

**ELECTIVE COURSE:**

**THE ONTARIO MUNICIPAL  
BOARD (OMB)**

City Clerk & Solicitor's Department  
Planning and Growth Management  
Department

# PLANNING PRIMER: THE OMB

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PRESENTERS



**GENERAL INFORMATION  
REGARDING THE ONTARIO  
MUNICIPAL BOARD**

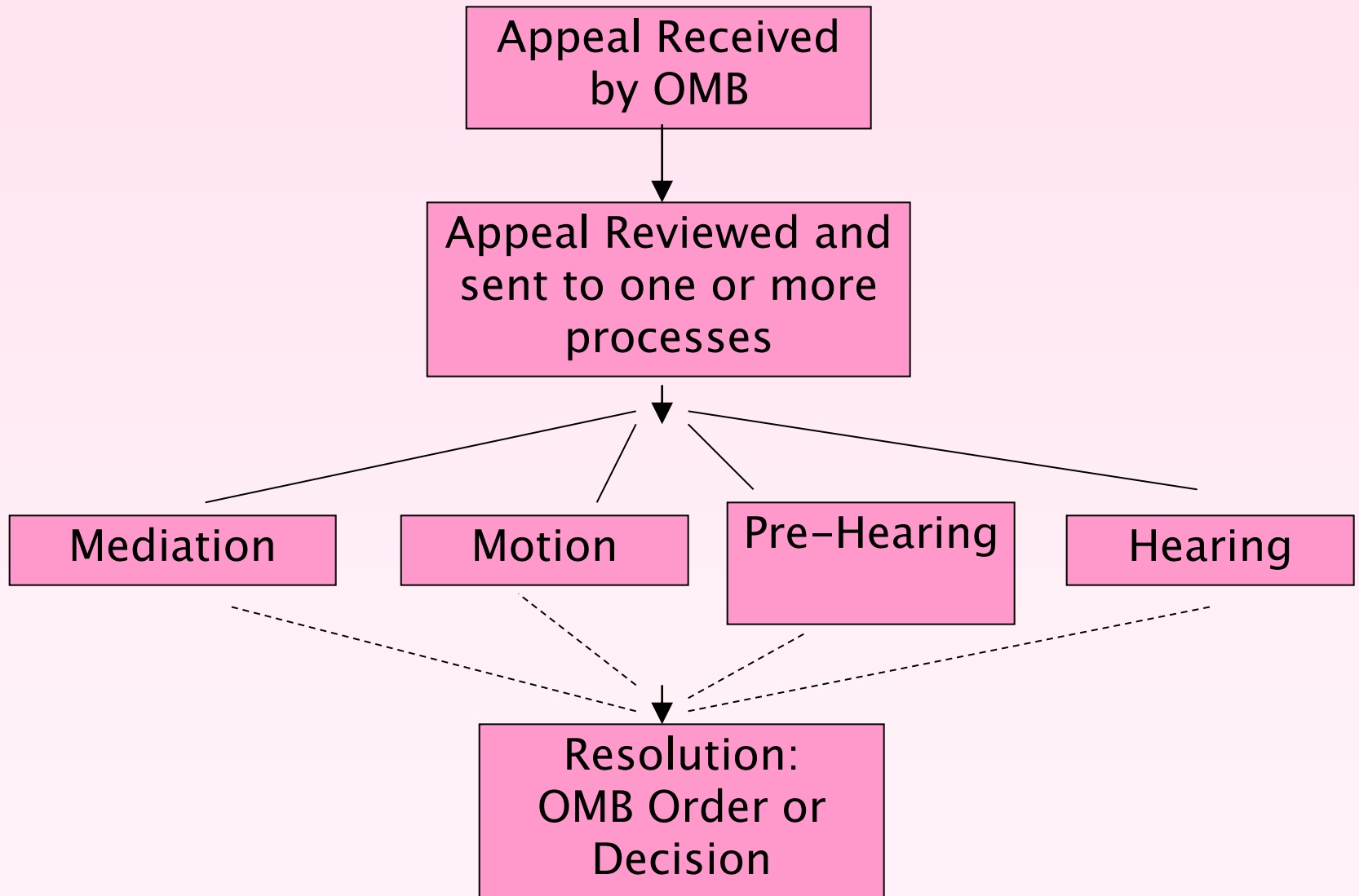
# WHAT IS THE OMB?

