

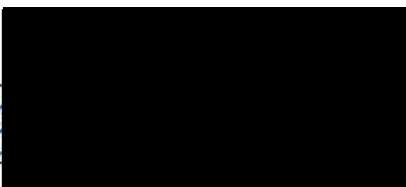


Township of Southgate

Conference, Workshop/Seminar & Training Policy #2

Council and Staff Education Evaluation Report Conference, Training, Seminars & Professional Development/Self-Study

Participant's Name: Clinton Stredwick

Course/Workshop/Conference: <u>OACA</u>	Overall Evaluation: Excellent Good <u>Average</u> Poor
Association /Institution Provider: <u>OACA</u>	Name of Instructor: <u>multiple</u>
Dates of Attended: (if online, indicate online) <u>Oct. 4, 2019</u>	
Purpose of Attending: <u>To learn and review process changes for COA as a result of new legislation.</u>	
Please summarize the contents and the main points of the course: (Attach additional pages if necessary) <u>There was a workshop on jurisdiction and procedural fairness which was good - see attached</u> <u>There was an excellent workshop on Accountability, codes of Conduct and pecuniary interests attached</u> <u>There was a good workshop which summarized the changes to the various Acts from Bill 108</u> <u>There was a good workshop on the C.A.'s role in Development. See Attached</u>	
Will you use this information in your role? If yes, explain how: <u>The information gained will assist me in providing sound planning advise to applicants and the Committee</u>	
Do you recommend that other Council Members/Staff attend this course? If so, who and why: <u>Other Committee members should attend this conference.</u>	
Should similar course material be presented in house? If yes, by whom? <u>no</u>	
Signature: 	Date: <u>Oct. 15, 2019</u>



Bill 108: *More Homes, More Choices Act, 2019*

AIRD BERLIS

This presentation may contain general comments on legal issues of concern to organizations and individuals. These comments are not intended to be, nor should they be construed as, legal advice. Please consult a legal professional on the particular issues that concern you.

Overview

- introduction
- key amendments to *Planning Act* and *LPAT Act, 2017*
- *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019*
- ongoing review of Provincial Policy Statement
- transition provisions
- conclusions

Bill 139: Big News in 2017/2018

- *Building Better Communities and Conserving Watersheds Act, 2017* received Royal Assent on December 12, 2017
- renamed and reconstituted the Ontario Municipal Board as the Local Planning Appeal Tribunal (“LPAT” or “Tribunal”)
- made a number of significant changes to the *Planning Act* and land use planning approval process, including:
 - establishing a new consistency/conformity test for OP, OPA, Zoning By-law, ZBA, Plan of Subdivision
 - creating a new two-step appeal process for OP, OPA, Zoning By-law, ZBA, Plan of Subdivision
 - lengthening the appeal period for private appeals based on an approval authority’s failure to make a decision
 - preventing appeals where the Minister of Municipal Affairs was the approval authority of an OP or OPA
- process largely unchanged for appeals of decisions on minor variance and consent

Change in Government – June 7, 2018



Bill 108: *More Homes, More Choices Act, 2019*

- *More Homes, More Choices Act, 2019* received Royal Assent on June 6, 2019
- amends key legislation in the land use planning regime in Ontario, including:
 - *Planning Act*
 - *Local Planning Appeal Tribunal Act, 2017*
 - *Development Charges Act, 1997*
 - *Ontario Heritage Act, 2006*
- repeals many (but not all) of the amendments introduced through Bill 139 (the *Building Better Communities and Conserving Watersheds Act, 2017*) in 2017
- majority of amendments came into effect on September 3, 2019, but a number of amendments will not come into effect until a later date
- stated objective to increase affordable housing in the province

Key Amendments: Returning to pre-Bill 139 Regime

- grounds for appeal
 - no more requirement that appeals be exclusively on the basis that approval of the instrument is inconsistent with the Provincial Policy Statement, fails to conform or conflicts with a provincial plan or fails to conform with an Official Plan
 - appellants can still raise these grounds of appeal (and provide supporting reasons), but are no longer limited to those grounds

Key Amendments: Returning to pre-Bill 139 Regime

- no two-step appeal process
 - return to single hearing where the LPAT would have the power to make a final determination approving, refusing to approve or modifying all or part of the instrument under appeal

Key Amendments: Returning to pre-Bill 139 Regime

- return of the former motion to dismiss “test” that:
 - the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Tribunal...

(Planning Act, ss. 17(45), 34(25), 51(17))

What's New: Community Benefits Charge

- the existing Section 37 density bonusing provisions will be replaced with a new "community benefits charge" that applies to an approval of:
 - zoning by-law or zoning by-law amendment,
 - plan of subdivision,
 - minor variance,
 - plan of condominium
 - building permit
- where a municipality has passed a community benefits charge by-law, the community benefits charge may replace the parkland dedication provisions in some cases
- requires municipalities to prepare a community benefits charge strategy, identifying the facilities, services and matters to be funded with community benefits charges
- details still the subject of ongoing consultation

(Planning Act, s. 37)

What's New: Shorter Timelines for Appeals of Non-Decision

- the time-frames for municipal processing of development applications (before a right to appeal arose), which had been extended in Bill 139, are now shorter than the pre-Bill 139 *Planning Act*:

Instrument	Pre-Bill 139	Bill 139	Bill 108
Official Plan/ Official Plan Amendment	180 days	210 days	120 days
Zoning By-law Amendment	120 days	150 days	90 days
Draft Plan of Subdivision	180 days	180 days	120 days

(*Planning Act*, ss. 17(40), 34(11), 50(34))

What's New: Power to Limit Examination or Cross-examination of Witnesses

- LPAT has the power to limit any examination or cross-examination of a witness if the Tribunal is satisfied that:
 - all matters relevant to the issues in the proceeding have been fully or fairly disclosed, or
 - in any other circumstances the Tribunal considers fair and appropriate

(LPAT Act, 2017, s. 33(2.1))

What's New: Restriction on third party appeals of plans of subdivision

- only the applicant, municipality, Minister, public body or prescribed list of persons have the right to appeal an approval authority's decision on a draft plan or subdivision, lapsing provision or any condition of draft plan approval
- third parties no longer have the right to appeal a draft plan approval, draft plan conditions or changed draft plan conditions to the LPAT
- affects property owners abutting or adjacent to draft plans of subdivision

(Planning Act, ss. 51(39), 51(43) and 51(48))

What's New: Role of Participants

- participants may only file written submissions and are no longer provided the opportunity to make oral submissions to the Tribunal

(LPAT Act, 2017, s. 33.2)

What's New: Additional Residential Unit Policies

- official plans are required to permit additional residential units by allowing two residential units in a house and a residential unit in a building or structure ancillary to a house

(Planning Act, s. 16(3))

What Remains the Same

- mandatory Case Management Conferences ("CMC")
- two-year freeze on secondary plan amendments, zoning by-law amendments and minor variances
- only the Minister can appeal an interim control by-law
- no appeals of Minister's decision if the Minister is the approval authority of an official plan or official plan amendment, including in the case of municipal comprehensive reviews and official plan review

What's New: No More Stated Cases

- LPAT no longer has the authority to pose a legal question in writing for the opinion of the Divisional Court

(see for example the Rail Deck Park case - *Canadian National Railway Company v Toronto (City)*)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019

- introduced on May 2, 2019
- adjusts minimum density and intensification targets for a number of single- and upper-tier municipalities
- permits municipalities to adjust settlement area boundaries outside of a municipal comprehensive review as long as certain criteria are met
- directs municipalities to establish development criteria when employment lands proposed to be redeveloped are outside of a designated employment area
- definition of Major Transit Station Areas broadened to include areas within an approximately 500 to 800 metre radius of a transit station
- introduces *Provincially Significant Employment Zones*

