

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: July 04, 2019

CASE NO(S): PL180082

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Jeff Hodgart
Appellant: Alexis Leino
Appellant: Desirée Narciso
Appellant: Westhaver Boutique Residences Inc.
Subject: By-law No. BL 1452-2017
Municipality: City of Toronto
OMB Case No.: PL180082
OMB File No.: PL180082
OMB Case Name: Hodgart et al. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Jeff Hodgart
Appellant: Alexis Leino
Appellant: Desirée Narciso
Appellant: Westhaver Boutique Residences Inc.
Subject: By-law No. BL 1453-2017
Municipality: City of Toronto
OMB Case No.: PL180082
OMB File No.: PL180083

Heard: By Written Motion

APPEARANCES:**Parties****Counsel**

City of Toronto

Thomas Wall, Benjamin Baena, Sarah
O'Connor

Westhaver Boutique Residences Inc.

Jason Cherniak

Whitehall Suites Inc.

Red Maple Suites Inc.

Royal Stays Inc.

Livingsuites Toronto Inc.

IHM Limited

Premium Suites Inc.

Desirée Narciso

Leo Longo

Alexis Leino

Hilary Brown

Fairbnb Canada

Eric Gillespie

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL**INTRODUCTION**

[1] A Pre-Hearing Conference (“PHC”) was held on June 4, 2019 for which a Memorandum of Oral Decision was issued on June 10, 2019. In accordance with that Decision, Fairbnb Canada (“Fairbnb”), a relative late-comer to these proceedings, filed a motion requesting Party status. This Decision addresses the motion and the Procedural Order (“PO”) for the hearing scheduled to begin on August 26, 2019.

[2] The City of Toronto (“City”) passed Zoning By-law Amendments (“ZBA”) to regulate the short term rental of residential premises across the City. The ZBA received three appeals and the Tribunal added six sheltering Parties (together, the “Appellants”) from the earlier PHC held on August 30, 2018.

FAIRBNB

[3] The request of Fairbnb to be added as a Party in these proceedings is granted for the reasons that follow.

[4] Fairbnb requests Party status on the basis that it satisfies the requirements of s. 34(24.2)1 and 2 of the *Planning Act* (“Act”) for adding a Party. Together with s. 34(24.1) of the Act, those sections permit the Tribunal to add a person as a Party if the person made oral or written submissions before the by-law was passed, or if the Tribunal is of the opinion that there are reasonable grounds to add the person as a party.

[5] Fairbnb submits that it made submissions to the City at the statutory public meeting and at other consultations during the preparation of the ZBA. Although not incorporated at that time, Fairbnb, as an unincorporated group, was represented by Thorben Wieditz who identified himself as representing Fairbnb in the audio record of the public meeting. Fairbnb argues that, on behalf of its membership - including residents’ groups, tenants’ organizations and hotel associations – it has conducted research and advanced positions in support of the reasonable regulation of home sharing by-laws, being the subject of the ZBA under appeal. Fairbnb further submits that the Tribunal has already declared that “this city-wide ZBA is an important matter of current public policy” (*Hodgart et al. v Toronto (City)*, 2018 CanLII 96155 (ON LPAT)) and that its community and industry perspective in support of the City’s ZBA should be heard in this widespread public policy issue.

[6] The City supports the request of Fairbnb. The City confirms that Mr. Wieditz represented Fairbnb at the public meeting and participated in several consultations leading up to the passing of the ZBA. The City submits that this not-for-profit coalition has a direct interest in the matter, that no new issues are added to the PO as a result of the request for status, that the date for filing witness statements has not yet passed, and that Fairbnb’s two witnesses can be accommodated in the hearing work plan.

[7] The Appellants oppose the request for Party status. They contend that who Mr. Wieditz was working for at the time of the public meeting remains unclear and that Fairbnb, as an incorporated entity, did not exist at that time. With reference to *1137528 Ontario Ltd. v. Oakville (Town)* [2010] O.M.B.D. No. 770, the Appellants argue that all six “obvious factors” for considering Party status are not addressed by Fairbnb. In the absence of clear submissions in that regard, and the failure of Fairbnb to make its request earlier in the process, the Appellants argue that there are no reasonable grounds upon which to allow the motion.

[8] The Tribunal will grant Party status to Fairbnb on the finding that Fairbnb satisfies both of the requirements of the Act for Party status: Fairbnb made submissions on the ZBA before it was passed, albeit as a fledgling organization before incorporation, and there are reasonable grounds to add Fairbnb as a Party.