[www.omb.gov.on.ca](http://www.omb.gov.on.ca)

The OMB is an independent tribunal subject to the rules of natural justice and the requirements of the Statutory Powers Procedures Act.



# THE OMB PROCESS



# WHO SITS ON THE OMB?

- Members are appointed by the Ontario government.
- Members are appointed from different areas of the province, and have diverse backgrounds (may include lawyers, former elected officials, engineers, surveyors, planners and public administrators).
- Members are generally appointed for three-year terms through an Order In Council



# WHAT APPEALS DOES THE OMB HEAR?

The OMB hears applications and appeals on:

- Land use planning under the Planning Act and other legislation;
- Financial issues related to development charges, land expropriation, municipal finance, ward boundaries and other legislated financial areas;
- Municipal issues as legislated under the OMB Act and other legislation;
- Other issues assigned to the Board by Provincial Statute.



# WHO CAN APPEAL?

Site Plan – ONLY the Applicant may refer a site plan control application to the Board

Zoning, Official Plan Amendments – a person must make oral or written submissions to the original approval authority to have the right to appeal.





# HOW MUCH DOES AN APPEAL COST?

The Notice of Decision usually tells you how to appeal and the amount of the appeal fee, usually **\$125.00**.

The Clerk of the Municipality, the Secretary Treasurer of the Committee or the Board's Public Inquiry Department can verify the amount.



# WHAT IS A “PARTY”?

**PARTY:**includes an individual or corporation set out in the legislation to be parties to a matter.

For example, in the case of a zoning by-law passed by a municipality and appealed to the Board, the parties may be the municipality, the applicant for the rezoning, and any persons who filed an appeal to the Board against the zoning by-law.

There are different provisions that an individual must meet in order to be granted party status: i.e. to be added as a party, one must have made oral submissions at a public meeting, or written submissions to the council, or committee of adjustment prior to a plan being adopted.



# WHAT IS A “PARTICIPANT”?

**PARTICIPANT:** a person, group or corporation that may choose to attend only part of the proceedings but makes a statement to the Board on all or some of the issues in the hearing. One does not need to have given oral or written submissions at council or with the committee of adjustment to be added as a participant.



# WHEN WILL THE HEARING BE?

The length of time it takes to get to the appeal varies.

Notice (10–60 days) of the hearing will be given to specific people.

- Those who request a copy of either Council's or the Committee of Adjustments decision;
- Those who write into the Board to be placed on a list that will be notified of a hearing event;
- The Clerk of a municipality;
- For “private” appeals, those who own land within 120 metres;
- The applicant/appellant .



# WHERE WILL THE HEARING BE?

Hearings are held locally.

In Ottawa, hearings are normally held at a City facility:

- The Keefer Room of the Heritage Building at City Hall; or
- Another City facility, such as Ben Franklin Place in Nepean.