Provincial Policy Statement

- anticipated revisions to the Provincial Policy Statement forthcoming
- draft revisions circulated in July 2019
- comment period closes October 21st

Transition Highlights – *Planning Act*

- general rule: everything is transitioned into the new Bill 108 regime unless there is a specific section in the Regulation that provides otherwise
- in the case of an existing appeal of an OP, OPA, ZB or ZBA:
 - where the appeal was already transitioned from the application of the Bill 139 regime (i.e. pre-Dec. 2017), the appeal will continue and be disposed of under the pre-Bill 139 regime
 - where the appeal is commenced after September 3, 2019, the appeal will be continued and disposed of in accordance with the Bill 108 regime
 - where the Bill 139 regime applied to an existing matter or proceeding, the question becomes whether the LPAT had yet scheduled a hearing on the merits of the appeal:
 - if a hearing of the merits has been scheduled, the matter will remain within and be disposed of in accordance with the Bill 139 regime
 - if a hearing of the merits has not been scheduled, the matter will be transitioned into the new Bill 108 regime.

Transition Highlights – *LPAT Act*

- O. Reg. 102/18 - revoked
 - previously prescribed timelines for the LPAT to render its decisions (6 months – 1 year)
 - previously prescribed time limit on oral submissions
 - previously prescribed restrictions on calling evidence and cross-examination
- LPAT Rules of Practice and Procedure
 - new as of September 3, 2019
 - Part II procedures (Enhanced Municipal Records, Appeal Records, Case Synopses) only apply to matters that remain within the Bill 139 regime
 - procedurally, Rules are largely back to pre-Bill 139 (i.e. OMB)

Bill 108 Revisions Not Yet Proclaimed in Force

- density bonus by-laws (s. 37) and parkland dedication (s. 42) still in force...for now
- the new Community Benefits Charges by-law regime and s. 37 transition rules not yet in force
- changes to the *Development Charges Act, 1997* and the *Ontario Heritage Act* are the subject of ongoing additional stakeholder consultation, with Proclamation expected early next year

Conclusions

- more flexibility for appellants
- repeal of the two-step appeal process
- return to a single hearing
- restrictions on third party appeals of plans of subdivision
- restrictions on participation of non parties in LPAT proceedings
- reduction in decision timelines for approval authorities, but no more time limit for LPAT decisions
- amendments to Growth Plan and anticipated amendments to PPS
- ongoing consultation regarding amendments to *Development Charges Act, 1997*, section 37 bonusing, parkland dedication and community benefits charge
- return (for the most part) to pre-Bill 139 procedures

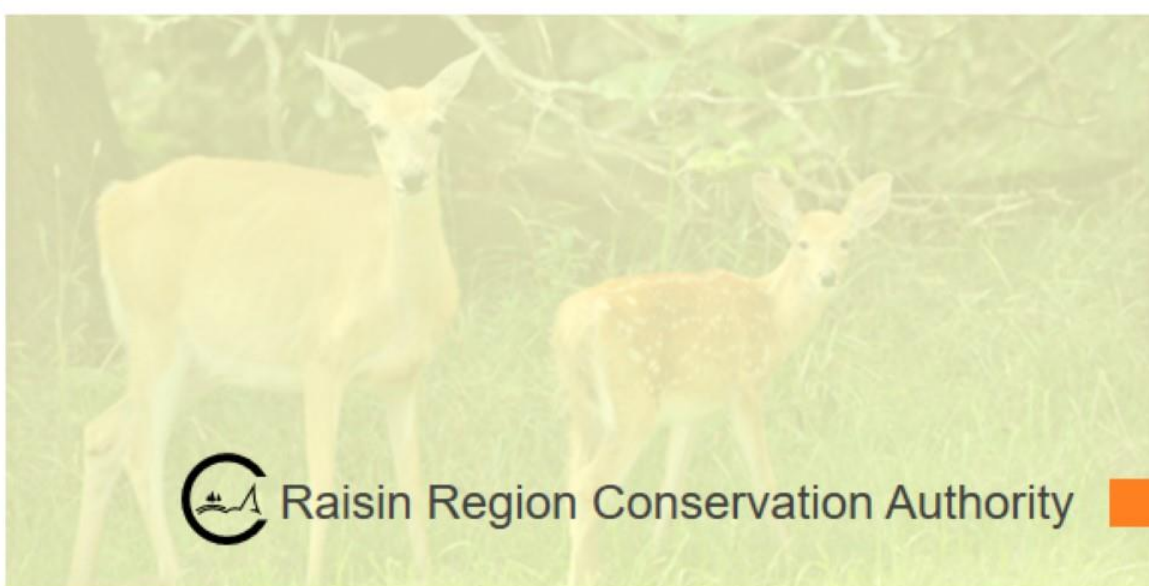


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Raisin Region Conservation Authority

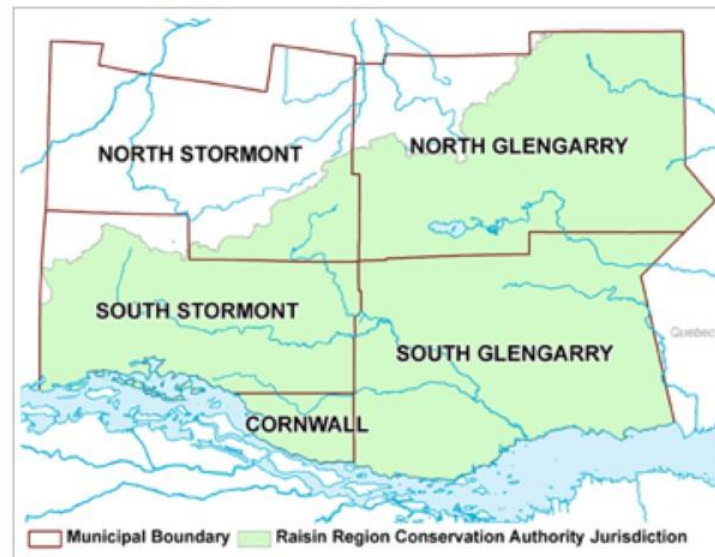
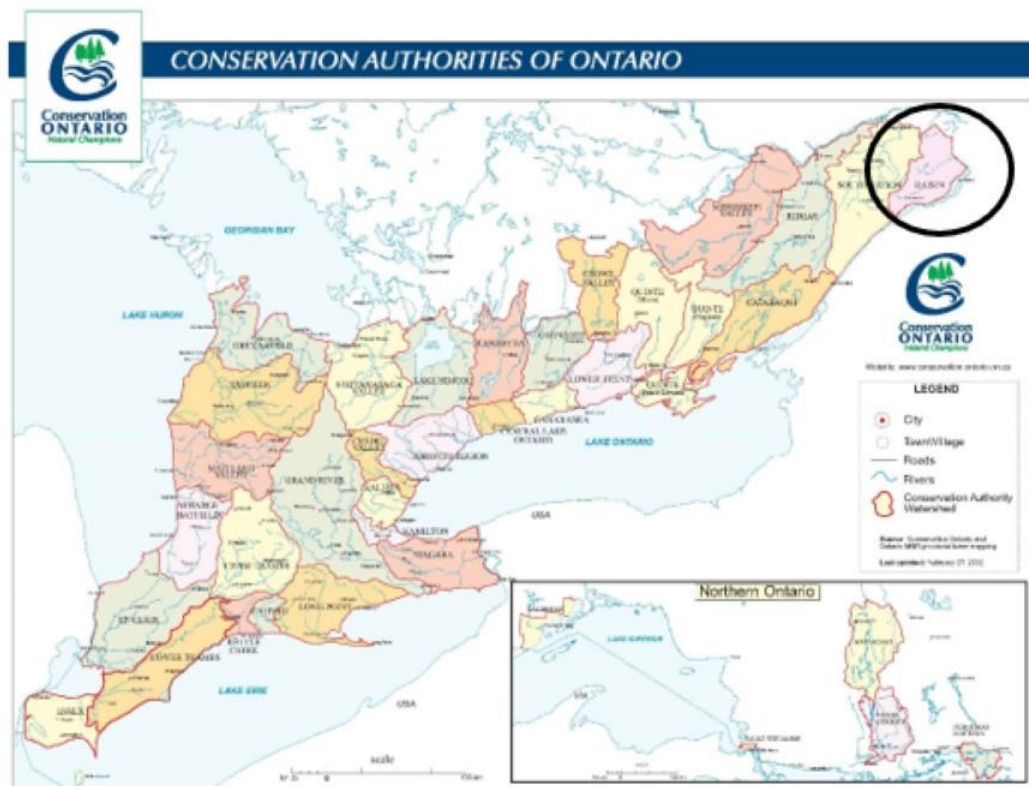
CA's Role in Development Review, Natural Hazards

