



Environment and Land Tribunals Ontario

Conservation Review Board

Annual Report 2009-2010

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Copies of this annual report, as well as other Board publications, may be obtained from the Board.

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ISBN 978-1-4435-3555-7

ISSN 1920-3454

Environment and Land Tribunals Ontario

www.elto.gov.on.ca

To the Honourable Chris Bentley, Attorney General

Minister:

We have the pleasure of submitting, for your approval, the Conservation Review Board 2009-2010 Annual Report.

Respectfully submitted,

A stylized, handwritten signature in black ink, appearing to read 'Peter Zakarow'.

Peter A.P. Zakarow
Chair
Conservation Review Board
Ontario

A stylized, handwritten signature in black ink, appearing to read 'Ali Arlani'.

Ali Arlani
Chief Executive Officer
Environment and Land Tribunals

2010

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Chair's Message

As the Chair of the Conservation Review Board, it is my pleasure to present the 2009-2010 Annual Report. This report covers the events of the past fiscal year, which is a period from April 1, 2009 to March 31, 2010.

The past year has proven to be very exciting for the Review Board on many fronts. The Review Board continues to see an increase in the number of cases and the complexity of issues raised in its proceedings. There continues to be an increase in the discussion of Heritage issues across the Province, and continued linkage between heritage and planning issues. The Review Board's primary mandate is to conduct proceedings where there are disputes concerning properties that may demonstrate cultural heritage value or interest, or disputes surrounding archaeological licensing, as governed by the Ontario Heritage Act. The Review Board operates as an independent adjudicative agency subject to the rules of natural justice, requirements of the Statutory Powers Procedure Act and the Review Board's Rules of Practice and Procedure. Where there is a dispute, an objection is referred to the Review Board to first attempt settlement of the dispute, followed by a formal hearing to examine the evidence and arguments of each party, where settlement cannot be reached. The Review Board then makes recommendations to the final decision making authority in the particular case, either a local municipal council or the Minister of Culture, to consider in rendering their final decision.

As the stakes continue to increase for all parties in heritage disputes, parties are leveraging legal resources and presenting evidence and arguments that are increasingly complex and sophisticated. The continued entanglement of heritage and planning issues has also brought much more public and professional attention to Review Board recommendations and its interpretation of the Act. The Review Board has continually invested in training and enhanced skill profiling in its member appointment search to ensure that it is well equipped to provide the jurisprudential leadership required to most effectively, objectively and transparently make recommendations to parties in dispute. The past year has seen much more professional focus on interpretation of the Act, and has identified areas where the specific skills and experience profile of the Review Board members is crucial to understanding and operationalizing the Act, along with other resources like the Provincial Policy Statement. The specific skills of these members, developed and ever-evolved through continued interaction with stakeholders, will continue to be a primary driver of the fundamental value and continued relevance of the Review Board into the future.

I would also like to formally welcome Michael Gottheil, who joined half way through the fiscal year, as the Executive Chair of Environment and Land Tribunals Ontario (ELTO). The Review Board has been operating as part of this cluster of adjudicative tribunals since his arrival and will be more formally recognized as part of ELTO in the next fiscal year. I am extremely pleased to

have a leader of Michael's calibre establish and deliver a vision to bring enhanced, integrated adjudicative services to Ontarians. It is a very exciting prospect for the Review Board to more formally leverage infrastructure, best practices, and thought leadership with the other ELTO member tribunals. As heritage issues continue to interact with planning issues, ELTO will effectively be empowered to leverage skills across tribunals to ensure the best perspectives are brought to each decision or recommendation. I am very excited with the prospect of leveraging all Review Board resources, practices and members, to assist Mr. Gottheil in achieving this vision, and I also look forward to formally transferring formal Chair control of the Review Board to him, as Executive Chair, in the new fiscal year, and personally assuming an Associate Chair position within ELTO.

On the whole, positive change always includes some fundamental disruption, and the Review Board is fully committed to working closely with the ELTO leadership to ensure that next year's ELTO Annual Report is able to communicate the great value created in formally bringing the Review Board into ELTO.

