable to section 38 *EBR* leave to appeal applications and subsequent appeals.

The Tribunal further found that s. 46 of the *EBR* provided the authority to allow it to grant Party or Participant status in a leave to appeal application. The Tribunal identified the issue as being whether the discretionary authority to grant such status is a "procedure" as referred to in section 46. The Tribunal concluded that the determination of whether a person has standing to launch an appeal or application for leave to appeal is a substantive matter determined by the wording of the particular statute and that a tribunal has no authority to expand the scope of parties entitled to do so. While that is a jurisdictional issue, the Tribunal determined that the issue of whether a person can be added as a Party, Participant or Presenter to an existing proceeding involves a discretionary power and is a procedural matter authorized by the Tribunal's Rules of Practice, which were adopted pursuant to section 25.1 of the *SPPA*.

The Tribunal noted that section 46 of the *EBR* provides that the appellate body hearing a section 38 leave application or subsequent appeal may follow procedures similar to those the appellate body would follow in an appeal relating to the same proposal. In relation to appeals under section 139 of the *EPA*, section 145 of the Act provides that the person requiring the hearing, the Director and any other person specified by the Tribunal are parties. The Tribunal adopted the

reasoning in the Tribunal's decision in *Dillon v. Ontario (Ministry of the Environment)* (2001), 39 C.E.L.R. (N.S.) 134 in determining that the Tribunal has the discretionary authority to grant Party status in a leave to appeal application based on the authority of section 46 of the *EBR* and section 145 of the *EPA.*

The Tribunal further found that it could add a Participant to the leave to appeal proceeding on the authority of section 5 of the *SPPA* and the common law.

Having concluded that the Tribunal had jurisdiction to grant Participant status on a leave to appeal application, the Tribunal examined the nature of Hamilton's interest and determined that had Hamilton filed an application for leave to appeal on time, it would have met the interest test under section 38 of the *EBR*. The Tribunal further found that Hamilton would have met the criteria for granting Participant status under the Tribunal's Rules of Practice. However, the Tribunal determined that it could only consider granting Hamilton Participant status in relation to issues already raised by one or more of the applicants for leave to appeal. To allow an expansion of the grounds of appeal would be tantamount to allowing Hamilton to file an application for leave to appeal after the statutory time limitation has expired.

The Tribunal found that the issues raised by Hamilton did not correspond to the grounds raised by the Six Nations leave to appeal application and, therefore, declined to add Hamilton as a Participant to that application.

While the Tribunal found that the issues raised by Hamilton did fit within the grounds of appeal raised in the Vallentin application, the Tribunal declined to exercise its discretion to grant Participant status because Hamilton had provided no explanation for its failure to file an application for leave to appeal within the statutory time limitation. In exercising its discretion, the Tribunal is required to balance the interests of allowing such participation at that late date, given the circumstances surrounding Hamilton's request, with the interests of the instrument holder.

Order released: May 5, 2005 (Case Nos.: 04-156/04-157)

Environmental Protection Act

Johnson v. Director, Ministry of the Environment

Margaret Johnson filed an appeal for a Hearing before the Tribunal under section 140 of the *Environmental Protection Act* ("*EPA*"), with respect to a Director's Order issued under section 157.3(5) of the *EPA* regarding the operation of a wood-fired sauna located on a cottage property in the Township of Bonnechere Valley. Sheila McNamara, owner of the adjacent property, had requested an investigation under Part V of the *Environmental Bill of Rights, 1993* ("*EBR*") of the impacts from the wood smoke emissions from the sauna.

At the Preliminary Hearing, Ms McNamara requested and was granted Party status on the basis that she was directly affected by the wood sauna emissions and that she had a genuine interest in the matter. The Parties held their own settlement discussions, as a result of which the Director and Ms Johnson reached an agreement. Ms McNamara was not satisfied with the terms of the agreement and withdrew from the discussions.

The Director took the view that by executing the Minutes of Settlement, Ms Johnson had complied with the requirements of the Director's Order. In accordance with a term of the settlement agreement, Ms Johnson sought to withdraw her appeal.

The main issue before the Tribunal was whether it had the jurisdiction to proceed with a Hearing following the withdrawal of the appeal by Ms Johnson, and, if so, whether the Tribunal should exercise its discretion to do so or dismiss the proceeding.

The Tribunal found that the general principles set out in *Uniroyal Chemical Ltd., Re* (1992), 9 C.E.L.R. (N.S.) 151 (E.A.B.), regarding the jurisdiction to continue a Hearing process, are still largely applicable today, despite the difference in facts, legislative setting and rules. In particular, the Tribunal found that it had the jurisdiction to continue the Hearing, but that the decision to do so is discretionary.

As there were no restrictions placed on the granting of Party status to Ms McNamara, she had the right to participate in mediation discussions. According to the Tribunal Rules of Practice, the only significance arising from whether settlement had been reached during or outside of the Tribunal mediation process is the matter of who would review the settlement, the mediator (Rule 137) or the Tribunal (Rule 172).

The Tribunal indicated that because the appeal had been withdrawn and the wording of the Order had not been amended on its face, it would appear that Rule 169 would apply, authorizing the Tribunal to dismiss the proceedings. However, in this case, the Tribunal noted that Ms McNamara alleged that there was prejudice to her because the Minutes of Settlement, although not altering the words of the Order, did not comply with it.

Upon examining the Minutes of Settlement, the Tribunal held that it could not be assured that section 14 of the *EPA* would be complied with and the goal of the Order achieved, namely that adverse effects would be eliminated, if the Minutes of Settlement were carried out. In looking at the issue of whether the Order had been altered, the Tribunal concluded that the intent of Rule 169, read in the context of Rule 172, was for the Tribunal to dismiss a proceeding where an appeal is withdrawn and the Order remains unchanged. Here, although the Order may have been weakened as a result of the Minutes of Settlement, in that one of the options set out in the settlement will not eliminate the potential for an adverse effect from wood smoke, the wording of the Order had not been amended. Given the Tribunal's authority to depart from or waive its Rules, given by section 4(2) of the *Statutory Powers Procedure Act* ("SPPA") and Rule 5, the Tribunal found that it should focus on the substantive question of whether it is just to proceed with a Hearing.

The Tribunal examined the purposes and applicable provisions of the Tribunal Rules of Practice, the *EPA*, the *EBR* and the *SPPA* and concluded that the Hearing should continue, despite Rule 169. This would provide the opportunity for Ms McNamara to participate in a Hearing. A Hearing would also provide an opportunity to question the proposed two-Party resolution, provide evidence on impacts, or propose alternative solutions to the environmental problem.

Order released: February 28, 2006 (Case No.: 05-031)

Ontario Water Resources Act

Trent Talbot River Property Owners Association, Marchand Lamarre and Jodi McIntosh v. Director, Ministry of the Environment

The Trent Talbot River Property Owners Association ("Trent Talbot") and Marchand Lamarre ("Lamarre") and Jodi McIntosh ("McIntosh") filed appeals for a Hearing by the Tribunal under section 100 of the *Ontario Water Resources Act* ("*OWRA*"). Leave to appeal had been granted under section 38 of the *Environmental Bill of Rights.* The appeals related to the issuance of a Permit to Take Water by the Director, Ministry of the Environment, under section 34 of *OWRA*, regarding dewatering a proposed quarry in the Township of Ramara.

During the Hearing, Trent Talbot called a witness to give geoscientific evidence. The witness was challenged on the basis that his presentation of evidence would contravene the *Professional Geoscientists Act* ("PGA") because he was not a licensed geoscientist, but would be presenting evidence that would possibly be applying the principles of geoscience. The witness withdrew. Two adjournments were granted to allow the witness the opportunity to obtain his qualifications under the *PGA* or to allow Trent Talbot to call another witness. The witness did not subsequently appear, nor did Trent Talbot call another witness in his place. With consent of all counsel, documents containing reference to the witness were removed from the Exhibit Books.

Following the Hearing, Trent Talbot sought leave to bring a Motion requesting that the Tribunal strike the evidence and testimony provided by two witnesses for the Director and the instrument-holders. Lamarre/McIntosh supported the Motion. The issue was whether the two witnesses were required to be licensed under the *PGA.*

The Tribunal found that one witness gave evidence in the Hearing as a biologist who specializes in fishery science, water quality, toxicology and ecological risk assessment, which the Tribunal determined relate to bioscience and not geoscience. The Tribunal determined that evidence presented as to the professional activities of the witness did not support a finding that these constituted the practice of geoscience.

The Tribunal found that the other witness gave evidence about the potential impacts of effluent discharged from the proposed quarry's sewage works on any downstream receivers and that there was no evidence that the occupation of the witness required him to be qualified as a geoscientist.

The Tribunal found that the evidence presented by the two witnesses did not contravene the *PGA*. The Tribunal also noted that neither Trent Talbot nor Lamarre/McIntosh had objected to the evidence or qualifications of either of the two witnesses during the Hearing.

The Tribunal dismissed the Motion.

Order released: September 21, 2005 (Case Nos: 02-214/02-217 and 03-188/03-189)

Trent Talbot River Property Owners Association, Marchand Lamarre and Jodi McIntosh v. Director, Ministry of the Environment

The Trent Talbot River Property Owners Association ("Trent Talbot") filed a Notice of Motion with the Tribunal to review the Tribunal's decision dealing with appeals by Trent Talbot and Marchand Lamarre and Jodi McIntosh of the Director's decisions to issue and amend a Permit to Take Water and to issue a Certificate of Approval in relation to the dewatering of a proposed quarry in the Township of Ramara.

The Director requested that the Tribunal dismiss Trent Talbot's motion on the grounds that the Notice failed to provide adequate grounds and supporting information. In the alternative, the Director requested that Trent Talbot be required to file another Notice of Motion with particulars and supporting materials.

The Tribunal examined Rules 16, 83 to 85, 88, 102 to 104, and 203 to 206 of the Tribunal's Rules of Practice. The Tribunal found that Rule 88 does not apply to a motion to review in relation to the timing of the motion, because Rule 204 explicitly addresses this issue and should be read together with Rule 85, which addresses the content of all motions. The Tribunal noted, however, that Rule 88 provides that a Notice of Motion and all supporting material be filed together.

The Tribunal further determined that Rules 102 to 104, which speak to the circumstances in which the Tribunal can decide not to process the commencement of a proceeding, do not apply to a motion to review.

The Tribunal noted that Rule 16 provides it with the authority to issue a procedural order to ensure compliance with the Rules and, in the event that non-compliance continues, has the authority to dismiss a proceeding after providing an opportunity for submissions.

