



Environment and Land Tribunals Ontario

Ontario Municipal Board

Annual Report 2009-2010

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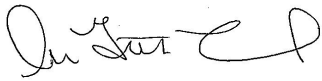
Environment and Land Tribunals Ontario
www.elto.gov.on.ca

To the Honourable Chris Bentley, Attorney General

Minister:

We have the pleasure of submitting, for the approval of the Legislature, the Ontario Municipal Board 2009-2010 Annual Report.

Respectfully submitted,



Michael Gottheil
Executive Chair
Environment and Land Tribunals Ontario



Ali Arlani
Chief Executive Officer
Environment and Land Tribunals Ontario

2010

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Chair's Message - 2010

On behalf of all Members and staff, I am pleased to present the 2009-2010 Ontario Municipal Board Annual Report. This report covers the fiscal year ending March 31, 2010.

The Ontario Municipal Board (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, expropriation, and a range of other municipal matters. Members of the Board hear these appeals and make independent decisions based on the law and the evidence presented at hearings.

In November, I was appointed as Chair of the OMB and Executive Chair of Environment and Land Tribunals Ontario (ELTO), a cluster of tribunals of which the OMB is a part.

ELTO brings together the OMB, the Assessment Review Board, the Board of Negotiation, the Conservation Review Board, and the Environmental Review Tribunal. I believe the decision by the Government to group these five important tribunals reflects a recognition of the key role each plays in resolving disputes, within the applicable legislative framework, to support strong, healthy communities, and of the potential to better fulfill that role by bringing them together.

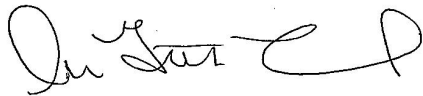
I also believe administrative tribunals must constantly work to be accessible, principled and just, and must engage their users, staff and Members in the design and ongoing assessment of their processes. Tribunals must operate in ways that attract, support and retain highly-skilled staff and Members, and must have a sharp focus on meeting the needs of their users and advancing the public interest within the applicable legal and policy frameworks.

The staff and Members of ELTO's tribunals are dedicated to achieving these important goals. In particular, the OMB is fully committed to resolving land use and other matters before it in a fair, open and timely manner, to exemplifying the highest standards of professionalism, integrity and good public service, and to providing access to justice for all who wish to use our services.

I extend my thanks to the former OMB Chair, Marie Hubbard, who worked with the Board for many years and to Wilson Lee, Executive Vice-chair, who has played a significant role in assisting me to assume the role of Chair. I also thank each of the Vice-Chairs and Members for their professionalism and their dedication to serving those who use the Board's services, and Joanne Hayes, OMB Senior Case Manager, and her staff for their excellent work in ensuring the OMB meets its mandate and service standards. Finally, I would like to thank Ali Arlani, ELTO's CEO, for his support, and for his achievements over the past few years, leading the operational and administrative staff through a successful,

though sometimes challenging transition to ELTO. I look forward to working with Members, staff, stakeholders and the broader community throughout the 2010/11 fiscal year and beyond to help realize the OMB's potential within ELTO.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gottheil". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