While it is very difficult at times to manage the time requirements and case load as part time members who all enjoy other careers, I am very proud of the efforts of all members and our staff this past year. I feel very strongly that part time resources bring incredible skill and perspective to our proceedings, enhance our ability to contemplate and interpret new situations, and allow us to fundamentally focus on creating a proceeding environment that measures outcomes and effectively communicates with the public as well as the parties. I look forward to the next year of further enhancing our services and being an active participant in the development and delivery of the ELTO vision for Ontarians.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter A.P. Zakarow', with a stylized flourish at the end.

Peter A.P. Zakarow

Chair
Conservation Review Board

SECTION 1: Conservation Review Board (CRB) Overview

Mission Statement

To provide the people of Ontario with a professional, efficient, transparent and accountable dispute resolution processes in cases concerning properties of potential heritage value or interest and archaeological licensing, according to the Ontario Heritage Act.

Mandate

The Board receives referrals of objections or applications under the Act concerning either properties of potential heritage value or interest, or archaeological licensing from either local municipalities or the Minister of Culture. Through a proceeding, the Board attempts to settle a dispute and/or hears evidence and arguments by parties. The ultimate result, where a case is not settled, is the development of a Board Recommendation Report which is submitted for the consideration of the final decision making body for that case, which is either a local municipal Council or the Minister of Culture. The Board is an independent regulatory agency subject to the rules of natural justice and many of the requirements of the Statutory Powers Procedure Act.

History and Jurisdiction

The Board was established in 1975 under Part III of the Ontario Heritage Act (R.S.O. 1990, Chapter O.18, as amended).

The Board conducts proceedings on matters that are referred, which includes both pre-hearing conferences to explore the potential of settlement as well as formal hearings to hear evidence and arguments to best enable the Board to make recommendations to the final decision making power for that particular case. The Board has responsibilities under both Part IV and Part VI of the Act.

In 2005, changes to the Act gave the Board additional responsibilities. The Board now hears objections concerning properties deemed provincially significant by the Minister of Culture under Part IV of the Act. As well, the Act now permits the cross-appointment of Board members to Ontario Municipal Board panels hearing certain appeals under the Act.

In 2009, an Order in Council transferred responsibility for the Board from the Ministry of Culture to the Ministry of the Attorney General (MAG).

The Board's jurisdiction and its authority are defined by the Ontario Heritage Act and the Statutory Powers Procedure Act. Here are the primary areas of the Board's jurisdiction under the Act:

Part 4

1. S.29.(5): Objection to a Notice of Intention to Designate (municipal designation by a municipal Council)
2. S.30.1(6): Objection by the owner to an Amendment of a Designating Bylaw.
3. S.31.(5): Objection to a Repeal of a Designating Bylaw (Council's Initiative).
4. S.32.(4): Application by the Owner for a hearing when Council refuses an application to Repeal a Designating Bylaw (Owner's Initiative).
5. S.32.(14): Objection to a Repeal of a Designating Bylaw.
6. S.33.(6): Application by the Owner for a hearing when Council adds terms and conditions or refuses consent to an Alteration of (Designated) Property.
7. S.34.5(4): Application by the Owner for a hearing when the Minister adds terms and conditions or refuses consent to an Alteration of (Designated) Property.
8. S.34.6(4): Objection to a Notice of Intention to Designate (provincial designation by Order of the Minister of Culture).
9. S.34.8(4): Objection to a Repeal of a Minister's Order (Minister's Initiative).
10. S.34.9(5): Application by the Owner for a hearing when the Minister refuses an application to Repeal a Minister's Order (Owner's Initiative).
11. S.34.9(8): Objection to a Repeal of a Minister's Order.

Part 6

12. S.49(4): Application for a hearing resulting from the Minister of Culture's Refusal to issue or renew or proposes to suspend or revoke an archaeological license.
13. S.52(4): Objection to a Notice of Intention to Designate.
14. S.55.(5): Application by the owner for a hearing when the Minister refuses Revocation of Designation, Owner's Initiative.