The Tribunal determined that Trent Talbot's Notice of Motion was deficient, in that it did not link the grounds with the factors that the Tribunal must consider in Rule 206 and did not make specific references to the Decision itself. The Tribunal noted that if the request for review is based on alleged errors, the Moving Party must clearly set out the specific portions of the decision that gave rise to the errors or specify if there are significant omissions in the decision.

Although the Tribunal agreed that its Rules do not permit a Party "two kicks at the can" in setting out the grounds in a Notice of Motion, due to the short time between the filing and

hearing of a motion, the Tribunal was not prepared to dismiss Trent Talbot's motion without giving it an opportunity to correct the deficiencies. The Tribunal ordered Trent Talbot to file an amended Notice of Motion, linking the grounds for review to the portions of the Decision and linking the grounds to the review criteria in Rule 206, together with all supporting materials, including affidavits and written submissions.

Order released: February 15, 2006 (Case Nos.: 02-214/02-217 and 03-188/03-189)

Summaries of Appeals and Judicial Reviews of Decisions of the Tribunal

Director under the *Environmental Protection Act* v. The Becker Milk Company Limited et al.

This was an appeal under section 144(2) of the *Environmental Protection Act* ("*EPA*") from an Order of the Environmental Review Tribunal ("Tribunal") to award costs to The Becker Milk Company Limited and Petro-Canada ("Becker's/Petro-Can"). The Order to pay costs followed the revocation of the Orders issued by the Director, Ministry of the Environment ("Director"), that were originally appealed by Becker's/Petro-Can under section 140 of the *EPA*. The Tribunal found that the Director had acted unreasonably regarding the adjournment motion and directed that costs be paid for that portion of the Hearing. The Tribunal held that it had the authority to award costs based on section 17.1 of the *Statutory Powers Procedure Act* ("*SPPA*"), the Rules of Practice, and the Guideline on Costs Awards.

The Divisional Court allowed the appeal and set aside the Order to pay costs. The Court ruled that the jurisdictional issue of the authority to award costs was a question of law for which the standard of review is correctness. As a matter of law, the Tribunal did not have the jurisdiction to award costs in appeal Hearings under section 140 of the *EPA* because the *EPA* does not confer the authority to award costs in these Hearings and because the Rules of Practice respecting costs did not meet the criteria in section 17.1 of the *SPPA*. Furthermore, the Divisional Court held that the Guideline on Costs Awards did not have the force of a rule and, in any event, only applied to Hearings conducted under sections 32, 33, and 36 of the *EPA*, section 21 of the *Environmental Assessment Act* and section 7 of the *Consolidated Hearings Act*.

Divisional Court Decision released: October 24, 2005 (ERT Case Nos.: 01-140/01-143)

Niagara Escarpment Commission et al. v. Embee Properties Limited et al.

This Judicial Review relates to a motion brought by the Niagara Escarpment Commission ("NEC"), the City of Burlington ("Burlington") and the Regional Municipality of Halton ("Halton") to dismiss or defer back to the statutory decision makers the Special Study Area Applications of the Proponents as a Hearing on Niagara Escarpment Plan Amendment 71 (the Plan Amendment Application that formed part of the undertaking of the Proponents) had already commenced. The Joint Board dismissed this motion. The NEC, Burlington, and Halton filed a Judicial Review Application and an Application to the Lieutenant Governor-in-Council regarding this decision.

The Divisional Court adjourned the Judicial Review to allow for the Joint Board to determine whether the passage of the *Greenbelt Act, 2005* had effectively determined the issue between the Parties.

Divisional Court Decision released: May 4, 2005 (ERT Case No.: 02-244)

Report on Performance Measures
Fiscal Year 2005-2006

For fiscal year 2005-2006, the Environmental Review Tribunal ("Tribunal") adopted nine goals as critical to effective and efficient performance and service quality in its main functions of Pre-Hearings, Hearings and Decision Making, Staff Processing of Hearings, Mediation, and Public Access to the Tribunal.

In this fiscal year, the Tribunal met or exceeded the performance measures in eight out of nine targeted areas. For Key Performance Goals and Objectives for the next fiscal year 2006-2007 refer to Appendix D.

Commitment #1: Courtesy

"Tribunal members are committed to ensuring that all parties are treated with courtesy and respect when appearing before the Tribunal at a hearing."

In order to monitor performance of a Tribunal member, the Tribunal sends out questionnaires after every hearing. Questionnaires were sent after every hearing to every party, representative of a party and every participant during this fiscal year. These questionnaires provide feedback and assist the Tribunal to improve the hearing processes. The questionnaires include questions relating explicitly to the conduct and performance of the Tribunal members during the hearing process. Although the number of questionnaires received by the Tribunal has decreased this fiscal year, 86% reported satisfaction with member courtesy. The decrease in questionnaires returned to the Tribunal may be due to parties choosing not to respond as they regularly appear before the Tribunal or Hearing Office. These parties may find it repetitive to complete the questionnaires after every hearing when there is no new information to report.

The Tribunal has a formal policy and process for complaints received from the parties or the public concerning its members. The Tribunal received one complaint this fiscal year and the Tribunal adhered to its complaints policy.

Commitment #2: Decisions

"Tribunal members will render timely decisions."

Legislation requires that all recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on development permit applications be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Of the total cases received under the *Niagara Escarpment Planning and Development Act* that resulted in a hearing and a decision, 27% of the decisions were rendered

within 30 days of the completion of the hearing. In addition, 25% of all decisions rendered were released between 32 – 35 days following the hearing.

Niagara Escarpment Plan amendment application decisions must be rendered not more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Although the Hearing Office received four plan amendment applications during this fiscal year, the applications were withdrawn prior to the hearing.

Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal has determined that, because of unusual circumstances, a longer period is needed.

In all other types of decisions, Tribunal members endeavour to render 80% of their decisions within 60 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

For the purposes of this performance measure, the commitment was defined this fiscal year as *"80% of all Decisions will be rendered within 60 days of final argument, excepting hearings with legislative timelines."* For the fiscal year 2005-2006, the timeliness of decisions rendered was captured for those decisions issued on appeals under the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act* and the *Safe Drinking Water Act, 2002*. There were no applications under the *Environmental Assessment Act*, the *Environmental Protection Act* and the *Ontario Water Resources Act*. In 56.25% of these cases, members released their decisions within 60 days of the final argument. Since this figure is below the 80% target, the Tribunal has initiated a monitoring process with the Case Managers to regularly remind members of the timelines for releasing their decisions. The Tribunal remains committed to timely decisions. In this fiscal year, the Tribunal continued to provide regular in-house training sessions for all its members.

Commitment #3: Training of Members

"The Tribunal will provide training for its Members."

Members are trained in the process and conduct of hearings, knowledge of legislation and Tribunal Rules, decision writing and mediation. New members receive one-on-one training regarding the legislation, conduct of hearings, the Tribunal Rules and Practice Directions and decision writing from in-house staff. Members attend training courses on adjudication and decision writing conducted by the Society of Ontario Adjudicators and Regulators. Full-time members attend the five-day course on alternative dispute resolution offered by Stitt, Feld, Handy. Members receive additional training by attending hearings, first as an observer, then as a member of a hearing panel and finally, conducting hearings independently.

In the last fiscal year, a new Vice-Chair and a part-time Member were appointed to the Tribunal. They were conducting hearings independently within the first six months of their appointments. The Tribunal strengthened its training for members and included two sessions on legislation and

process and one session on decision writing in its Learning Program. The Tribunal will continue to provide in-house training as part of its Learning Program in the next fiscal year. The Learning Program is outlined in Appendix C.

Commitment #4: Offer pre-hearing conferences and preliminary hearings

"The Tribunal will offer pre-hearing conferences in appeals under the Niagara Escarpment Planning and Development Act and schedule preliminary hearings in all other appeals and applications, prior to the commencement of the hearing."

During this fiscal year, the Tribunal was committed to providing pre-hearing conferences for matters under the *Niagara Escarpment Planning and Development Act* and preliminary hearings for all other appeals and applications. The pre-hearing conferences were held via teleconference and preliminary hearings were held at least 30 days prior to the commencement of the hearing.

Nineteen pre-hearing conferences and 60 preliminary hearings were held during this last fiscal year. The Tribunal will continue to provide pre-hearing conferences and preliminary hearings for all matters. However, with respect to pre-hearing conferences, if the parties do not agree to participate, then the teleconferences cannot be held.

Commitment #5: Appeals and Judicial Reviews of Tribunal Decisions

"Report on Appeals and Judicial Reviews of Tribunal Decisions."

The Tribunal has committed to reporting on the outcome of any appeals or judicial review applications of its decisions. This fiscal year, the Tribunal received two decisions of the Divisional Court and has reported on those decisions in this Annual Report under Summaries of Appeals and Judicial Reviews of Decisions of the Tribunal.

Commitment #6: Timeliness in Scheduling Hearings

"Improve the timeliness in scheduling hearings."

The Tribunal has adopted a 30 calendar day timeliness standard to issue a Notice of Hearing on appeals, starting on the day on which the appeal/application is received. During this fiscal year, the Tribunal met the timeframe, as the average time to issue the Notice of Hearing from the date of receipt was 22 days.

During this fiscal year, the staff also exceeded the scheduling expectation and scheduled hearings on an average four calendar days after receipt of all required information, which is well below our performance target of seven calendar days.

Commitment #7: Mediation Services

"*Offer mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.*"

Mediation services are available to all parties in matters before the Tribunal. The Tribunal formally offers these services in every appeal (except in matters filed under the *Niagara Escarpment Planning and Development Act*) and, upon request, in all applications in order to encourage parties to resolve their issues. In this fiscal year, parties participated in mediations during the hearing process in 11 cases compared to 18 cases last fiscal year. Of the 11 cases where mediation took place, none of the cases proceeded to a full hearing. Four cases were withdrawn and one case settled following mediation; two cases were settled by an agreement and dismissed following the Preliminary Hearing; one case was withdrawn following one day of Hearing and three cases were still ongoing as of March 31, 2006. Of those on-going cases, one case has subsequently settled.

These statistics indicate that the Tribunal mediation services are successful in resolving issues, narrowing the scope of those issues proceeding to a hearing and in reducing hearing time and costs for both the public and the government.

Tribunal members who conducted mediation sessions were certified through an accredited course. Questionnaires are regularly sent to participants in each mediation session to obtain feedback on the Tribunal's performance. Of the responses received, 100% expressed overall satisfaction with the mediation process.