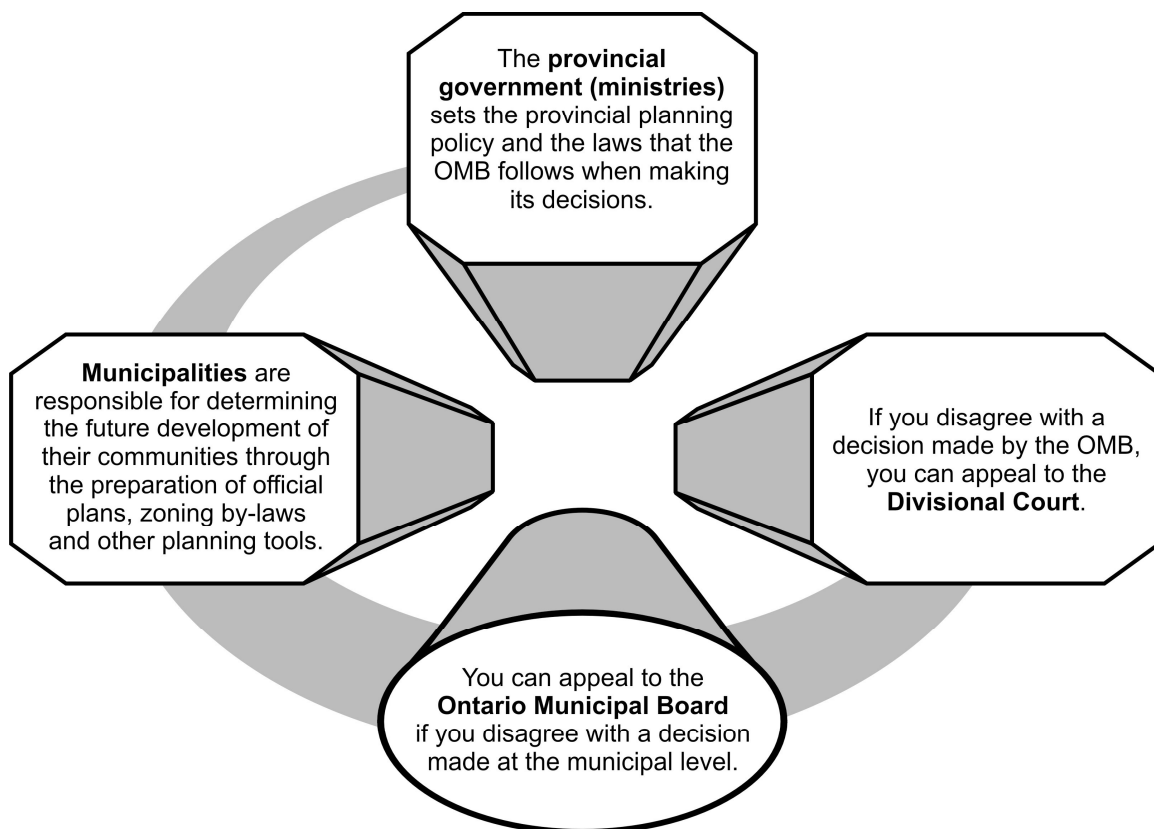
Michael Gottheil
Chair - Ontario Municipal Board
Executive Chair - Environment and Land Tribunals Ontario

SECTION 1: Ontario Municipal Board (OMB) 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. Its processes are designed to resolve disputes in an expert tribunal which is more informal, less expensive and more timely than the court system. OMB Members make independent decisions based on the applicable law and policies, and the evidence presented at the hearing.



The preceding 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 and make independent decisions based on the evidence presented at the hearing, provincial law, the provincial planning policy, municipal planning documents, previous Board decisions 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 its initial 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 and expanded 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 November of 2009, Michael Gottheil was appointed as Chair of the Ontario Municipal Board and, as Executive Chair, to lead the Environment and Land Tribunals Ontario cluster.

ELTO is a group of five tribunals that resolve appeals, applications and other disputes, under some 100 statutes, in relation to land use planning, environmental and heritage protection, property assessment, land valuation and other matters.

ELTO is the first cluster of tribunals created under the authority of the Adjudicative Tribunals Accountability, Governance, and Appointments Act, 2009. That Act permits the government to designate two or more adjudicative tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone.

The five tribunals included in the cluster are: the Assessment Review Board (ARB), the Board of Negotiation (BON), the Conservation Review Board (CRB), the Environmental Review Tribunal (ERT) and the OMB.

Legislative Changes

The Ontario Heritage Act was amended to now allow the Board to conduct reviews or reconsiderations of decisions in respect of appeals within the jurisdiction of the Board. This power, found in s. 43 of the Ontario Municipal Board Act, was previously not available to the Board in respect of a Heritage Act appeal.

In addition, there were a number of minor amendments to the Ontario Municipal Board Act, for example, deleting the restrictions placed upon Members who were formerly restricted from holding Railway Stock.

Rules of Practice and Procedure

Section 2.1 was added to allow the Executive Chair to designate a Vice-Chair to perform any of the duties provided for in the Rules. Now the Executive Chair may delegate responding to Requests for Review to the Executive Vice-Chair. As well, this delegation authorizes the Executive Vice-Chair to assign Members to hearings or mediation sessions.

SECTION 2: Operations 2009-2010

Case Management

The OMB's case management department supports the adjudication of matters by managing the processing 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 16 per cent during the 2009-2010 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-fifth, involving the City of Toronto.

The GTA and the rest of the Golden Horseshoe account for about 52 per cent of the Board's intake. Ottawa represents the next largest area with six per cent of the Board's intake. See the table that follows for the types of files received by the Board.

