

THE PASSING OF BILL 139

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Earlier this year we sent you a [bulletin highlighting the changes](#) occurring with regard to the land use planning appeal matters under the *Planning Act* under Bill 139 - the proposed *Building Better Communities and Conserving Watersheds Act, 2017* (the “**Act**”). Included in the numerous proposed changes under the **Act** is the replacement of the Ontario Municipal Board (“OMB”) with the Local Planning Appeals Tribunal (the “**LPAT**”), which is to function as an appeal body only.

Bill 139 received Royal Assent on December 12, 2017, thereby bringing the Act into force. Despite the enactment, the changes will not be implemented right away as the Schedules which contain the legislative amendments to the *Planning Act* will only come into force on a date to be named by proclamation of the Lieutenant Governor. While no such date has been decided upon at this time, the Ministry of Municipal Affairs has indicated that proclamation will likely occur in the spring of 2018, which is when they intend to have the rules and regulations applicable to the LPAT finalized.

Of particular interest (and perhaps concern) to our clients will be the anticipated transition of appeals from OMB jurisdiction to LPAT jurisdiction. In response to such concern, the Province has commenced a 45-day public comment period, ending January 21, 2018, and has posted a summary of its proposed transition regulations to the Environmental Registry ([found here](#)). On December 7, 2017, the Minister of Municipal Affairs and the Ministry of the Attorney General also issued a statement on the proposed transition regulation ([found here](#)).

Should the transition play out as is currently anticipated, the following is a summary of changes to be expected through the transition and under the new LPAT system:

1. If a complete application is filed with a municipality **prior** to Royal Assent (i.e., December 12, 2017), and the appeal to the OMB is also filed **prior** to Royal Assent, then the appeal will be sheltered, and the matter will be heard by the **OMB**.
2. If a complete application is filed with a municipality **prior** to Royal Assent (i.e., December 12, 2017), and the appeal to the OMB is also filed **prior** to Proclamation (anticipated to be spring of 2018), the appeal will still be sheltered, and the matter will be heard by the **OMB**.
3. If a complete application is filed **after** Royal Assent (i.e., after December 12, 2017), but the appeal is filed

prior to Proclamation, the appeal will be heard by the **LPAT**.

4. If a complete application is filed **after** Royal Assent (i.e., after December 12, 2017), but the appeal is filed after Proclamation, the appeal will be heard by the **LPAT**.

There are further changes to the approval and extended appeal timelines. As of December 12, 2017, the approval authority has 210 days to approve an adopted Official Plan or Official Plan Amendment, and the following extended appeal timelines will apply to completed applications filed from December 12, 2017 onward:

- Official Plan Amendments (“OPA”) 210 Days
- Zoning Bylaw Amendments (“ZBA”) 150 Days
- Combination of OPA and ZBA 210 Days

Further, certain restrictions will now apply where a decision on an instrument is issued after Proclamation. When this is the case, there will be:

- No ability to appeal an Interim Control Bylaw (ICBL) for one year;
- No ability to apply to amend an approved Secondary Plan; and
- No appeals of Ministerial Zoning Orders.

We will continue to monitor all matters related to the new legislation and will update our client Bulletin as more concrete deadlines and further information is received.

by Mary Flynn-Guglietti and Kailey Sutton

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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