OACA Workshop





RRCA Jurisdiction



Jurisdiction:
1,680 km²



Protecting People and Property – Marine Structure Conversions



- Minor Variances for boathouses
- Size and/or height increases



Protecting People and Property – St. Lawrence River System 2017



- The 1:100-year flood line, plus an allowance for wave uprush and other water related hazards



Protecting People and Property



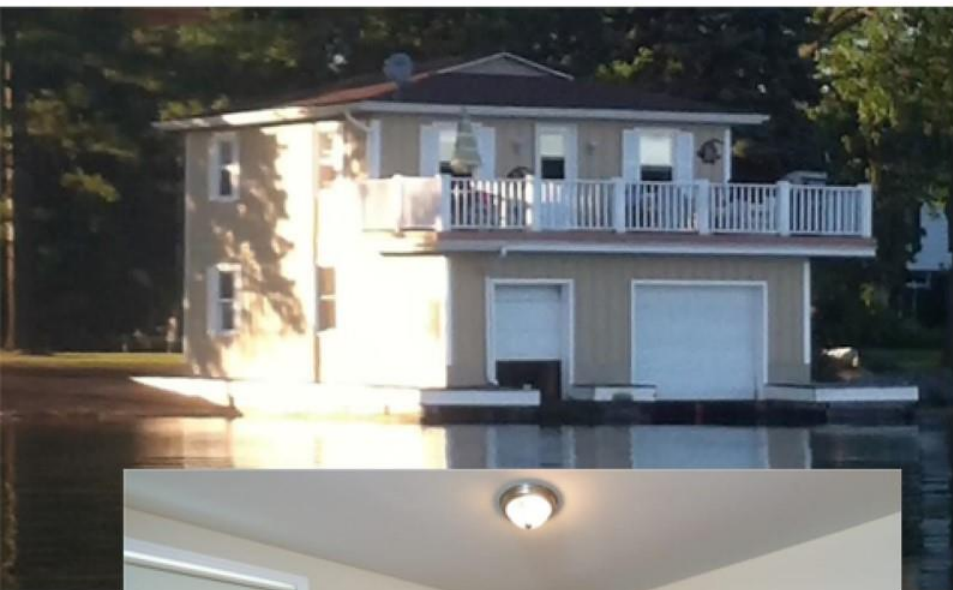


Protecting People and Property - Dangers Within Natural Hazard Areas





Protecting People and Property – Historical Structures & Conversions



For Sale/Rent Description

Stunning Waterfront Lot by the St-Laurence River in sought after Municipality with the luxury of owning your very own double door Boat House. The boat house also consists of an upper level 2-bedroom guest house. Do not miss out on this incredible opportunity.



Protecting People and Property – Historical Seasonal Dwelling



- CAs are working with local municipalities to improve or eliminate existing hazard situations when approached with a planning application such as a minor variance or a consent application.



CO Comments on Bill 108 (Schedule 12)

“Support a Range & Mix of Housing Options & Boost Housing Supply



*2 (1) Subsection 16 (3) of the Act is repealed and the following substituted:
Additional residential unit policies (3) An official plan shall contain policies that authorize the use of additional residential units by authorizing, (a) the use of two residential units in a detached house, semi-detached house or rowhouse; and (b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse.*



