



March 12, 2021

SENT VIA EMAIL - comm-legisassembly@ola.org

RE: Ontario Bill 245: Accelerating Access to Justice Act, 2021 - Schedules 6 and 10

To the Standing Committee on the Legislative Assembly

Credit Valley Conservation

Credit Valley Conservation (CVC) is one of Ontario's 36 Conservation Authorities (CAs) operating under the mandated purpose as described in Section 0.1 of the *Conservation Authorities Act* (CA Act):

'... to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario.'

CVC and Ontario Land Tribunals

CVC is engaged with the Ontario Land Tribunals' (OLTs') five tribunals/board as a commenting agency under the *Planning Act* and *Environmental Assessment Act* (representing CVC's mandated programs and services), technical advisors to member municipalities through memorandum of understanding/service level agreements (representing shared interests in support of municipal partners), administrators of Ontario Regulation 160/06 (pursuant to Section 28 of the CA Act), and development proponents (on CVC owned lands) or landowners throughout our jurisdiction.

Bill 245 – Schedules 6 and 10

At its meeting on March 12, 2021 the CVC Board of Directors (the Board) passed CVC Resolution #35/21 as follows:

WHEREAS the Province introduced Bill 245, the *Accelerating Access to Justice Act, 2021* on February 16, 2021; and

WHEREAS this Bill contains Schedule 6 which proposes to amalgamate five provincial tribunals into a single entity to be known as the Ontario Land Tribunal (the OLT) and sets out substantive procedural changes for OLT proceedings and Schedule 10 which proposes amendments to several provincial environmental laws, including elimination of existing rights of appeal under the *Environmental Protection Act* (EPA), *Ontario Water Resources Act* (OWRA), and other statutes; and

WHEREAS no consultation was undertaken on these proposed changes with environmental organizations; and

WHEREAS the Bill has been referred to the Standing Committee on the Legislative Assembly for Hearings on March 11 and 12, 2021 with written comments due by 7 pm on March 12, 2021;

THEREFORE BE IT BE RESOLVED that the Board of Directors of CVC endorses staff to submit comments on this act to the Standing committee before the submission deadline; and further

THAT a copy of the letter and comments be circulated to watershed municipalities, GTA conservation authorities, Conservation Ontario, watershed MPPs, Attorney General Doug Downey and Premier Doug Ford.

CVC has reviewed Bill 245: *Accelerating Access to Justice Act*, 2021 (the Bill), and is of the view that **Schedules 6 and 10 of the Bill should be withdrawn** for the reasons described below.

SCHEDULE 6

1.) Loss of Expertise

Schedule 6 of the Bill proposes to amalgamate five tribunals - the Local Planning Appeals Tribunal (LPAT), the Mining and Lands Tribunal, the Conservation Review Board, the Board of Negotiation, and the Environmental Reviews Tribunal (ERT) - into one tribunal called the Ontario Land Tribunal (OLT).

The practical effect of amalgamating the five tribunals is that any member of the OLT may preside over any proceeding that was previously within the exclusive jurisdiction of one of the five tribunals. CVC is concerned the impact this will have on the long-established experience, familiarity, and expertise of current Tribunals/Board will be transformed into one 'generalist' tribunal. The subject matter and process expertise currently held by these Tribunals/Board provides for fair, transparent, efficient and just decisions, which will be lost if this amalgamation proceeds.

2.) Inappropriate limits on non-party participation

Schedule 6 of the Bill proposes to greatly limit non-party participation at public hearings. In particular, section 17 of the Bill states that a non-party can make submissions to the OLT in writing only.

Both the ERT and the LPAT have well established rules to allow non-parties at hearings to make oral submissions. To date, this has provided an important mechanism for individuals, citizen groups, and agencies (particularly those who are unrepresented and/or under resourced), to participate in hearings without facing the risk of an adverse cost award by virtue of being a party.

Schedule 6 of the Bill and the draft OLT Rules will undoubtedly result in a significant loss of public participation rights, thereby likely depriving OLT members of relevant evidence and perspectives - adversely impacting access to justice.

3.) Expansion to the (proposed) OLT's authority to summarily dismiss an appeal

Section 19(1)(c) of Schedule 6 proposes to allow the OLT, on the motion of any party or its own initiative, to dismiss the proceeding without a hearing if the OLT is of the opinion that the proceeding has "no reasonable prospect of success."

This would (unjustly) expand the tribunal's authority to dismiss without a hearing (currently set by section 4.6 of the *Statutory Powers Procedure Act*) which currently only allows dismissals for proceedings outside the tribunal's jurisdiction or for proceedings that are frivolous, vexatious, or in bad faith.

This proposed 'new test' is undefined in Schedule 6, and it is unclear whether section 19 empowers the OLT to partially dismiss an appeal, as opposed to dismissing an appeal in its entirety. In addition, section 19 fails to include any meaningful criteria to assist the OLT (and hearing parties) in determining what is, or when, the "no reasonable prospect of success" test is – or is not – satisfied on the facts or in law.

The OLT's broad discretion to summarily dismiss a matter pursuant to section 19 of Schedule 6 raises concerns that proceedings may be terminated abruptly and unfairly after a preliminary assessment before the appellant's evidence (including opinion evidence from experts) has even been presented to the OLT. This risk is considerably exacerbated by the loss of subject-matter expertise that will result from amalgamation, as described above.

SCHEDULE 10

4.) Improper elimination of ministerial appeals

Schedule 10 of the Bill proposes to eliminate appeals to the Minister from decisions made by the OLT under environmental legislation.

At present, for example, decisions of the ERT under the *Environmental Protection Act* may be appealed to the Minister on questions of fact or policy. The existence of ministerial appeal rights provides an important safeguard and accountability, particularly since appeals from ERT decisions to Divisional Court are restricted to a question of law.

5.) Other Ontario governmental measures that undermine access to justice

The implications of Schedules 6 and 10 should be considered in conjunction with other changes that the Ontario government has recently made in relation to the ERT and LPAT. Although these changes pre-date Bill 245 and are therefore not a direct consequence of Schedules 6 and 10 of this Bill, it is nevertheless important to situate the Bill within the broader context of other government measures that, individually and collectively, impede access to justice.

For example, the provincial government has significantly increased the filing fees for commencing an appeal to the LPAT. Beginning on July 1, 2020, fees for appeals to the LPAT of an official plan amendment and zoning by-law amendment were set at \$1,100, which was more than a three-fold increase of previous fees. The imposition of costly filing fees will undoubtedly deter under resourced members of the public and agencies from commencing legitimate appeals, and constitutes an inappropriate financial barrier.

CVC Recommendation

In summary, CVC is concerned that the 'merger' proposal combined with other provisions in Schedules 6 and 10 described above will impair access to justice and diminish the quality and credibility of administrative decision-making under Ontario's environmental and land use statutes.

Accordingly, CVC recommends that both Schedules 6 and 10 be withdrawn from Bill 245.

Yours sincerely,



Karen Ras
Chair



Tom Adams
Vice Chair

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CVC Watershed MPPs
Conservation Ontario
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