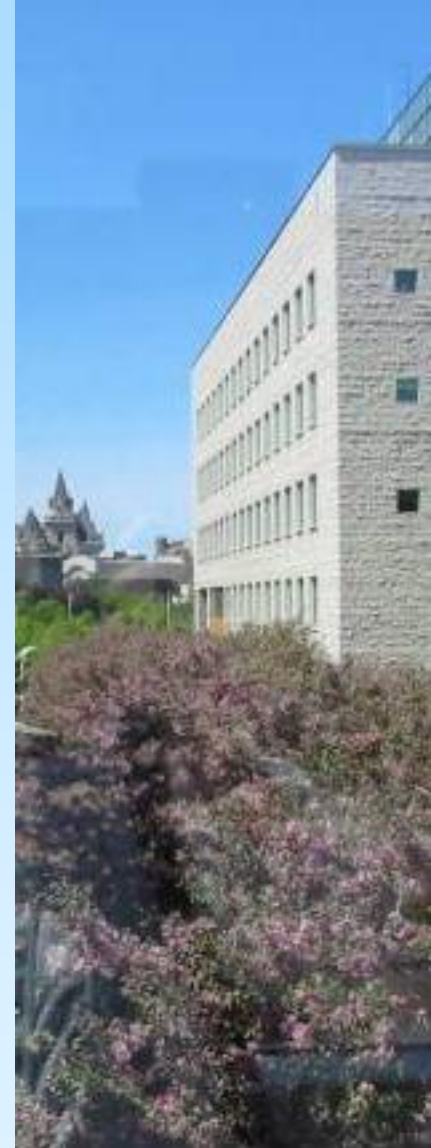


# RESOLUTION POSSIBILITIES

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Along the way to a hearing, a number of intermediary steps may arise:

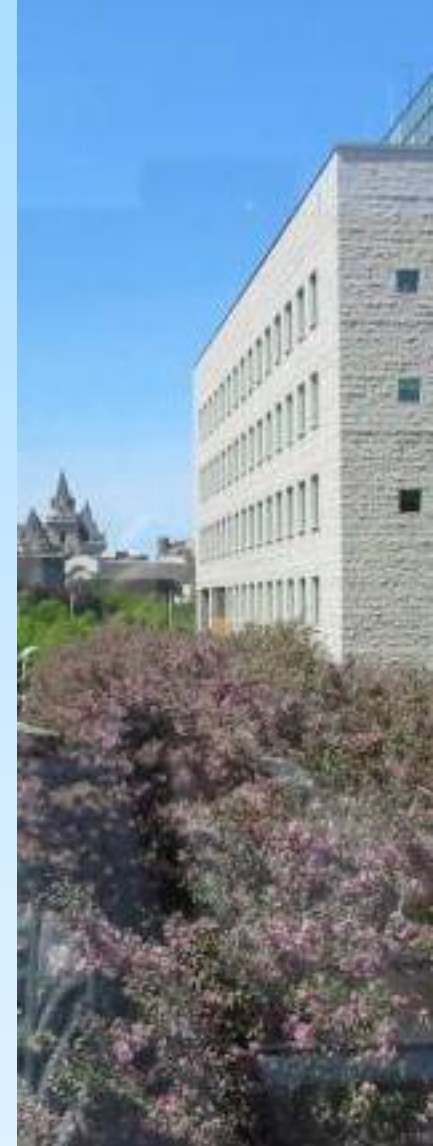
- Mediation
- Pre-hearing Conference
- Motions
- Settlement Discussions



Mediation is a process where an impartial person (a mediator) helps parties reach a voluntary, mutually acceptable solution on some or all of the issues.

The present Board practice is to have designated members serve as mediators.

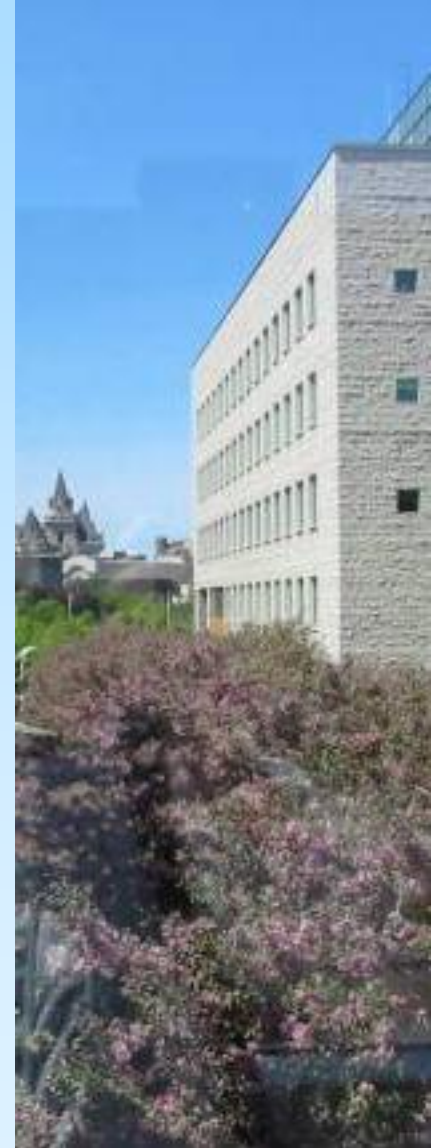
The purpose is to reach agreement and avoid or shorten a hearing.





