



# **Ontario Municipal Board and Board of Negotiation**

**Annual Report 2008-2009**



**To the Honourable Chris Bentley, Attorney General**

Minister:

We have the pleasure of submitting, for the approval of the Legislature, the Ontario Municipal Board and the Board of Negotiation 2008-2009 Annual Report.

Respectfully submitted,



Marie Hubbard  
Chair  
Ontario Municipal Board  
Board of Negotiation



Ali Arlani  
Chief Executive Officer  
Boards Administrative Services

2009

<b>Contents</b>	<b>Page</b>
<u>Chair's Message</u>	<u>3</u>

## **PART I: Ontario Municipal Board**

<u>Section 1: OMB Overview</u>	<u>4</u>
<u>Section 2: Operations 2008-2009</u>	<u>6</u>

## **PART II: Board of Negotiation**

<u>Section 1: BON Overview</u>	<u>10</u>
<u>Section 2: Operations: 2008-2009</u>	<u>11</u>

## **PART III: Combined 2008-2009 Financial Summary: OMB and BON**

<u>Section 1: Financial Summary</u>	<u>12</u>
-------------------------------------	-----------

## Chair's Message - 2009

As the Chair of the Ontario Municipal Board (OMB) and the Board of Negotiation (BON), it is my pleasure to present the 2008-2009 OMB/BON Annual Report.

The OMB plays an essential role in Ontario's land use planning process. We provide a public forum to hear appeals relating to land use planning and other municipal matters. Members of the Board hear these appeals and make independent decisions based on the law and the evidence presented at hearings.

Changes to OMB business practices and procedures have produced many improvements in client and stakeholder services. The Citizen Liaison Office, which is now in its second year, continues to help the public with understanding the OMB process. As well, the OMB website is regularly updated to provide useful and timely information for the public. We strive to provide current and accurate information.

During the 2008-2009 fiscal year, two new Members were appointed to the OMB, bringing with them valuable experience and knowledge to hear and resolve cases.

The BON provides valuable mediation services for the people of Ontario. When disputes develop regarding compensation for expropriated land, BON Members mediate possible settlements. There were 30 requests for mediation this year.

This report provides information about the OMB and BON activities for the 2008-2009 fiscal year. Each year, the Boards continue to look at ways to improve services to all Ontarians.

Sincerely,



Marie Hubbard  
Chair of the Ontario Municipal Board and the Board of Negotiation

