

LAND TITLES ASSURANCE FUND RULES OF PROCEDURE FOR THE TRIBUNAL*

*These Rules apply to proceedings before the Tribunal conducted under 57(4), 57(4.1), 57(4.2) AND 57(15) of the Land Titles Act, R.S.O. 1990, Chapter L.5.

RULE 1: GENERAL MATTERS

1.1 PURPOSE OF THE RULES

The purpose of these Rules is to provide a fair, open and accessible process for the parties, to increase the efficiency and timeliness of the proceedings and to assist the Tribunal in fulfilling its statutory mandate.

Authority for the creation of these Rules is provided for under s.25.1 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22, (SPPA). These Rules of Procedure supersede any prior Rules of Procedure of the Tribunal.

1.2 APPLICATION OF THE RULES

These Rules apply to proceedings (as defined in these Rules) before the Tribunal (as defined in these Rules), and are to be read in conjunction with any applicable Directors Orders, the Land Titles Act (LTA) and the SPPA. In the case of a conflict between these Rules and the LTA or the SPPA, the LTA and SPPA are paramount.

1.3 DEFECTS IN FORM

No proceeding governed by these Rules is invalid by reason only of a defect or other irregularity in form or by reason of any mistake not affecting the substantive justice of the matter.

1.4 DEFINITIONS

“Act” refers to the *Land Titles Act*, R.S.O. 1990, Chapter L.5, as may be amended from time to time, and the Regulations there under;

“caution hearing” means a hearing before the Director of Titles that he or she may hold under subsection 57(15) of the LTA following the registration of a caution and prior to making any rectification of the register pursuant to subsection 57(15) of the LTA;

“claim” means an application for compensation from the LTAF under s. 57(4), 57(4.1) or 57(4.2) of the LTA, that is commenced upon the submission of the compensation claim form;

“claimant” includes the person actually making the claim and any person through whom the person claims who the person alleges was wrongfully deprived of land or of some estate or interest therein;

“compensation claim form” is the form that must be completed and submitted to the Director of Titles by a claimant requesting compensation from the LTAF;

“days” shall mean calendar days excluding Saturdays, Sundays, statutory holidays and any other day that the Director specifies by order;

“Director” means the Director of Titles under the LTA;

“document” without limiting the generality of its meaning includes forms, correspondence, memoranda, files, books of account, agreements, reports, charts, graphs, and any other written or pictorial communication; a sound recording, videotape, photograph, map, plan, survey or like thing; and information recorded or stored by means of any device, including computer files;

“Deputy Director” means a Deputy Director of Titles;

“determination” means decision;

“electronic hearing” means a hearing held by telephone conference or some other form of electronic technology allowing persons to hear one another;

“hearing” means either a caution hearing under s. 57(15) of the LTA or a hearing in respect of a claim for compensation under the s. 57(4), 57(4.1) or 57(4.2) of the LTA for payment of compensation out of the Land Titles Assurance Fund; and includes, as the case may be, an electronic hearing, an oral hearing and a written hearing;

“issue” means to sign;

“LTA” means the *Land Titles Act*, R.S.O. 1990, Chapter L.5, as may be amended from time to time, and the regulations there under;

“Land Titles Assurance Fund” means the fund established under LTA.

“LTAF” means the Land Titles Assurance Fund;

“oral hearing” means a hearing where the parties and/or their representatives attend in person before the Tribunal;

“party” means the claimant and other persons specified as parties by the Tribunal;

“person” includes a corporation or a person and the heirs, executors, administrators or other legal representatives to whom the definition can apply according to law;

“proceeding” means a proceeding before the Tribunal and includes all steps to the disposition of a matter from the commencement of a caution hearing before the Director of Titles or, as the case may be, from the receipt of a compensation claim form;

“representative” means legal counsel or an agent who is authorized to represent a party or a person in a proceeding;

“Rules” refers to these Rules of Procedure of the Tribunal;

“SPPA” means the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as may be amended from time to time, and the regulations there under;

“Tribunal” means the Director or the Deputy Director of Titles when exercising a statutory power of decision in any proceeding for which sections 57 and 59 of the LTA creates his or her statutory mandate;

“written hearing” means a hearing that is conducted through the submission and/or exchange of documents.

1.5 TRIBUNAL POWERS

The Tribunal may, with the parties’ consent, waive any procedural requirements of the SPPA or the LTA. The Tribunal may waive any provision of these Rules where it is of the opinion that it would appropriate to do so in the circumstances.