Commitment #8: Website Access

"The Tribunal will use its website to communicate with its clients."

The public has embraced the website as the primary way to access information about the Tribunal and its processes. From April 1, 2005 to March 31, 2006, the Tribunal had a total of 15,743 visitors to its site and a total of 603,275 "hits" on specific pages in the site. One decision of the Tribunal was downloaded over 3,800 times. The Tribunal's Annual Reports were downloaded over 2,000 times. Copies of the Tribunal's Rules of Practice and Practice Directions, and Guides were also downloaded over 8,000 times. During the year there were 119,139 separate downloads of documents from its website, including over 96,826 downloads of Tribunal decisions and orders. "Webtrends" is used to monitor the Tribunal's statistics. For a list of the most popular downloads, refer to Appendix E.

The staff update the website three to five times weekly. With the exception of a few hours each month for website maintenance and unforeseen disruptions, the website is available at all times. If the gateway for the Ontario Government is not in service, the Tribunal's website would not be operational.

The Tribunal continues to ensure that the public has access to the most current documents available. Decisions and orders, Rules of Practice and Practice Directions, as well as the current published Annual Report, Business Plan and Guides are posted. In this fiscal year, the Tribunal commenced posting archived decisions that had not been previously posted to enhance the availability of its decisions on the website. All decisions from the Environmental Appeal Board have now been posted on the website.

During the last fiscal year, the Tribunal installed a new search engine on the website. This enhanced addition delivers fast, in-depth and relevant search results with different file formats, providing the public with more comprehensive access to information, decisions and orders of the Tribunal.

Commitment #9: Guides

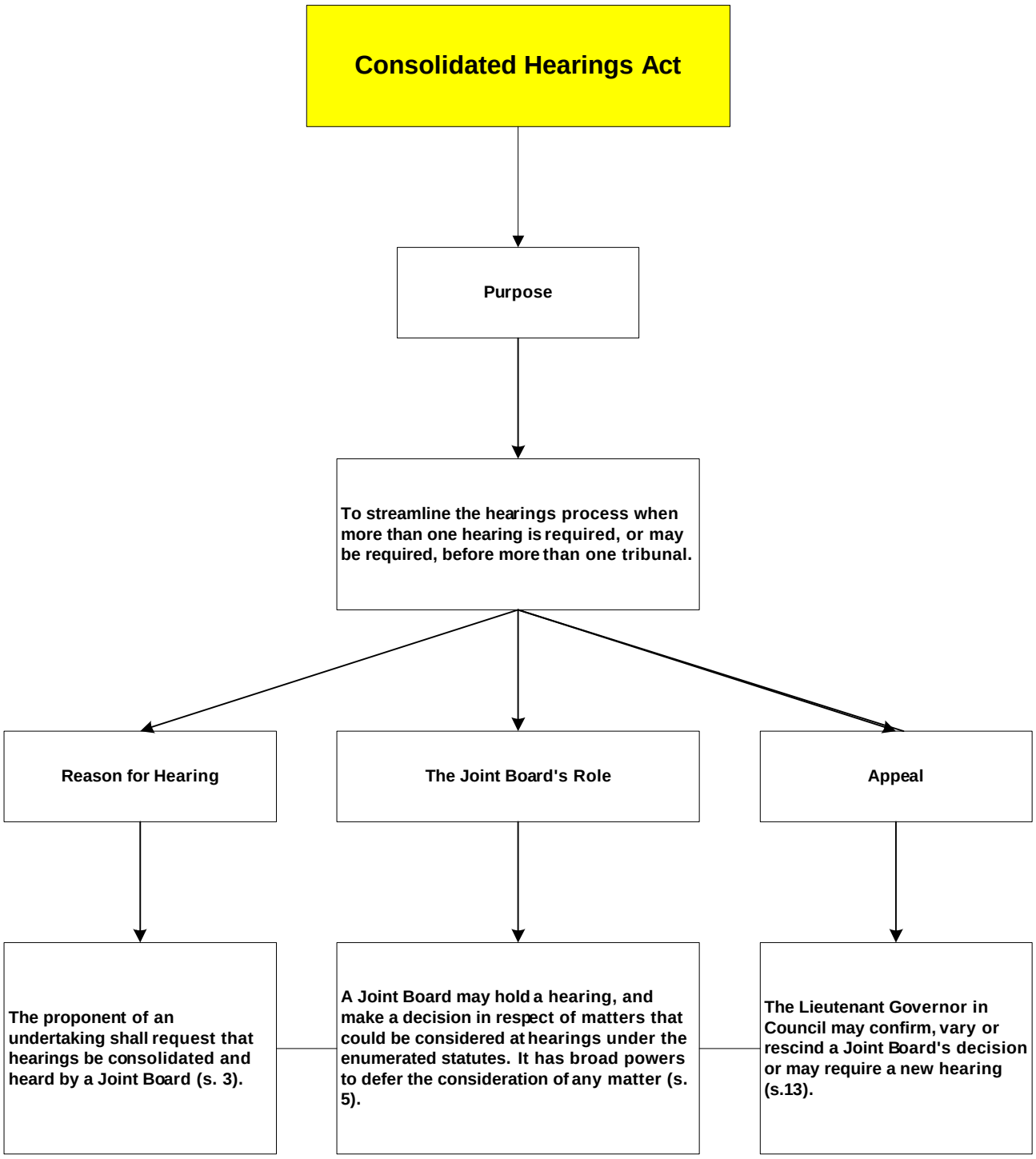
"Guides will be updated."

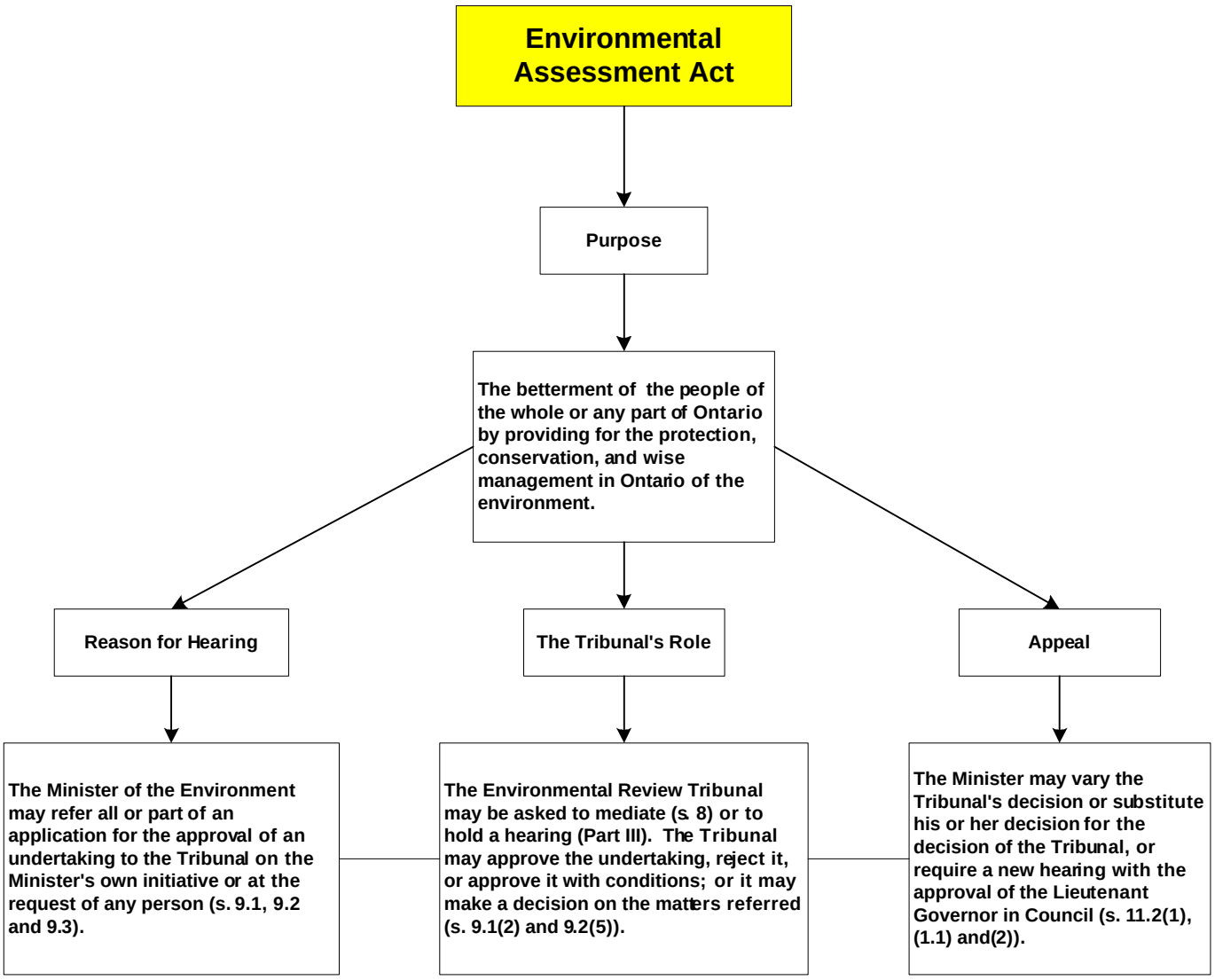
During the 2005-2006 fiscal year, the Tribunal updated all of its Guides as a result of the revisions made to the Tribunal's Rules of Practice and Practice Directions which were released in October, 2005.