## PART I: ONTARIO MUNICIPAL BOARD (OMB)

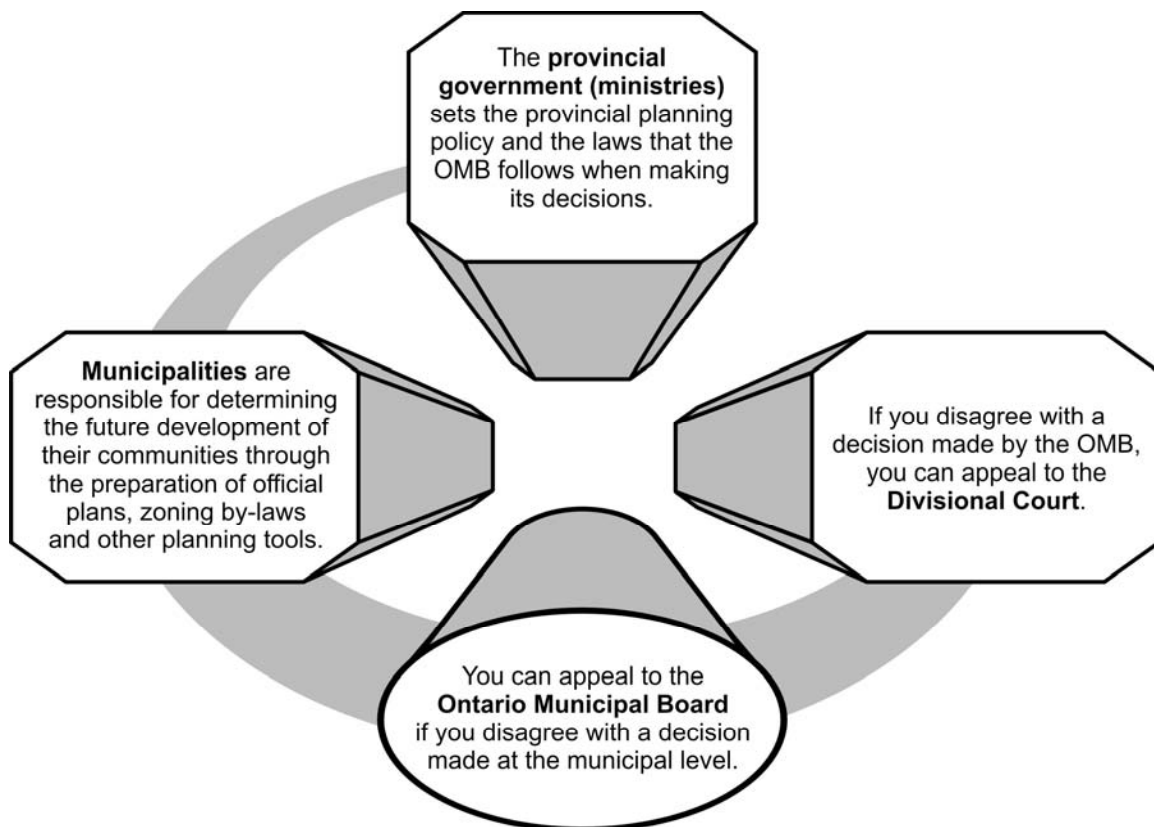
### SECTION 1: OVERVIEW

#### The OMB Role

The Ontario Municipal Board (OMB) is an independent tribunal established through provincial legislation. The Board hears appeals and applications on a wide range of municipal and land-related matters including official plans, zoning by-laws, subdivision plans, consents and minor variances, land compensation, development charges, ward boundaries and aggregate resources.

Along with other regulatory and adjudicative agencies, the OMB helps form the administrative justice sector in Ontario. It allows for disputes to be resolved in a more informal, less expensive and timelier process than the court system. Like judges, OMB Members hear appeals in a court-like setting and make independent decisions based on the law and evidence presented at the hearing.

#### Land Use Planning System in Ontario



The above diagram illustrates the land use planning system in Ontario. The Ontario government makes the laws and establishes the provincial planning policies. Municipalities develop land use planning instruments and local rules. When a dispute arises, appeals can be made to the Ontario Municipal Board (OMB) under the Planning

Act and other legislation. An OMB decision can also be appealed, on a matter of law, to the Divisional Court of Ontario.

### **The OMB Process**

Disputes are brought to the OMB by filing an appeal. Depending on the type of dispute, there are different processes and timelines for filing an appeal. The OMB reviews the appeal and streams it into mediation, motion, pre-hearing or hearing. Most appeals are resolved by a full hearing.

The OMB holds hearings across the province, most often in the municipality where the property is located. OMB Members hear the appeal in a court-like setting and make independent decisions based on the law and the evidence presented at the hearing. OMB Member decisions are based on provincial law, the provincial planning policy, municipal planning documents, and the principles of good planning.

### **History and Jurisdiction**

The OMB is one of the province's longest-standing adjudicative tribunals. In 1906, the OMB assumed new responsibilities, including those previously carried out by the Office of the Provincial Municipal Auditor. Originally named the Ontario Railway and Municipal Board, it was created to oversee municipalities' accounts and to supervise the rapidly growing rail transportation system between and within municipalities. It was renamed the Ontario Municipal Board in 1932.

While the OMB's mandate has evolved over the years, many of the powers given to the OMB at the time of its creation have been retained, albeit with changing scopes of responsibility.

### **Agency Clustering Project**

In September 2006, the Ontario government appointed an Agency Cluster Facilitator to work with five tribunals in the municipal, environment and land-use planning sectors to find ways to improve services through cross-agency coordination of operations, administration and dispute resolution.