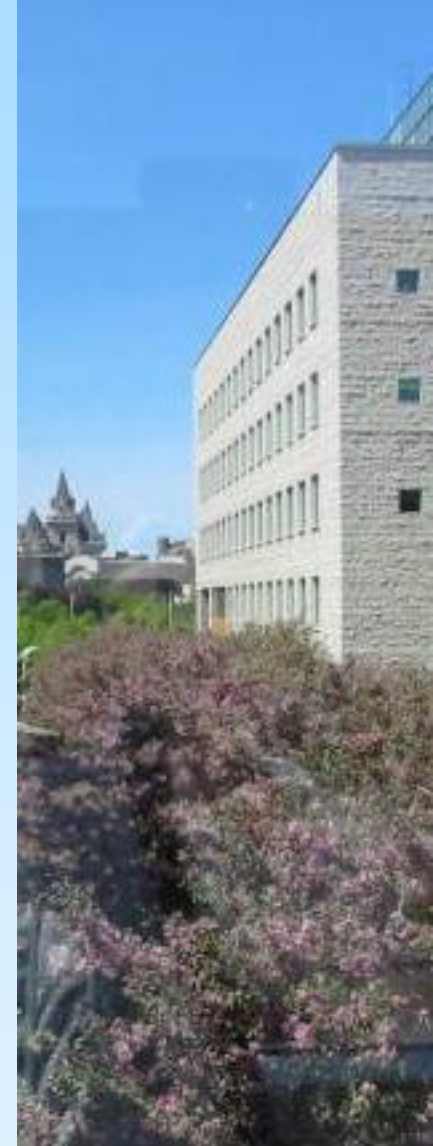
OMB mediation can take place at any time, before or during a pre-hearing or hearing. It may replace a hearing if the parties come to an agreement during mediation.

Mediation must be requested from the Board.



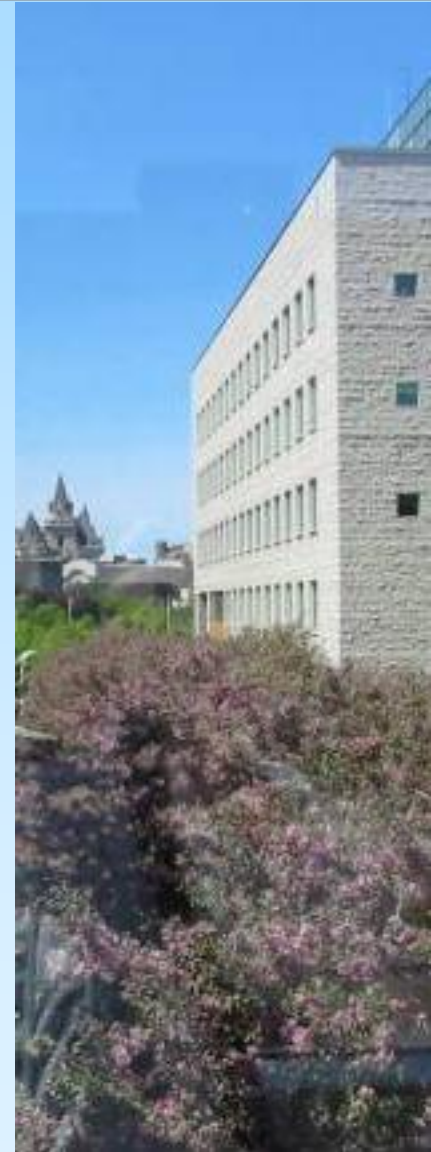
Mediation lets parties

- meet before the hearing;
- better understand the issues;
- take an active role in resolving the dispute;
- repair relationships;
- identify common interests; and
- Include options not available in a Board Order.