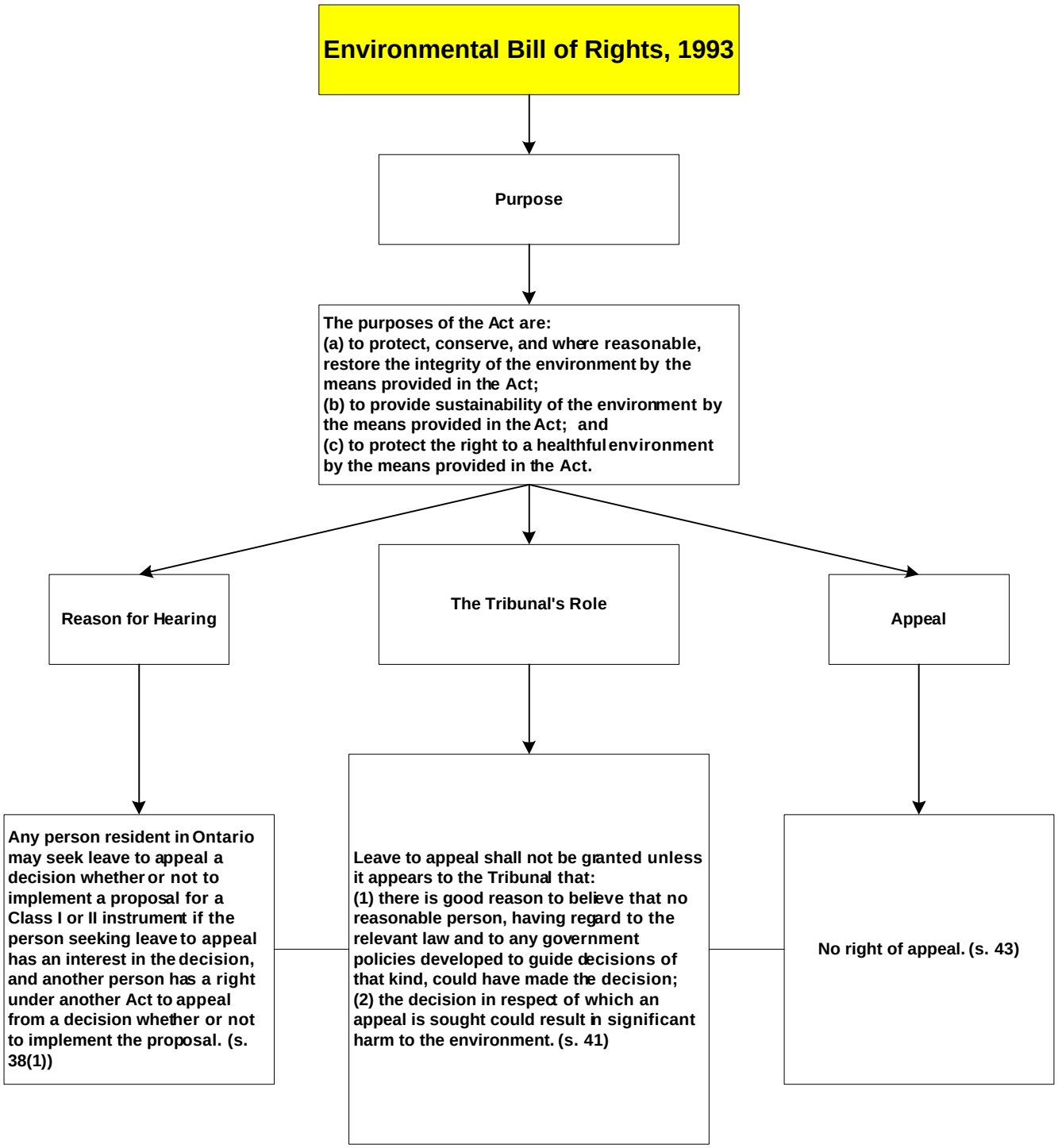
These changes to the Guides clarify the legislated requirements and the Tribunal's Rules that are part of the hearing process. The revised Guides will assist the public to better understand that process.

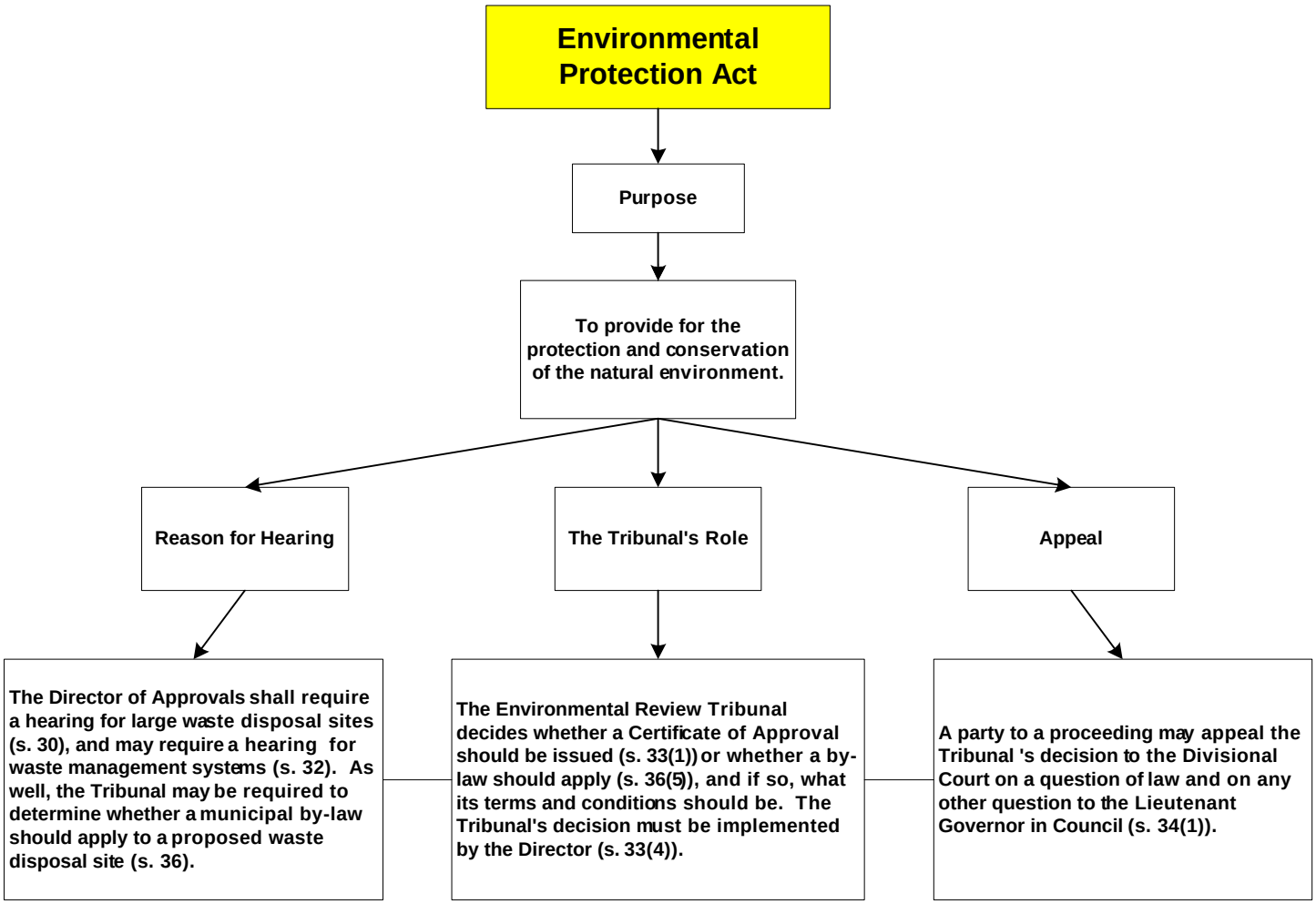
Appendix A

Overview of Relevant Legislation

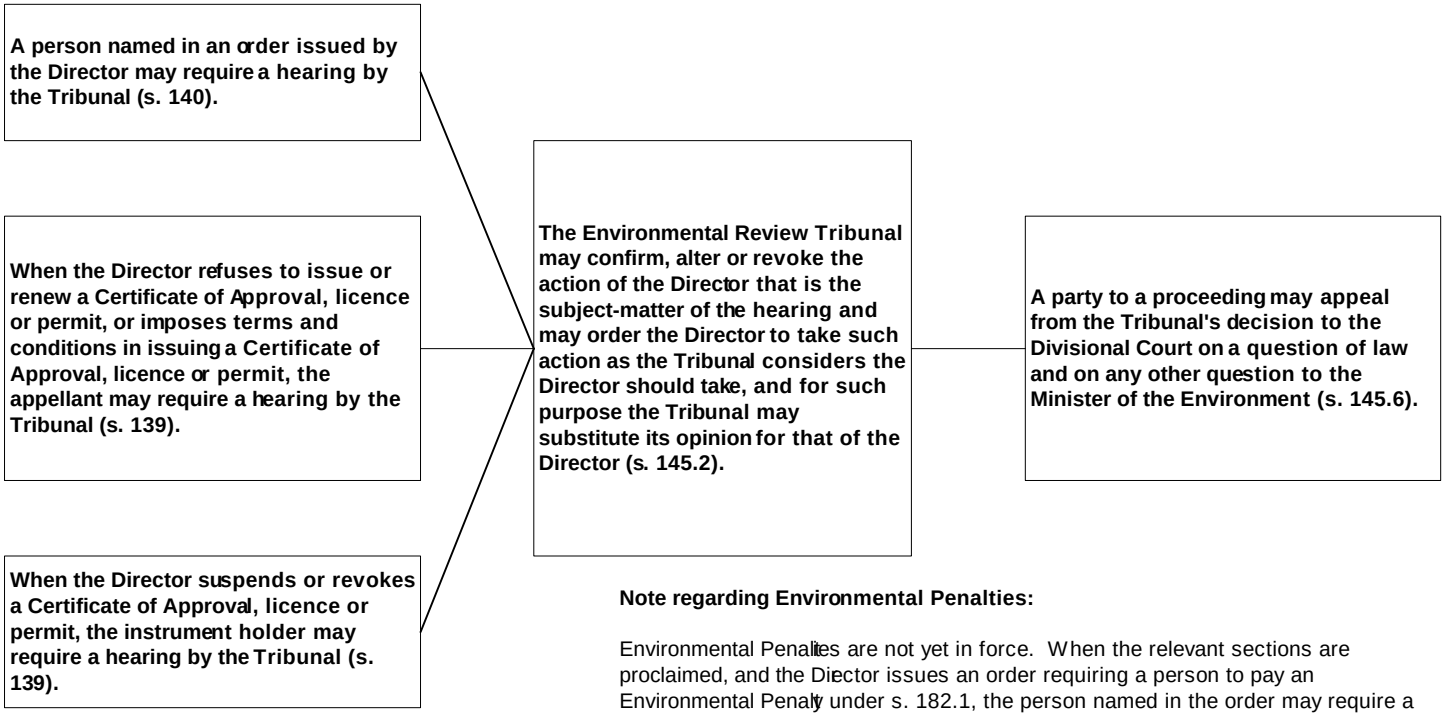



Environmental Assessment Act
Purpose
The betterment of the people of the whole or any part of Ontario by providing for the protection, conservation, and wise management in Ontario of the environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Minister of the Environment may refer all or part of an application for the approval of an undertaking to the Tribunal on the Minister's own initiative or at the request of any person (s. 9.1, 9.2 and 9.3).
The Environmental Review Tribunal may be asked to mediate (s. 8) or to hold a hearing (Part III). The Tribunal may approve the undertaking, reject it, or approve it with conditions; or it may make a decision on the matters referred (s. 9.1(2) and 9.2(5)).
The Minister may vary the Tribunal's decision or substitute his or her decision for the decision of the Tribunal, or require a new hearing with the approval of the Lieutenant Governor in Council (s. 11.2(1), (1.1) and(2)).