[9] The six “obvious factors” established by Vice-Chair S.J. Stefanko in the above referenced Decision are paraphrased as follows: whether a similar appeal to the same instrument has already been filed; whether the public interest will be advanced; whether prejudice would be suffered by another party; whether the person has a direct interest in the matter; whether a multiplicity of proceedings can be avoided; and whether the historical background to the issue supports the request.

[10] In step with these factors, the Tribunal finds that the ZBA is already under appeal and those appeals have precipitated Fairbnb’s request to support the ZBA passed by the City. On this important matter of public policy, the perspective of an organization representing community and industry groups is anticipated to be relevant and useful for the issues to be adjudicated. No prejudice is found to the Appellants given that no new issues are raised and Fairbnb must comply with the exchange dates for materials set out in the PO. Supported by its articles of incorporation, research and participation in this ZBA and in similar issues elsewhere in Canada, Fairbnb has a clear interest in the regulation of short term rentals of dwelling units. No Party raised substantive arguments regarding avoiding a multiplicity of proceedings, although the Tribunal finds

that Fairbnb's interests are best expressed in connection with the land use merits of the ZBA under appeal, as opposed to some other forum. Finally, the background of Fairbnb's involvement supports its request, subject to the caveat below.

[11] The Tribunal notes that Fairbnb does not fully explain the gap between its regular involvement in the process leading up to the ZBA and its relative absence following the lodging of the appeals, at least until it notified the Parties in late 2018 of its intent to seek Party status. Nevertheless, this shortcoming is not sufficient to deny Fairbnb's request. While it would have been preferable for Fairbnb to have made its request well before the most recent PHC, the process laid out in the PO on consent of the Parties avoids prejudice to the Appellants, and the breadth of the public policy issues raised in the appeals supports the involvement of Fairbnb.

[12] The Tribunal finds that Fairbnb satisfies the requirements of the Act for Party status in these proceedings and grants it Party status.

PROCEDURAL ORDER

[13] The City provided a finalized PO on consent of the Parties. The PO attached to this Decision as Appendix 1 is approved with one exception.

[14] Arising from the June 4, 2010 PHC, what is identified as Issue 33 in the PO was to be added on the consent of the City and Desirée Narciso. However, the City does not agree that Issue 33 is appropriate and requests direction from the Tribunal or the opportunity to address the issue at the outset of the hearing. Given that the Tribunal has not heard the Parties' arguments on the issue and that the hearing commences next month, Desirée Narciso, if she wishes the issue to be addressed, is directed to file a motion by **Friday, August 2, 2019** returnable at the outset of the hearing on August 26, 2019. Any responding and reply motion materials must be filed by **Friday, August 9, 2019** and **Wednesday, August 14, 2019** respectively such that the presiding Member may review the submissions in advance of the hearing.

[15] The PO attached to this Decision is approved, except for Issue 33. Issue 33 may remain in the PO for reference purposes only as highlighted and with the dispute noted. If a motion is filed, the Member presiding at the hearing will determine whether Issue 33 is permitted.

ORDER

[16] The directions set out in the above Decision are so ordered.

[17] No further notice will be given.

[18] This Tribunal Member is not seized.

“S. Tousaw”

S. TOUSAW
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

PROCEEDING COMMENCED UNDER subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Alexis Leino, Desiree Narciso Westhaver Boutique Residences Inc.
Subject	By-laws 1452-2017 and 1453-2017
Property Address/Description	City-wide
Municipality:	City of Toronto
LPAT Case No.:	PL180082 PL180083
LPAT File No.:	PL180082 PL180083
LPAT Case Name:	<i>Hodgart et al v. Toronto (City)</i>

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on **August 26, 2019** at 10:00 a.m. at the Tribunal's Offices, 655 Bay Street, 16th Floor, in the City of Toronto.
3. The length of the hearing will be **seven (7) days**. Note, the Tribunal will not sit on Labour Day, Monday, September 2nd.
4. The Parties and Participants identified at the Pre-Hearing Conference are listed in **Attachment 1** to this Order.
5. The Issues are set out in the Issues List attached as **Attachment 2** to this Order. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence is set out in **Attachment 3** to this Order.

Requirements Before the Hearing

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **May 27, 2019**. Note: the parties have exchanged witness lists at the time of this Procedural Order being prepared and these have been incorporated into the Work Plan attached as **Attachment 4** to this Order.

8. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided on or before **July 12, 2019**. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
9. On or before **July 12, 2019**, the parties shall provide copies of their expert and non-expert witness statements.
10. Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before **August 2, 2019**.
11. On or before **August 16, 2019**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
12. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. Such a motion shall be in accordance with the Tribunal's Rule 10, which requires that the moving party provide copies of the motion to all other parties **at least 15 days** before the Tribunal hears the motion.
13. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal **at least 7 days** before the hearing that the written evidence is not part of their record.
14. The Parties shall make efforts to coordinate on a Joint Document Book on or before **August 16, 2019** and which may be filed with the Tribunal on the first day of the Hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the Hearing unless ordered otherwise by the residing Member.
15. The Parties shall prepare and file a detailed Work Plan that identifies the following, at a minimum: the identified parties participating in the Hearing Event, preliminary matters (if any to be addressed), the date a witness is intended to attend the Tribunal, the identified witness name/expertise, and the approximate time allotted for Examination in Chief, Cross Examination and any re-examination (if any) (the "**Work Plan**"). The Work Plan will be adhered to guide the Hearing Event to the best ability of all the Parties, and any and all witnesses shall be available on the identified date(s), unless otherwise directed by the Tribunal. The Tribunal may, at its discretion, change or alter the Work Plan throughout the Hearing Event. A draft Work Plan has been prepared and is attached as

Attachment 4 to this Order. It is subject to change following the exchange of witness statements and replies and as may be required throughout the hearing.

16. Documents may be delivered by personal delivery, electronic transmission, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

17. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

18. The purpose of this Procedural Order and the meaning of the terms used in this Procedural Order are set out in **Attachment 5**.

SUMMARY OF DATES

DATE	EVENT
May 27, 2019	Exchange of witness lists
June 26, 2019	Deadline to file revised procedural order and work plan
July 12, 2019	Exchange of expert and non-expert witness statements, expert reports and participant statements
August 2, 2019	Exchange of reply witness statements (if any)
August 16, 2019	Exchange of visual evidence (if any)
August 16, 2019	Finalize Joint Document Book (if any)
August 26, 2019	Hearing commences

ATTACHMENT 1

LIST OF PARTIES AND PARTICIPANTS

A. PARTIES

	Party	Counsel
1)	City of Toronto	Sarah O'Connor Thomas Wall Ben Baena City of Toronto City of Toronto, Legal Services Metro Hall, 26th Floor 55 John Street Toronto, ON M5V 3C6 E-mail: sarah.oconnor@toronto.ca thomas.wall@toronto.ca ben.baena@toronto.ca Tel: (416) 392-8047 Fax: (416) 397-5624
2)	Appellant Westhaver Boutique Residence Inc.	Jason Cherniak Cherniak Law Professional Corporation Suite 209, 10909 Yonge Street Richmond Hill, ON L4C 3E3 E-mail: jason@cherniaklaw.com Tel: (905) 883-6706 Fax: (905) 883-6703
3)	Appellant Alexis Leino	Sarah Corman Hilary Brown Corman Feiner LLP Box 77, Richmond-Adelaide Centre 120 Adelaide Street West, Suite 1214 Toronto, ON M5H 1T1 Email: scorman@cormanfeiner.com hbrown@cormanfeiner.com Tel: (416) 787-0044 Fax: (416) 352-7812

4)	Appellant Desiree Narciso	Leo Longo Aird & Berlis 181 Bay Street, Suite 1800 Brookefield Place Toronto, ON M5J 2T9 E-mail: llongo@airdberlis.com Tel: (416) 865-7778 Fax: (416) 863-1515
	Fairbnb Canada Inc. – Pending Tribunal's Decision on Party Status Request	Eric Gillespie Monica Poremba Eric K. Gillespie Professional Corporation Barristers & Solicitors 160 John Street, Suite 300 Toronto, Ontario M5V 2E5 Email: egillespie@gillespielaw.ca mporemba@gillespielaw.ca Tel: (416) 703-6362 Fax: (416) 907-9147

B. PARTICIPANTS

1. Francis Spark
2. Shimon Gewing
3. Eileen Denny
4. George Mazomanos
5. Weiwei Gao
6. Wayne Murdock

ATTACHMENT 2

ISSUES LIST

Land Use Permission Issues

1. Are short-term rentals, as regulated by By-laws 1452-2017 and 1453-2017 (the "Short-Term Rental By-laws"), an appropriate land use in zones where residential uses are permitted? (City)
2. Are the existing short-term rentals operated prior to the passing of the Short-Term Rental By-laws in the City of Toronto an appropriate land use within their existing neighbourhood context and under applicable land use policies and regulations related to use and building type?
3. Were short term rentals either defined or regulated under the city's zoning by-laws prior to the enactment of Short- Term Rental By-laws?

