

THE LPAT AND THE NEW "ONTARIO LAND TRIBUNALS" CLUSTER

Posted on July 6, 2020

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On June 17, 2020, the [Province announced](#) the designation of the following cluster of adjudicative tribunals as the "Ontario Land Tribunals", pursuant to [O. Reg. 282/20](#): (1) Board of Negotiation (per the *Expropriations Act*), (2) Conservation Review Board, (3) Environmental Review Tribunal, (4) Local Planning Appeal Tribunal ("**LPAT**"), and (5) Mining and Lands Tribunal. The Ontario Land Tribunals cluster is led by Marie Hubbard, who also remains the Associate Chair of the LPAT.

Per the Province's announcement, the intention of this change is "to make it faster to resolve land use planning disputes and increase housing supply across the province". In addition, the intention is that [e]xisting or new cases will not be delayed as a result of the change." The Province's announcement also offers the following as a "quick fact":

- The Ontario Land Tribunals will build on changes that have helped to reduce delays when there is a dispute in the land use planning process. The backlog of Ontario Municipal Board legacy cases at the Local Planning Appeal Tribunal has been reduced from 1,200 cases in June 2019 to 736 cases as of May 25, 2020.

This new designation effectively separates the 5 above-listed Ontario Land Tribunals from the currently existing "Tribunals Ontario" cluster, which continues to include Tribunals such as the Animal Care Review Board, the Custody Review Board, and the Landlord and Tenant Board (see O. Reg. [126/10](#)). The 5 Ontario Land Tribunals previously existed as part of the Environment and Land Division ("**ELTO**") of Tribunals Ontario, alongside the Assessment Review Board. Other than this change, we expect that this is largely an administrative change only, and that there will be little to no public-facing changes as a result. The ELTO website has been decommissioned, and the new Ontario Land Tribunals website (<https://olt.gov.on.ca/>) went live on July 1, 2020.

In addition to the above, it has been announced that LPAT filing fees have increased effective July 1, 2020, which fees (either \$400.00 or \$1,100.00) correspond with the type of appeal. For example, the fee for minor variance and consent appeals is now \$400.00, while an appeal relating to an official plan amendment or zoning by-law amendment is \$1,100.00. The announcement also indicates that the LPAT can reduce fees from \$1,100.00 to \$400.00 for "eligible private citizens and community groups."

What's Going On at the Local Planning Appeal Tribunal?

Further to the discussion in our last bulletin dated [June 3, 2020](#) and our companion bulletin [also released today](#), it appears the LPAT is taking varied approaches to scheduling hearings of contested appeals, based largely on geographic location of the development and the municipality's position and ability to offer appropriate social distancing requirements.

In our previous bulletin, we had shared comments made by Member Swinkin during a Case Management Conference ("**CMC**") (PL180019) indicating that the current LPAT direction is not to schedule any contested hearings, particularly if the hearing was scheduled to be held at the Tribunal's offices at 655 Bay Street. Member Swinkin further stated that, prior to scheduling or confirming hearings, the Tribunal wants to ensure that there is "a detailed proposal as to how the hearing would be physically undertaken and what facilities would be provided by the municipality to ensure safe, fair and full participation by all of the parties", and such detailed proposal must be approved. When parties to this CMC raised the example of another matter that was, in fact, moving ahead with a contested hearing, the Member made the following comments:

"As with all good intentions, until the details are actually carefully scrutinized and finally approved, this remains a provisional disposition. Depending upon the number of persons who would be attending, their susceptibility to infection, their ability to get to the hearing facility, a protocol for the safe entry and assembly in the premises, including reasonable accommodation regarding washroom access and eating facilities, the ability to support an in-person hearing will vary from one context to another."

In deciding to release the July hearing dates for this matter, Member Swinkin concluded that, until a number of factors are institutionally addressed, it remains "premature to undertake an in-person hearing in the Toronto chambers of the Tribunal."

Nevertheless, the Tribunal is permitting other contested hearings to proceed. For example, as noted above, the Tribunal has permitted a "hybrid" or partly in-person hearing to proceed respecting the multi-party appeal of a rezoning and proposed official plan amendment in the Town of Richmond Hill (case nos. PL180073 and PL110189). According to the June 29, 2020 disposition in this matter (in which the Tribunal acknowledges the parties' competing submissions on the subject), Vice-Chair Makuch appears to have found the following facts salient to allowing the matter to proceed:

- The City's position and public-interest mandate - "the interests of the landowners... and local-residents... are limited in scope to their own private interests. The City on the other hand has a larger mandate to represent the larger and broad public interest in the municipality and should be accorded some deference by the Tribunal as to the appropriate form of the hearing" (para. 16);
- Availability of space in which to hold the hearing event – in this case, the Richmond Hill Municipal Offices

(para. 28);

- Regard for “compliance with physical distancing requirements and maximum number of persons in a public gathering (which includes a Tribunal hearing) at any given time” – in this case, the proposed format limits the persons in attendance at any given time to 10, or as may otherwise be permitted by the Provincial Regulations, with an adjoining Conference Room being available for overflow of an additional 10 persons, such as counsel and witnesses waiting to be called or take part (para. 27);
- Use of technology – in this case, other parties would be connected via Zoom Link “so that they would have an opportunity to make submissions or take part in any discussions as needed. The hearing could also be livestreamed for the benefit of registered Participants or members of the public” (para. 28);
- Suitability of the hearing to electronic format - Vice-Chair Makuch commented that “a purely electronic hearing format is much less well-suited to the fully contested hearing of the Phase 1 issues, with viva voce evidence from witnesses involving cross-examinations, objections and multiple documents - particularly given the number of parties involved” (para. 30).

Based on the above, it appears that the Tribunal considered the majority of factors listed by Member Swinkin, though it is unclear whether details such as “washroom access and eating facilities” have been “carefully scrutinized and finally approved” at this time. Indeed, Vice-Chair Makuch appears to have been content to approve the format prior to such details having been formalized, stating that “[i]t is evident that there would still be many logistical and practical considerations to be worked out as part of these arrangements. However, the Tribunal is satisfied that this approach provides a practical and workable framework to guide the structure and format of the hearing subject to further refinements as the situation evolves” (para. 29).

The authors very much agree with and encourage the Tribunal's flexibility and efforts to move matters forward, especially where it is not feasible to conduct a hearing virtually. However, the factors considered for moving ahead with a scheduled hearing appear somewhat unevenly applied at this time. Careful consideration should be had to ensure fair application of these new rules and procedures; for example, will hearings related to developments based in the City of Toronto be delayed significantly more than counterparts in other jurisdictions, based simply on the constraints of holding a hearing at the Tribunal's offices at 655 Bay Street? There will inevitably continue to be growing pains as systems adjust to new realities, and the LPAT will not be exempt from this while continuing to seek fair, cost-effective, and expeditious resolutions of parties' issues.

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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.

The logo for mcmillan, featuring the word "mcmillan" in a lowercase, sans-serif font. The "m" and "c" are in a dark red color, while the "m", "i", "l", "l", "a", and "n" are in a light blue color. The logo is positioned in the upper left corner of a banner image.

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