Table 1: OMB File Types Received

| File Types Received (Appeals and Applications) | 2007-2008 | 2008-2009 | 2009-2010 |
|---|------------------|------------------|------------------|
| Minor Variances | 578 | 552 | 363 |
| Consents | 279 | 260 | 176 |
| Zoning By-laws | 275 | 190 | 187 |
| Official Plans | 198 | 162 | 169 |
| Zoning Refusal or Inaction | 172 | 163 | 146 |
| Plans of Subdivision | 95 | 68 | 76 |
| Municipal Structure (incl. site plans) | 92 | 83 | 68 |
| Development Charges | 16 | 15 | 60 |
| Land Compensation | 25 | 29 | 42 |
| Capital Expenditures | 8 | 9 | 11 |
| Joint Board | 0 | 2 | 1 |
| Site Plan after Nov. 15 | 25 | | |
| Other | | 48 | 33 |
| TOTAL | 1,763 | 1,581 | 1,332 |

Hearing Activity

The Board scheduled 1,850 hearing events in 2009-2010, representing an approximate 10 per cent reduction in the number of hearings from the previous year. Of the 1,850 hearings scheduled, 1,213 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 matters have settled as the result of Board mediation. Mediations have 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 2009-2010 fiscal year, there were 66 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, the availability of hearing rooms and the readiness of parties to proceed.

- For stand-alone minor variance appeals, 92 per cent of the cases had a first hearing event within 120 days of filing.
- For all other types of applications and appeals, 87 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 2009-2010 fiscal year:

- 86 per cent of decisions were issued within 60 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 2009-2010, the Board continued work on its case management and computer-assisted scheduling systems. As well, the website was updated to expand 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 as the Chair of the Board of Negotiation (BON).

For more information on Member appointments, please visit the Public Appointments Secretariat website at www.pas.gov.on.ca.

Below is the list of active OMB Members from April 1, 2009 to March 31, 2010.

| Chair | Original OMB Appointment |
|--------------|---------------------------------|
|--------------|---------------------------------|

| | |
|--------------------------------------|------------------|
| GOTTHEIL, Michael HUBBARD, Marie* | November 2, 2009 |
|--------------------------------------|------------------|

Executive Vice-Chair

| | |
|----------------|--------------|
| LEE, Wilson S. | July 1, 1988 |
|----------------|--------------|

Vice-Chairs

| | |
|--------------------|------------------|
| CAMPBELL, Susan B. | April 28, 2004 |
| GRANGER, Donald R. | November 3, 1997 |
| McKENZIE, James | July 3, 2007 |
| SEABORN, Jan deP | May 31, 2000 |
| ZUIDEMA, Jyoti | August 20, 2007 |

OMB Members

| | |
|---------------------|--------------------|
| AKER, John R. | May 10, 2000 |
| ATCHESON, J. Peter | July 5, 2004 |
| CHEE-HING, Jason | September 1, 2004 |
| CHRISTOU, Aristotle | April 16, 2008 |
| CONTI, Chris | July 3, 2007 |
| DENHEZ, Marc | May 31, 2004 |
| GOLDKIND, Harold | February 7, 2007 |
| HEFFERON, Colin | September 20, 2006 |
| HUSSEY, Karlene | April 20, 2005 |
| JACKSON, Norman C. | October 6, 1997 |
| O'CONNOR, Gary | November 1, 2004 |
| ROSSI, Reid | May 31, 2004 |
| SCHILLER, Susan | September 6, 2005 |
| SILLS, Mary-Anne | July 3, 2007 |

SNIEZEK, Joseph E.
SOMERS, Michael G.
STEFANKO, Steven
SUTHERLAND, Sylvia
WONG, Joe. G

June 23, 2004
November 29, 2006
April 20, 2005
March 21, 2007
April 16, 2008

Note: *Indicates Members who were no longer with the OMB as of March 31, 2010

SECTION 3: Financial Summary

Fees Collected

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. 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) | | |
|---|-----------------------------------|-------------------|-------------------|
| | 2007-2008 (\$) | 2008-2009 (\$) | 2009-2010 (\$) |
| Total fees received | 244,488 | 237,416 | 209,921 |

*Source: public accounts

Allocation

A single budget for the OMB and the BON is provided within the *Estimates of the Ministry of the Attorney General* on a fiscal-year basis.

Table 2: Expenditures of the OMB and BON

| ACCOUNT ITEM | FISCAL YEAR (April 1—March 31) | | |
|--|-----------------------------------|-------------------|-------------------|
| | 2007-2008 (\$) | 2008-2009 (\$) | 2009-2010 (\$) |
| Salary and Wages | 5,408,227 | 5,739,638 | 5,800,595 |
| Employee Benefits | 705,775 | 740,579 | 761,011 |
| Transportation & Communications | 649,965 | 666,632 | 574,418 |
| Services | 496,250 | 534,929 | 226,259 |
| Supplies and Equipment | 291,351 | 134,653 | 45,910 |
| Transfer Payments | NIL | NIL | NIL |
| TOTAL | 7,551,568 | 7,816,431 | 7,408,193* |

* In 2009-10, the OMB/BON had a surplus of 3.3%, this was due in part to vacancies and in part due to the postponement of some reconfiguration of facilities.