Length of Stay

4. Prior to the enactment of the Short-Term Rental By-laws, was the "living accommodation" which was permitted in the zoning by-law definition of "dwelling unit" of ZBL 569-2013 (and the former general zoning by-laws) in any way qualified or did it require a minimum period of time or length of stay?
5. Is there a proper planning basis for the imposition of a 28 consecutive day minimum for a rental period under the Short Term Rental By-laws?

Principal Residence Requirement

6. Is there a legitimate planning rationale for the requirement that the rental operator be the principal resident of the dwelling unit being rented?
7. Is there a land use justification for limiting the short-term rental business in such a manner that those who own multiple residential units can only offer short-term rentals in one of their units (i.e. their principal residence)?

Secondary Suites – Principal Residence Requirement

8. Is the principal residence requirement for short-term rentals in secondary suites, appropriate? (City)
9. Is there a legitimate planning rationale for the ban on operating a short-term rental in the secondary suite of an owner's principal residence?

Impacts on the Neighbourhood/Community

10. Will an owner's absence as a principal resident of a dwelling unit have an impact on the maintenance of the unit to sufficient standards within the neighbourhood?

11. Will the short-term and longer-term rental of dwelling units, owned or managed by the appellants, who are not the principal residents of the dwelling units, have a negative impact on community character, or create nuisance or safety issues within the community where they are located as a result of the operator not being the principal resident of the unit?

Economic Issues

12. Are the Short-Term Rental By-laws consistent with the purposes of the Planning and Conservation Land Statute Law Amendment Act, 2006, s.15(10) ("Planning Act") as set out in Section 1.1 of the Planning Act?

13. Do the Short-Term Rental By-laws have appropriate regard for the matters of provincial interest as set out in Section 2 of the Planning Act, including (l) and (p)?

14. Are the Short-Term Rental By-laws consistent with the Provincial Policy Statement, 2014 pursuant to Section 3 of the Planning Act, including sections 1.3.1(a) and (b), 1.7.1 (a), (g)?

15. Are the Short-Term Rental By-laws consistent with the policies of the City of Toronto Official Plan, including sections 3.5.1-1(h), (i), and (j),?

16. What are the likely economic impacts of the Short-Term Rental By-laws as enacted?

17. Is a business operation that provides for short and longer-term rentals within dwelling units in residential neighbourhoods, including amenities unique to such dwelling units, a legitimate land use and business offering that would not be available if the Short-Term Rental By-laws are approved?

Hotel Industry Issues

18. Does the City of Toronto have sufficient hotel-room supply to support long-range travel and visitation forecasts for the Toronto-area market?

19. Do the short and longer-term rentals of the residential units owned or managed by the appellants, for which they are not the principal residents of the units being rented, compete with standard hotel/motel units or tourist homes?

20. Do the nature of the personal stays at the subject units being rented for short and longer-term rentals differ from those provided by standard hotel/motel units or tourist homes?

Housing Policy Issues

21. What is the likely impact of the Short-Term Rental By-laws on the availability and affordability of the range of short and long-term housing options in the City of Toronto?

22. Do the units affected by the Short-Term Rental By-laws support the Official Plan objectives of providing a full range of housing that makes efficient use of and replenishes existing housing stock that are not provided by other forms of rental accommodation, including hotels, motels and guest homes or tourist homes, and maintain a high-quality product in desirable residential neighbourhoods?

23. Do the Short-Term Rental By-laws prejudice those who are living in precarious or non-conventional circumstances and who cannot commit to long-term residential leases?

Site-Specific Issues

24. Is the short and longer-term rental unit operated from time-to-time out of the secondary suite of the appellant Alexis Leino's principal residence at 295 Mortimer Avenue a permitted land use under applicable land use laws and regulations?

25. Prior to the enactment of the Short Term Rental By-laws, and to date, has the rental of the existing dwelling units at 107 Gladstone Avenue for short periods of time caused any negative land use impacts on abutting or adjacent properties? (Desiree Narciso)

General and/or Policy Issues

26. Do the Short-Term Rental By-laws conform with the City's Official Plan? (City)

27. Do the Short-Term Rental By-laws have regard for matters of provincial interest? (City)

28. Are the Short-Term Rental By-laws consistent with the Provincial Policy Statement, 2017? (City)

29. Do the Short-Term Rental By-laws conform with the Growth Plan, 2017? (City)

30. Do the Short-Term Rental By-laws as drafted represent good planning?

31. Do the Short-Term Rental By-laws as drafted fall outside the scope of the jurisdiction of the City of Toronto as provided by the Planning Act to regulate land use?