Environmental Bill of Rights, 1993
Purpose
The purposes of the Act are:
(a) to protect, conserve, and where reasonable, restore the integrity of the environment by the means provided in the Act;
(b) to provide sustainability of the environment by the means provided in the Act; and
(c) to protect the right to a healthful environment by the means provided in the Act.
Reason for Hearing
The Tribunal's Role
Appeal
Any person resident in Ontario may seek leave to appeal a decision whether or not to implement a proposal for a Class I or II instrument if the person seeking leave to appeal has an interest in the decision, and another person has a right under another Act to appeal from a decision whether or not to implement the proposal. (s. 38(1))
Leave to appeal shall not be granted unless it appears to the Tribunal that:
(1) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
(2) the decision in respect of which an appeal is sought could result in significant harm to the environment. (s. 41)
No right of appeal. (s. 43)

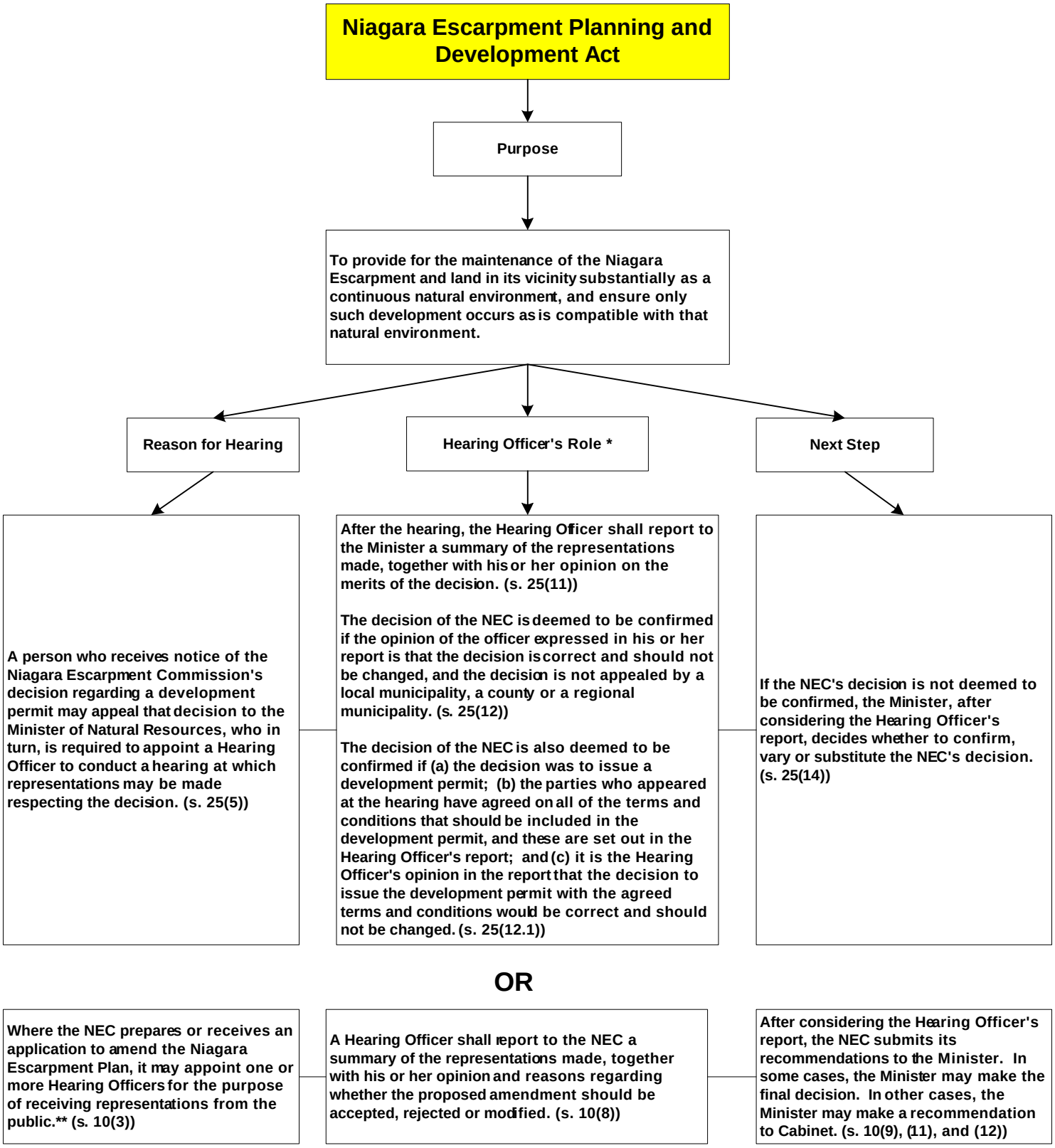


OR



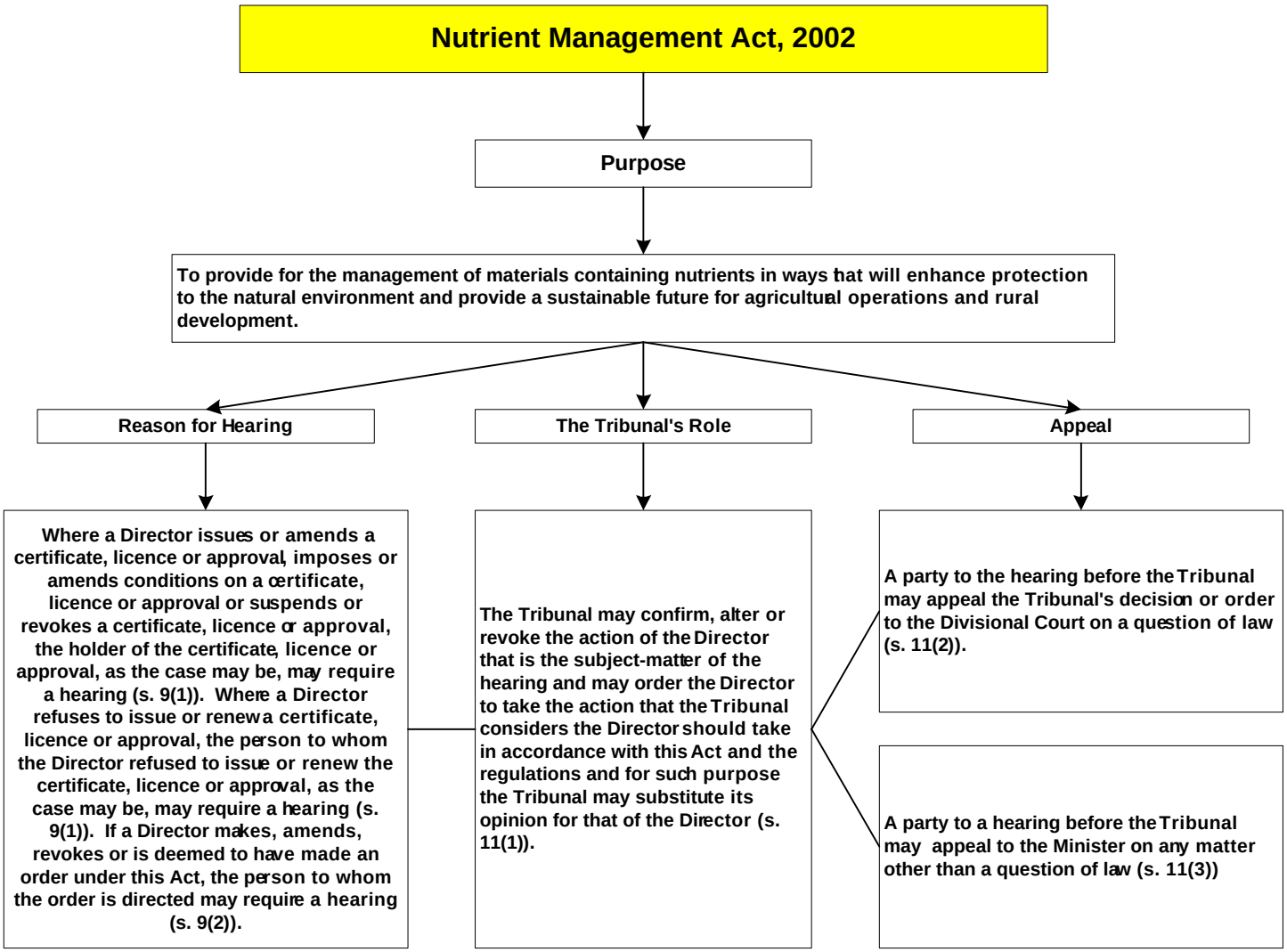
Note regarding Environmental Penalties:

Environmental Penalties are not yet in force. When the relevant sections are proclaimed, and the Director issues an order requiring a person to pay an Environmental Penalty under s. 182.1, the person named in the order may require a hearing before the Environmental Review Tribunal. The Tribunal shall not substitute its opinion for that of the Director with respect to the amount of the penalty unless the Tribunal considers the amount to be unreasonable (s. 145.4(2)).