Protecting People and Property – Flooding Hazards, Severances, & MVs





Protecting People and Property – Flooding Hazards, Severances, & MV's



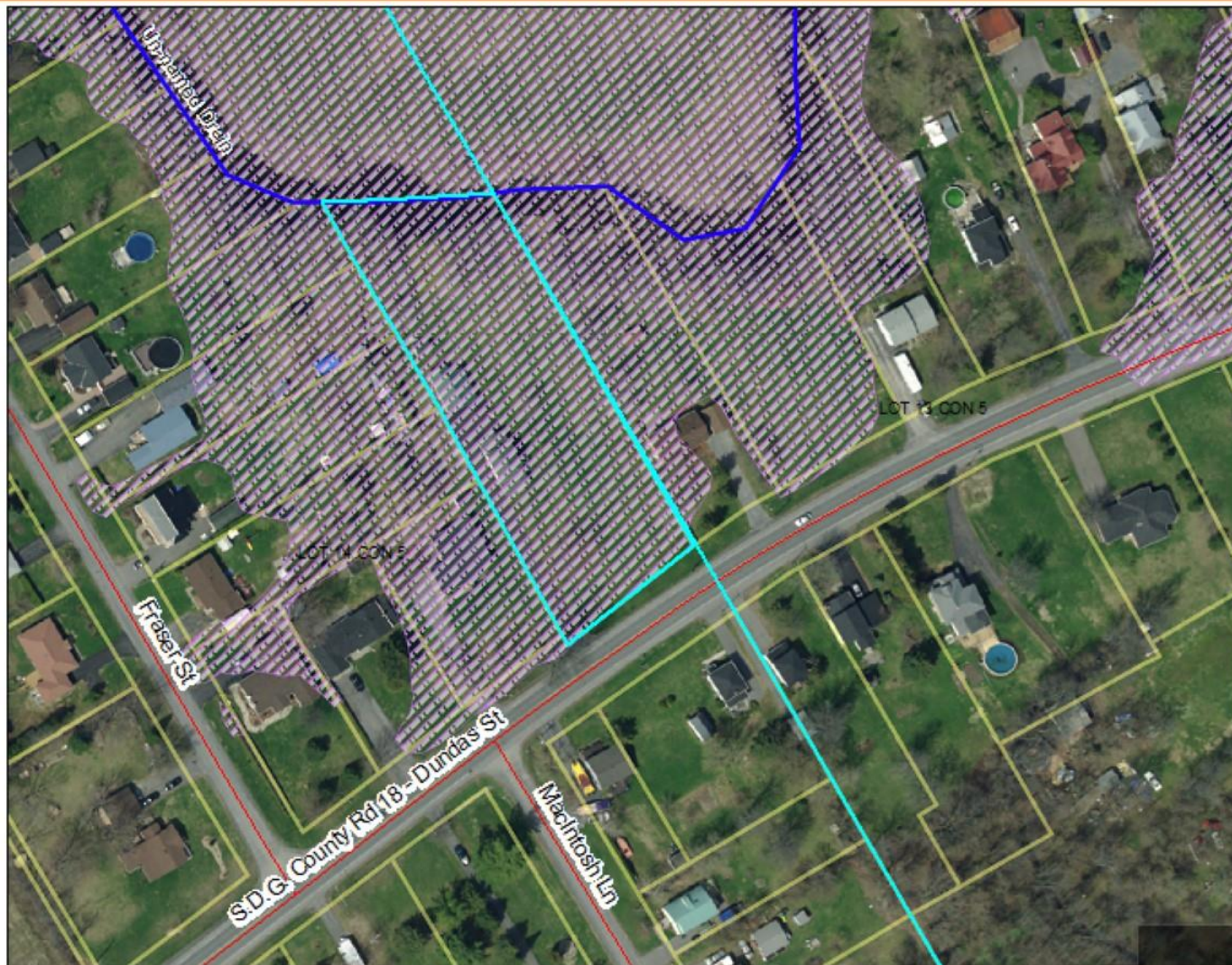


Protecting People and Property – Flooding Hazards, Severances, & MV's





Protecting People and Property – Flooding Hazards, Severances, & MV's





Protecting People and Property – Access/Egress Considerations





Protecting People and Property – Access/Egress Considerations





Protecting People and Property – Organic Soils & Consent Applications

Legend

- SDG_ORN_033115
- Railway Segment
- all_streams2015
- DFO_CLASS**
 - B
 - C
 - D
 - E
 - F
 - NR
 - T
- Organics
- floodplains
- Ansi
- Woodlands
- SIGNIF**
 - Evaluated-Other
 - Evaluated-Provincial
 - Not evaluated per OWES
 - SDG_Parcel_sel_withMPACData_1018





Protecting People and Property – Organic Soils & Consent Applications





Minor Variance Proposals with Reduced Setbacks





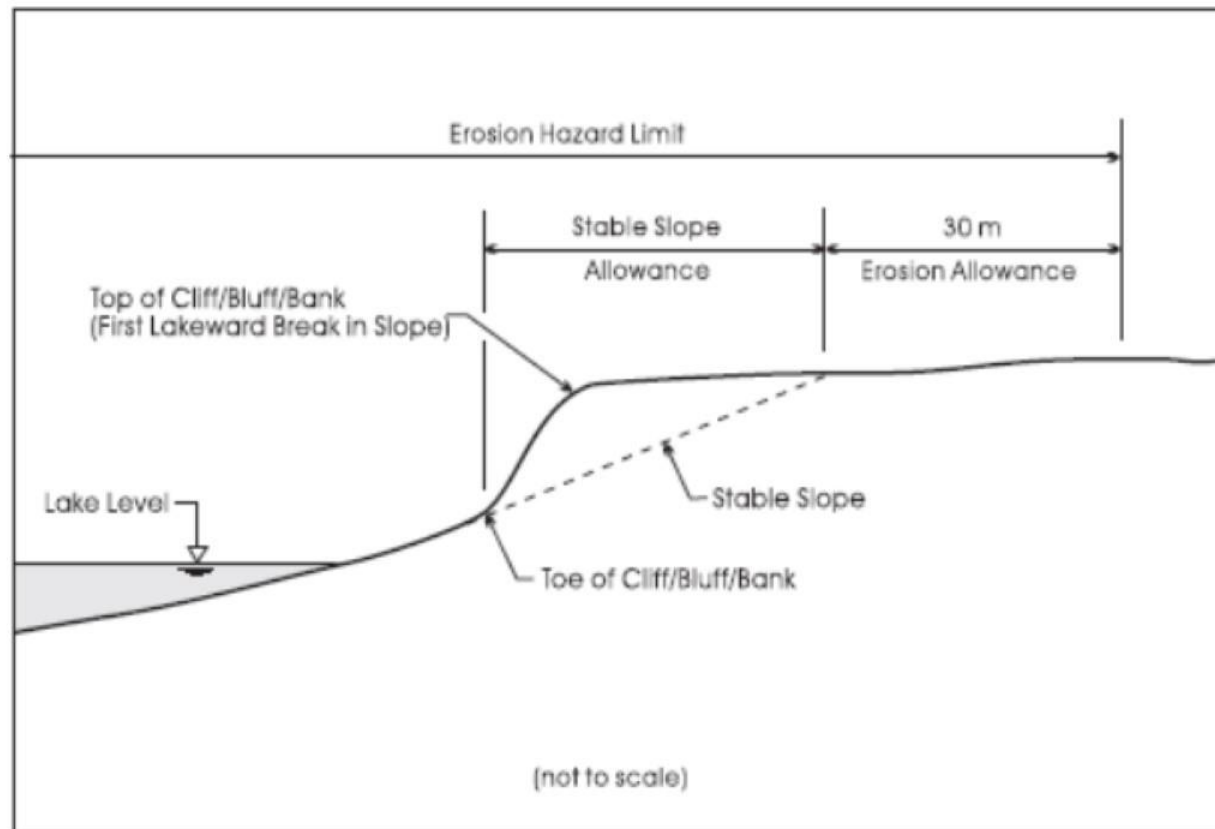
What does a Watershed Planner see?





Protecting People and Property – Erosion Hazards

Figure 4.16: Erosion Hazard Limit: Stable Slope Allowance plus 30 metre Erosion Allowance