The five tribunals included in the cluster were: the Assessment Review Board (ARB), the Board of Negotiation (BON), the Conservation Review Board (CRB), the Environmental Review Tribunal (ERT) and the OMB. All the Boards were co-located in March of 2008 to 655 Bay Street in Toronto.

In January of 2009, the ERT was transferred from the Ministry of the Environment to the Ministry of the Attorney General (MAG). At the same time, the CRB was also transferred to MAG from the Ministry of Culture.

## **Legislative Changes**

There were no significant changes to legislation or regulations directly affecting the Board during this period.

## **Rules of Practice and Procedure**

The Board revised the Rules of Practice and Procedure ("the Rules") effective August 11, 2008. The last major update to the Rules was in 2000. The Rules were revised:

1. To reflect recent legislative changes;
2. To reflect current procedures and policy, and
3. To improve the overall readability of the Rules.

The commentary to the Rules was removed to improve readability. Other key changes include: the requirement for a mediation assessment before the appointment of a Board mediator; the addition of provisions to permit videoconferencing; and refinement of the Rules for review of decisions under s. 43 of the Ontario Municipal Board Act. The Board will continue to review the effectiveness of these Rules to ensure that they facilitate fair, timely and consistent Board proceedings.

## **SECTION 2: OPERATIONS 2008-2009**

### **Case Management**

The OMB's case management department is responsible for the case management of all appeals/applications received by the Board from intake through to resolution, with the exception of the adjudication of matters by Members of the Board.

The department is divided into three teams: two planning teams and a hearings team. The planning teams are based on regional areas. This team structure helps to streamline cases and provides clients with a consistent point of contact with staff. Assigning caseload responsibility along regional lines also allows managers and staff to build regional expertise, monitor local issues and anticipate matters that could be brought to the OMB for adjudication.

The hearings team is responsible for the scheduling and facilities coordination of all hearing events across the province. The Chair assigns Members to hearings and the hearings team helps provide information to the Members so they can conduct hearings across the province.

### **Files Received**

File intake decreased by 11 per cent during the 2008-2009 fiscal year. Legislative amendments providing for increased public notice and the requirement for early participation in the process at the municipal level, coupled with the decrease in development activity stemming from the economic climate, may be contributing factors to the decrease in file intake. Patterns of intake from a geographic perspective continue to follow patterns found in previous years with the largest number of files, about one-quarter, involving the City of Toronto.



The GTA and the rest of the Golden Horseshoe account for about 60 per cent of the Board's intake. Ottawa represents the next largest area with six percent of the Board's intake. Generally the areas with the greatest population have a greater number of applications filed. See the table below for the types of files received by the Board.

*Table 1: OMB File Types Received*

<b>File Types Received (Appeals and Applications)</b>	<b>2006-2007</b>	<b>2007-2008</b>	<b>2008-2009</b>
<b>Minor Variances</b>	<b>551</b>	<b>578</b>	<b>552</b>
<b>Consents</b>	<b>341</b>	<b>279</b>	<b>260</b>
<b>Zoning By-laws</b>	<b>340</b>	<b>275</b>	<b>190</b>
<b>Official Plans</b>	<b>210</b>	<b>198</b>	<b>162</b>
<b>Zoning Refusal or Inaction</b>	<b>188</b>	<b>172</b>	<b>163</b>
<b>Plans of Subdivision</b>	<b>109</b>	<b>95</b>	<b>68</b>
<b>Municipal Structure (incl. site plans)</b>	<b>119</b>	<b>92</b>	<b>83</b>
<b>Development Charges</b>	<b>15</b>	<b>16</b>	<b>15</b>
<b>Land Compensation</b>	<b>47</b>	<b>25</b>	<b>29</b>
<b>Capital Expenditures</b>	<b>11</b>	<b>8</b>	<b>9</b>
<b>Joint Board</b>	<b>1</b>	<b>0</b>	<b>2</b>
<b>Site Plan after Nov. 15</b>	<b>N/A</b>	<b>25</b>	
<b>Other</b>			<b>48</b>
<b>TOTAL</b>	<b>1,932</b>	<b>1,763</b>	<b>1,581</b>

### **Hearing Activity**

The Board scheduled 2,165 hearing events in 2008-2009, similar to the number of hearings from the previous year. Of the 2,165 hearings scheduled, 1,271 resulted in a hearing before the Board. The Board continues to use the pre-hearing process on complex cases to refine or settle issues so that hearings, if still needed, are focused and more efficient.