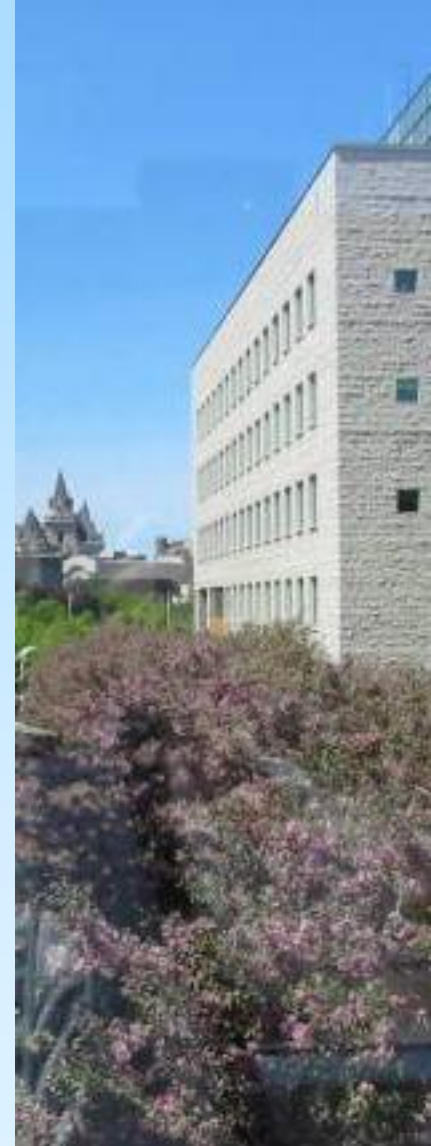


Other than at a pre-hearing conference, permission of the Board must be received to bring a motion.

Motions are useful if a party requires clarification of an appropriate procedure, or would like to ask the Board to order that someone do something before or at a hearing (such as provide documents they have been unable to get).



- Notice of Motion must be served
- An affidavit in support must be normally included
- Responding parties may issue a Notice of Response
- Motion hearings usually in person
- Cross-examinations on an affidavit are possible, but rarely occur
- In some cases, can be heard at the start of a hearing.

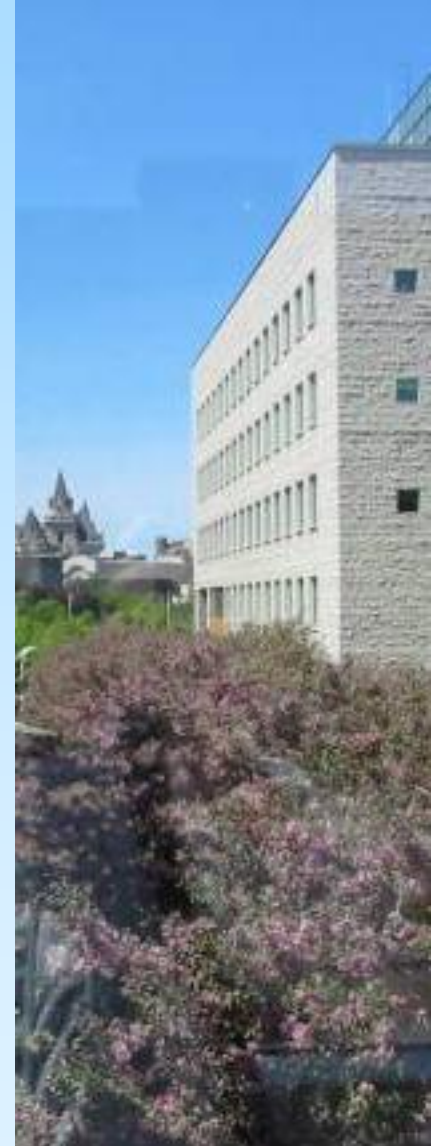


# PRE-HEARING CONFERENCE

A pre-hearing is often the first time parties and participants meet to begin the process of hearing a matter at the OMB.