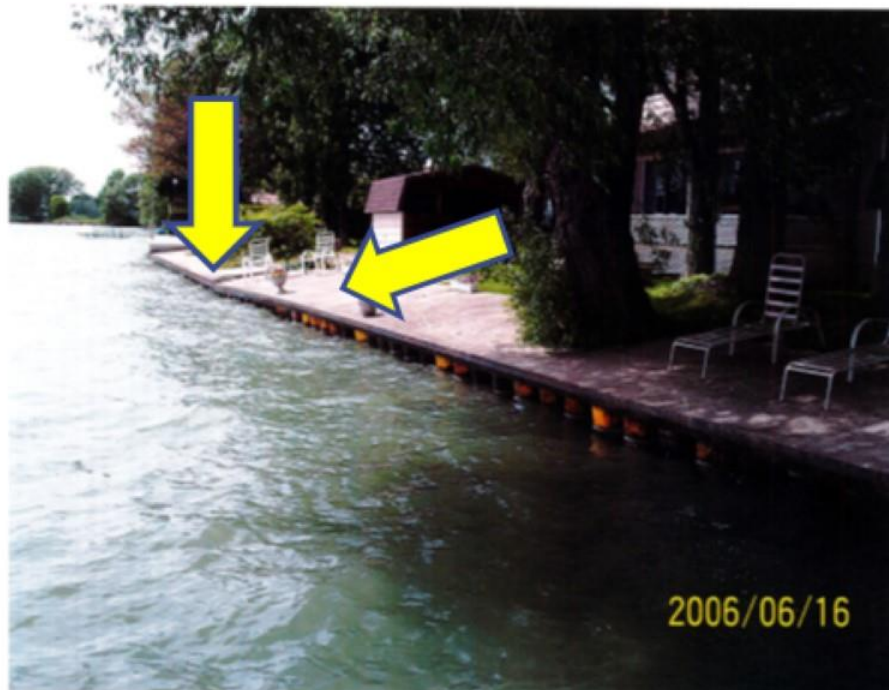


Protecting People and Property – Man-Made Structures vs. Mother Nature



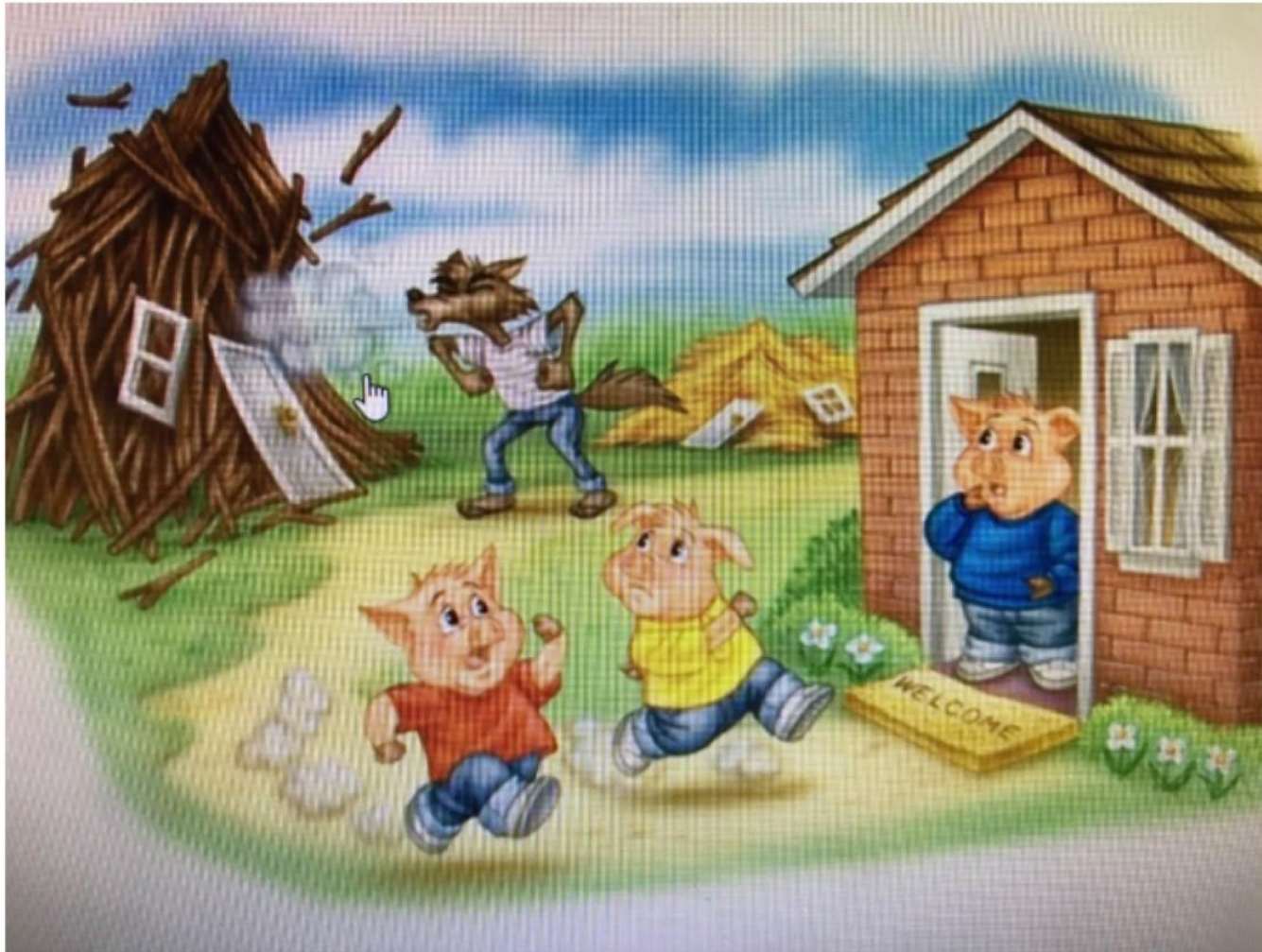


Reduced Setback, Minor Addition, Access/Egress?





Protecting People and Property – Preparing for the Future





Working with our Municipal Partners to Ensure Sound Development





It's a Collaborative Effort





Thank you



Raisin Region

Conservation Authority

Kimberley MacDonald

Watershed Planner

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(613) 938-3611 ext. 242



PRINCIPLES OF JURISDICTION, RULE OF LAW AND PROCEDURAL FAIRNESS

Athan Hadjis

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and Employment Board Secretariat

Director, *Council of Canadian Administrative Tribunals*
(CCAT)– *Interactive Course on Adjudication*

October 4, 2019



Council of Canadian Administrative Tribunals
Conseil des tribunaux administratifs canadiens

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Fall 2019 Session - Interactive Course on Adjudication

Agency, Board and Tribunal chairs and members, take note!

CCAT offers a practical five-day course in adjudication **for members of agencies, boards and tribunals, as well as the senior staff and counsel from these bodies**. This course provides essential tools for any new member and serves as an excellent refresher for more experienced members. Under the expert guidance of serving members and counsel, participants discuss - and put into action - current best practices in critical areas: basic principles of administrative justice, how to run a fair hearing, how to deal with preliminary matters, rules of evidence for administrative tribunals, managing hearing time, resolving ethical conundrums, dealing with difficult witnesses, providing an appropriate environment for unrepresented parties, making decisions and numerous other matters. This highly participatory course includes a simulated live hearing and provides an excellent background for dealing with "paper hearings" as well.

Participants will benefit from:

- a week-long immersion
- small class size
- training by current tribunal members and counsel
- conducting a simulated hearing
- networking opportunities with colleagues
- an exceptional professional experience all for an extremely reasonable fee!

This comprehensive course, rich in content, offers a judicious balance of theory and practice. It had its beginnings in 1992, when the first version was developed and offered by CCAT's National Institute for Administrative Tribunals. In 1995, HFATF decided to deliver this course through interactive, hands-on training by staff and members. During the intervening years, the training was broadened, refined and polished, and it has been serving the needs of federal agencies, boards and tribunals for two decades.

Overview

- The role of tribunals in government.
- The meaning of “jurisdiction” – Rule of Law
- The use of statutory interpretation in determining jurisdiction.
- What is the duty of fairness?
- When is the duty of fairness owed?
- Principles.
- Application.

Branches of Government

LEGISLATIVE

Enacts statutes

EXECUTIVE

Applies the statutes passed by legislative branch.