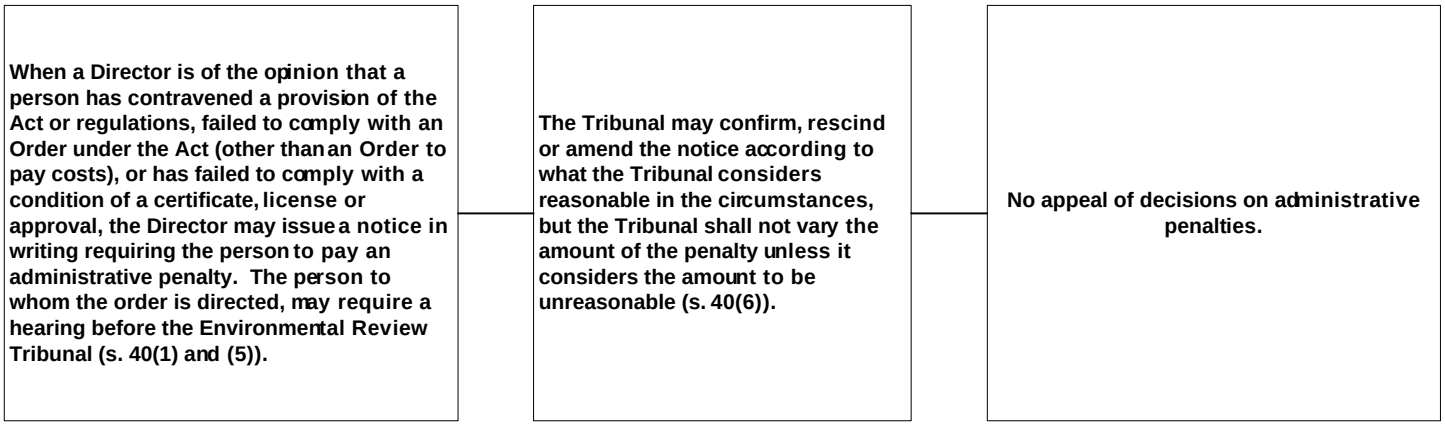


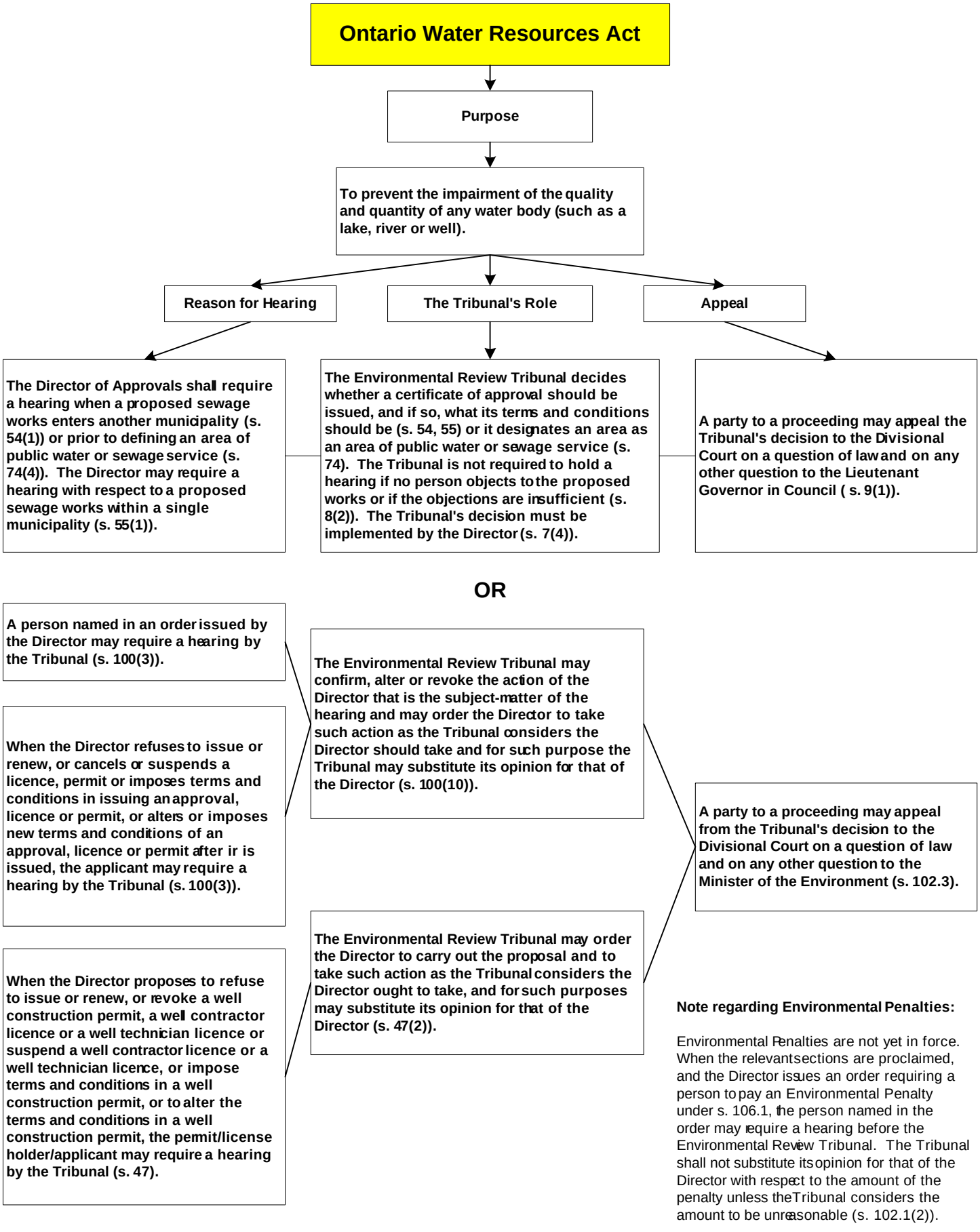
*Members of the Environmental Review Tribunal may be appointed as Hearing Officers under the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") to hear appeals of Niagara Escarpment Commission decisions on development permits and to conduct hearings on applications to amend the Niagara Escarpment Plan.

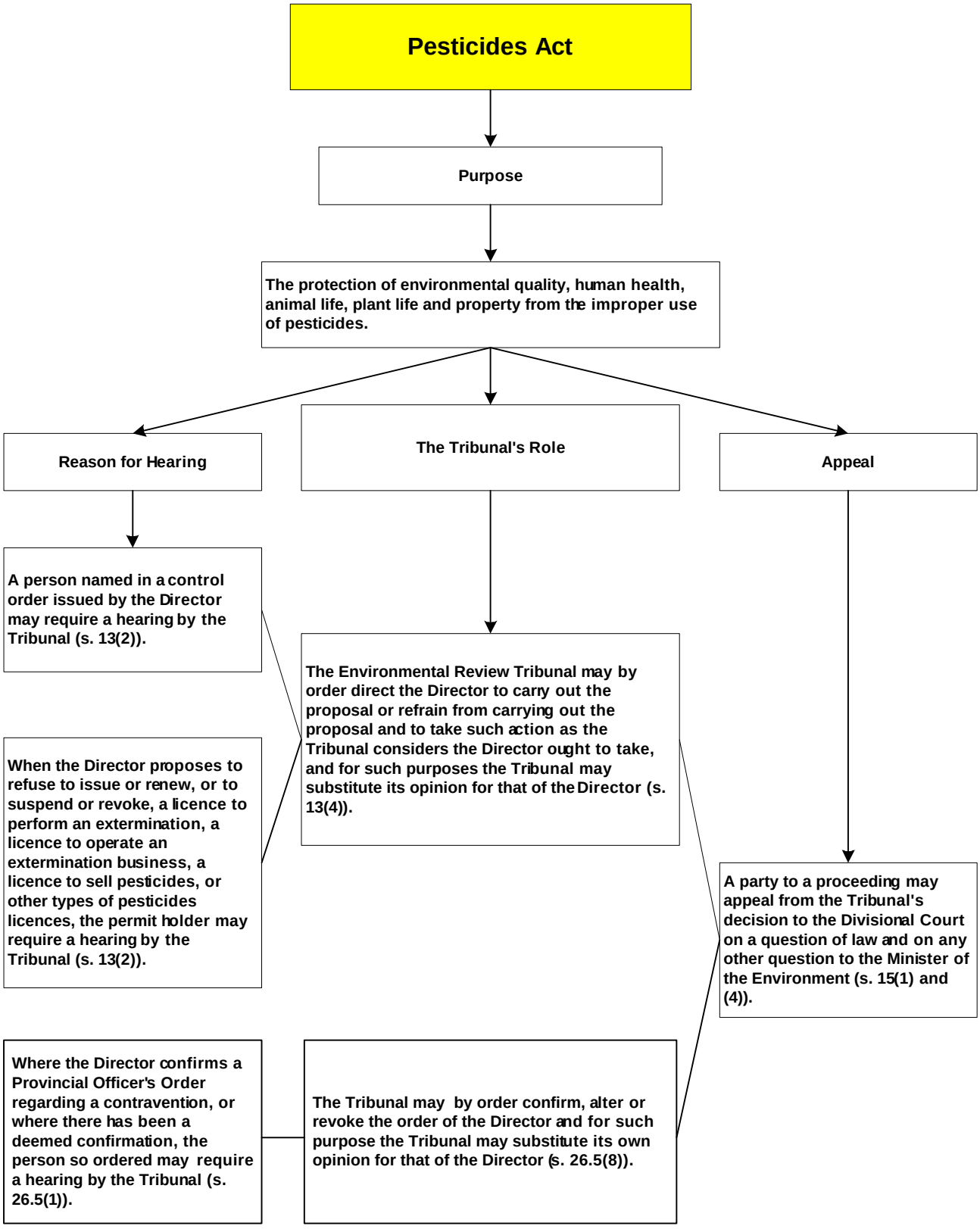
**Hearing Officers are normally appointed by the NEC to conduct hearings on proposed Plan amendments only if objections are made to the proposed amendments.