Purpose:

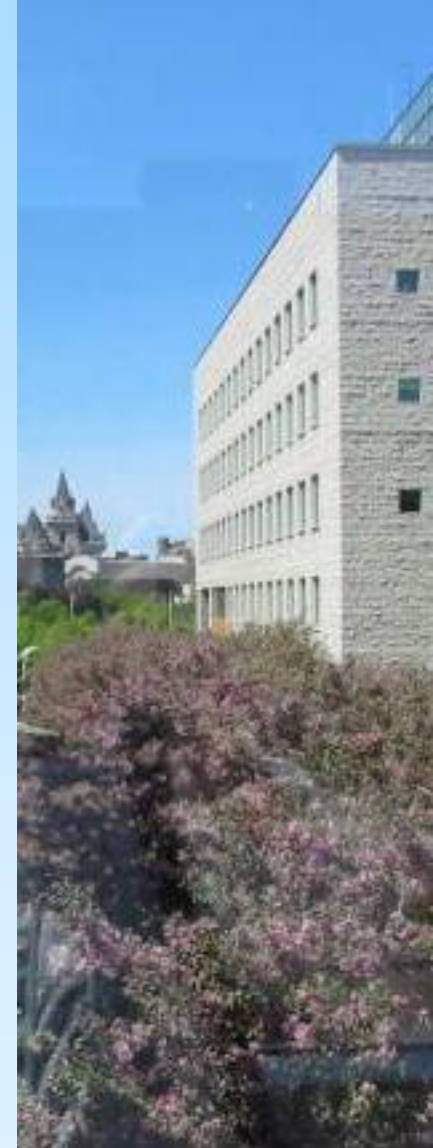
- to clarify the issues;
- to identify issues, parties and participants;
- to organize complicated matters;
- to determine what documents should be exchanged; and
- to establish procedures for before and during the hearing.



# PRE-HEARING CONFERENCE

At the pre-hearing, parties and participants may:

- identify their roles and responsibilities;
- deal with preliminary issues and motions;
- discuss procedures for the hearing; clarify the questions and issues that will be dealt with at the hearing;
- determine the length and date of the hearing; and
- set any additional pre-hearing or mediation dates.



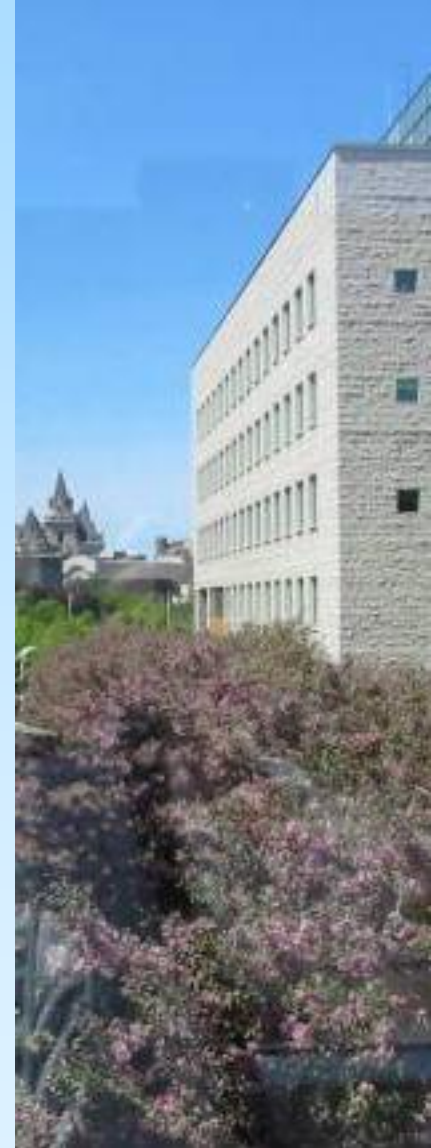
# INFORMAL SETTLEMENT DISCUSSIONS

Parties and participants are encouraged to maintain open communication in the time leading up to the hearing.

