

Goodmans^{LLP} Update

Ontario Proposes to Consolidate Environment and Land Tribunals

The Government of Ontario recently introduced legislation that proposes to combine an existing cluster of five land and environmental tribunals into a single entity called the Ontario Land Tribunal (OLT). The OLT will merge the Local Planning Appeal Tribunal (LPAT), the Environmental Review Tribunal (ERT), the Conservation Review Board, the Mining and Lands Tribunal, and the Board of Negotiation.

Bill 245, the *Accelerating Access to Justice Act, 2021* (“**Bill 245**”) is an omnibus bill that includes the proposed enactment of a new *Ontario Land Tribunal Act, 2021* (the “**Act**”), which would amalgamate these five tribunals. The government states that Bill 245 will improve access to justice for Ontario residents and modernize existing processes. While the new regime would not materially impact substantive land use planning and environmental matters, Bill 245 may have some impact on procedural matters by streamlining the process to initiate and consolidate appeals and creating more flexible rules to conduct hearings.

The OLT

The proposed Act sets out the general authority of the OLT. While the OLT would continue to exercise the powers of the existing tribunals as set out in other provincial statutes (which are also proposed to be amended through Bill 245 to include updated references to the OLT), the proposed Act also provides that the OLT:

- has the broad authority to consider and determine all legal and factual matters relating to its jurisdiction;
- has the broad authority to make orders and give directions that are necessary and incidental to its powers, including imposing conditions, and making interim orders; and
- can establish its own set of rules and procedures that include how the OLT will hold case management conferences, identify parties and/or participants, direct parties to participate in alternative dispute resolution, deal with witnesses and evidence, and determine costs awards.

Implications for Land Use Planning Matters

The creation of the OLT is not expected to significantly impact existing appeals before the LPAT. Unlike the Province’s previous overhaul of the LPAT through Bill 108 (as discussed in our May 2019 Update, *The 2019 Housing Supply Action Plan: Much More Than a Return to the Former OMB Process*), Bill 245 does not propose to alter, limit, or substantively change the land use planning appeal process. Instead, Bill 245 concerns more granular procedural matters concerning the OLT’s discretion to set timelines and proceed through an electronic or written hearing format, which in practice has already been implemented by the LPAT as a result of the COVID-19 pandemic.

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Implications for Environmental Matters

The ERT is a specialized tribunal that handles various types of appeals and applications under environmental statutes, notably the *Environmental Protection Act*, *Ontario Water Resources Act*, and the *Environmental Bill of Rights, 1993*. In particular, an applicant or holder of environmental compliance approvals, renewable energy approvals, well permits and licences, or certificates of property use can request a hearing before the ERT in the following cases:

- a Ministry of the Environment, Conservation and Parks Director (the “**Ministry**” and “**Director**”, respectively) refuses to issue or renew one of the above-mentioned approvals;
- the Director imposes terms and conditions on the issuance of an approval or alters or imposes new conditions on an existing approval; or
- the Director revokes an approval.

Any person “with an interest” in one of the above-mentioned decisions, as well as similar decisions regarding Permits to Take Water, can also attempt to appeal the decision to the ERT, but must seek leave under the *Environmental Bill of Rights, 1993* in order to do so.

In addition, if the Director issues any regulatory order to a person (such as an order to investigate, delineate, and/or remediate contamination in accordance with the *Environmental Protection Act*), then the person can appeal the order to the ERT.

Although ERT hearings are “new” hearings, the ERT has in some cases viewed its authority to rule on matters more narrowly than the LPAT. The ERT’s determination of its authority has been shaped in part by the ERT’s consideration of its role as either a protector of the broader public interest versus its role as a quasi-judicial tribunal deciding a dispute between two parties. The ERT has taken a similar approach to developing its own rules and procedures, favouring more prescriptive requirements than the more flexible *LPAT Rules of Practice and Procedure*.

Bill 245 would appear to overhaul the manner in which administrative appeals from environmental decisions are to be handled in Ontario. The OLT’s express and broad authority proposed in the Act suggest the OLT may take a more expansive approach to its authority, such as on the OLT’s ability to consider incidental matters related to the broader hearing.

Next Steps

Bill 245 has been introduced in the Ontario Legislature and has received first reading. There may be further changes to the legislation before its final enactment. The OLT Draft Rules may also be revised as a result of comments received by the public. We will continue to monitor Bill 245 as it proceeds through the legislative process.

Please contact any member of our [Municipal, Planning and Property Tax](#) or [Environmental Law Groups](#) if you have any questions.

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