1.6 DECISION NOT TO ACCEPT OR CONTINUE PROCESSING A CLAIM

The Tribunal may refuse to accept a claim for compensation, or may refuse to continue processing any documents related to the commencement of a proceeding if:

- (a) the documents are incomplete;
- (b) the documents are received after the time required for commencing the proceeding has elapsed; or
- (c) there is some other technical defect in the commencement of the proceeding.

1.7 RECTIFYING DEFICIENCIES IN DOCUMENTS INITIATING A CLAIM

A claimant will be given written notice that the claim cannot be processed and an opportunity to rectify the deficiency within a specified time frame. If rectified within the specified time frame, the claim will be processed. This section does not apply to claims that are filed in contravention of any statutory limitation periods.

1.8 DISMISSING A PROCEEDING WITHOUT A HEARING

The Tribunal may dismiss a proceeding without a hearing if:

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the Tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

1.9 NOTICE OF DISMISSAL WITHOUT HEARING

1.9.1 Before dismissing a proceeding under this section, the Tribunal shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for the reason that the matters are outside the jurisdiction of the Tribunal; or
- (b) the party who commences the proceeding if the proceeding is being dismissed for any other reason.

1.9.2 The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the Tribunal with respect to the dismissal within ten (10) days.

1.10 RIGHT TO MAKE SUBMISSIONS IF PROCEEDING TO BE DISMISSED WITHOUT HEARING

A party who receives a notice that a proceeding is to be dismissed without a hearing may make written submissions to the Tribunal with respect to the dismissal within the time specified in the notice. The Tribunal shall not dismiss the proceeding until it has given notice and considered any submissions made within the time provided in subsection 1.9.2.

RULE 2: NOTICE OF HEARING

2.1 WHO GETS NOTICE OF HEARING

The parties shall receive notice of the hearing.

2.2 WHEN NOTICE OF HEARING IS TO BE GIVEN

The parties shall be given notice of hearing a reasonable time before the hearing.

2.3 CONTENTS OF NOTICE

2.3.1 All notices of hearing shall include:

- (a) a reference to the statutory authority under which the hearing is to be held; and
- (b) a statement of the purpose of the hearing.

2.3.2 The Tribunal may include in a notice of hearing any other information or directions it considers necessary for the proper conduct of the hearing.

2.3.3 For an oral hearing, in addition to the requirements in subsection 2.3.1, the notice of hearing shall include a statement of the time and place of the hearing.

2.3.4 For a written hearing, in addition to the requirements of subsection 2.3.1, the notice of hearing shall include:

- (a) a statement of the time of the hearing, which is provided by setting out the time periods during which parties are to serve and file documents for the written hearing; and
- (b) a statement that the hearing will not proceed as a written hearing if a party is able to satisfy the Tribunal that there is good reason for not holding a written hearing.

2.3.5 For an electronic hearing, in addition to the requirements of subsection 2.3.1, the notice of hearing shall include:

- (a) a statement of the time of the hearing, and details about the manner in which the hearing will be held;
- (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case; and
- (c) if paragraph (b) does not apply, a statement that the hearing will not proceed as an electronic hearing if a party is able to satisfy the Tribunal that the electronic hearing is likely to cause significant prejudice to the party.

2.4 NON-ATTENDANCE OR NON-PARTICIPATION

Where a party does not object to a written or electronic hearing, or does not attend or participate in an oral, written or electronic hearing, the Tribunal may

proceed in that party's absence and the party is not entitled to any further notice in the proceedings.

2.5 COMBINATION OF HEARINGS

A hearing may be conducted in its entirety as a written, oral or electronic hearing or the Tribunal may hold any combination of oral, written and electronic hearing, and will provide notice accordingly.

RULE 3: PARTIES AND PARTICIPANTS

3.1 PARTIES

3.1.1 Parties to the proceedings will include the claimant and any other persons who in the opinion of the Tribunal should be added as parties because their interests may be affected.

3.1.2 A party to the proceeding in an oral hearing before the Tribunal may:

- (a) be questioned by the Tribunal and the parties;
- (b) call witnesses at the hearing;
- (c) cross-examine other parties and witnesses;
- (d) make submissions to the Tribunal, including final argument; and
- (e) where the party participated in the hearing, receive a copy of the Tribunal's decision.

3.2 REPRESENTATIVES

3.2.1 A party or witness to a proceeding can be represented by counsel or an agent.

3.2.2 If a representative ceases to represent a party or witness, the representative or the party or witness shall promptly notify the Tribunal in writing.