- Establish Common Ground
- Narrow/remove issues
- Ideally, avoid or shorten the hearing.



- New presentation of issues: OMB looks at each appeal from the beginning, as if no decision has been made.
- All are required to present and prove their case again.
- Hearings are open to the public, unless it is not practical – as with some written or electronic hearings, or if confidentiality is an issue.





The OMB may hold hearings in person (orally), electronically (by video or teleconferencing), or in written form.

## Electronic Hearings

- All documents must be filed before the hearing; and
- Cell phones must not be used

## Written Hearings

- Held rarely, when legislation allows



## Oral Hearings

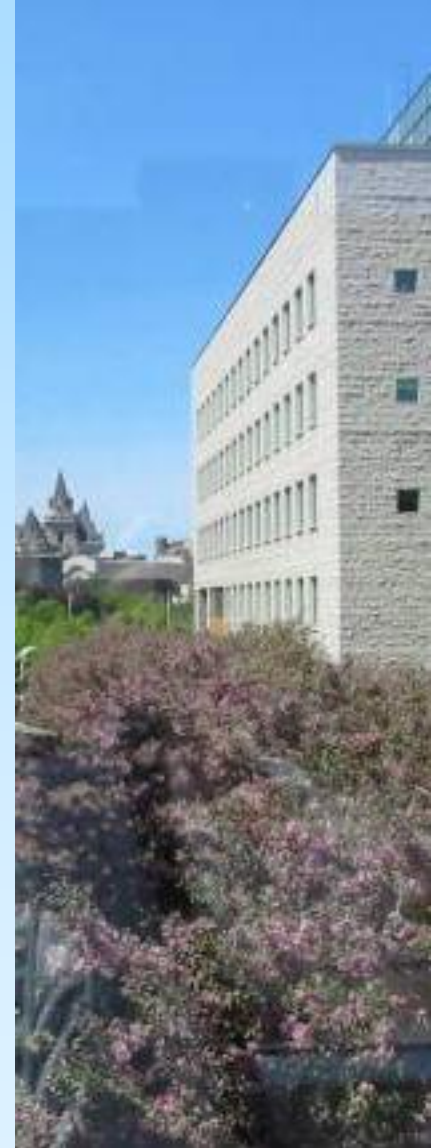
- Generally follow the established pattern of courtroom practice
- Less formal than a court proceeding, more formal than a council or committee meeting
- All evidence must be sworn/affirmed
- All witnesses can be cross-examined
- Complex hearings may involve legal counsel, many witnesses, and lengthy presentations.



# HOW DOES THE OMB REACH A DECISION?

The OMB makes its decision based on the evidence presented.

- Generally the appellant presents their case first.
- Sometimes the municipality provides an overview
- For minor variances and consents the applicant goes first.



# HOW DOES THE OMB REACH A DECISION?

- The party going first gives all of his/her evidence, followed by the other parties who support that position.
- The parties who oppose the position give evidence next.
- Each witness may be cross-examined.
- The first party has the right to reply to opposing parties' evidence.



- At the end, all parties give their final arguments, or a summary of all of the evidence that has been presented.
- The OMB may issue its decision orally, or later in writing (reserved decision).
- The decision does not refer to all of the evidence presented, but only to the evidence and issues the OMB considers the most relevant.
- The OMB can make any decision that the original approval authority can make, and its decisions may be different.



# PREPARING FOR A HEARING BEFORE THE OMB

## **Expert assistance is encouraged.**

- Expert assistance is not required.
- Most municipalities and people making appeals use lawyers or representatives.



