



SOUTH NATION  
CONSERVATION  
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## **Hearing Policy**

**Parts VI & VII of the  
*Conservation Authorities Act*, R.S.O. 1990, c. C.27  
and  
Ontario Regulation 41/24**

**September 19, 2024**

## Summary of Revisions

Revision No.	Board Approval Date	Resolution
1	November 28, 2019	Resolution BD-190/19
2	October 19, 2023	Resolution BD-182/23
3	September 19, 2024	Resolution BD-160/24



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# PART I: GENERAL

## Definitions

1. In this Policy:

“Act” means the *Conservation Authorities Act*, R.S.O. 1990, c. C.27;

“Applicant” means a person who applies for a Permit to engage in an activity prohibited under the Act within the Authority’s jurisdiction;

“Application” means a request for a Permit to engage in an activity prohibited under the Act within the Authority’s jurisdiction;

“Authority” means the South Nation River Conservation Authority;

“Common Permit” means a permit issued by the Authority under section 28.1 of the Act;

“Chair” means the Chair of the South Nation River Conservation Authority Board of Directors;

“Director” means a member of the South Nation River Conservation Authority Board of Directors;

“Executive Committee” means the Executive Committee appointed by the Authority;

“Mandatory Permit” means a permit issued by the Authority under section 28.1.2 of the Act;

“Minister’s Permit” means a permit issued by the Minister under section 28.1.1 of the Act;

“Minister” means the Minister as defined in the Act;

“Party” means an Applicant, Permit Holder, or individual subject to a Stop Order;

“Permit” means a Common Permit, Minister’s Permit, or Mandatory Permit;

“Permit Holder” means a person who holds a Common Permit or Mandatory Permit issued by the Authority or a Minister’s Permit issued by the Minister.

“Staff” means the employees of the South Nation River Conservation Authority;

“Stop Order” means a stop order issued under section 30.4 of the Act;

“Tribunal” means the South Nation River Conservation Authority Board of Directors or Executive Committee while it is conducting hearings in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

## **General**

- 2.1 The purpose of this policy is to guide the Authority or Executive Committee when conducting hearings in accordance with the Act and its regulations.
- 2.2 Where there is a conflict between the policies and the text of the Act or its regulations, the text of the Act and regulations prevail.
- 2.3 Where a section of these policies is found invalid, the invalid portion shall be voided and the remainder of these policies shall remain valid and effective.
- 2.4 This policy shall be reviewed every five (5) years to ensure compliance with the Act, its regulations, and any other applicable legislation.
- 2.5 This policy shall be made available to the public on the Authority’s website.
- 2.6 The Authority shall provide this policy in alternative formats by request in accordance with the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c. 11.

## **PART II: PRE-HEARING PROCEDURES**

### **Right to hearing, refusal**

- 3.1 An Applicant for a Common Permit may request a hearing where the Authority intends to refuse an Application.
- 3.2 An Applicant for a Common Permit may submit a written request for a hearing within 30 days of receiving notice the Authority intends to refuse an Application.

### **Right to hearing, conditions**

- 4.1 An Applicant for a Common Permit or Mandatory Permit may request a hearing where the Authority intends to attach conditions to a Permit.
- 4.2 An Applicant for a Common Permit or Mandatory Permit may submit a written request for a hearing within 30 days of receiving notice the Authority intends to attach conditions to a Permit.

### **Right to hearing, cancellation**

- 5.1 A Permit Holder of a Common Permit or Minister's Permit may request a hearing where the Authority intends to cancel a Permit.
- 5.2 A Permit Holder of a Common Permit or Minister's Permit may submit a written request for a hearing within 15 days of receiving a notice of intent to cancel a Permit.

### **Right to hearing, extension**

- 6.1 A Permit Holder of a Common Permit or Mandatory Permit may request a hearing where the Authority intends to refuse a request to extend a Permit.
- 6.2 A Permit Holder of a Common Permit or Mandatory Permit may submit a written request for a hearing within 15 days of receiving a notice of intent to refuse the request to extend a Permit.

### **Right to hearing, Stop Order**

7. An individual subject to a Stop Order may submit a written request for a hearing within 30 days after service of the order. The written request shall also include reasons for requesting the hearing.

### **Notice of Hearing**

- 8.1 An Applicant who requests a hearing shall be given at least 21 days notice of the date of the hearing.
- 8.2 A Permit Holder who requests a hearing shall be given at least 14 days notice of the date of the hearing.
- 8.3 An individual subject to a Stop Order who requests a hearing shall be given at least 14 days notice of the date of the hearing.
- 8.4 The notice of hearing shall be delivered by e-mail, registered mail, or personal service.
- 8.5 The Authority may consult with the Party to determine an agreeable date and time based on the Authority's regular meeting schedule.
- 8.6 The notice of hearing shall contain:
  - a) reference to the Act and Ontario Regulation 41/24 as the applicable legislation under which the hearing will be held;