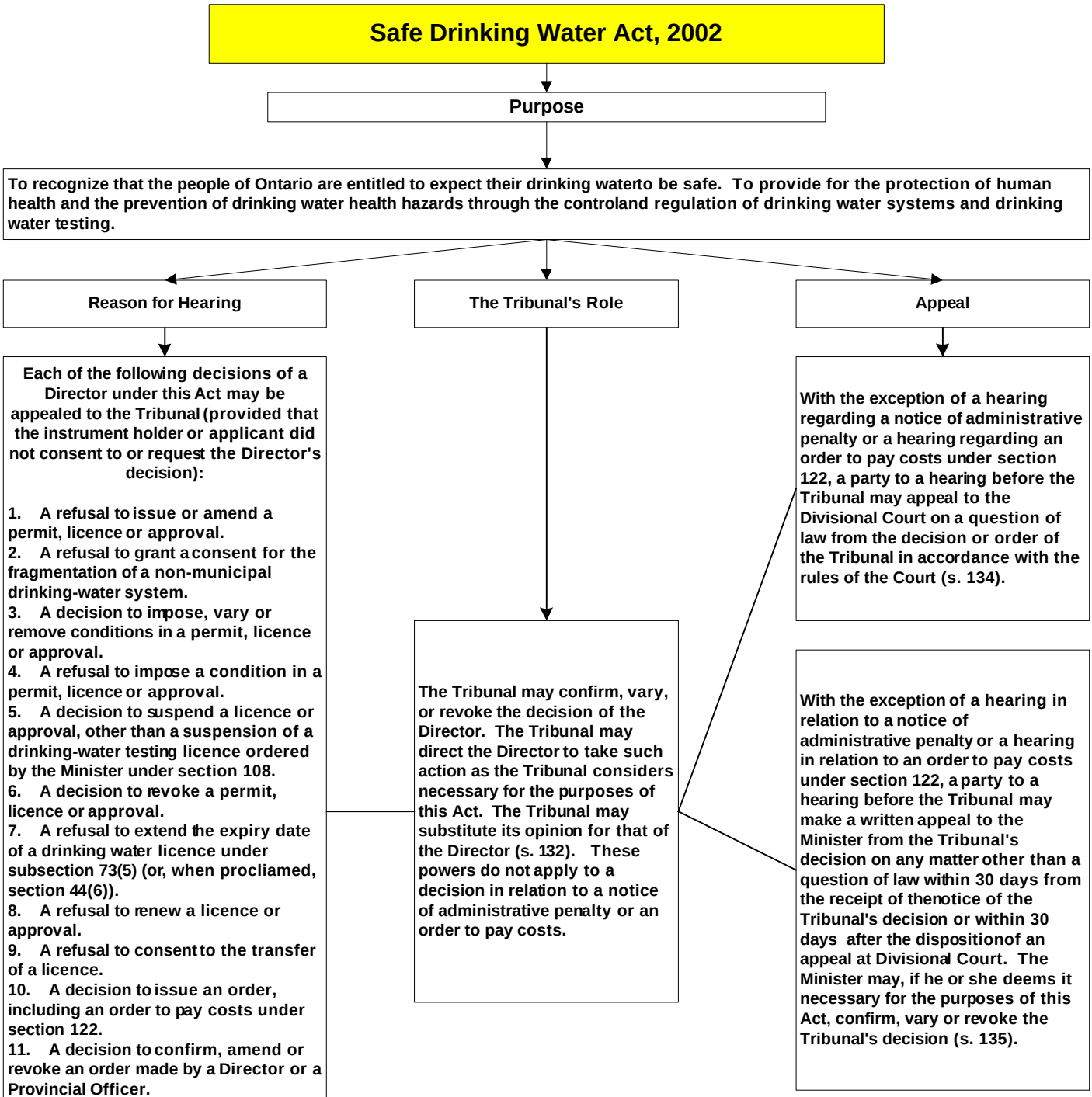


Re: Administrative Penalties




Ontario Water Resources Act
Purpose
To prevent the impairment of the quality and quantity of any water body (such as a lake, river or well).
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality (s. 54(1)) or prior to defining an area of public water or sewage service (s. 74(4)). The Director may require a hearing with respect to a proposed sewage works within a single municipality (s. 55(1)).
The Environmental Review Tribunal decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be (s. 54, 55) or it designates an area as an area of public water or sewage service (s. 74). The Tribunal is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient (s. 8(2)). The Tribunal's decision must be implemented by the Director (s. 7(4)).
A party to a proceeding may appeal the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council (s. 9(1)).
OR
A person named in an order issued by the Director may require a hearing by the Tribunal (s. 100(3)).
When the Director refuses to issue or renew, or cancels or suspends a licence, permit or imposes terms and conditions in issuing an approval, licence or permit, or alters or imposes new terms and conditions of an approval, licence or permit after ir is issued, the applicant may require a hearing by the Tribunal (s. 100(3)).
When the Director proposes to refuse to issue or renew, or revoke a well construction permit, a well contractor licence or a well technician licence or suspend a well contractor licence or a well technician licence, or impose terms and conditions in a well construction permit, or to alter the terms and conditions in a well construction permit, the permit/license holder/applicant may require a hearing by the Tribunal (s. 47).
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take and for such purpose the Tribunal may substitute its opinion for that of the Director (s. 100(10)).
The Environmental Review Tribunal may order the Director to carry out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes may substitute its opinion for that of the Director (s. 47(2)).
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment (s. 102.3).
Note regarding Environmental Penalties:
Environmental Penalties are not yet in force. When the relevant sections are proclaimed, and the Director issues an order requiring a person to pay an Environmental Penalty under s. 106.1, the person named in the order may require a hearing before the Environmental Review Tribunal. The Tribunal shall not substitute its opinion for that of the Director with respect to the amount of the penalty unless the Tribunal considers the amount to be unreasonable (s. 102.1(2)).


Pesticides Act
Purpose
The protection of environmental quality, human health, animal life, plant life and property from the improper use of pesticides.
Reason for Hearing
The Tribunal's Role
Appeal
A person named in a control order issued by the Director may require a hearing by the Tribunal (s. 13(2)).
When the Director proposes to refuse to issue or renew, or to suspend or revoke, a licence to perform an extermination, a licence to operate an extermination business, a licence to sell pesticides, or other types of pesticides licences, the permit holder may require a hearing by the Tribunal (s. 13(2)).
The Environmental Review Tribunal may by order direct the Director to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes the Tribunal may substitute its opinion for that of the Director (s. 13(4)).
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment (s. 15(1) and (4)).
Where the Director confirms a Provincial Officer's Order regarding a contravention, or where there has been a deemed confirmation, the person so ordered may require a hearing by the Tribunal (s. 26.5(1)).
The Tribunal may by order confirm, alter or revoke the order of the Director and for such purpose the Tribunal may substitute its own opinion for that of the Director (s. 26.5(8)).



Note regarding administrative penalties and orders to pay costs:

When the Director decides to issue a notice of administrative penalty under s. 121, the recipient may require a hearing before the Environmental Review Tribunal. The Tribunal may only confirm, vary or revoke the decision, but not so as to vary the amount of the penalty unless it considers the amount to be unreasonable (s. 127 and 132(4)).

When the Director decides to issue an order to pay costs under section 122, the person to whom the order is issued may require a hearing before the Environmental Review Tribunal. The Tribunal may confirm, vary or revoke the decision. The Tribunal can also grant the Director's request to add new items of costs or to increase the amounts set out in the order (s. 127 and 133).

Appendix B

Profile of Tribunal Members

Chair

Toby Vigod *(appointment expires May 31, 2008)*

- Appointed as Chair in June 2005
- Appointed as a Vice-Chair in December 2004
- Manager, Federal/Provincial/Territorial Relations and Co-Manager, National Secretariat, Climate Change Secretariat, Ottawa (2000-2004)
- Chair, Environmental Appeal Board and Forest Appeals Commission, British Columbia (1996-2000)
- Assistant Deputy Minister, Department of Policy, Planning and Legislation, Ministry of Environment, Lands and Parks, British Columbia (1994-1996)
- Commissioner, Commission on Planning and Development Reform in Ontario (1991-1993)
- Sessional Lecturer, Queen's University, Faculty of Law (1985-1991, 1993); University of Toronto, Faculty of Law (1991 and 1992); Osgoode Hall Law School (1993); Queen's School of Public Administration (1990 and 1991); Department of Geography, Ryerson University (2005)
- Counsel (1980-1993) and Executive Director (1986-1993), Canadian Environmental Law Association
- Called to the Ontario Bar (1980)
- B.A. (History Specialist) University of Toronto (1973) and LL.B Queen's University (1977)
- Member of a number of federal and Ontario environmental law reform committees; written extensively in the areas of environmental law and policy

Vice-Chairs

Norman A. Crawford *(appointment expires July 29, 2006)*

- Appointed as a Vice-Chair in July 2003
- Appointed as a member of the Ontario Municipal Board from August 2002 to July 2003
- A lawyer since 1972, he is a graduate of Osgoode Hall Law School and practised in both the public and the corporate and private sectors
- Prior to his appointment to the OMB, he carried on a general law practice in Kitchener

Jerry V. DeMarco *(appointment expires June 26, 2008)*

- Appointed as a Vice-Chair in June 2005
- Staff Lawyer (1996-2000) and Managing Lawyer (2000-2004), Sierra Legal Defence Fund, Ontario Office

- Master of Management (M.M.), McGill (2003); Master in Environmental Studies (M.E.S.), York (1994); Bachelor of Laws (LL.B.), Toronto (1994); Bachelor of Arts (B.A.), Winsdor (1990)
- Registered Professional Planner (R.P.P./MCIP) (1996)
- Called to the Ontario Bar (1996)
- Articled at Ministry of Environment and Energy (1994-1995)
- Publications have appeared in a wide variety of periodicals, journals and books
- Recipient of City of Toronto's first Green Toronto Award for environmental leadership

Knox M. Henry *(appointed "At Pleasure")*

- Acting Chair (December 2004-May 2005)
- Appointed as a Vice-Chair in 1991
- Member, Environmental Appeal Board (1978-1991)
- Member, Pesticides Appeal Board (1975-1978)
- Cross-appointed as member of the Ontario Rental Housing Tribunal (1999-2003)
- Cross-appointed as a Deputy Mining and Lands Commissioner (1995-1997)
- Strong background as one of Canada's leading horticulturalists
- Guest lecturer on propagation, management and environmental issues at various universities and colleges

Donald R. Martyn *(appointment expired April 23, 2006)*

- Appointed as a Vice-Chair since April 2003
- Taught at the Toronto Board of Education, York University and University of Toronto
- Government of Ontario – Executive Officer to Premier Robarts and Executive Director for the Ministry of Community and Social Services
- Consultant to business, associations, and to all four levels of government – strategic planning and program value for expenditure
- Former Chair of the Georgina Committee of Adjustment and member of Planning Board
- Member of Lake Simcoe Conservation Authority
- Past Chair of the Royal Commonwealth Society
- Governor of Machachlan College, Oakville
- Master of Arts (University of Toronto)

Part-time Members

Gary A. Harron *(appointment expires Sept. 10, 2006)*

- Appointed as a member in 2003 and a resident of Allenford, Ontario
- Graduated from the University of Guelph
- Owns and operates a 400 acre beef farm
- Member of the Ontario Municipal Board (1982 to 2004)
- Member of the Niagara Escarpment Commission (1973 to 1982)
- Several years municipal government experience as a member, Reeve and Warden
- Former executive in the insurance business

- Recipient of the Canadian Commemorative Medal on the 125th Anniversary of Confederation and the recipient of the Ontario Bicentennial Medal

Franco R. Mariotti *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Whitefish, Ontario
- He has traveled widely in North and South America, Iceland, and the Galapagos
- A founder of the Sudbury Naturalists' Club; active in social and environmentally-concerned groups
- A Biologist/Staff Scientist at Science North and manager of its Biosphere Exhibit since 1981