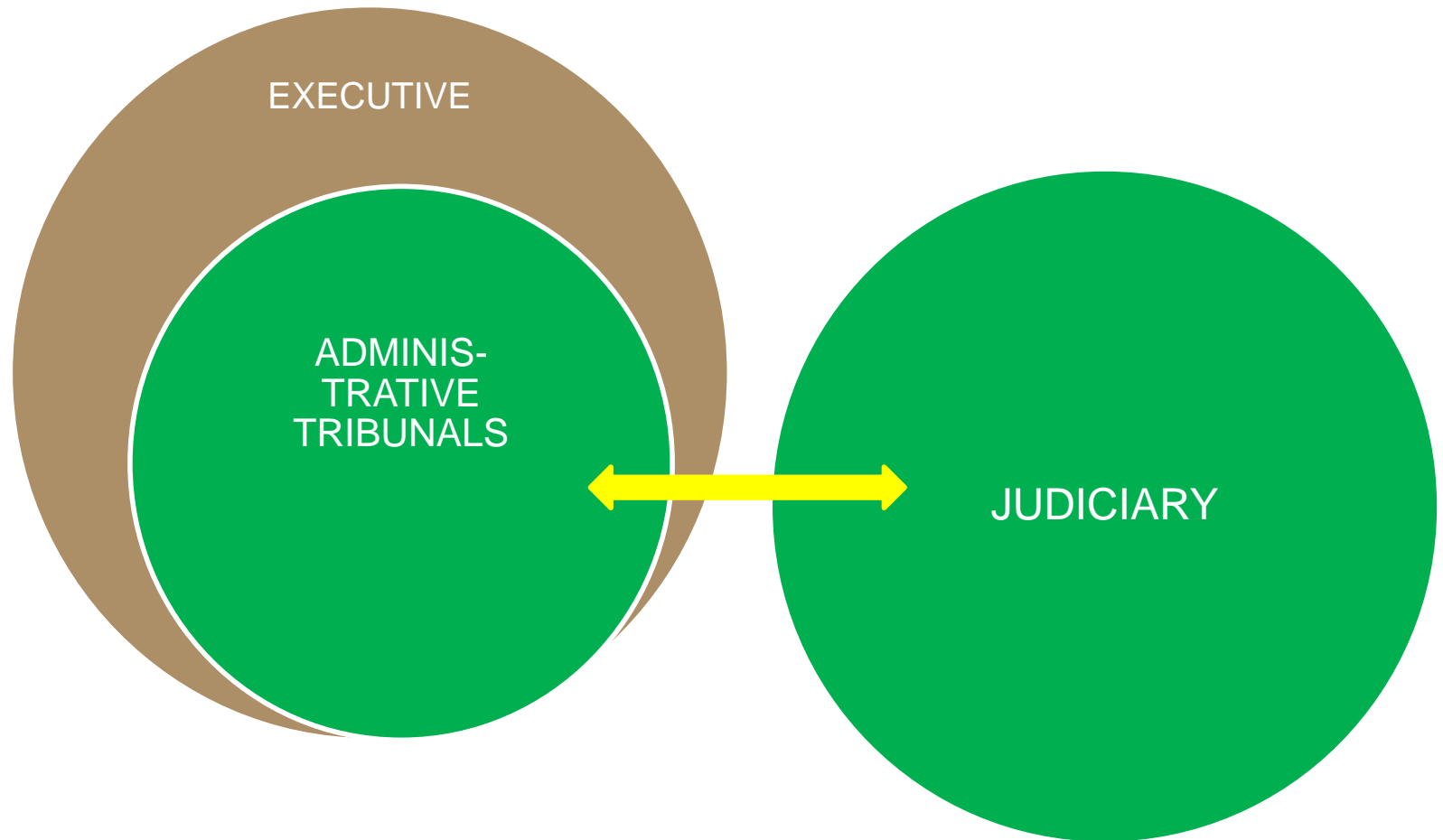
Carries out programs mandated by government of the day

JUDICIAL (COURTS)

Federal, provincial, and superior courts

Resolve public and private disputes by interpreting statutory and common laws

Distinct yet still similar



Courts



Admin tribunals



Reasons for having administrative tribunals

- **Specialized forums for decision-making and dispute resolution of complex or technical matters, considered on a case by case basis, separate from the day-to-day operations of government ministries.**
- **To avoid adding routine administrative matters to the already heavy caseload of the courts**
- **To create less formal, more expeditious and less costly ways of dealing with matters that require a formal decision**

Courts and Administrative Tribunals

Courts	Administrative Tribunals
<ul style="list-style-type: none">• Judicial branch.• Authority to govern their operations by virtue of their status as courts.• Use formal rules of evidence in their hearing processes.• Formality in their processes with complex rules.• Apply procedures that must be followed, making the court system difficult for the average person to use without the assistance of a lawyer.• <i>Stare decisis</i>• Judicial comity	<ul style="list-style-type: none">• Executive branch.• Must find the authority to govern their operations within their governing statute. Tribunals have only those powers that are set out in their statute or that are reasonably necessary to carry out those powers.• Not bound by the formal rules of evidence used in the court system. Evidence must be relevant and reliable, in keeping with procedural fairness principles.• Coherence

- Administrative tribunals, boards and agencies:
 - must maintain complete neutrality;
 - operate independently (“firewalls”) from government departments and from the day-to-day operations of line ministries;
 - are distinct from government departments;
 - are also distinct from other arm’s length public bodies such as Crown corporations, policy advisory bodies, community boards and grant funding agencies.
 - have some of the attributes of courts, particularly if they are quasi-judicial in scope.
 - are creatures of statute and often considered to have expertise in the interpretation of their statutes. This means that a tribunal is only permitted to do that which its statute asks and allows it to do.

A myriad of statutory schemes: Various Types of Tribunals



Single-member panel (e.g., landlord-tenant board, human rights tribunal, ...)

Various Types of Tribunals



Two-member panel (e.g. Veterans Review Appeal Board)

Various Types of Tribunals



Two-member panel (video hearing)
(e.g. Veterans Review Appeal Board)

Various Types of Tribunals



Three-member panel (e.g., Canadian Transportation Agency)

Various types of tribunals in action



Three-member panel
(e.g., Canadian Human Rights Tribunal Pay Equity hearings)

Various Types of Tribunals



Canadian Radio-
television and
Telecommunications
Commission

Multi-member panels

Canadian
Nuclear Safety
Commission



Various Types of Tribunals



Tribunals that do not hold oral hearings (i.e., which conduct paper hearings)

Various Types of Tribunals



In fact, any decision-making process that may affect a person's rights could be subject to the principles that apply to all administrative decision-makers

Jurisdiction

- The essence of a question of jurisdiction relates to whether or not a tribunal is permitted to do what it is being asked to do.
- RULE OF LAW
- Statutory interpretation is required.
- Principles of statutory interpretation.

Jurisdiction: Statutory interpretation

- The most commonly applied principle of legislative interpretation is that today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Determining a Tribunal's Jurisdiction

- Empowering statute
- Interpretation Act
- The Constitution Act
- Legislative History
- Text of Statute in the other official language
- Headings within statute
- Presumptions in criminal or regulatory statutes
- Presumption against retroactivity
- Presumption against redundancy
- Presumption against triviality

Example:

Federal *Public Service Staffing Tribunal*

The Tribunal's jurisdiction (*PSEA*):

88. (2) The mandate of the Tribunal is to consider and dispose of complaints made under subsection 65(1) and sections 74, 77 and 83.

77. (1) When the Commission has **made** or **proposed** an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Tribunal's regulations — make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of

(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2);

(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or

(c) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1).

Czarnecki v. Deputy Head of Service Canada, 2007 PSST 1

Complainant applied on two internal appointment processes but was eliminated from both at an early stage (failing to pass a written exam)

She filed two complaints alleging that the respondent had abused its authority in eliminating her from the processes

The complaints were filed before the processes were completed – no one had been appointed yet.

The respondent filed a motion to dismiss the complaints because the Tribunal lacked jurisdiction – the complaints were filed too early (prematurely)

The Tribunal stated at para. 18:

*As can be seen from a reading of each of the four sections referenced above, namely, subsection 65(1), and sections 74, 77 and 83, the **past tense is used to demonstrate that the action giving rise to the complaint**, the appointment or proposed appointment, has taken place. **By using the past tense, Parliament clearly indicated its intention that an appointment must have been made or proposed prior to the filing of a complaint to the Tribunal...**[G]rammatically, it only makes sense that the appointment or proposed appointment must precede the filing of a complaint.*

[19] If an employee's complaint is conditional upon an appointment or proposed appointment being made, consequently, the Tribunal does not have jurisdiction to deal with a complaint filed when there has been no appointment or proposed appointment. The Tribunal's jurisdiction requires that the complaint meets the conditions of section 77 of the PSEA.