- b) the time, place, and purpose of the hearing;
- c) a statement that if the Party does not attend the hearing, the Tribunal may proceed in the Party's absence and the Party will not be entitled to any further notice in the proceeding;
- d) information to identify the Party, property, and the nature of the matter that forms the subject of the hearing;
- e) reasons for:
  - i. intending to refuse a Common Permit;
  - ii. intending to attach conditions to a Common Permit or Mandatory Permit;
  - iii. intending to cancel a Common Permit or Minister's Permit;
  - iv. intending to refuse to extend a Common Permit or Mandatory Permit; or
  - v. issuing a Stop Order;
- f) if the notice is a notice of intent to cancel a Common Permit or Minister's Permit, notice the Permit will be cancelled on a date specified in the notice unless the holder requests a hearing;
- g) notice informing the Party of their rights under the *Evidence Act*, R.S.O. 1990, c. E.23 and the *Canada Evidence Act*, R.S.C., 1985, c. C-5, and
- h) notice that the Party is entitled to be represented at the hearing by counsel or an agent.

### **Submission of reports**

- 9.1 Staff shall submit a written report as evidence within 7 days of delivery of the notice of hearing.
- 9.2 A copy of the Staff report shall be delivered to the Party by e-mail, registered mail, or personal service within 7 days of delivery of the notice of hearing.
- 9.3 The Party may submit a written report as evidence to the Authority by e-mail, registered mail, or personal service within 7 days of receiving the notice of hearing.
- 9.4 The Party's report and the Staff report shall be provided to the Tribunal.





## Hearing information

10. The Party shall be advised of the Authority's hearing procedures prior to the hearing.

## Executive Committee

11. The Authority may delegate the holding of hearings in relation to Permits and Stop Orders to the Executive Committee in accordance with section 28.4 and subsection 30.4 (6) of the Act.

# PART III: HEARING

## Fair hearing

- 12.1 The *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 applies to hearings conducted by the Tribunal.
- 12.2 The Tribunal is bound by the administrative law principle of duty of fairness to perform its functions free from bias and reasonable apprehension of bias.
- 12.3 Directors are required to avoid bias and reasonable apprehension of bias.
- 12.4 Where a hearing is required to reach a determination, a final decision shall not be made until a hearing is held.
- 12.5 The Party shall be given an opportunity to attend the hearing before a decision is made. However, the Party need not be present for the Tribunal to render a decision.

## Public hearing

- 13.1 Subject to section 13.2, hearings shall be public in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.
- 13.2 A hearing or part of a hearing may be closed to the public in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 or the Authority's Administrative By-laws.

## Public participation

14. The Act does not provide for third-party status at hearings. Any information that a third party wishes to submit must be incorporated within the presentation of information by or on behalf of the Party or Staff.

## **Director participation**

15. A Director shall be present during the full course of the hearing to be eligible to deliberate and vote on the decision.

## **Bias**

- 16.1 Directors that have bias or reasonable apprehension of bias in a matter before the Tribunal shall not take part in the hearing. Bias includes:
- a) pre-judgment of a matter before it is heard (i.e., a closed mind);
  - b) a prejudicial attitude toward the Party;
  - c) previous involvement in the matter;
  - d) a pecuniary interest in the matter;
  - e) a personal interest in the matter; or
  - f) a relationship between the Director and the Party.
- 16.2 A Director that has a bias or reasonable apprehension of bias in a matter before the Tribunal shall declare their bias and recuse themselves from participating in the hearing.
- 16.3 A Director who has a bias or reasonable apprehension of bias in a matter before the Tribunal shall not attempt in any way before, during, or after the hearing to influence the decision.

## **Adjournments**

- 17.1 The Tribunal may adjourn a hearing on its own motion or that of the Party or Staff where it is satisfied that an adjournment is necessary for an adequate hearing to be held.
- 17.2 The hearing may be adjourned and resumed if it is necessary for a Director to leave the room.
- 17.3 While adjourned, Directors shall not discuss the matter that is the subject of the hearing.
- 17.4 Any adjournment shall form part of the hearing record.

## Orders and directions

18. The Chair is entitled to make orders or directions to maintain order and prevent the abuse of the hearing processes.

## Information presented at hearings

- 19.1 The Party shall be informed of their right to object to any question on the ground that the answer may incriminate them, pursuant to the *Evidence Act*, R.S.O. 1990, c. E.23 and the *Canada Evidence Act*, R.S.C., 1985, c. C-5.
- 19.2 The Party shall be excused from answering questions on the basis that the answer may be incriminating, in accordance with the *Evidence Act*, R.S.O. 1990, c. E.23 and the *Canada Evidence Act*, R.S.C., 1985, c. C-5.
- 19.3 Information need not be provided under oath or by affirmation.
- 19.4 Privileged information, such as solicitor/client correspondence, cannot be heard.
- 19.5 Information that is not directly within the knowledge of the speaker (hearsay) can be heard if relevant to the issues of the hearing.
- 19.6 The Tribunal may consider matters of common knowledge such as geographic or historic facts, times, measures, weights, etc. or generally recognized scientific or technical facts, information, or opinions within its specialized knowledge without hearing specific information to inform their decision.
- 19.7 Staff and the Party shall not present new information at the hearing that has not been submitted to the Tribunal and the other party.