32. In the event the Tribunal allows the appeal in whole or in part, what are the appropriate amendments to the Short-Term Rental By-laws?

33. Can a legal non-conforming use protected by s. 34(9)(a) of the *Planning Act* be prevented by a subsequently enacted licensing by-law (Toronto By-Law No. 613-2018)?

Note: Issue 33 has been added at the request of Leo Longo. The City is of the view that this is a legal issue that is not within the jurisdiction of the Tribunal and is beyond the scope of the hearing, and that its inclusion is not appropriate. The parties may require direction from the Tribunal in advance of the hearing, or to speak to this issue as a preliminary matter at the outset of the hearing.

ATTACHMENT 3
ORDER OF EVIDENCE

City of Toronto

Parties with like interests to City of Toronto, if any [tbd, pending the Fairbnb party status motion]

Westhaver & sheltering parties

Alexis Leino

Desiree Narciso*

Reply by the City of Toronto, if any

*counsel for Desiree Narciso has advised that she has a scheduling conflict taking her out of the country on August 29th, and that her evidence may be called out of order to accommodate her travel constraints

ATTACHMENT 4

PROPOSED WORKPLAN

NOTE: Where parties of like interest have issues in common, they shall make reasonable efforts to coordinate their examinations-in-chief and cross-examinations so as to

Day	Party and Witnesses	Date expected	Time allotted for examination in chief	Time allotted for cross examination	Time allotted for re-exam
1	Opening Statements, if any & Preliminary matters – 1 hour				
	All Parties	August 26			
1/2/3	City of Toronto				
1/2	Caroline Samuel	August 26/27	4hr	3hr	0.25hr
2	Peter Hardisty	August 27	1hr	1hr	0.25hr
2	Larissa Deneau	August 27	1.5hr	1hr	0.25hr
3	Narmadha Rajakumar	August 27/28	2hr	1.5hr	0.25hr
[3/4]	Parties with like interests to the City of Toronto - To be confirmed upon decision re: Fairbnb request for party status				
[3/4]	David Wachsmuth	August 28/29	3hr	2 hr	
[4]	Leilani Farha	August 29	1.5hr	1 hr	
5/6	Westhaver Boutique Residences and sheltering parties				
5	Michael Manett	August 30	5hr	2hr	0.25hr
6	Clarence Westhaver	August 30	1hr	.5hr	0.25hr
6	Alexis Leino				
6	Peter Thoma	September 3	3hr	2hr	0.25hr
6	Alexis Leino	September 3	1hr	.5hr	0.25hr
7	Desiree Narciso*				
	Desiree Narciso	September 4	1hr	.5hr	0.25hr
	City of Toronto				
7	Reply evidence, if any	September 4	1hr		
7	Final Submissions September 4				
	All parties				

minimize any duplication or overlap of evidence.

WORK PLAN - SUMMARY

Day 1: Preliminary matters & Opening statements

Chief of Caroline Samuel (City's Planning witness)
Start Cross of Caroline Samuel

Day 2: Finish Cross of Caroline Samuel

Chief and Cross of Peter Hardisty (City's MLS witness)
Chief and Cross of Larissa Deneau (City's Ec Dev witness)

Day 3: Chief and Cross of Narmadha Rajakumar (City's Housing Policy witness)

[Potential start Chief of David Wachsmuth (Fairbnb's Housing Policy witness)]

Day 4: [Potential finish Chief and Cross of David Wachsmuth]

[Potential Chief and Cross of Leilani Farha (Fairbnb's 2nd witness)]

Day 5: Chief and Cross of Michael Mannett (Westaver's Planning witness)

Day 6: Chief and Cross of Westhaver

Chief and Cross of Peter Thoma (Leino's Planning witness)
Chief and Cross of Leino

Day 7: Chief and Cross of Narciso*

Reply by the City of Toronto, if any
Final Argument
[Final Submissions may be written if timing requires]

ATTACHMENT 5

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at _____.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:
direct examination by the party presenting the witness;
direct examination by any party of similar interest, in the manner determined by the Tribunal;
cross-examination by parties of opposite interest;
re-examination by the party presenting the witness; or
another order of examination mutually agreed among the parties or directed by the Tribunal.