15. S.58.(4): Application for a hearing resulting from the Minister of Culture refusing to issue or renew a permit or proposes to suspend or revoke a permit to excavate.

Agency Cluster

In November of 2009, Michael Gottheil was appointed to lead the Environment and Land Tribunals Ontario cluster.

ELTO is a group of five tribunals that resolve appeals, applications and other disputes, under some 100 statutes, in relation to land use planning, environmental and heritage protection, property assessment, land valuation and other matters.

ELTO is the first cluster of tribunals created under the authority of the Adjudicative Tribunals Accountability, Governance, and Appointments Act, 2009. That Act permits the government to designate two or more adjudicative tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone.

The five tribunals included in the cluster are: the Conservation Review Board, the Assessment Review Board, the Board of Negotiation, the Environmental Review Tribunal and the Ontario Municipal Board.

Changes in Legislation and Regulations

On December 15, 2009, with the Royal Assent of the Good Government Act, subsection 24.1 of the Ontario Heritage Act was amended to add protection from personal liability for members and staff conducting their duties in good faith on behalf of the Board.

As well, it clarified that if one objection to a proposed heritage designation is withdrawn, the Conservation Review Board must hold hearings for any remaining objections.

Rules of Practice and Procedure:

There were no changes to the Rules during the past year.

SECTION 2: Operations 2009-2010

Caseload:

Board cases have become increasingly more complex in terms of legal interpretation of the Act, the degree of sophistication in party arguments and evidentiary submissions, and the layering of cultural heritage elements. The Board has responded to these pressures with increased member training, closer interaction with Board legal counsel, the establishment of new Rules of Practice and Procedure, and a standardization of administrative practices.

At the beginning of the 09/10 fiscal year, the Board had 27 open files. Between April 1, 2009 and March 31, 2010, 16 referrals were received from municipalities. Of the 16 referrals, 12 were received under s.29 of the act, one under s. 31, two under s.32 and one under s.33. All of the referrals received during the past fiscal year were made under s.29 of the act. No referrals were received from the Minister of Culture.

The Board was successful in settling the majority of matters referred during the past fiscal year. The efforts of the Board through its use of pre-hearing conferences resulted in objections being withdrawn in many of these cases.

In total, 21 referrals were resolved during the past fiscal year. Three full hearings were held and for each one a report was made to council. The Board held 38 pre-hearing conferences with each referral having an average of two pre-hearing conferences before resolution by withdrawal or hearing. The Board had 21 active files as of March 31, 2010.

Table 1: Board Caseload

	Fiscal Year	
Statistics	2008/09	2009/10
Cases Received	25	16
Pre-Hearing Conferences	47	38
Reports Issued	4	3
Withdrawals	24	19
Active Cases	27*	21*

* Active Cases as of March 31, 2009 and March 31, 2010

Members:

The Lieutenant Governor in Council appoints part-time Members to a term of two, three or five years. Members travel throughout the province to conduct hearings and view properties. For more information on Member appointments, please visit the Public Appointments Secretariat website at: www.pas.gov.on.ca.

**Chair:
Appointment****Original CRB**

ZAKAROW, Peter A.P.

March 30, 2002

Vice-Chair:

MURDOCH, Su

February 16, 2005

Members:

HARRIS, Julie

April 16, 2009

HASLAM, Karen

December 1, 2004

HENDERSON, Stuart W.

June 28, 2006

KIDD, Stuart

February 3, 2006

MCDONALD, Richard*

Note: * Indicates Members who are no longer with the Conservation Review Board as of March 31, 2010.

Ms Julie Harris was newly appointed to the Board this fiscal year. Ms Harris has been a heritage professional for over 25 years working for both private and public sector clients.

SECTION 3: Financial Summary

Expenditures

Table 2: Expenditures 2009-2010

ACCOUNT ITEMS	2009-2010 (\$)
Salary and Wages	55,800
Employee Benefits	5,430
Transportation and Communications	6,605
Services	124,293
Supplies & Equipment	2,515
TOTAL	194,643