## PART IV: CONDUCT OF HEARING

### Director attendance

20. Director attendance shall be recorded at the opening of the hearing.

### Opening remarks

21. The Chair shall convene the hearing with opening remarks which generally;
  - a) identify the Party;
  - b) describe the nature of the hearing and the property location;
  - c) outline the hearing procedures; and

- d) advise on the requirements of the *Evidence Act*, R.S.O. 1990, c. E.23 and the *Canada Evidence Act*, R.S.C., 1985, c. C-5.

### **Declaration of bias**

- 22.1 The Chair shall request Directors declare any bias or reasonable apprehension of bias in the matter before the Tribunal.
- 22.2 A Director that has a bias or reasonable apprehension of bias in a matter before the Tribunal shall declare the bias and recuse themselves from participating in the hearing.
- 22.3 Should the Chair have a bias or reasonable apprehension of bias in the matter before the Tribunal, the Chair shall declare the bias and recuse himself from participating in the hearing and another Director shall be appointed to chair the Tribunal by majority vote of the Directors present.

### **Presentation of Staff information**

- 23.1 Staff shall present the materials and reasons supporting the recommendation.
- 23.2 Any reports, documents, or plans that form part of the presentation shall be properly indexed and received.
- 23.3 Staff shall not submit new information at the hearing that has not already been provided to the Tribunal and the Party.
- 23.4 Upon completion of the Staff presentation, the Party shall be given the opportunity to cross-examine Staff on the materials and reasons presented.

### **Presentation of Party's information**

- 24.1 The Party shall be given the opportunity to present information following the conclusion of the Staff presentation.
- 24.2 Any reports, documents, or plans which form part of the submission shall be properly indexed and received.
- 24.3 The Party shall only present information relevant to the subject of the hearing.
- 24.4 The Party shall not submit new information at the hearing that has not already been provided to the Tribunal and Staff.
- 24.5 The Party may be represented by legal counsel or an agent.

- 24.6 The Party's presentation may include technical witnesses.
- 24.7 Upon completion of the Party's presentation, Staff may cross-examine the Party on the information presented.

### **Questions**

- 25.1 Directors may ask questions through the Chair during the presentations.
- 25.2 The Chair may limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented and where the questioning has gone beyond reasonable and proper bounds.

### **Deliberation**

26. The Tribunal shall debate and vote on the decision in open session.

## **PART V: DECISION**

### **Decision**

- 27.1 After holding a hearing considering refusal or attaching conditions to a Common Permit, the Tribunal may:
- a) issue the permit;
  - b) issue the permit subject to conditions; or
  - c) refuse the permit.
- 27.2 After holding a hearing considering attaching conditions to a Mandatory Permit, the Tribunal may:
- a) issue the permit; or
  - b) issue the permit subject to conditions.
- 27.3 After holding a hearing considering cancellation of a Common Permit or Minister's Permit, the Tribunal may:
- a) confirm the decision to cancel;
  - b) rescind the decision to cancel; or



- c) vary the decision to cancel.
- 27.4 After holding a hearing considering extension of a Common Permit or Mandatory Permit the Tribunal may:
- a) confirm the refusal of the extension; or
  - b) grant an extension for such period of time as it deems appropriate, as long as the total period of validity of the permit does not exceed the applicable maximum period specified in Ontario Regulation 41/24.
- 27.5 After holding a hearing considering a Stop Order, the Tribunal may:
- a) confirm the order;
  - b) amend the order; or
  - c) remove the order, with or without conditions.

### **Adoption**

- 28.1 The Tribunal shall move and second a motion in the hearing that contains the decision.
- 28.2 The decision of a simple majority of Directors is the Tribunal's decision.
- 28.3 The Tribunal shall adopt a resolution containing the decision and relevant details.

### **Notice of decision**

- 29.1 The Party shall receive written notice of the decision within 14 days following the hearing.
- 29.2 The notice of decision shall include the following information:
- a) the identification of the Party, property, and the matter that was the subject of the hearing;
  - b) the decision;
  - c) written reasons;
  - d) a copy of the Tribunal's resolution; and
  - e) notice of the Party's right to appeal the Tribunal's decision to the Ontario Land Tribunal or the Minister.

## **Record of hearing**

- 30.1 The Authority shall compile a record of the hearing.
- 30.2 A copy of the record of the hearing shall be forwarded to the Ontario Land Tribunal or Minister in the event of an appeal.
- 30.3 The record of the hearing shall include:
- a) the Application, Permit, or Stop Order that was the subject of the hearing;
  - b) the notice of hearing;
  - c) any orders made by the Tribunal (e.g., adjournments);
  - d) all information and materials received by the Tribunal;
  - e) the minutes of the meeting made at the hearing;
  - f) the decision and written reasons of the Tribunal; and
  - g) the notice of decision.