[21] Since both complaints were filed prior to the selection process being completed and there has been no appointment or proposed appointment in either process, the Tribunal has no jurisdiction to deal with them.

[22] Both complaints are therefore dismissed.

- As Chief Justice McLaughlin stated:

The rule of law requires that all official power be exercised within the framework of the law – fairly, reasonably and in accordance with the powers duly conferred on the body exercising them. The challenge is ensuring this in the modern regulatory state.

PROCEDURAL FAIRNESS

- Natural justice and fairness must be observed at all times in the exercise by administrative tribunals of their delegated powers
- Subject to the supervision of the courts

Natural Justice/Procedural Fairness

- Aspects of fairness
 - A fluid, contextual concept.
 - Right to notice.
 - Right to know the case to be met.
 - Right to be heard.
 - Right to a fair hearing.
 - Assistance from counsel or an agent.
 - Assistance of an interpreter.
 - Reasons.

Right to reasonable notice

- Follow requirements of statute: FORM, CONTENT, DATE, etc.
- Where no requirements laid out in the statute, ensure “adequate notice”:

Should be provided to all persons with a direct interest in the decision that is being made.

Should lay out the basis of decision, time of hearing, date of hearing, location of hearing process for oral or written submissions, contact names, time within which response necessary etc.

Right to reasonable notice

Section 45, *Planning Act*, R.S.O. 1990, c. P-13

Time for hearing

- (4) The hearing on any application shall be held within thirty days after the application is received by the secretary-treasurer. R.S.O. 1990, c. P.13, s. 45 (4).

Notice of hearing

- (5) The committee, before hearing an application, shall in the manner and to the persons and public bodies and containing the information prescribed, give notice of the application. R.S.O. 1990, c. P.13, s. 45 (5); 1994, c. 23, s. 26 (1).

Hearing

- (6) The hearing of every application shall be held in public, and the committee shall hear the applicant and every other person who desires to be heard in favour of or against the application, and the committee may adjourn the hearing or reserve its decision. R.S.O. 1990, c. P.13, s. 45 (6).

***Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22**

Notice of hearing

- **6. (1)** The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).
- **Statutory authority**
- **(2)** A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.
- **Oral hearing**
- **(3)** A notice of an oral hearing shall include,
 - (a) a statement of the time, place and purpose of the hearing; and
 - (b) a statement that if the party notified does not attend at 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. 1994, c. 27, s. 56 (13). (...)

Effect of non-attendance at hearing after due notice

- **7. (1)** Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14). (...)

Right to Know the Case to Meet

- What will the tribunal be considering? This will allow the parties to determine what the arguments or evidence they want to put forward.
- Allow parties to know with « sufficient precision » the issues that will be considered by the decision maker.

Right to be heard

- Right to present arguments, evidence supporting their own case.
- Right to comment on, dispute, correct or contradict anything prejudicial to their position.
- Right to have assistance in presenting case.
- Assistance in interpretation

Right to reasonable notice

- Energy regulator grants licence to natural gas processor (F Co)
- C. lived 1.5 km from F Co's facility and has concerns, which she had previously expressed at public meetings for earlier approvals from other authorities.
- When F. Co applied to regulator it mentioned C's concerns but did not provide her with notice of its application and the regulator only published a public notice. She only found out after the hearing. The regulator refused her appeal to revisit the grant of licence.
- Appeal Court: significant natural justice flaw in procedure granting licence and denying appeal without notice or affording a full hearing on either issue, particularly given the proximity of her home.

Right to Know the Case to Meet & Right to Be Heard

- MD suspended from medical staff – suspension period served – reapplied to health authority - denied
- MD was required to give names of several references and last employer, and consent to disclosure of private info
- Authority based decision on highly prejudicial info obtained from these persons. The info was not disclosed to MD. He had no opportunity to respond.
- Reviewing court said the authority should have shared this info with MD and afford him opportunity to respond before making a final decision.

» *Young v Central Health*, 2016 NLTD(G) 145

Right to Be Heard & to Know the Case

- PSLRB – grievance adjudication regarding a collective agreement clause – a prior Board decision had dealt with a similar, though not identical, clause from an earlier collective agreement. During a pre-hearing conference call, the adjudicator said that she thought the decision had some bearing on the case. She later wrote to parties asking for submissions on the decision’s applicability, suggesting that an oral hearing may be called to deal with this issue.
- After receiving the submissions, she issued a final decision saying facts not materially different and applying the “precedent” to allow the grievances.
- Court: Employer was denied procedural fairness – reasonable for employer to assume that requested submissions were to assess differences in collective agreement language. No way for employer to have anticipated that adjudicator would rule on the merits without seeking further submissions. Accordingly, the employer did not file evidence or make submissions on the merits.

» *Canada (Attorney General) v. Timson*, 2012 FC 719

Right to Know the Case to Meet & Right to Be Heard

- Professor – improper use of university equipment
- University board holds hearing – professor and university president attend
- Afterwards, during deliberations over dinner, the board called in the president to discuss the case, in the absence of professor or his counsel.
- Board decides to suspend professor
- SCC: Board made fundamental error in deliberating as they may have heard further information which affected its disposition of the issues.
- *Audi alteram partem* – *hear the other side too*. Professor was suspended without having an opportunity to be heard.

• *Kane v Governors of UBC*, [1980] 1 SCR 1105.

Right to a Fair Hearing – (duty to consider all relevant evidence)

- MD was alleged to have significantly overbilled Ministry of Health – panel rules that he must repay and revokes his enrolment as practitioner
- MD was overseas at time of hearing – tried to file detailed affidavit, which had not been properly sworn – panel refused to consider it, even though a proper affidavit was later filed
- Superior Ct: his professional reputation and ability to earn a living were at stake, which militated in favour of procedural patience rather than asperity in the circumstances - panel's refusal to receive his evidence was an inexcusable breach of its common law duty of procedural fairness.

- *Hefnawi v. Health Care Practitioners Special Committee for Audit Hearings*, 2016 BCSC 226

Right to a Fair Hearing – (duty to disclose all relevant information)

- A supermarket location was sold - employees were represented by union A – new owner, multi-stores all with union B – labour board ruled that union A would continue to represent employees in the supermarket
- Major issue about allowing union A to continue was whether it got along with union B – there had been antagonism in the past due to raiding – Union B led evidence and argued that there was still “bad blood”
- Board, without knowledge of parties, went to union A’s website, which said that all conflicts had been resolved – Board used this as a factor in its decision in favour of union A.
- Court of Appeal: Board’s resort to website info was breach of procedural fairness - parties had no notice it would do so and could not have anticipated it – legitimate expectations of parties was that it would confine itself to assessing evidence before it

• Saskatoon Co-operative Association Limited v SJBRWDSU, 2016 SKCA 94

Right to a Fair Hearing – (duty to hear before deciding an issue)

- M. applied for personalized licence plates (“Dr. DUI”)
- Someone complained to govt. agency about them – agency decided to revoke them the next day
- Three days later, letter to M to return them – issued in error - no further explanation – agency later spoke by phone to M who explained the plates’ meaning
- Court of Appeal: This phone conversation was not meaningful participation – there was no intent on agency’s part to consider M’s arguments – copy of complaint was not given to him – he did not know case against him – conversation was just a post-decision investigation – agency failed to respect most minimal procedural fairness requirement

• *O’Connell, as the registrar of Motor vehicles for the province of New Brunswick v. Maxwell*, 2016 NBCA 37