## Hiring a Lawyer or Representative

- Lawyers and representatives question witnesses and make statements and arguments based on the evidence presented.
- If you don't hire a lawyer or representative, you will have to:
  - Obtain the documents you need to present your case,
  - Make copies for the Board and all parties (including extracts of OPs and Zoning);
  - Present relevant facts (evidence) clearly and logically to prove your case and convince the OMB at the hearing.





## Using Expert Witnesses

- It is also a good idea to hire expert witnesses to give evidence about technical questions.
- Expert witnesses may have to prepare written statements that include details of their education, experience and their opinions on the issues, as well as a list of reports they will use at the hearing.
- Witness Statements should be provided to other parties and their representatives.



# PREPARATION AND PRESENTATION OF EVIDENCE

Evidence before the OMB takes 2 forms:

- Oral Evidence
- Exhibits

**Oral Evidence** may be given by:

- Expert witness
- Laypersons

**Exhibits** may include:

- Document Book
- Maps
- Plans
- Photos
- Letters
- Reports
- Videotapes
- Models



- All witnesses must be sworn or affirmed to ensure that the evidence they provide is the truth, the whole truth, and nothing but the truth.
- All parties are able to call witnesses, and to cross-examine the witnesses of the other parties.
- All experts must sign an Acknowledgement of Experts' Duty



# ORAL EVIDENCE: EXPERT WITNESSES

In order to give opinion evidence on technical issues, an individual must be qualified by the Board as an expert in a specified field.

- Land Use Planner
- Traffic Expert
- Engineer (i.e. soils, hydro-geology, noise)
- Architect
- Economist (i.e. Development Charges cases)



# ORAL EVIDENCE: LAYPERSONS

Oral evidence can also be provided by individuals, including neighbours and Community Association representatives.

- Weight?
- Who?



## **NUMBER ALL PAGES OF EXHIBITS**

Copies for the Board and all parties should be provided in advance.

- Site Photos
- Plans
- Original Application and comments from City, public, technical agencies
- Decision of Approval Authority
- Extracts of relevant legislation (PPS, OP, Zoning By-law, Design Guidelines)



Large enough to be seen clearly by the Board, and all parties.

Able to be detached from backing.

May be retained by the Board.

- Site Photos
- Plans
- Maps



# EXHIBITS: WHAT NOT TO INCLUDE

- Petitions focusing on the process
- Newspaper articles





- Prior to the submission of evidence, and again after all of the evidence has been called, you or your representative will have the opportunity to make submissions (i.e. opening/closing statements) to the Board.
- Closing submissions are a form of argument. They should be a concise summary of the case with reference to applicable statutes and case law.
- You cannot introduce evidence in closing submissions.



# DECISIONS OF THE ONTARIO MUNICIPAL BOARD

# WRITTEN DECISIONS

It is usual for the Board to reserve its decision at the end of a hearing, and to later issue a written decision.

The decision does not refer to all of the evidence presented, but only to the evidence and issues the OMB considers the most relevant.



# ORAL DECISIONS

In situations where the parties have been able to resolve some of the issues, and have simplified the issues before the Board, the Board has the option of delivering an oral decision.



# REVIEWING A DECISION

- The OMB rarely grants reviews of its decisions, and rarely changes a decision.
- For the OMB to consider a review, it must be proven that it made an error that, if known, may have changed the decision resulting from the hearing. The OMB would need proof that it:
  - Acted outside its jurisdiction;
  - Violated the rules of natural justice (i.e. did not give notice of the hearing);



# REVIEWING A DECISION

- Made a material error of fact or of law;
- Heard false or misleading evidence that could have changed the decision; or
- Should consider new evidence not available at the time of the hearing that could change the decision.



# APPEAL / JUDICIAL REVIEW

- If you think that the OMB made an error on a **question of law**, you may bring a motion to the Divisional Court of Ontario for an order of the Court to allow the appeal to proceed.
- In certain rare circumstances, you may be able to seek Judicial Review in the Divisional Court.
- *People usually hire a lawyer to appeal or to seek Judicial Review because of the complicated procedures and issues.*