3.3 COMMUNICATIONS WITH THE TRIBUNAL

A person who communicates with the Tribunal should generally provide a copy or notice of the communication to the other parties prior to the Tribunal dealing with the matter. A party who has a representative shall communicate with the Tribunal through the representative. Tribunal staff will communicate with a represented party through the party's representative.

3.4 PROTECTION FOR WITNESSES

A witness at an oral or electronic hearing shall be deemed to have objected to answer any question asked him or her upon the ground that the answer may tend to criminate him or her or may tend to establish his or her liability to civil proceedings at the instance of the Crown, or of any person. No answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence at the hearing.

RULE 4: DISCLOSURE OF DOCUMENTS AND THINGS

4.1 DISCLOSURE OF DOCUMENTS

The Tribunal may, at any stage of the proceeding before all hearings are complete, make orders for:

- (a) the exchange of documents, provided they are not subject to a claim of privilege;
- (b) the oral or written examination of a party;
- (c) the exchange of witness statements and reports of expert witnesses;
- (d) the provision of particulars; and
- (e) any other form of disclosure.

4.2 FAILURE TO DISCLOSE

If a party fails to comply with the provisions of subsection 4.1 the party may not refer to the document or thing or enter the document or thing in evidence at the hearing without the consent of the Tribunal, which may be on such conditions as the Tribunal considers appropriate, including, but not limited to, the awarding of costs.

4.3 DISCLOSURE WHEN CHARACTER, CONDUCT OR COMPETENCE QUESTIONED

If the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party making such allegations shall, prior to the hearing, disclose to the party against whom the allegations are made, the details of the allegations and all evidence in the party's possession or control relevant to the allegations including:

- (a) all witness statements and transcripts or notes of witness interviews or, if these do not exist, statements of evidence that each witness is expected to give;
- (b) all documents and other things; and
- (c) all experts' reports.

RULE 5: HEARING DOCUMENTS

5.1 FILING DOCUMENTS WITH THE TRIBUNAL

5.1.1 Claims and documents may be filed with the Tribunal by delivery to its office by any of the following methods of delivery:

- (a) mail (regular, registered or certified mail, Priority Post);
- (b) facsimile transmission;
- (c) courier; and
- (d) any other means that may be permitted by the Tribunal from time to time.

RULE 6: PRE-HEARING MATTERS

6. 1 PRE-HEARING CONFERENCES

The Tribunal may direct the parties to a hearing to participate in one or more pre-hearing conferences, which may deal with the following issues:

- (a) identifying parties and witnesses, and the scope of their participation in the hearing;
- (b) determining the date, time, length and location of the hearing;
- (c) determining whether the hearing will be conducted orally, electronically or in writing;
- (d) hearing preliminary motions,
- (e) addressing procedural issues;
- (f) identifying, defining and simplifying issues;
- (g) arranging for the exchange among parties and for the filing with the Tribunal of all documents relevant to the proceeding;

- (h) establishing facts or evidence that may be agreed on; and
- (i) any other matters that may assist in the just and expeditious disposition of the proceeding.

6.2 NOTICE OF PRE-HEARING CONFERENCE

The Tribunal will provide a notice of pre-hearing conference to all parties to the hearing, unless a party waives this requirement. The notice of pre-hearing conference will be sent by regular mail or electronically at least ten (10) days prior to the conference or within such other period as the Tribunal may determine is fair in the circumstances.

6.3 ATTENDANCE AT PRE-HEARING CONFERENCE

A party or a party's representative may attend the pre-hearing conference. At the request of a party or a party's representative, the person conducting the pre-hearing conference may permit the party or party's representative to attend the conference by means of an electronic medium, if satisfied that all participants are able to hear one another.

6.4 AUTHORITY OF REPRESENTATIVE

A party should only attend a pre-hearing by the party's representative if such representative has the authority on behalf of the party to make procedural agreements and commit to take actions respecting the matters to be addressed.

6.5 FAILURE TO ATTEND PRE-HEARING CONFERENCE

Where notice of a pre-hearing conference has been given to a party to the hearing, and the party does not attend the conference in person or by authorized representative, the Tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

6.6 ORDER FOLLOWING PRE-HEARING CONFERENCE

The person conducting the pre-hearing conference may issue such orders as may be appropriate in determining the matters considered at the pre-hearing conference.

RULE 7: ADJOURNMENTS

7.1 RULE ON ADJOURNMENTS

A hearing may be adjourned from time to time by the Tribunal of its own motion or where it is shown to the satisfaction of the Tribunal that the adjournment is required to permit an adequate hearing to be held.