George W. Ozburn *(appointed "At Pleasure")*

- Appointed as a member in 1975 and a resident of Thunder Bay, Ontario
- Bachelor of Science degree in Agriculture (McGill); spent a year studying at Imperial College of Science and Technology in London (UK) prior to receiving his Ph.D. (Entomology and Toxicology) from McGill University, and prior to joining the Faculty of Science at Lakehead University in Thunder Bay
- Worked in pesticide research for three years in West Africa followed by a university appointment in Michigan
- For many years was responsible for a major study of chronic and acute toxicity of many families of chlorinated organic compounds
- As Professor Emeritus, is now associated with a laboratory at Lakehead University which carries out regulatory and chronic toxicity testing for industry

Bruce Pardy *(appointment expires June 21, 2008)*

- Appointed as a member in June 2005
- Associate Professor, Faculty of Law, Queen's University (2000 -)
- Associate Dean, Faculty of Law, Queen's University (2002-04)
- Visiting Professor, South Texas School of Law International Program, Malta (2000); California Western School of Law, San Diego (1998-2000); Seattle University School of Law (1996)
- Visiting Scholar, University of British Columbia Faculty of Law (1997)
- Senior Lecturer (Associate Professor) (1996-99) and Lecturer (Assistant Professor) (1993-96), Faculty of Law, Victoria University of Wellington, New Zealand
- Sessional Lecturer, Faculty of Law, University of Western Ontario (1992)
- Lawyer, Litigation Associate (1990-93) and Articling Student (1988-89), Borden Ladner Gervais LLP, Barristers & Solicitors
- Called to the Ontario Bar (1990)
- LL.B. University of Western Ontario (1988); LL.M. Dalhousie University (1991)
- Written extensively on environmental law and policy in Canada, U.S. and New Zealand

David A. B. Pearson *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Sudbury, Ontario
- Professor of Earth Sciences at Laurentian University

- Involved in research concerning lake water quality; leader of the Urban Lakes section of the Co-operative Fresh Water Ecology Unit at the university
- Took leave to be Project Director during the development of Science North 1980-1986, where he continues as Associate Director
- Past host of "Down to Earth" and "Understanding the Earth" TV series, and "Radio Lab" on CBC Northern Ontario Radio

Mary C. Schwass *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Tara, Ontario
- President of Canadian International Consulting Economists Ltd., a firm specializing in developing long-term strategic planning, policies and priorities for private sector companies and governments throughout North America, Africa and Asia

Appendix C

Learning Program		
Date	**Topic**	**Presenters/Visitors**
June 10, 2005	**Innovative Farming and Nutrient Management – Tour of Farms in Schomberg and Alliston**	Tour of Dandyland Holsteins and Schaus Farm Presentation by Earl Pollock, Field Manager, Nutrient Management Branch, OMAF
Sept. 16, 2005	**Bill 133, the *Environmental Statute Law Amendment Act,* 2004**	Jamie Flagal, Legal Services Branch, MOE Mike Nicol, Counsel, ERT
Sept. 16, 2005	**Members' Training: NEPDA Hearings: Process and Key Issues**	Mike Nicol, Counsel, ERT Gaye McCurdy, Acting Tribunal Secretary, ERT
Nov. 18, 2005	**Members' Training:** **1. MOE, EBR, CHA Hearings Process and Key Issues** **2. New Rules of Practice and Practice Directions**	Mike Nicol, Counsel, ERT Gaye McCurdy, Acting Tribunal Secretary, ERT
Jan. 27, 2006	**Environmental Assessment Reform: Recommendations from the EA Advisory Panel and Implications for the ERT**	Dr. Beth Savan, University of Toronto Chair, EA Advisory Panel Rod Northey, Barrister & Solicitor, Birchall, Northey Member, EA Advisory Panel Alan Levy, Barrister & Solicitor, Member, EA Advisory Panel Tim Sharp, Project Manager, Strategic Policy Branch, MOE
Jan. 27, 2006	**Members' Training:** **Decision Writing**	Mike Nicol, Counsel, ERT

Appendix D

Key Performance Goals and Objectives For Next Fiscal Year 2006-2007

For more information on the Tribunal's performance goals and objectives refer to the Business Plan for 2006-2009.

1. Pre-Hearings, Hearings Decision Making Core Function:			
Goals/Outcomes	Measures	Targets/Standards	2006-2007 Commitments
Commitment #1: Tribunal Members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy. All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To continue to provide Questionnaires to hearing participants and monitor respect and courtesy by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of hearing Questionnaires will be reported in the Tribunal's Annual Report. All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #2: Tribunal Members will render timely decisions.	The Tribunal will track the time it takes to render its written decisions.	Decisions will be rendered within 60 days of final arguments, except decisions that have legislated timelines and decisions under the *Consolidated Hearings Act*.	In 80% of all decisions rendered, Tribunal members will adhere to the target to render decisions within 60 days.

Commitment #3: Training of Tribunal Members.	All Members will receive adequate training to conduct hearings, write decisions and, in some cases, conduct mediation sessions.	Members will be trained in the process and conduct of hearings, knowledge of legislation, Tribunal's Rules, decision writing and alternative dispute resolution.	New members without prior Tribunal experience are trained to conduct hearings independently within 6 months of their appointment. All members will receive ongoing training regarding the Tribunal's legislation, Rules of Practice and administrative policies. The Tribunal will continue to conduct its learning program designed to enlighten members on environmental issues and administrative law.
Commitment #4: Offer pre-hearing conferences in appeals under the *NEPDA** and schedule preliminary hearings in all other appeals and applications, prior to the commencement of the hearing. **Niagara Escarpment Planning and Development Act*	When all parties agree to participate, pre-hearing conferences for matters under the *NEPDA** will be held and for all other appeals and applications, preliminary hearings will be held, at least 30 days prior to the commencement of the hearing.	Encourage parties to participate in pre-hearing conferences under the *NEPDA* * and continue to hold preliminary hearings for all other appeals and applications.	Continue to offer pre-hearing conferences in every matter under the *NEPDA** and preliminary hearings in all other appeals and applications. Questionnaires will be sent to all parties at the completion of the *NEPDA** hearing to ascertain their level of satisfaction with the process and assist the Tribunal in improving its services. The Tribunal will monitor the success of pre-hearing con-

			ferences by tracking the cases that are resolved prior to the hearing.
Commitment #5: Report on appeals and judicial review of Tribunal Decisions.	The Tribunal will report the outcome of any appeal of its decisions or judicial review applications.	Review and analyze the outcome of any appeal of its decisions or judicial review applications.	The Tribunal will summarize any decision on appeal or judicial review in its Annual Report. The Tribunal will review practices in light of any decisions of appeal.

2. Staff Processing of Hearings
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2006-2007 Commitments
Commitment #6: Improve Timeliness in Scheduling Hearings.	Hearings will be scheduled within the timeliness standard.	On average, hearing dates will be scheduled within 30 calendar days from the filing date of the application/appeal and 7 calendar days from the date the Tribunal receives all required information/ documentation from the parties.	Staff will adhere to the target.

3. Mediation
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2006-2007 Commitments
Commitment #7: Offer Mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation sessions will generally be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the mediation session to ascertain their level of satisfaction with the process and assist the Tribunal in improving its services. The Tribunal will monitor the success of mediation sessions by tracking the cases that are resolved prior to the hearing.

4. Public Access to the Tribunal
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2006-2007 Commitments
Commitment #8: The Tribunal will use its website to provide information and communicate with the public.	The Tribunal will continue its review of its website to improve ease of access and the Tribunal will continue to track the	Continued increase in the use and efficiency of the site.	The information contained on the website will be reviewed and improvements made to

	number of visitors to the site to monitor its use.		ensure ease of use for the public. The website will be updated each business day. Any amendments to the Rules of Practice and Practice Directions or publication of the Annual Report will be posted as approved.
Commitment #9: Guides will be updated.	The Tribunal will review its Guides in order to update the information to ensure accuracy and consistency.	Continued communication of the hearing process to the public.	To review and revise the Guides as changes to Tribunal Rules, legislation and policies arise.

Appendix E
Website Statistics – Downloads
During the period April 1, 2005 to March 31, 2006

Most Popular Downloads – Entire ERT Website:

Dufferin Aggregates, a Division of St. Lawrence Cement Inc. (Decision released June 08, 2005)	**3,822**
Rules of Practice and Practice Directions of the Environmental Review Tribunal (August 26, 2005)	**1,504**
Rules of Practice and Practice Directions of the Environmental Review Tribunal (October, 2005 changed November 10, 2005)	**1,287**
Rules	**956**
Niagara Escarpment Plan Review – Appendix B (Decision released October 15, 2001)	**737**
Niagara Escarpment Plan (June, 2005)	**631**
Guidelines of the Environmental Review Tribunal	**527**
Anne Vallentin and Six Nations of the Grand River v. MOE (Decision released June 21, 2005)	**520**
Practice Directions of the Environmental Review Tribunal	**512**
Rail Cycle Inc. v. MOE (Decision released May 6, 2005)	**474**
Annual Report 2003-2004	**398**
Imperial Oil Limited and 172965 Canada Limited v. MOE (Decision released May 13, 2005)	**379**
Ryan and 1353837 Ontario Inc. v. MOE (Decision released July 11, 2005)	**332**
A Guide to Appeals under the *Environmental Protection Act,* the *Nutrient Management Act,* 2002, the *Ontario Water Resources Act,* the *Pesticides Act,* and the *Safe Drinking Water Act,* 2002.	**330**

Appendix F

Financial Report
2005-2006

General Account for the Operation of the Tribunal:

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Salaries & Wages[1]	$1,002,900	$ 847,600	$ 845,641
Transportation and Communications	97,500	84,300	73,802
Services	201,900	179,400	194,456
Supplies and Equipment	97,500	103,100	109,587
Total	$1,399,800	$1,214,400	$1,215,366

Additional Funds Allocated:

Clean Water

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Transportation and Communications	$ 0	$ 700	$ 0
Services	$ 410,000	$ 11,400	$ 23,172
Supplies and Equipment	$ 0	$ 31,500	$ 20,253
Total	$ 410,000	$ 43,600	$ 43,425

Nutrient Management Act

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Salaries & Wages[1]	$ 42,800	$ 0	$ 0
Transportation and Communications	$ 4,300	$ 1,000	$ 0
Services	$ 63,400	$ 5,600	$ 0
Supplies and Equipment	$ 4,300	$ 1,900	$ 0
Total	$ 114,800	$ 8,500	$ 0

[1] Employee benefits are being managed centrally.

Appendix G

Contact Information

For further information about this report or the Environmental Review Tribunal contact:

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