The Board has the ability to provide hearing dates quickly once the parties are prepared to proceed. The Board has increased its ability to respond to client requests for quick access to adjudication on new cases or timely interventions on ongoing cases where the parties require an adjudicative determination to keep the case on track to resolution.

### **Mediation**

The Board's mediation program continues to provide enhanced service to Board clients. Many hearing events have settled as the result of Board mediation. Mediations have also been shown to shorten the time for resolution and to be less costly for the parties. Mediation efforts in relation to land compensation cases have had the greatest success. For the 2008-2009 fiscal year, there were 72 mediation events held.

## **Performance Results**

The scheduling of hearing dates at the OMB depends on many factors including: the correct filing of documents, the number of witnesses expected, availability of hearing rooms and the readiness of parties to proceed.

- For stand-alone minor variance appeals, 86 per cent of the cases had a first hearing event within 120 days of filing.
- For all types of applications and appeals, 88 per cent of the cases had a first hearing event within 180 days of filing of the last application that formed part of the case.

The OMB strives to issue its decisions in a timely manner. In the 2008-2009 fiscal year:

- 80 per cent of decisions were issued within 45 days of the hearing.

## **Information Technology and Electronic Service Delivery**

The Board uses a variety of technologies to process its caseload and provide information to the public.

In 2008-09, the Board continued work on its case management and computer assisted scheduling systems. As well, the website was updated to expand on the information for the public about the OMB.

The website continued to receive thousands of hits each month for its E-status and E-decisions applications. An online feedback form allows the public to submit comments directly to the Citizen Liaison Office through the website. With the feedback form, questions, concerns or suggestions can be addressed via e-mail.

## OMB Members

The Lieutenant Governor in Council appoints Members for terms of up to five years. Members of the OMB include professionals from different areas of the province with diverse backgrounds such as lawyers, former elected officials, engineers, planners and public administrators. The OMB Chair is cross-appointed to the Board of Negotiation (BON).

For more information on Member appointments, please visit the Public Appointments Secretariat website at [www.pas.gov.on.ca](http://www.pas.gov.on.ca).

Below is the list of active OMB Members from April 1, 2008 to March 31, 2009.

### Chair

HUBBARD, Marie †

### Executive Vice-Chair

LEE, S. Wilson

### Vice-Chairs

CAMPBELL, Susan B.  
GRANGER, Donald R.  
McKENZIE, James

SEABORN, Jan deP.  
ZUIDEMA, Jyoti

## OMB Members

AKER, John R.  
ATCHESON, J. Peter  
BARBIR, Draga\*  
BECCAREA, Robert A.\*  
CHEE-HING, Jason  
CHRISTOU, Aristotle  
CONTI, Chris  
DENHEZ, Marc  
GATES, Douglas\*  
GOLDKIND, Harold  
HEFFERON, Colin

HUSSEY, Karlene  
JACKSON, Norman C.  
O'CONNOR, Gary  
ROSSI, Reid  
SCHILLER, Susan  
SILLS, Mary-Anne  
SNIEZEK, Joseph E.  
SOMERS, Michael G.  
STEFANKO, Steven  
SUTHERLAND, Sylvia  
WONG, Joe G.

**Note:** † Indicates Chair of the OMB and BON

\*Indicates Members who were no longer with the OMB as of March 31, 2009

## **PART II: THE BOARD OF NEGOTIATION**

### **SECTION 1: BON OVERVIEW**

#### **Purpose of the BON**

The Board of Negotiation (BON) serves as an informal tribunal that negotiates compensation settlements in expropriation cases. The BON becomes involved only after alternative avenues for settlement have not succeeded. Meetings with expropriated parties and the authorities are arranged throughout Ontario at no cost to either party. The BON reviews all written documentation and considers the submissions from the parties.