7.2 FACTORS TO CONSIDER FOR ADJOURNMENT

When a party requests an adjournment, the Tribunal may consider any relevant factors, including:

- (a) the reason for the request;
- (b) the extent to which prejudice will be suffered if the adjournment is refused;
- (c) the extent to which any other party will suffer prejudice if the adjournment is granted;
- (d) the extent to which the requesting party gave advance notice to other parties and to the Tribunal of its request for an adjournment;
- (e) the consent of other parties to the request;
- (f) whether the requesting party previously consented to the hearing or pre-hearing proceeding on the scheduled date;
- (g) the length of adjournment;
- (h) previous delays including the number and length of previous adjournments granted at the request of or with the consent of the party now requesting an adjournment;
- (i) the public interest in the efficient and timely conduct of proceedings;
and
- (j) any other possible effects on the fairness of the proceedings.

7.3 DENIAL OF ADJOURNMENT

The Tribunal may refuse an adjournment where:

- (a) the adjournment was requested too close to the scheduled hearing date;
- (b) the Tribunal is not satisfied that the adjournment is necessary;
- (c) where the only ground for the adjournment is that the party unreasonably delayed retaining a representative;
- (d) the party consented to the original hearing date;
- (e) the adjournment would negatively affect the fairness of the proceedings; or
- (f) the Tribunal is of the opinion that it would be inappropriate to grant the adjournment in the circumstances.

7.4 CONDITIONS OF ADJOURNMENT

In granting an adjournment the Tribunal may impose such conditions as it considers appropriate, including, but not limited to the awarding of costs.

RULE 8: HEARING PROCEDURES

8.1 FACTORS TO CONSIDER FOR DETERMINING TYPE OF HEARINGS

In deciding whether to conduct a written or electronic hearing the Tribunal may consider any relevant factor including:

- (a) the suitability of conducting a written or oral hearing considering the subject matter of the hearing;
- (b) whether the evidence is appropriate for a written, electronic or oral hearing, including whether credibility is an issue;
- (c) the extent to which facts are in dispute;
- (d) the convenience of the parties, including any anticipated prejudice to a party;
- (e) the desirability or necessity of public participation in, or broad public access to, the Tribunal's process;
- (f) the avoidance of unnecessary delay;
- (g) whether all the participants in an electronic hearing will be able to hear each other;

- (h) the quantum of the claim;
- (i) the fulfillment of the Tribunal's statutory mandate; and
- (k) any other possible effects on the fairness of the proceedings.

8.2 WRITTEN HEARINGS

The Tribunal may conduct a written hearing.

8.3 OBJECTION TO WRITTEN HEARING

8.3.1 The Tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.

8.3.2 A party who objects to a written hearing must do so in writing, with reasons for the objection.

8.3.3 A party cannot object to a written hearing if the only purpose of the hearing is to deal with procedural matters.

8.4 NO EXAMINATION IN WRITTEN HEARINGS

In a written hearing there shall be no examination by written questions.

8.5 ELECTRONIC HEARINGS

The Tribunal may conduct a hearing as an electronic hearing.

8.6 OBJECTION TO ELECTRONIC HEARING

8.6.1 The Tribunal shall not hold an electronic hearing if a party satisfies the Tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

8.6.2 A party who objects to an electronic hearing must do so in writing, with reasons for the objection.

8.6.3 A party cannot object to an electronic hearing if the only purpose of the hearing is to deal with procedural matters.

8.7 COMBINATION OF DIFFERENT TYPES OF HEARINGS

The Tribunal may, in a proceeding, hold any combination of written, electronic and oral hearings.

RULE 9: PUBLIC ACCESS TO HEARINGS

9.1 HEARINGS OPEN TO PUBLIC

Subject to subsection 9.2, a hearing shall be open to the public, including any documents submitted.

9.2 CLOSED HEARING

Part or all of a hearing, including any documents or things submitted, may be closed to the public where the Tribunal is of the opinion that,

- (a) matters involving public security may be disclosed;
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or
- (c) it is not practical to hold an electronic hearing in a manner that is open to the public.

9.3 CONDITIONS ON PUBLIC ACCESS

The Tribunal may impose such conditions as it considers appropriate for the conduct of that part of a hearing that is closed to the public.

9.4 CONDUCT OF CLOSED HEARING

9.4.1 Unless otherwise ordered by the Tribunal, where part of an oral or electronic hearing is closed to the public, it may be attended by:

- (a) witnesses and their representatives when they are testifying in the case of an oral hearing;
- (b) Tribunal staff;

(c) parties and their representatives; and

(d) such other persons as the Tribunal considers appropriate.