Reasonable Apprehension of Bias

- Parties appearing before tribunal have right to a fair and impartial hearing by an impartial decision-maker
- This right will be threatened where a member of the panel is, or appears to be, seriously predisposed on the issues or has a pecuniary or financial interest in the outcome.
- **Test: whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator**
 - *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623
- **What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would they think that it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide fairly?**
 - *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369

Reasonable Apprehension of Bias

- After a labour dispute at Canada Post, bill passed in Parliament to order resumption of service – provides that arbitrator will choose between parties' final offers
- Arbitrator who is appointed used to represent CP in pay equity matter for over 15 years – final judgment issued only one year before but arbitrator had left law firm 2 years earlier – arbitrator was active member and executive of governing political party until about 2 years earlier – former candidate in three elections – Facebook friend with ministers including those responsible for his appointment and for CP
- Fed Ct: *a reasonable sensible person who had thought matter through can reasonably be concerned that arbitrator who was CP's counsel for many years in a similar case, which cost large losses for CP and who also until recently engaged in party activities and maintained ties with ministers, may serve the interests of a party or government, even unknowingly.*

• *Canadian Union of Postal Workers v. Canada Post Corporation*, 2012 FC 975

Person who hears must decide

- Areas where this issue may arise:
 - Plenary meetings of a tribunal's members
 - Use of policy guidelines or policy manuals
 - Inappropriate pressure by others (members, chairperson, senior staff, ministerial staff,...)
 - Not being “there” (a member “stepping out”, becoming sick, falling asleep,...)

Person who hears must decide

- Guidelines for plenary meetings:
 - Meetings should be voluntary
 - No new evidence is introduced or considered
 - Cannot discuss the facts or merits of an individual case
 - Limited to discussions of legal and policy issues and the implications of a decision
 - A decision is not based on new grounds raised at meetings unless parties are informed and can make representation on the new grounds
- See *Iwa v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 SCR 282, 1990 CanLII 132
- See also *Shuttleworth v. Ontario (Safety, Licensing Appeals and Standards Tribunals)*, 2019 ONCA 518

Duty to Give Reasons

- Reasons: No traditional common law rule requiring the giving of reasons for administrative decisions.
- However, giving reasons reduces, the chances of arbitrary or capricious decisions, reinforces public confidence in the judgment and fairness of administrative tribunals, and affords parties to administrative proceedings an opportunity to assess the question of appeal.
- Reasons should be considered to be a requirement of procedural fairness where, “the decision has important significance for the individual, [or] when there is a statutory right of appeal...”.

• *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

Summary

- Administrative tribunals form part of the executive branch of government but are usually distinct from government departments
- Often have many attributes of courts
- Can only do that which their statutes ask and allow them to do
- Owe duty of fairness
 - Parties must know the case against them and have opportunity to reply
 - Unbiased decision-maker
 - Person who hears must decide
 - Decision-maker must give reasons for decision

Ontario Association of Committees of Adjustment Cornwall, Ontario

M. Rick O'Connor, CMO, LLB
City Clerk, Ottawa
October 4, 2019



New Accountability Framework



As of March 1, 2019, Committee of Adjustment members are subject to a code of conduct and a new municipal conflict of interest scheme.

Code of Conduct

Code of conduct

223.2 (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards.

Code of Conduct

Four mandatory subject matters:

- Gifts, benefits and hospitality
- Respectful conduct towards staff
- Confidential information
- Use of board resources



Oversight of the Code

The municipality's Integrity Commissioner is responsible for:

- Application of the code of conduct, including receiving complaints respecting alleged non-compliance;
- Requests for advice from members regarding their obligations under the code of conduct; and
- Providing education and training to members, staff and the public.

Compliance with the Code

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

Municipal Conflict of Interest Act (MCIA)

What has changed? As of March 1, 2019, a new municipal conflict of interest framework now:

- Authorizes an Integrity Commissioner to provide pecuniary (financial) conflict of interest advice;
- Establishes a new complaint process through the Integrity Commissioner (as opposed to directly through court); and
- Enhances the disclosure and reporting requirements for conflict of interest declarations.

Types of Pecuniary Interests

MCIA applies to three types of pecuniary (financial) interests:

- **Direct:** a member would sustain a positive or negative financial impact as a result of a decision on the matter
- **Indirect:** a Member is a shareholder in a private company, is a director or senior officer of a public or private company, has a controlling interest in a public company, is a member of a “body”, or is a partner or employee of a person or body that has a pecuniary interest in the matter

Types of Pecuniary Interests (cont'd)

- **Deemed** – the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

Deemed Interests

“**spouse**” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

“**parent**” means a person who has demonstrated a settled intention to treat a child as a member of his or her family.

“**child**” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family.

Exceptions

There are eleven exceptions (nine specific and two general) to a Member's duty with respect to a conflict of interest.

Specific exceptions include matters where the Member:

- Is a user of any public utility service;
- Is entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;

Specific Exceptions (cont'd)

- Purchased or owns a debenture of the municipality or local board;
- Made a deposit with the municipality or local board;
- Has an interest in any property affected by a work under the *Drainage Act* or local improvements;
- Has an interest in farm lands that are exempted from taxation for certain expenditures under the *Assessment Act*;

Specific Exceptions (cont'd)

- Is eligible for election or appointment to fill a vacancy, office or position in the council or local board;
- Is appointed by Council to another body (e.g. municipal corporation) carrying on business for or on behalf of the municipality; and
- Is entitled to an allowance, honorarium, remuneration or benefit for being a member.

General Exceptions

The two general exceptions apply to those matters where the Member has:

- An interest in common with electors generally; and
- An interest is remote or insignificant in nature.

Responsibilities cont'd

If a member has a pecuniary conflict of interest:

- Do disclose the interest;
- Don't participate in the discussion of the matter nor vote on any question;
- Don't attempt to influence the decisions or recommendations of staff;
- Don't attempt to influence the voting on any such question before, during or after the meeting.
- Do immediately leave the meeting if it is not open to the public; and
- Do file a written statement with the Secretary-treasurer asap.

How is the MCIA enforced?

Any eligible elector (or a person demonstrably acting in the public interest) who believes a member has contravened the conflict of interest rules, may apply to the Integrity Commissioner to request an investigation within six weeks of becoming aware of a conflict of interest.

How is the MCIA enforced?

- Where the Integrity Commissioner investigates and determines a contravention may have occurred, s/he may apply to a judge for a determination.
- Only a judge has the authority to determine if a contravention has occurred and apply penalties.
- Local board is required (by law) to pay for the costs of an application to court.

New Wider Range of Penalties

Power of judge

9 (1) If the judge determines that the member or former member contravened section 5, 5.1 or 5.2, the judge may do any or all of the following:

1. Reprimand the member or former member.
2. Suspend the remuneration paid to the member for a period of up to 90 days.

Penalties cont'd

3. Declare the member's seat vacant.
4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.
5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.

Saving Provisions

When exercising their discretion with respect to penalties, a judge may consider, among other matters, whether the member or former member:

- a) took reasonable measures to prevent the contravention;
- b) sought and followed advice from the Integrity Commissioner;
or
- c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.

Declarations of Interest Registry

The MCIA now requires municipalities and local boards to establish and maintain a public registry of declarations of interest which shall include:

- (a) a copy of the declaration of interest filed; and
- (b) a copy of the minutes where the declaration is recorded.

The registry must be available to the public.

Seek Advice

- When in doubt, reach out to your Integrity Commissioner for confidential advice respecting obligations under the Code of Conduct or a potential conflict of interest.
- **Remember:** If the matter makes it to court, a judge may consider if a member sought, received, and followed advice from the Integrity Commissioner.

Questions?



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