Through mediation, the BON attempts to bring the parties to an agreement on the appropriate compensation for the specific case. With no power to impose a settlement, the BON will, where sufficient information has been submitted, provide a recommendation on what would be fair compensation.

Subsection 27(5) of the Expropriations Act provides that BON Members must view the property in question prior to, or during, the hearing. Using its expert mediators, the BON has been able to achieve a high rate of success with the cases brought before it. If a settlement cannot be reached, the parties may appeal to the OMB.

#### **History and Jurisdiction**

The BON was formed under the authority of the Expropriations Procedures Act 1962/63. The Act, which came into force on January 1, 1964, represented one of the recommendations of the report by the Select Committee on Land Expropriation. As a result of subsequent studies on compensation and procedures, including the reports for the Ontario Law Reform Commission, the Expropriations Act came into force on January 1, 1970. Under the Expropriations Act, the Land Compensation Board was established, forming a single tribunal that would possess the potential for uniform decision-making. The OMB has now assumed the Land Compensation Board's duties.

### **SECTION 2: OPERATIONS 2008-2009**

#### **Requests for BON Involvement**

*Table 1: Meetings Requested and Held April 1, 2008 to March 31, 2009*

	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Requests Received	11	2	2	0	1	1	3	1	0	2	1	6	30
Meetings Held	0	2	1	3	1	2	4	0	1	1	3	2	20

## **Members**

The Lieutenant Governor in Council appoints part-time Members to a term of up to five years. Members travel throughout the province to conduct mediations and view properties. For more information on Member appointments, please visit the Public Appointments Secretariat website at: [www.pas.gov.on.ca](http://www.pas.gov.on.ca).

Below is the list of active BON Members from April 1, 2008 to March 31, 2009.

### **Chair**

HUBBARD, Marie†

### **BON Members**

ARMSTRONG, Hilje\*

BOYAK, Mark

MILNE, John E.

SIMMONS, Lawrence John

TAYLOR, Ian

YUEN, Jane

Note: † Indicates Chair of the BON and OMB

\* Indicates Members who were no longer with the BON as of March 31, 2009

## PART III: COMBINED 2008-2009 FINANCIAL SUMMARY: OMB and BON

### SECTION 1: FINANCIAL SUMMARY

Under the authority of section 100 of the Ontario Municipal Board Act, filing fees have been set for each application or appeal filed with the OMB. The standard fee is \$125. Revenue collected under section 99 of the Act is reported as “miscellaneous.” This includes, for example, fees for publications, copies of documents, maps or plans and all certificates provided under legislation.

#### Fees Collected

The BON does not collect fees for its services. The revenue stated below is generated solely through the services of the OMB. All fees collected by the OMB are remitted to the Ministry of Finance.

*Table 1: Fees Collected*

APPLICATION, APPEAL OR RENEWAL FEES	FISCAL YEAR (April 1—March 31)		
	2006-2007 (\$)	2007-2008 (\$)	2008-2009 (\$)
<b>Total fees received</b>	<b>304,502</b>	<b>244,488</b>	<b>237,416</b>

SOURCE: PUBLIC ACCOUNTS

#### Actual Expenditures

*Table 2: Expenditures of the OMB and BON*

ACCOUNT ITEM	FISCAL YEAR (April 1—March 31)		
	2006-2007 (\$)	2007-2008 (\$)	2008-2009 (\$)
<b>Salary and Wages</b>	5,380,665	5,408,227	5,739,638
<b>Employee Benefits</b>	667,884	705,775	740,579
<b>Transportation &amp; Communications</b>	719,491	649,965	666,632
<b>Services</b>	341,683	496,250	534,929
<b>Supplies and Equipment</b>	395,456	291,351	134,653
<b>Transfer Payments</b>	NIL	NIL	NIL
<b>TOTAL</b>	<b>7,505,179</b>	<b>7,551,568</b>	<b>7,816,431</b>

#### Allocation

The budgets of the OMB and the BON are provided within the *Estimates of the Ministry of the Attorney General* on a fiscal-year basis.