9.4.2 Exhibits, documents, submissions and Tribunal orders relating to that part of the hearing that is closed to the public shall be marked confidential and kept separate from the public record. Access to that material shall be made available only by order of the Tribunal or as otherwise authorized by law.

RULE 10: SPECIAL NEEDS

10.1 NOTIFICATION TO TRIBUNAL

Parties should notify the Tribunal as early as possible of any special needs, which they or their witnesses might have, such as physical disabilities, hearing impairment and sight impairment; or if they require a translator.

RULE 11: WITNESSES

11.1 SUMMONS TO WITNESS

11.1.1 The Tribunal may summon any person to attend an oral or electronic hearing, give evidence on oath or affirmation and require any person, including a party, to produce in evidence at the hearing such documents or other things as are specified in the summons and relevant to the subject matter of the proceeding and admissible.

11.1.2 A party who requests a summons to witness shall advise the Tribunal of the name and address of the witness to be summoned and the details of any documents or other things to be summoned with the witness.

11.1.3 A summons shall be personally served on the person summoned. It is the responsibility of the party who obtained the summons to ensure that it is served and to pay the attendance fees and travel allowance required by the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended from time to time, at the time of service.

11.2 EXCLUSION OF WITNESSES

11.2.1 The Tribunal may order that a witness be excluded from the hearing until called to give evidence. An order for exclusion will not generally be made against a party to the proceeding.

RULE 12: EVIDENCE

12.1. RULES OF EVIDENCE

12.1.1 The Tribunal may admit any evidence, whether or not admissible in a court of law, relevant to the subject matter of the proceeding.

12.1.2 The Tribunal may receive and act on any facts agreed on by the parties without proof or evidence.

12.1.3 Nothing is admissible in evidence that that would be inadmissible in a court by reason of any privilege under the law of evidence or by a statute.

RULE 13: COMBINING PROCEEDINGS OR HEARING PROCEEDINGS TOGETHER

13.1 COMBINING PROCEEDINGS

13.1.1 If two or more proceedings before the Tribunal involve the same or similar questions of fact, law or policy, the Tribunal may,

- (a) combine the proceedings or any part of them, with the consent of the parties;
- (b) hear the proceedings at the same time, with the consent of the parties;
- (c) hear the proceedings one immediately after the other; or
- (d) stay one or more of the proceedings until after the determination of another one of them.

13.1.2 If the parties to the second-named proceeding consent, the Tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under subsection 13.1.1(b).

13.2 SEPARATION OF COMBINED PROCEEDINGS

Where two or more proceedings, or any part of them, have been combined, and combining the proceedings unduly complicates or delays the proceedings or causes prejudice to a party, or for any other reason considered fair, the Tribunal may order that the proceedings are no longer combined and continue with the proceedings separately.

RULE: 14 DECISIONS

14.1 ORAL AND WRITTEN DECISIONS

14.1.1 The Tribunal may reserve its decision or may indicate its decision orally at the end of the hearing.

14.1.2 Despite subsection 14.1.1, the Tribunal shall issue a written final decision, which shall be the official decision of the Tribunal.

14.1.3 If there is a discrepancy between an oral and written decision, the written one shall prevail.

14.1.4 The Tribunal may or may not issue written reasons with its decision, but will provide reasons when requested by a party.

14.2 MEANS OF SENDING A DECISION

The Tribunal shall send by first class mail a copy of its final decision, including the reasons if any have been given, to the claimant or their representatives.

The tribunal shall send each party who participated in the proceeding, or the party's representative, a copy of its final decision, including the reasons if any have been given,

- (a) by first class mail;
- (b) by regular lettermail;
- (c) by electronic transmission
- (d) by telephone transmission or a facsimile; or
- (e) by some other method that allows proof of receipt.

14.3 EFFECTIVE DATE OF DECISION

A Tribunal decision or order is effective from the date on which it was signed or such other date if specified in the order of the Director of Titles or Deputy Director of Titles making the decision.

RULE 15: TRIBUNAL'S CONTROL OF ITS PROCESS

Notwithstanding anything set out in these Rules, the Tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes, including limiting the extent to which, or the

purposes for which any oral testimony, documents or things may be used in evidence and to provide for fair, open and efficient proceedings.

RULE 16: PUBLICATION OF DECISIONS

16.1 PUBLISHING DECISIONS

The Tribunal may publish its decisions and orders.

16.2 INTERNET POSTING

The Tribunal may publish its decisions on the Internet.

RULE 17: COSTS OF PROCEEDINGS

The Tribunal has the discretion to award costs of proceedings where the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith.