The Planning Act: Bill 51
What's New, What Remains,
What You Must Know – Part II

"Have Regard To", "Shall Be Consistent With" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

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Introduction

This paper seeks to identify and discuss the significance of certain phrases in the *Planning Act* that have considerable importance to the approvals processes under the Act. Those words are: "have regard to", "be consistent with" and "conform with" or variations of them.

Although the discussion will focus on the placement and significance of the phrases where they are found in the *Planning Act*, it is important to realize that these phrases have been used in literally dozens of other statutes in Ontario, in other jurisdictions of Canada and in the United States. As an illustration of this interesting fact, there are tables attached to this paper that identify where the phrases are found in such statutes. The lists of legislation are not exhaustive; but they are telling. The abundance of references suggests that the language has been found to be of real value in providing guidance to decision makers in a broad range of activities as to the extent of their jurisdiction.

Furthermore, knowledge of these other references may prove of value when probing the extent of discretion that is given to decision makers by the language to the extent that the language has been interpreted by courts in those jurisdictions.

In many instances, the phrases are introduced by the words "shall". The Canada *Interpretation Act*, R.S. 1985, c. I-21 and the Ontario *Interpretation Act*, R.S.O. c. I.11 provide that the word "shall" is to be construed as imperative. Accordingly, where the word "shall" is used in legislation to impose an obligation, there is no discretion to decide whether or not to do it. It is a mandatory obligation.

A. The *Planning Act*

Ontario's *Planning Act*, R.S.O. 1990, c. P.13 (the "*Planning Act*") has recently undergone a number of significant changes, the most significant being the result of two pieces of legislation, known as Bill 26 and Bill 51. Bill 26, formally described as the *Strong Communities (Planning Amendment) Act, 2004*, received Royal Assent on November 30, 2004. The provisions of this legislation came into effect on various dates set out in O. Reg. 63/05 (made on February 28, 2005 and filed on March 1, 2005). Bill 51, formally known as the *Planning and Conservation Land Statute Law Amendment Act, 2006* received Royal Assent on October 19, 2006 and came into effect on the date named in a Proclamation made after October 19, 2006, namely January 1, 2007.

Bill 26 or Bill 51 or both re-introduced or introduced for the first time some of the phrases discussed in this paper. The other phrases have been in the statute for some time.

(a) "Have Regard To"

Where is "have regard to" found in the Planning Act?

Provincial Interest

The phrase "shall have regard to" makes its first appearance in the *Planning Act* at section 2 of the *Planning Act which* reads as follows:

"Provincial interest

2. The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

(a) the protection of ecological systems, including natural areas, features and functions;

(b) the protection of the agricultural resources of the Province;

(c) the conservation and management of natural resources and the mineral resource base;

(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;

(e) the supply, efficient use and conservation of energy and water;

(f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;

(g) the minimization of waste;

(h) the orderly development of safe and healthy communities;

(h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;

(i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;

(j) the adequate provision of a full range of housing;

(k) the adequate provision of employment opportunities;

(l) the protection of the financial and economic well-being of the Province and its municipalities;

(m) the co-ordination of planning activities of public bodies;

(n) the resolution of planning conflicts involving public and private interests;

(o) the protection of public health and safety;

(p) the appropriate location of growth and development;

(q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians.”

This provision was introduced into the Planning Act as part of a major overhaul of the Act in 1983 as follows:

> “2. The Minister, in carrying out his responsibilities under this Act, will have regard to, among other matters, matters of provincial interest such as,”

In the major amendments to the Act made in 1994, the requirement to "have regard to" provincial interests in section 2 was made a prerequisite to the carrying out of the responsibilities under this Act of public decision makers at all levels of the planning and development process in Ontario rather than applying just to the responsibilities of the Minister under the Act.

This provision was not amended by Bill 26 or Bill 51.

It is worthy of note that when Bill 26 was under consideration in the Legislature, the NDP party sought to have the "have regard to" language in s. 2 replaced by "be consistent with" at the same time as the "be consistent with" language was being re-introduced into ss. 3(5) and 3 (6), but the government insisted that it was intended that there be a difference in approach between the operation of s. 2 and s. 3 of the Act and refused to agree to an amendment of s.2.

Decision-making by OMB

The new application of the phrase in the Planning Act is found in new s. 2.1, added by Bill 51. This section reads as follows:

> Decisions of councils and approval authorities
>
> **2.1** When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,
> (a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and
> (b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a).

The introduction of s.2.1 into the *Act* is an important part of the government's response to critics, largely municipal and ratepayer, of the jurisdiction exercised by the OMB in reviewing and sometimes overturning municipal decisions. The complaints were

wrapped in an over-arching concern about the Board's jurisdiction to hold "hearings de novo" with evidence being received that was different from that considered by the municipal council. Sometimes the "proposal" being considered by the Board was different than that considered by the municipal council, a practice quaintly referred to as the "bait and switch".

So, Bill 51 introduced several amendments intended to address these concerns, including,

- the requirement to file a complete application (ss. 22(5), 22(6), 34(10.2), 34(10.3), 51(18), 51(19), 53(3) and 53(4))
- the restriction on the introduction of "new evidence" at any OMB hearing in regard to the application (ss. 17(44.3)-(44.6); ss 34(24.3)-(24.6); ss 51(52.3)-(52.6))
- empowering the Board, on its own motion or on the motion of the Minister, the relevant approval authority or the municipality, to dismiss an appeal if the application to which the appeal relates is substantially different from the application that was before council at the time of its decision (s. 17(45.1), s34(25.1.1) and s.51(53.1)). This power does not apply to a private appeal in regard to a requested official plan amendment which council failed to consider within 180 days (s.22(11))
- the aforesaid requirement that the Board have regard to the council decision and the supporting materials etc in regard to that decision (s.2.1)

In this case, what was not done is as instructive as what was done. What was not done is discussed below:

- With the exception of applications related to settlement areas, employment areas and second units, the Board's jurisdiction to substitute its decision for that of the municipal council remains intact since the Board's powers on an appeal are not significantly changed by Bill 51. (s. 17(50),s. 17(50.1) and s. 22(11)-official plans; ss. 34(26) and 34(11.0.2)-zoning by-laws; s. 41(12)-site plans; s 45(18)-

minor variances etc.; s.51(56),s. 51(56.1) and s.51(56.2)-plans of subdivision and s.53(34) and s.53(35)-consent/severances).

- the language of s.2.1 does not require the Board to make a decision which is "consistent with" or which "conforms with" the decision of the municipal council, thus it is clear that the Board is not "governed by" the council decision. The Board continues to have considerable discretion to consider the appropriateness of the municipal decision *per se*.
- the language of s. 2.1 requires the Board to balance its consideration of the council decision against the materials available to council in support of the decision (or, to the contrary, the materials not in support of the decision, such as a favourable staff report in regard to the development proposal which may be contrary to the "political" decision taken by the municipal council).

Requiring that the municipal decision be taken in the context of the materials etc, in support is a reasonable approach insofar as there is abundant experience in this province of municipal decisions on applications which are inconsistent with the policies of its official plan and/or in conflict with municipal staff reports on the application. It speaks to an appropriate level of political accountability in the context of the council's approved planning policies and the professional advice received by council on the matter.

Other implications of s. 2.1 are discussed in the papers being presented at this conference by my colleague Mary Bull *entitled "Processing Official Plan and Zoning Matters at the Municipal Level"*, and by Mike Minkowski entitled *"The Planning Act: Bill 51, Appeals Before the Municipal Board, New Rules on Complete Applications, New Evidence and Powers to Dismiss"* and in the presentation made by Susan Schiller, Member of the Ontario Municipal Board.

Other Provisions in the Planning Act

The term "shall have regard to" or "regard to" is also found in the *Planning Act* at sections 6(2), 8.1(4), 17(44.6), 26(1), 26(5), 34(24.6), 41(4), 41(4)2(f), 41(7)(a)(4.1), 41(8)(a)(v), 51(24), 51(25), 51(52.6), 53(12), 57(6), 75(3) and 75(4). For the text and context of the words, see Table 1 at the end of this paper.

What does "have regard to" mean?

Dictionary definitions of the word "regard" are as follows:

> ***Regard*** (verb) 1. think of in a particular way. 2. gaze at in a specified fashion. 3. archaic pay attention to (noun) 1. heed or concern: *she rescued him without regard for herself*. 2. high opinion; esteem. 3. a steady look. 4. (regards) best wishes (used especially at the end of letters). ***Catherine Soanes, The Compact OxfordEnglish Dictionary, 2nd ed. (Oxford: Oxford University Press, 2002)***

> ***Regard*** 1. gaze upon (usu. w. adv. phr. or adv.; *found him regarding me with curiosity, intently*). 2. give heed to, take into account, let one's course be affected by, (esp. w. neg.; person, advice, etc., or abs.) 3. look upon or contemplate mentally *with* reverence, horror, etc., or in specified manner (*regard it in that light*) or with specified sentiment (*I still regard him kindly*), or *as* being (*is to be regarded as a wild beast; regard it as madness* or *indispensable, him as among my friends).* 4. (Of thing) concern, have relation to, have some connection with; as ~s, ~ing (*part.* or *prep.*), about, concerning, in respect of, so far as it concerns, (*considerations regarding peace; am innocent as regards or regarding the former*). [ME, f. F *re*(*garder* Guard); see RE- 6; cf. REWARD] ***H.W.Fowler, H.G. Fowler, The Concise Oxford Dictionary of Current English, 7th ed. (Oxford: Oxford University Press, 1982)***

> ***Regard*** (noun) 1. Attention, care, or consideration <without regard for the consequences>. 2. Hist. In England, an official inspection of a forest to determine whether any trespasses have been committed. 3. Hist. The office or position of a person appointed to make such an inspection. ***Bryan A. Garner, Black'sLaw Dictionary, 7th ed. (St Paul: West Group, 1999)***

> ***Regard*** *noun* 1. archaic : appearance 2. a: attention, consideration <due regard should be given to all facets of the question> b: a protective interest : care <has no regard for her health>3. look, gaze 4. a: the worth or estimation in which something or someone is held <a man of small regard> b (1): a feeling of respect and affection : esteem <she soon won the regard of her colleagues>

> (2) plural : friendly greetings implying such feeling <give him my regards> 5. a basis of action or opinion : motive 6. an aspect to be taken into consideration : respect <is a small school, and is fortunate in this regard> 7. obsolete : intention ***Meriam-Webster Online Dictionary***

Prior to the enactment of the 1983 Planning Act, as part of the reform study process known as the Planning Act Review Committee, begun in 1976, a research paper dated May 1979, entitled “Some Legal Implications of the Report of the Planning Act Review Committee” was released in which is a legal memorandum which discusses the meaning of the words “shall have regard to” and “consider”. This memo was prepared to address a suggestion that the words “shall have regard to” might replace the words “confirm with’ in what is now s. 24(1) regarding the legal relationship between official plans and by-laws and public works. Ultimately the words were used in the provisions related to policy statements. Regardless, the memo provides the best evidence of the advice received at the time that the phrase was introduced in to the Act. One of the legal authorities referred to in the memo construed the words as follows:

> “*…we are of the opinion that the expression ‘shall have regard to seniority,’ as used in the agreement, was not intended to have the same meaning as ‘will be governed by seniority.’ We think the term ‘shall have regard to seniority’ means simply that the company was required to take the matter of seniority into consideration, together with all the other factors presented by the particular situation, and if upon such consideration there was reasonable ground for making the transfer, and no arbitrary disregard of respondent's seniority rights, the company would be permitted to make such change.*” [*Sullivan v. Boeing Aircraft Co. WASH. 1947*]

It is of consequence that the plaintiff in the Sullivan case had argued that the words were synonymous with “governed by”. This view was obviously rejected.

Since 1983, the phrase has received consideration on many occasions by the Courts and the Board. The essence of the approach to the application of the words “shall have regard to” which has been approved by the Courts and largely followed by the Board is as follows:

> *To "have regard to" falls somewhere on the scale that stretches from "recite them then ignore them" to "adhere to them slavishly and rigidly".*

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> *The question is whether the Board had "regard to" provincial policies within the meaning given to that expression in Juno Developments (Parry Sound) Ltd. V. Parry Sound (Town) (1997), 35 O.M.B.R. 1 (Ont. Div. Ct.)per Molloy J. at p. 10:*
>
> *It has been held that the Board is required to have regard to the Provincial Policy Statements issued under s. 3 of the Planning Act. In other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole and what they seek to protect: Ottawa Carleton (Regional Municipality) Official Plan. Amendment 8 (Re) (1991), 26 O.M.B.R. 132 at pp. 180-182…*
>
> *The passage from Ottawa Carleton (D.H. McRobb and P.H. Howden, Q.C., Vice-Chairs and R.D.M. Owen) at pp. 181-2 reads as follows:*
>
> > *"Statements of government policy...must be regarded by the board. The board is not bound to follow them; however, the board is required to have regard to them, in other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole, and what they seek to protect. The board is then to determine whether and how the matter before it is affected by, and complies with, such objectives and policies, with a sense of reasonable consistency in principle."*
>
> [***Concerned Citizens of King Township Inc. v. King (Township,)(2000) 42 O.M.B.R.3 (Div. Ct.)***]

For a more recent and more thorough discussion of the phrase see *Spellman v. Essex (Town)* [a.k.a. *Material Handling Problem Solvers Inc. v. Essex (Town)*] in Table 2 of this paper. Other relevant Court and OMB decisions which have interpreted these words are found in Table 2 at the end of this paper.

Although the phrase "have regard to" has been largely considered by the Board and the Courts in the context of policy statements made under s.3(1) of the Planning Act, there is no reason to believe that the words have any different meaning if interpreted in the context of s. 2 of the Act or of any of the other provisions of the Act noted above.

(b) "Shall Be Consistent With"

Where is "be consistent with" found in the Planning Act?

Policy Statements under S. 3(1)

The phrase "shall be consistent with" makes its first appearance in the *Planning Act* at section 3, subsection (5). This language re-appeared in the Act by virtue of Bill 26 (*Strong Communities (Planning Amendment) Act, 2004*) and came into effect on March 1, 2005. This is the same date as the Provincial Policy Statement (2005) came into force. The following table compares the language in Bill 51 and Bill 26.

Planning Act (Prior to Bill 51)	**Planning Act (After Bill 51)**
Consistency with policy statements	**^Policy statements <u>and provincial plans</u>**
(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, shall be consistent with policy statements issued under subsection (1). 2004, c. 18, s. 2. [Re-enactment commenced 01/03/2005]	(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,
	<u>(a)</u> shall be consistent with the policy statements issued under subsection (1) <u>that are in effect on the date of the decision; and</u>
	<u>(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.</u> 2006, c. 23, s. 5 [Amendment commenced 01/01/2007].

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1983 marked the introduction of a provision into the Planning Act, s. 3 which set out a process whereby provincial "policy statements" would be made and which set out how such "policy statements" should be applied treated by decision makers. This amendment to the Act followed a period of uncertainty as to what constituted a governmental policy that should be treated seriously in planning processes in Ontario and, even when the policy was clearly identified, what significance should be given to such policies in the planning approvals processes, in particular when being considered by the Ontario Municipal Board. In other words, were such policies pre-emptive of local decision-making, merely suggestive of an appropriate approach or something between.

Since s.3 was introduced into the Act in 1983, this question of what level of pre-emption of local decision-making policy statements should be given has been the subject of a remarkable amount of political attention as is obvious in the following chronological list of amendments, prior to the Bill 26 2004) amendments:

Originally enacted 1983, c.1, s. 3(5) as follows:

> 3. (5) In exercising any authority that affects any planning matter, the council of every municipality, every local board, every minister of the Crown and every ministry, board, commission or agency of the government, including the Municipal Board and Ontario Hydro, shall have regard to policy statements issued under subsection (1). (underlining added)

In 1994, this subsection was amended to read as follows:

> 3. (5) A decision of the council of a municipality, local board, planning board, the Minister and the Municipal Board under this Act and such decisions under any other Acts as may be prescribed shall be consistent with policy statements issued under subsection (1). (underlining added)

In 1996, the subsection was amended to read as follows:

> 3 (5) In exercising any authority that affects a planning matter, the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board and Ontario Hydro, shall have regard to policy statements issued under subsection (1). (underlining added)

In 1998, the reference to Ontario Hydro was removed.

Bill 51 makes no change in regard to the "shall be consistent with" language in regard to the PPS or any other "policy" statements that are issued under s.3(1).

It is worth noting that s. 3(5)(a) and s. 3(5)(b) only apply to "policy statements" made under s.3(1) not other manifestations of governmental policy, such as statements of the Minister in the Legislature. Neither do the provisions apply to the myriad other methods used by provincial government ministries to elaborate on their intentions, such as guidelines. This is not to suggest that such statements or guidelines are of no probative value in decision making. What it means is that the significance to be given to such things is not governed by the "consistent with" language. It likely means that more discretion can be exercised by decision-makers in applying these non-s.3(1) documents. The extent of such discretion will have to be determined on a case by case basis.

The significance of "in effect"

An important change has been made, however, by Bill 51 in regard to the date of the "policy" document that is relevant. It is the policy document that is "in effect" on the date of the "decision" of the relevant body making the decision.

It is understood that the introduction of this language is intended to reverse the present approach of the Ontario Municipal Board, but only as it relates to policy statements made under s.3(1), as to what policy document applies where there has been a change in one or more of the provisions of that document after the date that an application for an approval under the Planning Act has been made.

In order to address this situation, the Board generally adopts the approach described in the following decision:

In determining which planning instruments are applicable, the Board adopts the

> *principle enunciated in Clergy Properties Ltd. v. Mississauga (City) (1996), 34 O.M.B.R. 277 (O.M.B.) , namely that the application should be judged on the regime in place at the time of the application. This is not a situation where applications were made and then lay dormant for a considerable period of time. The proponents worked steadily with the City and City procedures prior to appealing these matters to this Board. And the appeals to this Board only occurred after the City decision to simply defer these applications indefinitely. Nonetheless, because the City was, coincidentally, in the process of developing a new official plan, the Board also adopts the approach enunciated in Dumart v. Woolwich (Township), [1997] O.M.B.D. No. 1817 (O.M.B.), relying on Boothman v. Newcastle (Town) (1993), 29 O.M.B.R. 26 (O.M.B.) , that the new Plan is "admissible, relevant but not determinative".*
>
> [Menkes Lakeshore Ltd. v. Toronto (City), 2006 CarswellOnt 6458]

This decision is merely the most recent in a long line of decisions. The following discussion of the Clergy approach taken from an earlier Board decision plumbs some of the complexities that confront the Board:

> *39 Having considered the lengthy submissions of counsel for the parties to this motion, the Board concludes that what we commonly refer to as the "Clergy principle" as modified by Dumart, remains a useful doctrine and practice. It should continue to serve as a firm guide when faced with the question of which policies should be used to evaluate an application in those infrequent cases where the policy environment pertaining to the application has changed before the application could be finally decided. It is a practice that promotes fairness, consistency and predictability -- all of which are of value to the planning process and to all participants in that process.*
>
> *40 In short people should continue to expect that the policies that are in place when they apply will be made to apply to them. In the vast majority of cases, this should continue to be the practice of the Board as it has been in the past.*
>
> *41 However, it must also be acknowledged that the Clergy principle is not a law or an inviolate rule. It is a practice meant to promote fairness in the planning process. Even so, there are occasions where fairness conflicts with other values that may be of equal, or in some cases, much greater importance to the planning process, and while abandoning a fair practice may result in some prejudice to one party, this must be weighed in the balance against the other values that are at stake.*
>
> *42 The Board agrees with the Town in its interpretation of the meaning that underlies the Clergy principle. On its face, Clergy appears to stand for the proposition that an application should be judged by the policies that exist at the*

> *time that the application is filed. But more deeply, as the court acknowledged in its reasoning, the case stands for the proposition that the Board has the authority to formulate a procedural policy such as the Clergy principle and that it is uniquely equipped to judge those circumstances in which it is appropriate to apply it and, by corollary, when it is appropriate to set it aside.*
>
> *43 The court said the following in its ruling upholding the Board's determination in the Clergy case:[FN5]*
>
> > *In carrying out its mandated duties, the OMB has exclusive jurisdiction to determine the scope of the issues before it, the procedures to be followed, and the appropriate policy choices to be made and applied in order to arrive at sound planning decisions.*
>
> *44 In short the Board is authorized to conclude when it is fair to apply the Clergy principle and should undoubtedly do so in the vast majority of cases. And equally, it has the authority to conclude when the circumstances of a case warrant the application of another principle. For instance, it may choose in its procedural discretion to consider and apply more recent policies and more modern standards that are consistent with a compelling public interest.*
>
> *45 To conclude otherwise is to require that current practices and policies, no matter how reasonable, must be ignored or given so little weight as to be made virtually trivial, in all cases where the date of the application precedes them. This would amount in some cases to a willful blindness that would prevent the decision-maker when determining the merits of an application - even where it is reasonable to do so -- to apply criteria, standards and tests that are based on the most current research and information.*
>
> [James Dick Construction Ltd. v. Caledon (Town) 2003 CarswellOnt 6221]

Although an interesting topic for analysis, that is not the purpose of this paper.

One conclusion which flows from the legislative approach of adding “in effect” language to s. 3(5) is an implicit approval of the Board’s “Clergy” approach in regard to other matters over which it has jurisdiction, since the same “in effect” words were not added in regard to those other areas of the Board’s jurisdiction.

The language raises one unexpected problem. What if the policy document changes between the time that one of the decision makers named in the subsection, such as a

municipality, makes a decision and the time that an appeal of that decision is considered by a decision maker further out on the approvals road, such as the OMB. This may be viewed as a highly academic point insofar as it is unlikely that a policy document approved under the process set out in s. 3 will be changed in the time spans involved, but it is possible that a provision in the policy document could be amended. Thus, it is worth keeping in mind.

Other Provisions in the Planning Act

The phrase "shall be consistent with" also appears in section 3 (6)(a) of the *Act*. This section requires that any comments, advice or submissions from a planning-related decision-making body, Minister or Ministry are to be consistent with recent policy statements issued under section 3(1).

For the text of all sections of the Planning Act where the term "shall be consistent with" or the words "consistent with" appear please see Table 3.

What does "be consistent with" mean?

Dictionary definitions of "consistent" are as follows:

> ***Consistent*** (adverb) 1. conforming to a regular pattern; unchanging. 2. (usu. consistent with) in agreement. ***Catherine Soanes, The Compact Oxford English Dictionary, 2nd ed. (Oxford: Oxford University Press, 2002)***
>
> ***Consistent*** a. compatible, not contradictory, (with); (of person) constant to same principles; hence ~LY adv. [f. L consistere (see CONSIST, -ENT) ***H.W. Fowler, H.G.Fowler, The Concise Oxford Dictionary of Current English, 7th ed. (Oxford: Oxford University Press,1982)***
>
> ***Consistent*** *adjective* 1. *archaic* : possessing firmness or coherence 2. a: marked by harmony, regularity, or steady continuity : free from variation or contradiction <a *consistent* style in painting> b: marked by agreement : compatible — usually used with *with* <statements not *consistent* with the truth> c: showing steady

> conformity to character, profession, belief, or custom <a *consistent* patriot> 3. tending to be arbitrarily close to the true value of the parameter estimated as the sample becomes large <a *consistent* statistical estimator> ***Meriam-Webster Online Dictionary***

The Ministry of Municipal Affairs and Housing description of its intention in regard to the change in language from "have regard to" to "be consistent with" is as follows:

> *"Dictionary meanings are a useful starting point for the purpose of establishing the meaning of a term. As an example, the Webster Dictionary defines the term "consistent" to mean:*
>
> - *Marked by agreement and concord;*
> - *Coexisting and showing no noteworthy opposing, conflicting or contradictory qualities or trends;*
> - *In harmony with;*
> - *Compatible with;*
> - *Constant to the same principle as; and,*
> - *Not contradictory with.*
>
> *"Shall be consistent with" is a higher policy implementation standard and is a more demanding test than "shall have regard to". It requires decision-makers to apply the policies and make decisions that are consistent with the applicable policies of the PPS, 2005. It is a stronger implementation standard focusing on achieving policy outcomes, while retaining some flexibility in how it is implemented."* [MAH – website - http://www.mah.gov.on.ca/userfiles/HTML/nts_1_26905_1.html]

During the period in the mid 90's when the phrase "consistent with" was found in s. 3(5) and 3(6), the following comment was made by the Board,

> *"The application was made in 1995 during which the "Bill 163" version of the Planning Act, as it is known, was in effect. The Board is required to apply the law as it then stood since the legislature, when it further amended the Act, did not make the most recent provisions retroactive. The Planning Act states as follows:*
>
> > *A decision of the council of the municipality, local board, planning board, the Minister and the Municipal Board under this Act and such decisions under any other Act as may be prescribed shall be consistent with policy statements issued under subsection (1) (emphasis added)*

> *The terms "shall be consistent with" provides very little - if any - discretion in applying the terms of the Comprehensive Policy Statement passed under subsection (1)”* [Delhi (Township) Official Plan Amendment No. 64 (Re**)** [1997] O.M.B.D. No. 154, Ontario Municipal Board, 1997]

An interesting interpretation of the phrase is found in the following Court decision from British Columbia:

> *“47 Since the OCP mandates that the project for which the development project application was made "shall be consistent" with the Guidelines, the first part of that advice must, as a matter of logic, be wrong if the second part, that only "a number" and not all of the Guidelines have been met, is correct. It is a necessary logical inference from the second part of the advice that "a number" of the Guidelines have not been met. If that is so, it logically follows that the application is not consistent with the provision of the OCP which mandates that the project be consistent with the Guidelines.*
>
> *48 The detailed written submission of the applicant makes a persuasive case that many aspects of the project are not consistent with the Guidelines. At the least, it raises considerable doubt that the project is entirely consistent with the Guidelines. On the view I take of this case, I need not decide whether the project is consistent with the Guidelines, for reasons which follow.*
>
> …
>
> *56 At the very least the applicant has demonstrated there is doubt that the project met all the Guidelines. City officials in their advice to the council indicated, by implication at least, that "a number" of the Guidelines had not been met. In light of the doubt about whether all the Guidelines had been met, the City council did not act in conformity with its obligation to act judicially as dictated by the Westfair case, before authorizing the development permit.*
>
> *57 To meet that obligation the City council had to establish clearly and in a manner open to public scrutiny that all Guidelines had been met. Alternatively, assuming the council had the jurisdiction to authorized the development permit even if "each an every" one of the Guidelines was not met, its obligation was to address the questions of which Guidelines were not being met and why directly and in a manner open to public scrutiny.*
>
> *58 Since the City council did not do either of those things, I find that it did not act judicially in authorizing the development permit and therefore acted without jurisdiction. It follows that the development permit must be set aside.”*[emphasis added]

“Have regard to,” “Shall be consistent with” and “Shall Conform With”: When Do They Apply and How Do You Apply Them?

[Loewen v. Coquitlam (City) 1999 Carswell BC 2112, 5 M.P.L.R. (3d) 135, British Columbia Supreme Court, 1999]

In order to contrast the effect of the phrase “consistent with” with the phrase “have regard to”, consider the following:

“The proponent's representatives say that the "have regard to..." requirement of the Planning Act provides the Board with the discretion to consider the policy and in the context of the circumstances of the case, to apply it or to set the policy aside according to one's conscientious exercise of judgement. Mr. Balfour, the proponent's planner, explained the history of this section of the Act, pointing out that for a short time the standard was higher. In 1995 the Planning Act was amended by Bill 163 which included Section 3(5) which as excerpted read as follows:

3(5) A decision of ... the Municipal Board under this Act and such decisions under any other Act as may be prescribed shall be consistent with policy statements issued under subsection (1)[Emphasis added]

This higher standard stood for only about one year and, following a change in the composition of the legislature, the original language "have regard to ..." was restored. The implication of this is that the intent of the legislature was to abandon the higher test, unfetter the Board (and others) in its exercise of judgment, and to provide the Board with the latitude to make the most appropriate decision in the given circumstances.” Spellman v. Essex (Town) [a.k.a. *Material Handling Problem Solvers Inc. v. Essex (Town)*]

(c) “Shall Conform With”

Where is “conform with” found in the Planning Act?

Provincial Plans

The phrase “shall conform with” makes its first appearance in the *Planning Act* at section 3 (5)(a).

Section 3(5)(b) of the *Planning Act* reads:

> **Policy statements and provincial plans**
>
> (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,
>
> (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
>
> (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.
>
> See: 2006, c. 23, ss. 5, 37 (2).

The phrase “shall conform with” also appears in section 3(6)(b) of the *Planning Act*. which reads as follows:

> **Same**
>
> (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government,
>
> (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and
>
> (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.
>
> See: 2006, c. 23, ss. 5, 37 (2).

The provincial plans referred to in s. 3(5) and s. 3(6) are defined in the Act as follows:

> "provincial plan" means,
>
> (a) the Greenbelt Plan established under section 3 of the Greenbelt Act, 2005,
>
> (b) the Niagara Escarpment Plan established under section 3 of the Niagara Escarpment Planning and Development Act,
>
> (c) the Oak Ridges Moraine Conservation Plan established under section 3 of the Oak Ridges Moraine Conservation Act, 2001,
>
> (d) a development plan approved under the Ontario Planning and Development Act, 1994,
>
> (e) a growth plan approved under the Places to Grow Act, 2005, or
>
> (f) a prescribed plan or policy or a prescribed provision of a prescribed plan or policy made by the Lieutenant Governor in Council, a minister of the Crown, a ministry or a board, commission or agency of the Government of Ontario

Zoning, Public Works, Plans of Subdivision and Consents

S. 24(1) is the best known and applied provision requiring conformity between provisions of an official plan and public works and municipal by-laws. It reads as follows:

> 24.(1) Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith

There are related provisions found at ss. 24(1), 24(2), 24(2.1), 24(3) and 24(4).

The other well known provision is s.51(24) that relates to the approval of draft plans of subdivision (and consents) which provides as follows:

> (24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,
>
> (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;
>
> (b) whether the proposed subdivision is premature or in the public interest;
>
> (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;…

The requirement that there be "conformity" between public works and municipal by-laws and that such conformity be "regarded" in the context of the approval of draft plans of subdivision has been embodied in the Planning Act since 1946. In 1946, the legal significance of an "official plan" was enlarged from that of applying to approvals of plans of subdivision (as was the case prior to 1946) to include public works and municipal by-laws. The linkage between the official plan and these other instruments of land use control was the reference to "conformity". For instance, section 12 of the Planning Act, 1946 provided as follows:

> "…where an official is in effect, no public work that does not conform therewith shall be undertaken, except with the approval of a two-thirds affirmative vote of all members of council of the municipality in which the work is to be carried out."

Section 13 of the 1946 Act provided that where there was a conflict between an official plan and a (restricted area (zoning)) by-law passed under s.406 of The Municipal Act R.S.O. 1940, c.266, the official plan prevailed. The relationship between an official plan and a proposed plan of subdivision, first established in 1912 when an official plan was described as a "general plan", was continued by s.25(4) of the 1946 Act which provided,

> "(4) In considering a draft plan of subdivision regard shall be had, among other matters, to the health, safety, convenience and welfare of the future inhabitants and to the following,
>
> (a) whether the plan conforms to the official plan."

The Planning Amendment Act, 1947 S.O. 1947 c.75, repealed s.12 of the 1946 Act and replaced it by a broader prohibition that

> "…where an official plan is in effect no by-law shall be passed for any purpose that does not conform therewith”.

Furthermore, s.13 was broadened to provide that in the event of a conflict between an official plan and any municipal by-law, the official plan was to prevail.

The Planning Amendment Act, 1949, S.O. 1949, c.71, repealed s.12 and replaced it again, to read as follows:

> "Notwithstanding any other general or special Act, where an official plan is in effect, no public work shall be undertaken and no by-law shall be passed for any purpose that does not conform therewith."

This control linkage between the official plan and municipal council action, as established in 1949, remains substantially unaltered today

The Planning Amendment Act, 1950, S.O. 1950, c. 53 repealed s. 12 and replaced it again, to read as follows:

> “Notwithstanding any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsection 2, no by-law shall be passed for any purpose that does not conform therewith”

The reference to subsection 2 represented the beginning of a number of amendments s. 12 (and its successors) intended to address subtle issues of the timing of the adoption of a plan (or amendment) and any implementing by-laws.

S. 27(1) is the companion provision to s. 24(1). It reads as follows:

> 27.(1) The council of a lower-tier municipality shall amend every official plan and every by-law passed under section 34, or a predecessor of it, to conform with a plan that comes into effect as the official plan of the upper-tier municipality

Prior to the 1983 introduction of this provision into the Planning Act, a similar provision was contained in most of the individual statues creating metropolitan, regional and district municipalities. These provisions were repealed coincidently with the enactment of the *Planning Act*, 1983 (see the *Planning Statute Law Amendment Act*, 1983, S.O. 1983, c.5, ss.2-13).

Bill 51 added s. 26(1) which reads as follows:

Prior to Bill 51	**After Bill 51**
Determining need for revision	**^<u>Updating official plan</u>**
26.(1) If an official plan is in effect in a municipality, the council of the municipality that has adopted the official plan shall, not less frequently than every five years, hold a special meeting of council, open to the public, to determine the need for a revision of the official plan and in determining the need for a revision council shall have regard to policy statements issued under subsection 3 (1). 1996, c. 4, s. 16 (1).	26.(1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses,
	(a) revise the official plan as required to ensure that it,
	(i) conforms with provincial plans or does not conflict with them, as the case may be,

	(ii) has regard to the matters of provincial interest listed in section 2, and
	(iii) is consistent with policy statements issued under subsection 3 (1); and
	(b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended. 2006, c. 23, s. 13 [Amendment commenced 01/01/2007].

Once amendments to an official plan are processed pursuant to s.26, the following provision kicks in:

> "26(9) No later than three years after a revision [ed.-to an official plan] under subsection (1) or (8) comes into effect, the council of the municipality shall amend all zoning by-laws that are in effect in the municipality to ensure that they conform with the official plan."

Other Planning Act Provisions

Variations on the requirement that something "conform with" that are not mentioned above can be found at sections 22(7.4), 26(2), 26(10), 28(6), 28(7), 28(10), 34(8), 43(2), 45(2), 50(18.1), 51(58), 57(7), 70.2(6), 70.2(7) of the *Planning Act.*

For the text of all sections of the *Planning Act* where the term "shall conform with" or variations of the phrase appear see Table 5 at the end of this paper.

What does "conform with" mean?

There has been little controversy as to what the phrase "conform with" means.
A useful decision in regard to the application of this phrase is found in *Ryan v. Adjala-Tosorontio (Township*) provided in Table 6 at the end of this paper. The primary issue in that hearing was conformity of an official plan amendment with the *Oak Ridges Moraine Conservation Act* and the *Oak Ridges Moraine Conservation Plan*.

Other cases of interest from various jurisdictions are also found in Table 6.

The following definitions taken from dictionaries is instructive:

> ***Conform*** (verb) 1. comply with rules, standards, or conventions. 2. be similar in form or type. ***Catherine Soanes, The Compact Oxford English Dictionary, 2nd ed. (Oxford: Oxford University Press, 2002)***

> ***Conform*** v. 1. v.t. form according to pattern, make similar (to). 2. v.i. be conformable (to, or abs.); comply with rules or general custom; ~ to or with, comply with. 3. Hence ~ ANCE, ~ ER, ns. [ME, f. OF conformer f. L con (formare f. forma shape)] ***H.W. Fowler, H.G. Fowler, The Concise Oxford Dictionary of Current English, 7th ed. (Oxford: Oxford University Press, 1982)***

> ***Conform*** *transitive verb*: to give the same shape, outline, or contour to : bring into harmony or accord <*conform* furrows to the slope of the land>*intransitive verb* 1: to be similar or identical; *also* : to be in agreement or harmony — used with *to* or *with* <changes that *conform* with our plans>2 a: to be obedient or compliant — usually used with *to* <*conform* to another's wishes> b: to act in accordance with prevailing standards or customs <the pressure to *conform*> ***Meriam-Webster Online Dictionary***

It may be of academic interest at this point in the legislative history of the Planning Act, but it is fair to wonder why the Legislature found it necessary to introduce the phrase “consistent with” when the statute already made abundant use of the phrase “conform with” without significant controversy as to its meaning. This may be a situation where there appears to be a distinction which does not really exist.

B. Other Legislation

Tables identify other legislation in Canada where the phrases “regard to”, “consistent with” and “conform with” are found. This list of legislation is intended to be illustrative not exhaustive.

Table 1 - Planning Act: “Have Regard To”, “Have Regard”

Section Number	Language
2 Matters of Provincial Interest	**Provincial interest** **2.** The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as, (a) the protection of ecological systems, including natural areas, features and functions; (b) the protection of the agricultural resources of the Province; (c) the conservation and management of natural resources and the mineral resource base; (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest; (e) the supply, efficient use and conservation of energy and water; (f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems; (g) the minimization of waste; (h) the orderly development of safe and healthy communities; (h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies; (i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities; (j) the adequate provision of a full range of housing; (k) the adequate provision of employment opportunities; (l) the protection of the financial and economic well-being of the Province and its municipalities; (m) the co-ordination of planning activities of public bodies; (n) the resolution of planning conflicts involving public and private interests; (o) the protection of public health and safety;

Section Number	Language
	(p) the appropriate location of growth and development. (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians.
2.1	**Decisions of councils and approval authorities** **2.1** When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to, (a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and (b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a). 2006, c. 23, s. 4. See: 2006, c. 23, ss. 4, 37 (2).
6(2)	**Planning policies** (2) A ministry, before carrying out or authorizing any undertaking that the ministry considers will directly affect any municipality, shall consult with, and have regard for, the established planning policies of the municipality. R.S.O. 1990, c. P.13, s. 6 (2).
8.1(4) Local Appeal Body	**Eligibility criteria** (4) In appointing persons to the local appeal body, the council shall have regard to any prescribed eligibility criteria. 2006, c. 23, s. 7.
17(44.6) Official Plans	**Council's recommendation** (44.6) The Municipal Board shall have regard to the council's recommendation if it is received within the time period referred to in subsection (44.4), and may but is not required to do so if it is received afterwards. 2006, c. 23, s. 9 (7).
	Updating official plan **26.** (1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses, (a) revise the official plan as required to ensure that it, (i) conforms with provincial plans or does not conflict with them,

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Section Number	Language
	as the case may be, (ii) has regard to the matters of provincial interest listed in section 2, and (iii) is consistent with policy statements issued under subsection 3 (1); and (b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended. 2006, c. 23, s. 13.
26(5) Updating Official Plan	**Public participation** (5) The council shall have regard to any written submissions about what revisions may be required and shall give any person who attends the special meeting an opportunity to be heard on that subject. 2006, c. 23, s. 13.
34(24.6) Zoning By-laws	**Council's recommendation** (24.6) The Municipal Board shall have regard to the council's recommendation if it is received within the time period mentioned in subsection (24.4), and may but is not required to do so if it is received afterwards. 2006, c. 23, s. 15 (12).
41(4) Site Plan Control	**Approval of plans or drawings** (4) No person shall undertake any development in an area designated under subsection (2) unless the council of the municipality or, where a referral has been made under subsection (12), the Municipal Board has approved one or both, as the council may determine, of the following: 1. Plans showing the location of all buildings and structures to be erected and showing the location of all facilities and works to be provided in conjunction therewith and of all facilities and works required under clause (7) (a) including facilities designed to have regard for accessibility for persons with disabilities.
41(4)2(f) Site Plan Control	**Approval of plans or drawings** (4) No person shall undertake any development in an area designated under subsection (2) unless the council of the municipality or, where a referral has been made under subsection (12), the Municipal Board has approved one or both, as the council may determine, of the following:

Section Number	Language
	2. Drawings showing plan, elevation and cross-section views for each building to be erected, except a building to be used for residential purposes containing less than twenty-five dwelling units, which drawings are sufficient to display, (f) facilities designed to have regard for accessibility for persons with disabilities.
41(7)(a)(4.1) Site Plan Control	**Conditions to approval of plans** (7) As a condition to the approval of the plans and drawings referred to in subsection (4), a municipality may require the owner of the land to, 4.1 Facilities designed to have regard for accessibility for persons with disabilities.
41(8)(a)(v) Site Plan Control	**Where area is in upper-tier municipality** (8) If an area designated under subsection (2) is within an upper-tier municipality, plans and drawings in respect of any development proposed to be undertaken in the area shall not be approved until the upper-tier municipality has been advised of the proposed development and afforded a reasonable opportunity to require the owner of the land to, (a) provide to the satisfaction of and at no expense to the upper-tier municipality any or all of the following: (v) where the land abuts a highway under the jurisdiction of the upper-tier municipality, facilities designed to have regard for accessibility for persons with disabilities;
51(24)	**Criteria** (24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to, (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2; (b) whether the proposed subdivision is premature or in the public interest; (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any; (d) the suitability of the land for the purposes for which it is to be subdivided;

Section Number	Language
	(e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them; (f) the dimensions and shapes of the proposed lots; (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land; (h) conservation of natural resources and flood control; (i) the adequacy of utilities and municipal services; (j) the adequacy of school sites; (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes; (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy, and (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*.
51(25)	**Conditions** (25) The approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision, including a requirement, (a) that land be dedicated or other requirements met for park or other public recreational purposes under section 51.1; (b) that such highways, including pedestrian pathways, bicycle pathways and public transit rights of way, be dedicated as the approval authority considers necessary;

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Section Number	Language
51(52.6) Plans of Subdivision	**Approval authority's recommendation** (52.6) The Municipal Board shall have regard to the approval authority's recommendation if it is received within the time period mentioned in subsection (52.4), and may but is not required to do so if it is received afterwards. 2006, c. 23, s. 22 (11).
53(12) Consents	**Powers** (12) A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51 (24) and has the same powers as the approval authority has under subsection 51 (25) with respect to the approval of a plan of subdivision and subsections 51 (26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent. 1994, c. 23, s. 32.
57(6)	**Criteria for consideration** (6) In considering whether to issue a certificate under subsection (1), regard shall be had to the prescribed criteria. 1993, c. 26, s. 63.
75(3) Transitional Provisions	**Exception** (3) Despite subsection (1), in exercising any authority in respect of a matter or proceeding referred to in subsection (5), the council of a municipality, a local board, a planning board, the Minister and the Municipal Board, shall have regard to the policy statements issued under subsection 3 (1) if, (a) the matter or proceeding was commenced on or after March 28, 1995; and (b) no decision has been made in respect of the matter or proceeding. 1996, c. 4, s. 41.
75(4) Transitional Provisions	**Exception, comments, etc.** (4) Despite subsection (1), in providing any comments, submissions or advice with respect to any matter or proceeding referred to in subsection (5), a minister or a ministry, board, commission or agency of the government shall have regard to the policy statements issued under subsection 3 (1), if, (a) the matter or proceeding was commenced on or after March 28, 1995; and (b) no decision has been made in respect of the matter or proceeding. 1996, c. 4, s. 41; 1998, c. 15, Sched. E, s. 27 (12).

Table 2 - Caselaw: “Have Regard To”

Citation	Quotation
	Ontario
1982 CarswellOnt 1991, 14 O.M.B.R. 492, Ontario Municipal Board, 1982	***Bruckmayer v. Renfrew Land Division Committee*** 3 I am required to have regard to whether the proposed conveyance conforms to the official plan for the Pembroke Township Planning Area. The subject land is designated "Rural Marginal" in the official plan. Secton C.3 of the official plan indicates that, among other uses, seasonal residences will be permitted. Section C.3(5) of the official plan deals with consents, and states that consents "may be granted" in eight enumerated cases, ranging from infilling to discharge of farm mortgages. Quite clearly, the present case does not fit into any of these eight cases. As I have noted, the subject land is not and can never become agricultural land, and is out of the question for subdivision. This rules out all but the first three cases, which are: (1) Infilling in areas already substantially developed; (2) Commercial, industrial and institutional development; and (3) Lot enlargement. The present case obviously fits none of these categories. Section C.3(2) of the official plan indicates that seasonal residences "shall follow the policies of Section E, Subdivision Development Criteria", but since the subject land is not suitable for a subdivision, the result seems to be that although it is designated for seasonal residences, it cannot be used for that purpose. … 5 The situation in this case raises a point that I think needs to be made. The *Planning Act*, R.S.O. 1980, c. 379, s. 49(3), confers upon the land division committee a statutory discretion to grant consents provided the committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the municipality. In exercising that discretion s. 36(4) of the Act requires the land division committee to *have regard* to the matters enumerated in that subsection, including conformity with the official plan. Section 36(4) therefore leaves the committee's discretion intact, but directs the committee to consider the provisions of the official plan. Put in another way, nothing in the official plan justifies the land division committee in refusing jurisdiction -- it must exercise its statutory discretion, but in doing so may conclude that the provisions of the official plan are such that the discretion ought not to be exercised in the applicant's favour. 6 My conclusion is that the official plan simply does not address the present case. This is no criticism of the official plan. One can hardly expect a document

Citation	Quotation
	of this sort to cover every possible set of circumstances that could arise in a large and diverse municipality. There must always be room for the exercise of judgment and the application of common sense, by municipal councils and by discretionary authorities such as the land division committee. To hold otherwise is to subscribe to an extremely mechanical approach to municipal planning not, in my opinion, in conformity with the spirit of the *Planning Act*. 7 I have had regard to the matters enumerated in s. 33(4) of the Act, and I am of opinion that the proposed conveyance does not offend any of those principles. One specific comment is required. Clause (*e*) of s. 36(4) of the Act requires me to have regard to the shape of the lot. The subject lot obviously is of peculiar shape, with a long panhandle running down to the concession road. Clearly, this arrangement was arrived at to comply with the zoning by-law, which requires a road frontage. I can see no objection to this, and received no evidence of any planning difficulty arising from the irregularity of the lot. 8 For all the foregoing reasons, the consent will be granted.
1991 CarswellOnt 6004; 26 O.M.B.R. 132, [1991] O.M.B.D. No. 1427; Ontario Municipal Board; August 28, 1991	***Ottawa-Carleton (Regional Municipality) Official Plan Amendment 8, Re*** 135 Statements of government policy like the Food Land Guidelines which remain as the pre-1983 adopted statement on agriculture or post-1983 statements like the Flood Plain Planning adopted under s. 3 of the 1983 Act must be regarded by the board. The board is not bound to follow them; however, the board is required to have regard to them, in other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole, and what they seek to protect. The board is then to determine whether and how the matter before it is affected by and complies with, such objectives and policies; with a sense of responsible consistency in principle. For those who want clearer solutions, the right to petition and to try to influence the elected members of the legislature and the government of the day is an important democratic right; however, this board cannot change the law.
1997 CarswellOnt 1049, 99 O.A.C. 95, 35 O.M.B.R. 1, 38 M.P.L.R. (2d) 133, [1997] O.J. No. 976, Ontario Court of Justice (General Division) [Divisional Court], 1997	***Juno Developments (Parry Sound) Ltd. v. Parry Sound (Town)*** **Issue No. 6 - Whether the Board properly interpreted Section 3 of the Planning Act in applying the Provincial Policy Statements to the facts of this case** 28 Section 3(5) of the *Planning Act* requires the Municipal Board to have "regard to policy statements issued under subsection 1". It has been held that the Board is required to have regard to the Provincial Policy Statements issued under s.3 of the *Planning Act*. In other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole and what they seek to protect.

Citation	Quotation
	Ottawa-Carleton (Regional Municipality) Official Plan Amendment No. 8, Re (1991), 26 O.M.B.R. 132 at pps. 180 to 182
2000 CarswellOnt 5279, 38 C.E.L.R. (N.S.) 199, 19 M.P.L.R. (3d) 103, [2000] O.J. No. 3517, 42 O.M.B.R. 3, Ontario Superior Court of Justice (Divisional Court), 2000	***Concerned Citizens of King Township Inc. v. King (Township)*** **Have Regard To** 15 The decision raises a question of law, whether the Board erred in law in his interpretation of the expression "have regard to" in s. 3 of the Planning Act which requires that the Board must have regard to matters such as the Provincial Policy Statement. 16 The question is whether the planning authorities and the OMB must seriously, conscientiously, and carefully consider the provincial policy guidelines or whether it is sufficient simply to pay lip service to them. 17 The decision notes the degree to which Ms. Howson, the author of OPA 54, considered there was an obligation to consider the provincial guidelines: In response to a question from the Board as to conformity with Provincial Policy Statements (PPS) for compact communities, Ms. Howson responded that the approval authority need only "have regard to" these policies. 18 The key word here is the dismissive "only". It diminishes the importance of the provincial policies to say that one need "only" have regard to them. Although one should not place too much emphasis on one word in an entire decision, the judgment in its entirety makes only two references to PPS policies. The judgment as a whole raises the question, whether the Board erred in failing adequately to have regard to provincial policies. 19 To "have regard to" falls somewhere on the scale that stretches from "recite them then ignore them" to "adhere to them slavishly and rigidly". 20 The question is whether the Board had "regard to" provincial policies within the meaning given to that expression in *Juno Developments (Parry Sound) Ltd. V. Parry Sound (Town)* (1997), 35 O.M.B.R. 1 (Ont. Div. Ct.)per Molloy J. at p. 10: It has been held that the Board is required to have regard to the Provincial Policy Statements issued under s. 3 of the Planning Act. In other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole and what they seek to protect: Ottawa Carleton (Regional Municipality) Official Plan. Amendment 8 (Re) (1991), 26 O.M.B.R. 132 at pp. 180-182 21 Although leave to appeal to the Divisional Court was granted in *Juno*, counsel were unable to find any indication that the appeal ever proceeded. 22 The passage from *Ottawa Carleton* (D.H. McRobb and P.H. Howden, Q.C., Vice-Chairs and R.D.M. Owen) at pp. 181-2 reads as follows:

Citation	Quotation
	Statements of government policy...must be regarded by the board. The board is not bound to follow them; however, the board is required to have regard to them, in other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole, and what they seek to protect. The board is then to determine whether and how the matter before it is affected by, and complies with, such objectives and policies, with a sense of reasonable consistency in principle. 23 Taking the reasons as a whole it is open to serious question whether the Board "had regard" to the provincial policies in the sense of considering them carefully in relation to the circumstances at hand, their objectives and the statements as a whole, and what they seek to protect, and determining whether and how the matter before it is affected by, and complies with, such objectives and policies, with a sense of reasonable consistency in principle. 24 Leave to appeal is therefore granted on this issue.
2001 CarswellOnt 5715, 42 O.M.B.R. 468, Ontario Municipal Board, 2001	***London (City) Official Plan Amendment No. 212, Re*** 8 The Ministry planner sees no reason for the MDS guidelines not to be applied in the City of London as contemplated in the revised policy. He looks to Section 3 of the *Planning Act* and equates the expression of provincial interest through policy statements as articulations of public interest for which regard shall be had in accordance with Section 3(5). Regard represents more than simply a cursory consideration of the document and includes reading the policy to understand its intent and objective, and answering the question 'What do you want to achieve?' This demands that the reader look at ways to achieve the policy, and if it cannot be achieved then one must answer the question 'Why not?' If not, then the reader must consider the justification for not achieving by answering the question 'For what higher purpose are you able to proceed without regard?' This was the underpinning of his evidence. 9 For him, the guiding principles of the MDS guidelines are clear: 1. There must be reference to them in Official Plans and Zoning By-laws; 2. They apply when development is proposed near livestock; 3. They apply even if the farm is not in operation but is 'sound' and 'capable' of operating; 4. They apply to urban expansion while distinguishing edge conditions; and 5. They do not contemplate mitigation being employed. … 16 The Board agrees with the Ministry planner in his assessment of the steps necessary to have proper regard for provincial policy. To that end the Board finds

Citation	Quotation
	that three questions must be considered in order to have proper regard for provincial policy. 1. Does the individual goal meet with the intent and objectives of the policy statement? 2. If there is conflict between the individual goal and the policy statement, is there a way to resolve it and meet the policy statement? 3. If there is not a way to resolve it, what higher purpose does the individual goal serve that would allow it to supersede the policy statement? 17 In the opinion of the Board, if these questions have not been thoroughly considered, then it would be difficult to say that proper regard had been had.
2001 CarswellOnt 6085, 24 M.P.L.R. (3d) 124, Ontario Superior Court of Justice (Divisional Court), 2001	***King City Preserve the Village Inc. v. York (Regional Municipality)*** 18 The 4th Issue is whether the Board erred in law in failing adequately to "have regard" to policy statements on matters relating to municipal planning issued under s.3.3(1) of the *Planning Act*, as required by s.3.3(5) of the *Planning Act*. Counsel for the appellants and for the respondent Township of King (the "Township"), who supported the appellants on this point, emphasized the apparent approval by the Board of the statement by one of the planners that the approval authority need *only* have regard to such policies. … 20 We accept that the provision to "have regard" requires that the approval authority, and the Board, do more than pay lip service to the policies in question. Those policies must be carefully considered in the context of the matter at hand. … 25 The Board's reasons dealt at length with the provision of sewage services, population and employment growth, agricultural issues, and environmental issues, including conformity with the OPM Guidelines. The Board found that the Ministries of Municipal Affairs & Housing, Natural Resources and Environment and the Toronto Region Conservation Authority had "signed off" with respect to the conformity of OPA with the ORM (interim) Guidelines. This appears to have been a finding that those bodies had concluded that there was such conformity. 26 There is no valid reason to conclude that the Board failed to give careful consideration to the relevant provincial policies.
2002 CarswellOnt 5112, 38 M.P.L.R. (3d) 109, 1 C.E.L.R. (3d) 256, 44 O.M.B.R. 364, Ontario Municipal Board, 2002	***Spellman v. Essex (Town)*** [a.k.a. *Material Handling Problem Solvers Inc. v. Essex (Town)*] 97 The proponent's representatives say that the "have regard to..." requirement of the *Planning Act* provides the Board with the discretion to consider the policy and in the context of the circumstances of the case, to apply it or to set the policy aside according to one's conscientious exercise of judgement. Mr. Balfour, the

Citation	Quotation
	proponent's planner, explained the history of this section of the *Act*, pointing out that for a short time the standard was higher. In 1995 the *Planning Act* was amended by Bill 163 which included Section 3(5) which as excerpted read as follows: 3(5) A decision of ... the Municipal Board under this Act and such decisions under any other Act as may be prescribed *shall be consistent with* policy statements issued under subsection (1). [Emphasis added] 98 This higher standard stood for only about one year and, following a change in the composition of the legislature, the original language "have regard to ..." was restored. The implication of this is that the intent of the legislature was to abandon the higher test, unfetter the Board (and others) in its exercise of judgment, and to provide the Board with the latitude to make the most appropriate decision in the given circumstances. 99 A number of Board cases have reflected on the meaning of the obligation to have regard to provincial policies. In a Durham Region case (*Durham (Regional Municipality) Plan of Subdivision 18T-91019, Re*, [1993] O.M.B.D. No. 257 (O.M.B.)) a case that is similar to the matter now before the Board, the Board stated simply that "... in having regard to a provincial policy statement, one must not apply it mechanically, in a manner that pays no regard to the circumstances at hand." The Board in that case took account of the fact that the lands were privately held and zoned agriculture and that the lands could be farmed much more intensely as a matter of right. The Board there concluded that the "lands should not be left in their natural state," and permitted residential development. 100 In the well known Ottawa Palladium case (*Ottawa-Carleton (Regional Municipality) Official Plan Amendment 8, Re*, [1991] O.M.B.D. No. 1427 (O.M.B.)) in which the Board carefully considered the meaning of the "have regard to ..." obligation, the Board concluded as follows: The Board is not bound to follow (statements of government policy); however, the Board is required to have regard to them, in other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole, and what they seek to protect. The Board is then to determine whether and how the matter before it is affected by, and complies with, such objectives and policies, with a sense of responsible consistency in principle. 101 In a more recent, but equally reflective example of the Board's consideration, Ms Rogers writes in *Victoria Point Homes Inc. v. Orillia (City)* , [1998] O.M.B.D. No. 684 (O.M.B.) (QL paragraph 64), as follows: In the Board's view, a requirement to have regard to a statement of provincial planning policy means more than considering whether a completed design has met a provincial objective, and if it has not,

Citation	Quotation
	deciding not to apply the policy. Having regard to these policies requires a careful consideration of the planning objective and a determination of how to meet that objective in a particular situation; or alternatively, determining if circumstances make it inappropriate or impossible to meet that objective in a particular situation. 102 A review of the decisions reveals some key elements that have emerged in the understanding of the Board's duty to have regard. The first is that the Board must consider the policies carefully. This means that one cannot - following a reading of the policy - simply, capriciously or with a minimum of interest discount their applicability. One must take care to understand them and to consider the implications of applying the policies or failing to apply them. 103 Secondly the Board must not take a narrow or merely particular approach but should consider the overall objectives of the policies. In doing so the Board must determine the intended outcome of the policy. It is not necessarily the duty of the Board to judge or question the intent, but rather to understand "what they are meant to protect" and in the Ms Roger's words, "how to meet the objectives in a particular situation." To formulate a policy, whether it is a policy plan for a community or a region, or a provincial policy statement, means first of all, to make a statement of intent: in our case, for example "Natural heritage features and areas will be protected from incompatible development." This forms one of the overall objectives of the policy. A policy statement then goes on to explain how the objective is to be achieved in any given set of circumstances: again, in our example, "Development and site alteration will not be permitted in significant wetlands south and east of the Canadian Shield." In other words, a policy statement is a conscious or stated choice - a kind of public promise - to take a consistent and fair approach to similar circumstances in the future and to make decisions (or have others who hold similar authority make decisions) that will advance the desired objectives of the policy. Like an unkept promise, a policy observed 'more in the breach' is of little true value. 104 Furthermore, although the test does not require consistency, the phrase "having regard to" nevertheless evokes a sense that a policy by definition will be applied evenly to similar situations. In the *Ottawa* case, Mr. Howden asserts that the Board must make its determination with "a sense of responsible consistency in principle." The reasonable expectation following the adoption of a policy is that it will be applied, and that it will be applied evenly. The decision said this before the Act was amended to read that decisions must be "consistent with" provincial policies. Nevertheless, as a matter of definition and principle, anyone reading a policy should reasonably expect that if the circumstances apply to them, so will the policy. By the same token, it may be reasonably expected that it will be applied equally and fairly to others where similar circumstances obtain. The fact that the statute was changed to omit the obligation that all decisions are to be consistent with provincial policies does not mean that there is no obligation to

Citation	Quotation
	apply policies fairly and equally to all similar situations. The planning system depends on the reliable application of policy to achieve some measure of certainty for the participants in the process and to avoid arbitrary and volatile decision-making. 105 Even so, a policy is not like a law. Adherence to a policy statement is not strictly mandatory and the consistent application of policy is not mandatory in the same way that it is for the law. The intent of the *Act* is to clearly permit a very broad discretion to depart from the policy. The proponent's representatives rely on this. They say that, yes, the Board must have regard to the policies, but having done so, it can simply exercise its discretion and ignore or bypass the policy in the exigencies of the situation. They say correctly that the Board is not "bound" by the policies and that the language of the *Act* gives the Board a complete discretion to act in any way that it sees fit after having had regard to the policies. All this is correct. 106 But even discretion must be exercised with reason. Ms Rogers suggests that discretion may be exercised where "circumstances make it inappropriate or impossible to meet the (policy) objective in a particular situation." "Inappropriate or impossible" may seem to be a steep test. Nevertheless, at the very least, establishing a policy implies that it should be followed fairly and equally unless there is some good and sufficient reason, arising out of the circumstances before the Board, to do otherwise. This marks the reasonable exercise of discretion. 107 The proponents say further that the Board "only" has to have regard and should not apply the Provincial Policy Statement "slavishly." In a leave to appeal ruling arising from a Board decision in King Township (*Concerned Citizens of King Township Inc. v. King (Township)*, [2000] O.J. No. 3517 (Ont. Div. Ct.)), the court considered the Board's decision to accept the testimony of a planner who said that "the approval authority need *only* 'have regard to' these (provincial) policies." While the matter is yet to be heard, leave to appeal on this issue was granted by Campbell, J. who in his reasons wrote: The key word here is the dismissive "only." It diminishes the importance of the provincial policies to say that one need "only" have regard to them. Although one should not place too much emphasis on one word in an entire decision, the judgement in its entirety makes only two references to provincial policies. The judgement as a whole raises the question, whether the Board erred in failing adequately to have regard to provincial policies. 108 Taking account of these reflections, the Board in the present case considers the obligation to have regard to the Provincial Policy Statement as one that requires: a careful consideration, not a dismissive one; a fair application of, and approach to policy which applies it similarly to all similar situations, rather than one that allows frequent departure from the policy; and the exercise of reasonable discretion, that is departing from the requirements of the policy only

Citation	Quotation
	when it would make more sense to depart from the policy than to comply with it. 109 A careful consideration of the policy and of the circumstances of the matter before the Board reveals that it is meant to deal precisely with the circumstances as they present themselves in this case. Large high quality wetlands are valued and rare in Southern Ontario and even rarer and thus more valued in Essex. The objective of the policy is to correct the historic loss by protecting identified provincially significant wetlands and by prohibiting development. The Board sees no reason to warrant not applying the policy approved for consideration under Section 3 of the *Planning Act* in the circumstances of this case.
2003 CarswellOnt 3656, 45 O.M.B.R. 165, 43 M.P.L.R. (3d) 134, Ontario Municipal Board, 2003	***Campitelli v. Ajax (Town)*** 10 When considering provincial policy, the Board is mindful that it is a "have regard" test. "Regard" contemplates more than a cursory review. "Regard" must include some form of earnest consideration. It appears at times to have become commonplace for those charged with regarding the Provincial Policy Statement to regard it simply as a broad reference tool. That is not the case here. All of the planners who testified agreed that this policy represents a threshold test with clear, direct wording. There is no ambiguity in their minds. The Board has great respect for each of the planners who gave evidence in this hearing. Each of them was clear, concise and forthright in their testimony. Their integrity is unquestionable.
2003 CarswellOnt 7720, 2003 WL 24190162 (O.M.B.), Ontario Municipal Board, 2003	***561650 Ontario Inc. v. Ottawa (City)*** 87 The case law on interpretation of the phrase "have regard to" in Subsection 3(5) of the *Planning Act* is significant. An examination of the case law indicates that to have regard to requires a careful consideration and not merely a perfunctory one involving a consistent application to similar situations all the while retaining discretion to consider particular fact situations. In this instance, the Board has applied this principle in assessing the applications before it.
2003 CarswellOnt 5270, 45 O.M.B.R. 465, Ontario Municipal Board, 2003	***Webster v. Victoria (County)*** 19 As to how this Board should deal with the Provincial Policy Statement and the issue of "shall have regard for", both counsel referred to the *Ottawa-Carleton (Regional Municipality) Official Plan Amendment 8, Re*, [1991] O.M.B.D. No. 1427 (O.M.B.), online: QL (Ontario Municipal Board). That panel of the Board at page 25 made the following statement, which this panel adopts: The Board is not bound to follow them; however, the Board is required to have regard to them, in other words, to consider them carefully in relation to the circumstance at hand, their objectives and the statements as a whole, and what they seek to protect.

Citation	Quotation
2003 CarswellOnt 2991, 40 M.P.L.R. (3d) 107, 174 O.A.C. 297, Ontario Superior Court of Justice (Divisional Court), 2003	***McGregor v. Rival Developments Inc.*** *Did the Board fail to give "due regard" to Provincial Policy 3.1 on Hazard Lands as required under s. 3 of the Planning Act?* 120 The Ontario Municipal Board in exercising any authority that affects a planning matter is directed by s. 3(5) of the *Planning Act* to have regard to Provincial Policy Statements (PPS). Having regard to PPS has been addressed in various decisions. In *King City Preserve the Village Inc. v. York (Regional Municipality)*, [2001] O.J. No. 5363 (Ont. Div. Ct.), the Divisional Court states at para. 20: We accept that the provision to "have regard" requires that the approval authority, and the Board, do more than pay lip service to the policies in question. Those policies must be carefully considered in the context of the matter at hand. 121 The requirement imposed under s. 3(5) of the *Act* was addressed in *Concerned Citizens of King Township Inc. v. King (Township)* (2000), 42 O.M.B.R. 3, [2000] O.J. No. 3517 (Ont. Div. Ct.). Justice A. Campbell in that case refers to the interpretation of "have regard to" as set out in *Juno Developments (Parry Sound) Ltd. v. Parry Sound (Town)* (1997), 35 O.M.B.R. 1 (Ont. Div. Ct.) and *Ottawa-Carleton (Regional Municipality) Official Plan Amendment 8, Re* (1991), 26 O.M.B.R. 132 (O.M.B.). In *Concerned Citizens of King Township Inc.* the court found that the Board is to have regard to PPS: in the sense of considering them carefully in relation to the circumstances at hand, their objectives and the statements as a whole, and what they seek to protect, and determining whether and how the matter before it is affected by, and complies with, such objectives and policies, with a sense of reasonable consistency in principle. 122 The Board is required to consider the PPS in relation to the circumstances at hand. In this case, it was to consider Rival's proposal to construct a residential development adjacent to the Thames River and more particularly, to consider that proposal in the context of the City's Official Plan, which provides for a two zones policy in respect of flood lands adjacent to the river. No development is permitted within a floodway. Development is permitted within the flood fringe area. PPS 3.1 sets out the policy in respect to natural hazards relative to the flood fringe area. The Policy directs that development will generally be directed to areas outside of hazardous land adjacent to river and stream systems which are impacted by flooding and/or erosion hazards: (3.1.1).
2006 CarswellOnt 64, 52 O.M.B.R. 36, Ontario Municipal Board, 2006	***Ontario (Ministry of Municipal Affairs & Housing) v. London (City)*** 10 On the issue of whether the OPA and ZBA under appeal did have regard for the PPS, it is important to consider what "shall have regard for" means as it

Citation	Quotation
	relates to the PPS. Counsel for the proponent referred to a number of previous Board decisions in which this issue was considered. The Board refers to the Ottawa Palladium case (*Ottawa-Carleton (Regional Municipality) Official Plan Amendment 8, Re,* [1991] O.M.B.D. No. 1427 (O.M.B.) [reported (1991), 26 O.M.B.R. 132 (O.M.B.)] in which the Board concluded as follows: The Board is not bound to follow (statements of government policy); however, the Board is required to have regard to them, in other words, to consider them carefully in relation to the circumstances at hand, their objectives and the statements as a whole, and what they seek to protect. (p.181) 11 In the particular circumstances at hand, the Board has considered the evidence presented and prefers the evidence proffered by the planner for the City and finds that in reviewing the applicant's proposal, staff carefully considered and had regard for not only the agricultural policies of the PPS but also of those contained in the City's OP. The Board accepts the conclusion of the staff planning report that the site is too small to support a viable agricultural operation and given the mixed uses of the surrounding areas that a rezoning of the subject site to allow a restaurant use is appropriate. The removal of this site from agricultural use would not result in an appreciable loss of agricultural land nor would it adversely impact nearby agricultural uses. The Board finds that the OPA and ZBA do have regard for the PPS.
2006 CarswellOnt 3262, 24 M.P.L.R. (4th) 135, 211 O.A.C. 250, 53 O.M.B.R. 266, Ontario Superior Court of Justice (Divisional Court), 2006	***Kellway v. St. Clair (Township) Committee of Adjustment*** 23 I agree with Mr. Moran that the Act merely requires the Board to "have regard to" the criteria enumerated in the Act, and that the Board did so in this case. Having turned its mind to the grounds raised, the Board must then consider the nature of the application before it and make a determination as to which of those grounds are relevant and applicable to the issues raised by the application. This process is reflected in the authority relied on by the Applicants, *A Practical Guide to the Ontario Municipal Board* (Toronto: Butterworths, 2003) by Bruce W. Krushelnicki, Ph.D., where the author discusses how provincial policy statements ("PPS") issued under s. 3 of the Act are to be considered by the Board. He says the following at pg. 111: In light of all this, the obligation to "have regard to" the PPS should mean that the policy, *if it is relevant and applicable in the circumstances of the case before the Board*, should be given weight and should play some meaningful role in the decision. [*emphasis added*]
	Saskatchewan
1989 CarswellSask 128, 7 R.P.R. (2d) 78, 46 M.P.L.R. 274, 64 D.L.R. (4th) 241, (sub nom. Marathon Realty	***Regina (City) v. Marathon Realty Co.*** 1 This appeal, by stated case under s. 31(1) of the *Planning and Development Act, 1983*, S.S. 1983-84, c. P-13.1,[FN1] arises out of a controversial decision of

Citation	Quotation
Co. v. Regina (City)) 80 Sask. R. 53, Saskatchewan Court of Appeal, 1989	the Provincial Planning Appeals Board denying two applications by the appellant (Marathon) to subdivide certain lands in the City of Regina. There are two appeals before the Court (numbered 9304 and 9305), but the parties agree that identical issues are raised in each. … 12 In each of the within appeals, the Board's decision was based upon its finding that Marathon's proposed subdivision had not been shown to *conform* with the Regina Development Plan. If one applies the less stringent test under s. 151(1), as asserted by Marathon, then conformity with that plan is not a *requirement* but merely a *factor* that the Board is required to "have regard to." … 17 The interaction of ss 140 and 151 of the Act is not expressly addressed in the statute, but it has been judicially considered. In *Kannata Valley (Village) v. Kannata Highlands Ltd.* (1987), 61 Sask. R. 292 (C.A.), which is the controlling authority in this jurisdiction, Wakeling J.A. for the Court stated at p. 297: [12] There is no doubt that the wording contained in the two sections is significantly different, and the difference does support the suggestion of counsel for the respondent that the Board has a greater latitude than that provided the Director. Nonetheless, we are not convinced that the words 'shall have regard to' are meant to indicate that the Board need only refer to and not be bound by any relevant development plan or zoning bylaw. If we were to otherwise conclude, it would create the absurdity that the Minister had created a body described as 'Last Mountain Lake Special Planning Commission' to determine how that area should be best developed and zoned, required the Director to be bound by the regulations emanating from that Commission, but, on appeal, the Board was free to accept or reject any application without more than reference to the directions of that Commission. [13] It may be that it was intended the Board should have a greater latitude than that given the Director, but, if so, it is incumbent upon the legislators to indicate the extent of that greater latitude. As matters now stand, an interpretation which allows them simply to have regard to regulations without responsibility for adhering to them, in effect gives the Board the complete right to determine the appeal on any matter without being required to comply with the existing development plans or bylaws. We cannot accept such a proposition and therefore conclude that where s.15(1) requires the Board to have regard for a regulation it requires compliance with that regulation. 18 Marathon now asks this Court to revisit its resolution of this issue on the ground *Kannata* was wrongly decided. 19 As a starting point I observe that *Kannata*, supra, was not decided per in curiam. The relevant statutory provisions were canvassed and considered by the

Citation	Quotation
	Court. However, we are invited to reconsider our interpretation of the words "shall have regard to" in s. 151(1) and hold that the enumerated criteria did not impose an obligation on the Board to ensure compliance or conformity with the Regina Development Plan. 20 Marathon submits that the Board's interpretation of s. 151 (as well as this Court's interpretation in *Kannata*) constitutes a clear error because the Board, having regard for the wording of s. 151(1), failed to hold that conformity with the plan was *not* a requirement -- the Board need only have regard for it. As noted earlier, this proposed standard which was also put forward in *Kannata* is much less stringent than that of s. 140(1)(b), which requires "conform[ity]" to the provisions of any development plan, basic planning statement or zoning by-law that affects the land in question. In support of this contention the appellant relies on the following, inter alia authorities: *Ishak v. Thowfeek*, [1968] 1 W.L.R. 1718 (P.C.); *Foothills No. 31 v. Alta. Planning Bd.* (1984), 33 Alta. L.R. (2d) 181 (C.A.): *Wetaskiwin No. 10 v. Alta. Planning Bd.* (1982), 20 M.P.L.R. 42, 23 Alta. L.R. (2d) 182, 42 A.R. 172, 142 D.L.R. (3d) 183 (C.A.) and *Moose Jaw v. M.L.S. Construction* (1981), 11 Sask. R. 1 (C.A.). 21 The respondent says that such an interpretation overlooks the overall scheme of the Act and its purpose, as well as the intention of the Legislature. It argues that s. 151(1) cannot be read in isolation from the legislation as a whole. More particularly, learned counsel for the respondent city points to the various stages of the process preceding an appeal under s. 151(1) and submits that a less stringent test at the final stage would ignore the intent of the legislation, particularly with respect to its focus on the importance of community planning. He submits that it would be a contradiction in terms to adopt such an interpretation and invites this Court to re-affirm its decision in *Kannata* because the interpretation there placed on the legislation comports with its purpose and scope -- a point stressed by Wakeling J.A. in the following passage [at p. 297]: As matters now stand, an interpretation which allows them simply to have regard to regulations without responsibility for adhering to them, in effect gives the Board the complete right to determine the appeal on any matter without being required to comply with the existing development plans or bylaws. We cannot accept such a proposition and therefore conclude that where s.15(1) requires the Board to have regard for a regulation it requires compliance with that regulation. 22 I agree with the respondent's submission and reject Marathon's contention that the Board committed an error in law in its interpretation of the applicable test under s. 151(1). In my opinion, the interpretation by the Board which was not challenged at that time comports harmoniously with the overall scheme of the Act, its purpose and the intention of the Legislature. I find that the principle articulated by Kerans J.A. in *Wyo-Ben Inc. v. Wilson Mud Can. Ltd.* (1985), 41 Alta. L.R. (2d) 289, [1986] 2 W.W.R. 350, 23 D.L.R. (4th) 760 (C.A.) applies to

Citation	Quotation
	this case [at 292, Alta. L.R.]: The words of this statute should be given a purposive interpretation, by which I mean that the words must be given that meaning which is most harmonious with the object or scheme of the statute provided always that the meaning is one they can reasonably bear. 23 In passing upon an issue of this nature, one must recognize that municipal planning embraces many fields of municipal endeavour, including but not limited to zoning and subdivision. The legislation's focus on "basic planning statements" suggests that comprehensive redevelopment plans are significant. Planning, zoning, and subdivision are not convertible terms. Subdivision is not devoid of planning, but it does not include the whole of planning with its broad socio-economic aspects. The same can be said of zoning. Planning has a much broader connotation, and the Act reflects that. The statute has in view the physical development of the community and its environment in relation to its social and economic well-being for the fulfilment of common destiny according to such comprehensive development plans or basic planning statements as may be created, based on careful and comprehensive studies and surveys of present conditions and the future prospects of the municipality. 24 This Court in *Kannata* gave effect to this concept, particularly in the light of the provisions of the Act. Although the Court can depart from its earlier decision when satisfied they are clearly wrong, I have concluded that *Kannata* was correctly decided, and, in my opinion, the Board applied the correct standard of approval for an appeal under s. 151(1).
	United States
29 Wash.2d 397, 187 P.2d 312, Supreme Court of Washington, Department 2., 1947	***Sullivan v. Boeing Aircraft Co.*** **WASH. 1947** Taking into consideration the scope and purposes of the labor relations agreement, the necessitous conditions existing by reason of the national emergency, and the fact that the parties to the agreement themselves used different terms to cover different situations, rather than one term to cover all, we are of the opinion that the expression 'shall have regard to seniority,' as used in the agreement, was not intended to have the same meaning as ' will be governed by seniority.' <u>We think the term 'shall have regard to seniority' means simply that the company was required to take the matter of seniority into consideration, together with all the other factors presented by the particular situation</u>, and if upon such consideration there was reasonable ground for making the transfer, and no arbitrary disregard of respondent's seniority rights, the company would be permitted to make such change. ***405** One of the paramount purposes of the agreement was 'to further to the fullest extent possible * * * the quality and quantity of aircraft produced.' The uncontradicted evidence is that the transfer was made in good faith, because production requirements necessitated the

Citation	Quotation
	equalization of the shifts. Respondent was the junior ‘A’ riveter in the particular shop, though not the junior in the entire plant. There were also ‘A’ riveters in the plant, serving on the second shift, who were senior to respondent. Taking all these things into consideration, we are of the opinion that appellant acted within its rights in transferring respondent to the second shift.

Table 3 - Planning Act: "Consistent With"

Section Number	Language
3(5)	**Policy statements and provincial plans** (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5. See: 2006, c. 23, ss. 5, 37 (2).
3(6) Policy statements and provincial plans	**Same** (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5. See: 2006, c. 23, ss. 5, 37 (2).
26(1)	**Updating official plan** **26.** (1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses, (a) revise the official plan as required to ensure that it (i) conforms with provincial plans or does not conflict with them, as the case may be,

Section Number	Language
	(ii) has regard to the matters of provincial interest listed in section 2, and (iii) is consistent with policy statements issued under subsection 3 (1); and (b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended. 2006, c. 23, s. 13.

Table 4 - Caselaw: "Consistent With"

Citation	Quotation
MAH – website - http://www.mah.gov.on.ca/userfiles/HTML/nts_1_26905_1.html	**Interpreting "shall be consistent with"** Previously, the *Planning Act* required that planning authorities "shall have regard to" policy statements issued under the authority of the Act. This required planning decision-makers to seriously consider the PPS in making land-use planning decisions. The *Planning Act* now requires that planning decisions, comments, submissions or advice "shall be consistent with" provincial policy statements. The focus is now on the outcome of a decision. The "shall be consistent with" standard is not defined in the *Planning Act* or in the PPS, 2005. Dictionary meanings are a useful starting point for the purpose of establishing the meaning of a term. As an example, the Webster Dictionary defines the term "consistent" to mean: • Marked by agreement and concord; • Coexisting and showing no noteworthy opposing, conflicting or contradictory qualities or trends; • In harmony with; • Compatible with; • Constant to the same principle as; and, • Not contradictory with. "Shall be consistent with" is a higher policy implementation standard and is a more demanding test than "shall have regard to". It requires decision-makers to apply the policies and make decisions that are consistent with the applicable policies of the PPS, 2005. It is a stronger implementation standard focusing on achieving policy outcomes, while retaining some flexibility in how it is implemented. Application of the "shall be consistent with" standard will occur through decisions of the OMB and the courts. These decisions will help us understand the application of the standard.
	Ontario
[1995] O.M.B.D. No. 1472, Ontario Municipal Board, 1995	***Huck v. Front of Escott (Township) Committee of Adjustment*** The planner testified that, in her opinion, none of the four tests were

Citation	Quotation
	met. Furthermore, she was of the view that the proposed variances would run afoul of the Comprehensive Set of Policy Statements ("the Policy Statements") recently issued under s. 3 of the Act. Because the variance application was made after March 28th, 1995, the amendments to the Act by Bill 163 apply [See Note 2 below], including the new requirement that decisions of this Board be "consistent with" the Policy Statements. On the question of the weight to be given to the Policy Statements, I agree with the planner's interpretation of the recent change in s. 3(5) of the Act from "shall have regard to" to "shall be consistent with". Given the ordinary meaning of the words used, the Legislature's clear intention is to require the Board to give greater weight to s. 3 policy statements. On the facts of this case, the Applicant has not satisfied me that the variances would be consistent with s. 3.1.3.
[1997] O.M.B.D. No. 154, Ontario Municipal Board, 1997	***Delhi (Township) Official Plan Amendment No. 64 (Re)*** 4 The application was made in 1995 during which the "Bill 163" version of the Planning Act, as it is known, was in effect. The Board is required to apply the law as it then stood since the legislature, when it further amended the Act, did not make the most recent provisions retroactive. The Planning Act states as follows: > A decision of the council of the municipality, local board, planning board, the Minister and the Municipal Board under this Act and such decisions under any other Act as may be prescribed shall be consistent with policy statements issued under subsection (1) (emphasis added) The terms "shall be consistent with" provides very little - if any - discretion in applying the terms of the Comprehensive Policy Statement passed under subsection (1). The applicable section of the Policy Statement made under subsection (1) reads as follows: Prime Agricultural alas will be protected for agricultural use, being: > secondary agricultural uses: uses secondary to the farm operation, such as home occupations, home industries and uses that produce value-added agricultural products from the farm operation. 5 Although it would seem that OMAFRA staff and the applicant have reached an agreement, the Board is nevertheless required to act in the place of the Minister and consider the merits of the proposed Amendment. Amendments to a municipality's official plan are never simply a formality or a routine matter, but must be considered in light of the role of the plan as the basic planning document for the community. Thus, the question that the Board must address, despite the accommodation proposed by the Ministry, is whether the uses permitted by the compromise wording of the Official Plan Amendment are consistent with that allowed within the secondary agricultural uses as provided by the Comprehensive Policy Statement.

Citation	Quotation
	… 9 The Board is compelled to apply the Policy Statement within the terms of the Planning Act as it then was. In this respect I cannot simply "have regard to" the Policy Statement, I must ensure that the Amendment is "consistent with" the Policy Statement. In this light and even allowing the widest degree of interpretation and discretion, I cannot ignore the inconsistencies apparent between some of the uses - especially camping and tourist supplies and wooden outdoor furniture - and the secondary agricultural uses. The Board accepts that there is some latitude to consider that it might be possible to supplement local produce out of season, so that not every item sold is "from the farm operation". This is Mr. Oliver's reluctant concession. I accept further that such things as baked goods, preserves, crafts, and (giving every benefit of the doubt) "collectibles" may be considered "value added agricultural products." But the Board can go no further than this without stepping outside any reasonable understanding of the law and policy of the Province. 10 Therefore the Board will accept the Official Plan Amendment, but only with further modification that omit those items which result in uses that are inconsistent with the Policy Statement, and permitting those that, in the circumstances of this site and the application on it, may be considered secondary agricultural uses. The Official Plan Amendment, as further modified, will read as follows: …
2006 CarswellOnt 5959, 2006 WL 2812198 (O.M.B.)	***Boals v. Kincardine (Municipality)*** 7 In summary, the appellant's position is that the proposal represents an appropriate form of intensification and therefore is consistent with the Provincial Policy Statement (PPS), conforms to the applicable Official Plans and represents good land use planning. Three witnesses testified in support of the amendment, professional land use planners Don Scott and Leah Andrews and Mr. Boals. Ms Andrews, who is employed with the County of Bruce, testified under summons. Both Mr. Scott and Ms Andrews submit that the Property has the potential for a more intense use than what exists. In their view, the proposal is compatible with the existing uses in the area and in this regard note that, with the exception of the number of units proposed and the reduction in the lot frontage, the buildings will be equal in height, size and mass to what is permitted in the R1 zone and any adverse impacts can be properly mitigated through site plan control. 8 The Municipality opposes the proposal. It submits that while the PPS and the applicable Official Plans support intensification, this proposal is not appropriate and therefore is not consistent with the PPS, does not conform to the Plans and does not represent good land use planning. The Municipality called one witness, Richard Zelinka, a professional land use planner. 16 The application before the Board is an amendment to the R4 zone to permit

Citation	Quotation
	two 6-unit apartment buildings. During the hearing some references were made to the notion of "preserving" or maintaining the R1 zoning for the Property. In particular the Board notes the evidence of Mr. Plater who testified that he wants the Property to remain in the R1 zone. The matter before the Board is a site specific amendment from R1 to R4 and in that regard, the issue is whether the R4 zone and the proposal is consistent with the PPS, conforms to the County and Municipal Official Plans and represents good land use planning. In so doing, the Board is examining whether there should be a zoning change from R1 to R4 and nothing further. It would be incorrect to draw from this decision that the R1 zone should remain in perpetuity as that is not the issue before the Board. The evidence at this hearing was restricted to this proposal. Mr. Zelinka indicated quite candidly in cross-examination that while it may be possible that a semi-detached dwelling could fit in the area, he has not seen and therefore cannot opine on any such proposal. The only evidence before the Board is for a 6-unit apartment building on each lot. 21 In this instance, the difference in the planning opinions lies in how they interpret and apply the PPS. Mr. Scott and Ms Andrews apply a strict reading and interpretation of the policies. In simplified terms, their evidence is that intensification is the primary goal and objective in the PPS. This application represents intensification and therefore is consistent with the PPS. To some extent, this approach suggests that the policies support a carte blanche application of the principle. 22 The Board prefers the opinion of Mr. Zelinka. His evidence is that, while the PPS promotes intensification, it does not advocate for intensification in all areas and all forms. Mr. Zelinka was very forthright in stating that such approach would lead to serious adverse consequences. The Board agrees. 23 Mr. Zelinka submits that the PPS contemplates limits to intensification such that it must be appropriate. The notion of appropriateness is recognized in the PPS by the use of the word "appropriate". Even further, Mr. Zelinka notes that the PPS calls for planning authorities to identify appropriate areas for intensification which is an indication that, while the policies promote intensification, it is not a blanket approach and further that there is some room in the process for input from the local level.
2006 CarswellOnt 5537, 26 M.P.L.R. (4th) 1, Ontario Court of Appeal, 2006	***Hill & Hill Farms Ltd. v. Bluewater (Municipality)*** 1 This appeal concerns the jurisdiction of the Normal Farm Practices Protection Board under the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1 (the *FFPPA*) to grant relief from the application of a zoning by-law. Pursuant to subsection 6(3) and 6(6) of the *FFPPA*, the Board is empowered to determine whether an agricultural operation or proposed operation that is directly affected by a municipal by-law is a normal farm practice [FN1]. If so,

Citation	Quotation
	then, pursuant to s. 6(1) of the Act: No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation … 4 My conclusion requires me to go on and review the decision of the Board. I am of the opinion that the Board's decision should be reviewed on a standard of reasonableness. Pursuant to section 6(15) of the FFPPA, one of the four factors the Board is required to consider in determining whether a practice is a normal farm practice is whether the by-law reflects a provincial interest as set out in a policy statement. The Board held that its decision did not contradict the provincial policy statements issued under Section 3 of the Planning Act. The provincial policy statements require that new or expanding livestock facilities comply with the minimum distances separation formulae. Inasmuch as the Board's decision cut the required minimum distance separating Hill's proposed operation from the Stanley Complex in half, the Board's conclusion that its decision was in compliance with the provincial policy statements is simply not tenable and is unreasonable. 5 More importantly, s.9 of the *FFPPA*, requires that, "...the Board's decisions under this Act must be consistent with [the Minister of Agriculture's] directives, guidelines or policy statements." The exercise of the Board's power was therefore limited by s. 9. All that By-law 22 -1985 of the Township of Stanley did was enact the Minimum Distance Separation (MDSII) guidelines of the Ministry of Agriculture for the siting of livestock facilities from other uses. The Board's decision that Hill need not comply with the minimum distance specified in the by-law for siting his barns is not consistent with the MDSII guidelines. The Board's decision is therefore unreasonable; it surpasses the limitation imposed by s. 9 and therefore cannot stand. **Conclusion** 56 The Board's decision cannot stand. Pursuant to s. 9(1) of the *FFPPA*, the Board was required to ensure that its decision in this case was consistent with the Ministry's MDS II guidelines. Compliance with the Ministry's MDS II guidelines would have required the appellant's closest proposed barn to be located 604 metres from the institutional zone occupied by the Stanley Complex. Instead, the Board permitted a setback of only 302 metres. This result -- a reduction by half of the required setback distance -- simply cannot be said to be consistent with the MDS II guidelines. The Board could not ignore section 9 and render a decision that was inconsistent with the MDS II guidelines. It's decision was unreasonable. 57 In the result I would dismiss the appeal.

Citation	Quotation
	Alberta
2000 CarswellAlta 230, 250 A.R. 365, 213 W.A.C. 365, 12 M.P.L.R.(3d) 153, 83 Alta. L.R. (3d)239, [2000] A.J. No. 253, 2000 ABCA 79, Alberta Court of Appeal, 2000	***Daisley v. Lethbridge (City)*** ***IX. General Rules for all Districts*** **40. Applicability** Unless otherwise provided in an individual district, or in the general rules for commercial, industrial, public service or residential districts, the following rules apply to all uses in all districts. . . . . . **43. Design, Character and Appearance of Buildings** ***(1) General:*** The design, character and appearance of buildings: (a) Shall be consistent with the purpose of the district in which the building is located. (b) Shall take into account any other buildings existing in the vicinity. … 21 It is clear that s.43 of the bylaw requires the MPC to determine, in its discretion, whether the "design, character and appearance of buildings" in the proposed development is "consistent with the purpose of the district in which the building is located", and must "take into account any other buildings existing in the vicinity." As recognized by the learned chambers judge, there is little scope for a court to review the exercise of that discretion, provided the decision of the MPC is not patently unreasonable. … 25 In the absence of any evidence or any indication in the record as to whether the MPC considered s.43 of the bylaw, it must be presumed that the MPC considered and weighed all relevant factors it was mandated to consider.
	British Columbia
1999 CarswellBC 2112, 5 M.P.L.R. (3d) 135, British Columbia Supreme Court, 1999	***Loewen v. Coquitlam (City)*** 29 The applicant's submission on this aspect of the case it is that the authority under s. 920(2) of the *Municipal Act* to issue a development permit "must be exercised only in accordance with the applicable guidelines specified in an official community plan" pursuant to s. 920(3). The applicable official community plan ("OCP"), the "Maillardville Official Community Plan" includes clause 4.3(a) headed "Guidelines to Achieve Objectives" which provides as

Citation	Quotation
	follows: a) New multi-family residential development shall be consistent with the "Design Guidelines for New Multi-Family Residential Developments in Maillardville with French-Canadian Character", District of Coquitlam, November 1987, adopted by Council Resolution No. 1044, 1987, and as may be amended by Council from time to time by resolution. These "Design Guidelines" I will hereafter refer to as "the Guidelines". … 42 I am satisfied that the provision in s. 4.3(a) of the OCP that "new multi-family residential development shall be consistent" with the Guidelines, makes it clear to any reader, in a manner the OCP considered in Washi did not, what guidelines are applicable. My conclusion that the Guidelines are specified as incorporated in the OCP is supported by the fact that, as is not disputed and is reflected in the General Manager's memo quoted above, the project was "reviewed in relation to the OCP in terms of the Design Guidelines" by City officials. … 44 It is true that the Guidelines are not in language which would normally be used for mandatory legislative provisions, but they do state "the Maillardville-based approach is essential for proposed developments in and around Laval Square and along the Brunette Avenue frontage near identified potential heritage sites". 45 The OCP s. 4.3(a) is expressed in mandatory language, "shall be consistent with", yet the Guidelines are not. Thus it is argued in the GVRD's written submission "compliance with the Design Guidelines will be achieved ... if [they] are consulted and ... the application is submitted to the Advisory Panel". "Consulted" in this context must mean considered by City officials. … 47 Since the OCP mandates that the project for which the development project application was made "shall be consistent" with the Guidelines, the first part of that advice must, as a matter of logic, be wrong if the second part, that only "a number" and not all of the Guidelines have been met, is correct. It is a necessary logical inference from the second part of the advice that "a number" of the Guidelines have not been met. If that is so, it logically follows that the application is not consistent with the provision of the OCP which mandates that the project be consistent with the Guidelines. 48 The detailed written submission of the applicant makes a persuasive case that many aspects of the project are not consistent with the Guidelines. At the least, it raises considerable doubt that the project is entirely consistent with the Guidelines. On the view I take of this case, I need not decide whether the project

Citation	Quotation
	is consistent with the Guidelines, for reasons which follow. … 56 At the very least the applicant has demonstrated there is doubt that the project met all the Guidelines. City officials in their advice to the council indicated, by implication at least, that "a number" of the Guidelines had not been met. In light of the doubt about whether all the Guidelines had been met, the City council did not act in conformity with its obligation to act judicially as dictated by the Westfair case, before authorizing the development permit. 57 To meet that obligation the City council had to establish clearly and in a manner open to public scrutiny that all Guidelines had been met. Alternatively, assuming the council had the jurisdiction to authorized the development permit even if "each an every" one of the Guidelines was not met, its obligation was to address the questions of which Guidelines were not being met and why directly and in a manner open to public scrutiny. 58 Since the City council did not do either of those things, I find that it did not act judicially in authorizing the development permit and therefore acted without jurisdiction. It follows that the development permit must be set aside.
	United States
3 Va.App.599, 352 S.E.2d 525, Court of Appeals of Virginia, 1987	***Roanoke Memorial Hospitals v. KenleyVa.App.*** The circuit court did not discuss all forty-one of the requirements of the Code. We believe that “consistent with” as used in the context of the statute does not mean “exactly alike” or “the same in every detail.” It means instead, “in harmony with,” “compatible with,” “holding to the same principles,” or “in general agreement with.” Both the Code and the State Health Plan recognize that the Commissioner will exercise some discretion in issuing a CON to determine whether his decision is “consistent with” the standard in the State Health Plan, including the proviso that there “should be no additional megavoltage units opened, unless each existing megavoltage unit in a given medical service area is performing at least 6,000 treatment visits per year.”
51 Misc.2d 311, Supreme Court, New York County, New York, Special Term, Part I, 1966	***English v. McCoy*** The standards and policies of the Administrative Board are required to be ‘consistent with the civil service law’ (Judiciary Law s 212). This means ‘in accordance with’ rather than ‘governed’ by the Civil Service Law. (Goldstein v. Lang, 23 A.D.2d 483, 255 N.Y.S.2d 557 (1965) (dissenting opinion), rev'd on dissenting opinion in App.Div. 16 N.Y.2d 735, 262 N.Y.S.2d 112, 209 N.E.2d 728 (1965). The Administrative Board is thus bound by the general principles of civil service- examinations and tenure principally-but it has discretion to fit the

Citation	Quotation
	particular application of these principles to the new situation which it is required to meet. Ibid.
87 P.U.R.3d 406, 182 N.W.2d 648, Supreme Court of Nebraska, 1971	***Wells Fargo Armored Service Corp. of Nebraska v. Bankers Dispatch Corp.*** 'Consistent with the public interest,' as used by the quoted section, means ****651** that the proposed contract carrier service does not conflict with the legislative policy of the state in dealing with transportation by motor vehicles. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., 183 Neb. 229, 159 N.W.2d 310 (1968). To be contrasted with this is the heavier burden put upon an applicant for a common carrier certificate. In that case, the applicant must meet the test of 'public convenience and necessity,' also set out in section 75-311, R.S.Supp., 1969: 'A certificate shall be issued to any qualified applicant therefore * * * if it is found * * * that the proposed service * * * is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.'
183 Neb. 229, 159 N.W.2d 310, Supreme Court of Nebraska, 1968	***Samardick of Grand Island-Hastings, Inc. v. B. D. C. Corp.*** The burden is on the applicant to affirmatively establish the conditions precedent to the grant of a permit as a contract carrier. It must show that it is fit, willing, and able to perform the service in compliance with the rules and regulations of the commission and that the proposed operation is consistent with the public interest and the legislative policy expressed in sections 75-301 and 75-311, R.R.S.1943. The term 'consistent with the public interest' is quite different in its meaning than ***237** the term 'public convenience and necessity.' The former means only that the proposed contract carrier service does not conflict with the legislative policy of the state in dealing with transportation by motor carriers, while the latter requires a consideration of the present service being rendered in the territory, the need of additional service, and the facilities which the applicant can provide. Consistent with the public interest simply means that it is not contrary to the public policy of the state as expressed in the *Motor Carrier Act. Hagen Truck Lines, Inc. v. Ross, supra.*

Table 5 - Planning Act: "Shall Conform With", "Conform With", "Conforms To", "Conformity"

Section Number	Language
3(5)	**Policy statements and provincial plans** (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5. See: 2006, c. 23, ss. 5, 37 (2).
3(6) Policy statements and provincial plans	**Same** (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5. See: 2006, c. 23, ss. 5, 37 (2).
22(7.4) Appeal to the Municipal Board	**Exception** (7.4) Despite subsection (7.1), a person or public body may appeal to the Municipal Board in respect of all or any part of a requested amendment described in clause (7.2) (a) or (b) if the requested amendment, (a) is in respect of the official plan of a lower-tier municipality; and (b) conforms with the official plan of the upper-tier municipality. 2006, c. 23, s. 11 (6). See: 2006, c. 23, ss. 11 (6), 37 (2)

Section Number	Language
24(1)	**Public works and by-laws to conform with plan** 24. (1) Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith. R.S.O. 1990, c. P.13, s. 24 (1); 1999, c. 12, Sched. M, s. 24.
24(2) Public works and by-laws to conform with plan	**Pending amendments** (2) If a council or a planning board has adopted an amendment to an official plan, the council of any municipality or the planning board of any planning area to which the plan or any part of the plan applies may, before the amendment to the official plan comes into effect, pass a by-law that does not conform with the official plan but will conform with it if the amendment comes into effect. 2006, c. 23, s. 12.
24(2.1) Public works and by-laws to conform with plan	**Same** (2.1) A by-law referred to in subsection (2), (a) shall be conclusively deemed to have conformed with the official plan on and after the day the by-law was passed, if the amendment to the official plan comes into effect; and (b) is of no force and effect, if the amendment to the official plan does not come into effect. 2006, c. 23, s. 12. See: 2006, c. 23, ss. 12, 37 (2).
24(3) Public works and by-laws to conform with plan	**Preliminary steps that may be taken where proposed public work would not conform with official plan** (3) Despite subsections (1) and (2), the council of a municipality may take into consideration the undertaking of a public work that does not conform with the official plan and for that purpose the council may apply for any approval that may be required for the work, carry out any investigations, obtain any reports or take other preliminary steps incidental to and reasonably necessary for the undertaking of the work, but nothing in this subsection authorizes the actual undertaking of any public work that does not conform with an official plan. R.S.O. 1990, c. P.13, s. 24 (3).
24(4) Public works and	**Deemed conformity** (4) If a by-law is passed under section 34 by the council of a municipality or a planning board in a planning area in which an official plan is in effect and, within

Section Number	Language
by-laws to conform with plan	the time limited for appeal no appeal is taken or an appeal is taken and the appeal is withdrawn or dismissed or the by-law is amended by the Municipal Board or as directed by the Board, the by-law shall be conclusively deemed to be in conformity with the official plan, except, if the by-law is passed in the circumstances mentioned in subsection (2), the by-law shall be conclusively deemed to be in conformity with the official plan on and after the day the by-law was passed, if the amendment to the official plan comes into effect. 1994, c. 23, s. 16 (2); 1996, c. 4, s. 14 (2).
26(1)	**Updating official plan** **26.** (1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses, (a) revise the official plan as required to ensure that it, (i) conforms with provincial plans or does not conflict with them, as the case may be, (ii) has regard to the matters of provincial interest listed in section 2, and (iii) is consistent with policy statements issued under subsection 3 (1); and (b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended. 2006, c. 23, s. 13.
26(2)	**Effect of provincial plan conformity exercise** (2) For greater certainty, the council revises the official plan under subsection (1) if it, (a) amends the official plan, in accordance with another Act, to conform with a provincial plan; and (b) in the course of making amendments under clause (a), complies with clauses (1) (a) and (b) and with all the procedural requirements of this section. 2006, c. 23, s. 13.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Section Number	Language
26(9)	**Updating zoning by-laws** (9) No later than three years after a revision under subsection (1) or (8) comes into effect, the council of the municipality shall amend all zoning by-laws that are in effect in the municipality to ensure that they conform with the official plan. 2006, c. 23, s. 13.
26(10)	**Minister may request amendment to zoning by-law** (10) The Minister may, if he or she is of the opinion that a zoning by-law in effect in the municipality does not conform with the official plan as revised under subsection (1) or (8), request the council of the municipality to pass an amendment to the zoning by-law to achieve conformity. 2006, c. 23, s. 13**.**
27(1)	**Amendments to conform to official plan** 27. (1) The council of a lower-tier municipality shall amend every official plan and every by-law passed under section 34, or a predecessor of it, to conform with a plan that comes into effect as the official plan of the upper-tier municipality. 2002, c. 17, Sched. B, s. 7
28(6)	**Powers of council re land** (6) For the purpose of carrying out a community improvement plan that has come into effect, the municipality may, (a) construct, repair, rehabilitate or improve buildings on land acquired or held by it in the community improvement project area in conformity with the community improvement plan, and sell, lease or otherwise dispose of any such buildings and the land appurtenant thereto; (b) sell, lease or otherwise dispose of any land acquired or held by it in the community improvement project area to any person or governmental authority for use in conformity with the community improvement plan. R.S.O. 1990, c. P.13, s. 28 (6); 2001, c. 17, s. 7 (6).
28(7) Com-munity improve-ment plans	**Grants or loans re eligible costs** (7) For the purpose of carrying out a municipality's community improvement plan that has come into effect, the municipality may make grants or loans, in conformity with the community improvement plan, to registered owners, assessed owners and tenants of lands and buildings within the community improvement project area, and to any person to whom such an owner or tenant has assigned the right to receive a grant or loan, to pay for the whole or any part of the eligible

Section Number	Language
	costs of the community improvement plan. 2006, c. 23, s. 14 (8). See: 2006, c. 23, ss. 14 (8), 37 (2).
28(10) Com-munity improve-ment plans	**Conditions of sale, etc.** (10) Until a by-law or amending by-law passed under section 34 after the adoption of the community improvement plan is in force in the community improvement project area, no land acquired, and no building constructed, by the municipality in the community improvement project area shall be sold, leased or otherwise disposed of unless the person or authority to whom it is disposed of enters into a written agreement with the municipality that the person or authority will keep and maintain the land and building and the use thereof in conformity with the community improvement plan until such a by-law or amending by-law is in force, but the municipality may, during the period of the development of the plan, lease any land or any building or part thereof in the area for any purpose, whether or not in conformity with the community improvement plan, for a term of not more than three years at any one time. R.S.O. 1990, c. P.13, s. 28 (10).
34(8)	**Acquisition and disposition of non-conforming lands** (8) The council may acquire any land, building or structure used or erected for a purpose that does not conform with a by-law passed under this section and any vacant land having a frontage or depth less than the minimum established for the erection of a building or structure in the defined area in which such land is situate, and the council may dispose of any of such land, building or structure or may exchange any of such land for other land within the municipality. R.S.O. 1990, c. P.13, s. 34 (8); 1996, c. 4, s. 20 (4).
43(2) Non-conform-ance	**Effect of amendment that conforms with subs. (1)** (2) Any land, building or structure that otherwise conforms with a by-law passed under section 34 or a predecessor thereof or an order made by the Minister under section 47 or a predecessor thereof does not cease to conform with the by-law or order by reason only of an amendment to the by-law or order that conforms with subsection (1). R.S.O. 1990, c. P.13, s. 43 (2).
45(2) Powers of committee re non-	**Other powers** (2) In addition to its powers under subsection (1), the committee, upon any such application, (a) where any land, building or structure, on the day the by-law was

Section Number	Language
conforming	passed, was lawfully used for a purpose prohibited by the by-law, may permit, (i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or (ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; or (b) where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law. R.S.O. 1990, c. P.13, s. 45 (2).
50(18.1) Foreclosure or exercise of power of sale	**Criteria** (18.1) No approval shall be given by a council under subsection (18) unless the approval conforms with the prescribed criteria. 1993, c. 26, s. 58 (2).
51(24) Plan of sub-division approvals	**Criteria** (24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to, (a) the effect of development of the proposed subdivision on matters of

Section Number	Language
	provincial interest as referred to in section 2; (b) whether the proposed subdivision is premature or in the public interest; (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any; (d) the suitability of the land for the purposes for which it is to be subdivided; (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them; (f) the dimensions and shapes of the proposed lots; (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land; (h) conservation of natural resources and flood control; (i) the adequacy of utilities and municipal services; (j) the adequacy of school sites; (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes; (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*. See: 2006, c. 23, ss. 22 (4), 37 (2).
51(58) Plan of sub-division approvals	**Final approval of plan** (58) Upon presentation by the person seeking to subdivide, the approval authority may, if satisfied that the plan is in conformity with the approved draft plan and that the conditions of approval have been or will be fulfilled, approve the plan of subdivision and, once approved, the final plan of subdivision may be tendered for registration. 1994, c. 23, s. 30.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Section Number	Language
57(7) Sub-division of land, certificate of validation	**Criteria for certificate** (7) No certificate shall be issued by a council under subsection (1) unless, (a) the land described in the certificate conforms with the prescribed criteria; or (b) the Minister, by order, has exempted that land from the criteria. 1993, c. 26, s. 63.
70.2(6) Develop-ment permit by-law	**Deemed conformity with official plan** (6) If a development permit by-law is passed under this section by the council of a municipality in which an official plan is in effect, subsection 24 (4) applies to the by-law in the same manner as if it were a by-law passed under section 34. 1994, c. 23, s. 46.
70.2(7) Develop-ment permit by-law to conform with plan	**Conformity with upper tier plans** (7) If an approval authority has approved an official plan adopted by an upper-tier municipality, every development permit by-law that is then in effect in the area affected by the plan shall be amended to conform with the plan and subsections 27 (2) to (4) apply, with necessary modifications, to the amendment. 1994, c. 23, s. 46; 2002, c. 17, Sched. B, s. 27.

Table 6 - Caselaw: "Shall Conform With"

Citation	Quotation
	Ontario
1996 CarswellOnt 5872, [1996] O.M.B.D. No. 538, Ontario Municipal Board, 1996	***Fralick v. Nanticoke*** 23 Sections 53(12) and 51(24)(c) of the *Planning Act*[FN15] require the Board, in considering an application for a provisional consent, to have regard to whether it generally conforms to the official plan. I have found that both the Regional plan and the District plan intend that the granting of consents be restricted to specific circumstances. These circumstances are not found in this case. I therefore cannot find that the consent conforms to either plan. Furthermore, s. 53(12) and s. 51(24)(b) require the Board to have regard to whether the proposed consent is premature. I have found that it is. Finally, s. 53(1) requires that I be "satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality." I am not so satisfied, and find that the future of the Applicants' property should be determined by plan of subdivision.
2003 CarswellOnt 5948, 46 O.M.B.R. 310, Ontario Municipal Board, 2003	***Ryan v. Adjala-Tosorontio (Township)*** 17 The primary issue in the hearing is conformity with the *Oak Ridges Moraine Conservation Act* and the Oak Ridges Moraine Conservation Plan. Section 7(1) of the *Oak Ridges Moraine Conservation Act*, S. O. 2001, c. 31 provides as follows: A decision that is made under the *Planning Act* or the *Condominium Act*, 1998 or in relation to a prescribed matter, by a municipal council, local board, municipal planning authority, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, shall conform with the Oak Ridges Moraine Conservation Plan. In addition, this *Act* establishes a hierarchy of planning legislation in Section 8(1) by stating: Despite any other Act, the Oak Ridges Moraine Conservation Plan prevails in the case of conflict between the Plan and (a) An official plan; (b) A zoning by-law; or (c) A policy statement issued under section 3 of the *Planning Act*. The combined effect of Section 7 and Section 8 of the *Act* is to make the Oak Ridges Moraine Conservation Plan the prevailing planning authority, requiring that all local planning authorities in the Oak Ridges Moraine jurisdiction pass legislation conforming to it. In this case it is not disputed that conformity with the

Citation	Quotation
	Oak Ridges Moraine Conservation Plan must be proven first and if proven, conformity with the Township Official Plan and the County Official Plan must also be proven.… 34 The appellants assert that they conform to the Oak Ridges Moraine Conservation Plan based on Section 7. The Board must apply the evidence of what is proposed to determine conformity.… 39 The Board finds the test in Section 7(a) of the Oak Ridges Moraine Conservation Plan is not met since what is requested is not permitted under the applicable Zoning By-law on November 15, 2001. A private boarding and kennel use for dogs is not permitted specifically as a use and the size of the proposed kennel of 261 square metres exceeds the limitation in the By-law of 58 square metres for an ancillary structure under home occupations.… 42 It is clear to the Board, based on the evidence, that there are features such as woodlands, watercourses and animal activity that would justify some analysis that the ecological integrity of the Plan Areas would not be affected. The evidence of Mr. Dragicevic does go some way to meeting that requirement, however, the Board has not been satisfied that the analysis has done more than to consider of the subject property when the analysis ought to consider the subject property in the context of the Plan Area with specific reference to the natural features that do surround the subject property. 43 The Board does understand that the words "to the extent possible, in Section 7(b) of the Plan" do import a practical insight into the environmental consideration, which will not, in every situation, require a full environmental impact study. 44 For these reasons the Board finds the proposed amendment to Zoning By-law 76-4 to permit a private boarding and kennel facility for dogs as ancillary to a dwelling unit is not in conformity with the Oak Ridges Moraine Conservation Plan. Since the Oak Ridges Moraine Conservation Plan is at the top of the planning hierarchy and the Official Plans of the municipalities, counties and regions must be brought into conformity with the Plan, the failure to conform to the Oak Ridges Moraine Conservation Plan defeats the appeal by itself. (Emphasis added)
2003 CarswellOnt 7506, Ontario Municipal Board, 2003	***Lau v. Richmond Hill (Town) Committee of Adjustment*** 14 With regard to Oak Ridges Moraine issues, Mr. Rendl noted that Section 7 (1) of the *ORMCA* requires any decision made by an approval authority under the Act shall conform with the ORMCP and that notwithstanding the location of the subject property within a "Settlement Area", section 22 (2) of the ORMCP essentially prohibits all development and site alteration within a key natural heritage feature (wetland/floodplain) and/or the related minimum (30metres from Lake Wilcox) vegetation protection zone. The Board was also directed to section

Citation	Quotation
	30(6) of the ORMCP requiring that an application for development of land in 'land conservation area (Category 2)': *shall* identify planning, design and construction practices that will keep disturbance to land form character (flood plain) to a minimum. The Board finds the consent application at variance to these policies. 15 The Board accepts the unchallenged evidence of planner, Rendl that the proposed lot runs afoul of a number of policy statements in the PPS, OPA 129 and ORMCP. With particular reference to the "items" listed under the Section 51 (24) of the Act, the Board finds that the proposed lot fails to address: (i) matters of Provincial Interest (pertinent policies in ORMCP and PPS); (ii) prematurity, (no supportive environmental studies); (iii) conflicts with the very specific policy regime set out in the Official Plan (OPA 129) for the lands abutting Lake Wilcox and (iv) proposes a configuration clearly 'at odds' with the regular shaped lots along this stretch of Plan 240. 16 Having failed to appropriately address at least four of the "items" of Section 51 (24), the Board allows the appeal and rules that provisional consent is not given.
2004 CarswellOnt 2895 1 M.P.L.R. (4th) 55, Ontario Superior Court of Justice, 2004	***Seguin (Township) v. Grin*** 33 In this case, the effect of Section 4 of the zoning by-law when read together with Section 1.3 of the same by-law, which expressly states that "no building, structure or land shall be used and no building or structure shall be erected, structurally altered or enlarged *except in conformity with the by-law*" is not to be taken to mean that only "expressly permitted" uses are allowed. No by-law can be expected to cover all unforeseen exigencies or societal changes or commercial undertakings at the time of drafting. The use of the words "in conformity with" are designed to meet those future needs that could not have been anticipated at the drafting of the legislation but which can other wise be determined to be consistent with the "expressed" principle of the legislation. If it were intended to be otherwise, the drafters of the by-law, instead of using the words "in conformity with", would have used more limiting language such as, "except to accord with only those uses 'expressly permitted' by this by-law" … 37 When one considers the activities associated with the WT Summer Camp which occur on the Property only, leaving aside those activities which occur on the public beach or at the Humphrey Arena as those lands are not the subject of the Application brought by the Township nor are they owned by Grin and Beemer, it would appear that the uses envisaged under the definitions of "dwelling unit", "dwelling or dwellings for the owner or resident staff", "home industry", "tourist home", "guest cabin", "private park", and "fishing camp" (each being a use authorized by the by-law) are sufficiently broad to authorize all of the

Citation	Quotation
	uses undertaken on the Property in connection with running the WT Summer Camp. … 39 The by-law does not contain any restriction on the number of persons that may live in a "dwelling unit", nor does it restrict the number of members that may constitute a family. The by-law's only limitation affecting the scale of use is through the coverage provision, which allows buildings up to 34,335 sq. ft. in size. 40 The use to which the Property is put by Grin and Beemer is consistent with the criteria set out in Section 2.66 of the By-law, which defines a "home industry", a permitted use. 41 Also the use to which the Property is put by Grin and Beemer is consistent with the definition of "tourist home" in the By-law. Although "vacationing public" is not defined in the By-law, applying the reasoning in *Thunder Bay (City) v. Potts* (supra), the words "vacationing public" are to be given a broad meaning which would encompass the type of activity the WT Summer Camp carries on by Grin and Beemer. … 46 The Counter-Application by Grin and Beemer seeking a declaratory order that WT Summer Camp operating on the Property is a permitted use under the Township of Humphrey's zoning by-law is granted. [History of case shows that it has been reversed by 2005 CarswellOnt 1459, which states: APPEAL from judgment reported at Seguin (Township) v. Grin (2004), 1 M.P.L.R. (4th) 55, 2004 CarswellOnt 2895 (Ont. S.C.J.), dismissing township's application for interim and permanent injunction restraining owners from operating camp, and granting owners' counter-application for declaratory order that camp was permitted use under zoning by-law. ***Per curiam*:** 1 The appeal, being unopposed, is allowed. We understand that the matter has been settled and we make no comment on the merits of the appeal. We also make no order as to costs. *Appeal allowed.*

Citation	Quotation
	Manitoba (S.C.C.)
1990 CarswellMan 235, [1991] 2 W.W.R. 145, [1990] 3 S.C.R. 1170, 46 Admin. L.R. 161, 2 M.P.L.R. (2d) 217, 75 D.L.R. (4th) 385, 116 N.R. 46, 69 Man. R. (2d) 134	***Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*** Per Sopinka J. (Dickson C.J.C., Wilson and MacLachlin JJ. concurring) … The question of conformity of a zoning by-law to an official plan is primarily a planning decision based on fact and policy. The opinion of the designated commissioner, while not immune from judicial review, should not be disturbed by an appellate court simply because it disagrees with the opinion in respect of policy or fact. The commissioner is in a much better position than the court to assess the conformity of a new development. The Court of Appeal confirmed the commissioner's opinion that the proposed rezoning conformed to the development plan. Accordingly, the present court would not be justified in substituting its view of fact and policy except in the most exceptional circumstances.… Per La Forest J. (dissenting) (L'Heubreux-Dubé and Cory JJ. concurring) In determining whether the zoning by-law conforms with the development plan, the purpose of the plan in the context of the planning process must not be forgotten. The point of establishing the plan is to place constraints on the future character of development in accordance with long-term objectives. In order to ensure that the municipal council does not exercise its powers in such a way as to inhibit the ultimate implementation of the objectives, the City of Winnipeg Act mandates that zoning must fit the plan. The condominium development represents a derogation from the regional park designation in the plan. The municipality had first to amend the plan before it could permit development that conflicted with the policy of the plan. Council could not circumvent any part of the procedures for amendment by the passage of zoning by-laws. Judicial review was not inappropriate in this case. The designated commissioner is not independent of council, but is appointed and may be dismissed by council. In addition, there is no privative clause; thus it is open to the courts to overturn a decision which is legally incorrect rather than patently unreasonable. Moreover, the land in question clearly did not conform with the development plan. … [Dissent continued] 8 The Residents Association attacks the rezoning by-law on the ground that council exceeded its zoning power by failing to conform with Plan Winnipeg. It points to s. 599 of the City of Winnipeg Act, which delimits the zoning power of

Citation	Quotation
	Council as follows: 599 In exercising the power delegated by section 598, the council *shall conform* to the Greater Winnipeg development plan, and any relevant provision in a community plan and action area plan. [emphasis added] 27 First, the designated commissioner is not independent of council, but is appointed and may be dismissed by council pursuant to s. 2(5) of the Act. It should be noted, as well, that there is no privative clause. Thus, it is open to the courts to overturn a decision which is legally incorrect, rather than patently unreasonable. It is also important to realize that we are not dealing here with a subtle issue which requires great planning expertise and direct knowledge of local land use dynamics. We are faced with the prospect of a seven-storey condominium tower which is to be built on an area clearly designated on the plan policy map as park land. With all deference, I am unable to understand how this can be said to conform with the plan. To so hold would be to set at nought the carefully crafted provisions devised by the legislature to ensure the participation of citizens in planning decisions affecting the character of the community in which they live. 28 I conclude that the city was precluded from adopting the zoning by-law in question, and must look to amending the plan.… [Majority] 101 It is clear that the Act establishes a complex scheme of nested plans of increasing specificity. That these plans are not intended to alter zoning, but are intended to guide future development and planning, is made clear in the definition of the Greater Winnipeg development plan (Plan Winnipeg): ... a statement of the City's policy and general proposals in respect of the development of the land in the city and the additional zone, set out in texts, maps or illustrations, and measures for the improvement of the physical, social and economic environment and transportation. 102 It is contended by the appellant that the proposed zoning does not conform to Plan Winnipeg. There was no community plan for the area. An earlier district plan had been adopted as the action area plan. In this plan the land was designated "future residential" though zoning heights and densities were left undetermined. In the map accompanying the text of Plan Winnipeg, the land in question was designated partly "regional park" with the balance designated "older residential neighbourhood." 103 Is there non-conformity with Plan Winnipeg? As in the instant case, it may frequently be difficult to determine if a proposed rezoning does not conform with

Citation	Quotation
	a general statement of policies and principles. The Act provides: 609(2.1) Where the designated commissioner *is of the opinion* that the zoning by-law applied for would not conform to The Greater Winnipeg Development Plan, a relevant community plan or an action area plan, he shall refer the application to the designated committee and if that committee is of the same opinion the application shall not be referred to the community committee ... unless and until the council has given 1st reading to a by-law to amend the plan and remove that non-conformity. [emphasis added] 104 The development is residential, though it certainly is not single family dwellings. This is consistent with the area plan. However, though it conforms in the main with Plan Winnipeg, the part of the project designated parkland in that plan is the source of the alleged non-conformity. As mentioned in Plan Winnipeg, the proposed development would retain a strip, albeit reduced in width, of park beside the river. One street providing access to the river will be closed; it is not clear whether pedestrian access to the river will be prevented. In addition, the development is definitely in conformity with a policy of encouraging private sector investment in older residential neighbourhoods, a goal of Plan Winnipeg. 105 It is clear from the facts of this case that the designated commissioner was of the opinion that the proposed rezoning did conform to Plan Winnipeg. Huband J.A. came to the same conclusion on the basis that the proposed rezoning complied with the spirit of the text and map "in terms of what our civic elected representatives hope for the future of that particular area" [p. 727]. 106 The question of conformity to an official plan is primarily a planning decision which is based on fact and policy. The opinion of the designated commissioner, while not immune from judicial review, should not be disturbed by an appellate court simply because it disagrees with the opinion in respect of policy or fact. The commissioner is in a much better position to assess whether a new development conforms to the planning policy of the municipality than is the court. Huband J.A. was not prepared to disagree with the commissioner's opinion. Indeed, he confirmed the opinion. In light of the above, this court would not be justified in substituting its view of fact and policy except in the most exceptional circumstances.

Table 7 - Planning Act: "Conflict"

Section Number	Language
	Planning Act
2(n)	**Provincial interest** **2.** The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as, (n) the resolution of planning conflicts involving public and private interests;
3(5)	**Policy statements** **3.** (1) The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interest. R.S.O. 1990, c. P.13, s. 3 (1). **Policy statements and provincial plans** (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.
3(6)	**Same** (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Section Number	Language
5(4)	**Conditions** (4) A delegation made by a council under subsection (1) or (3) may be subject to such conditions as the council may by by-law provide and as are not in conflict with any conditions provided by order of the Minister under section 4.
17(44.7)	**Conflict with *SPPA*** (44.7) Subsections (44.1) to (44.6) apply despite the *Statutory Powers Procedure Act*. 2006, c. 23, s. 9 (7). **See: 2006, c. 23, ss. 9 (7), 37 (2).**
26(1)	**Updating official plan** **26.** (1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses, (a) revise the official plan as required to ensure that it, (i) conforms with provincial plans or does not conflict with them, as the case may be, (ii) has regard to the matters of provincial interest listed in section 2, and (iii) is consistent with policy statements issued under subsection 3 (1); and (b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended. 2006, c. 23, s. 13.
27(4)	**Conflicts** (4) In the event of a conflict between the official plan of an upper-tier municipality and the official plan of a lower-tier municipality, the plan of the upper-tier municipality prevails to the extent of the conflict but in all other respects the official plan of the lower-tier municipality remains in effect. 2002, c. 17, Sched. B, s. 7.
34(24.7)	**Conflict with *SPPA*** (24.7) Subsections (24.1) to (24.6) apply despite the *Statutory Powers*

Section Number	Language
	Procedure Act. 2006, c. 23, s. 15 (12).
47(3)	**Order prevails over by-law in event of conflict** (3) In the event of a conflict between an order made under clause (1) (a) and a by-law that is in effect under section 34 or 38, or a predecessor thereof, the order prevails to the extent of such conflict, but in all other respects the by-law remains in full force and effect. R.S.O. 1990, c. P.13, s. 47 (3).
51(52.7)	**Conflict with *SPPA*** (52.7) Subsections (52.1) to (52.6) apply despite the *Statutory Powers Procedure Act*. 2006, c. 23, s. 22 (11). **See: 2006, c. 23, ss. 22 (11), 37 (2).**
70.2(4)	**Conflicts** (4) A regulation made under this section prevails over the provisions of any other Act that are specified in the regulation. 1994, c. 23, s. 46.
70.3(4)	**Conflicts** (4) A regulation made under this section prevails over the provisions of any other Act that are specified in the regulation. 1994, c. 23, s. 47.
70.4(5)	**Conflict** (5) A regulation under clause (1) (a) prevails over any provision of this Act specifically mentioned in the regulation. 2004, c. 18, s. 10.
70.5(5)	**Conflict** (5) A regulation under clause (1) (a) prevails over any provision of this Act specifically mentioned in the regulation. 2006, c. 23, s. 28.
71	**Conflict** **71.** In the event of conflict between the provisions of this and any other general or special Act, the provisions of this Act prevail. R.S.O. 1990, c. P.13, s. 71.
77(4)	**Conflicts** (4) Despite subsection (3), if there is a conflict between a by-law passed by the County of Oxford and a by-law passed by a lower-tier municipality in the exercise of a power under subsection (3), the by-law of the County of Oxford prevails. 2002, c. 17, Sched. B, s. 28.

Table 8 - Other Ontario and Other Canadian Legislation: "Shall Have Regard To"

Legislation & Section Number	Language
	Ontario
Aggregate Resources Act, R.S.O. 1990, c. A.8, s. 12(1), 26, 46(1)	**12(1) Matters to be considered by Minister** In considering whether a licence should be issued or refused, the Minister or the Board, as the case may be, shall have regard to, (a) the effect of the operation of the pit or quarry on the environment; (b) the effect of the operation of the pit or quarry on nearby communities; (c) any comments provided by a municipality in which the site is located; (d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site; (e) any possible effects on ground and surface water resources; (f) any possible effects of the operation of the pit or quarry on agricultural resources; (g) any planning and land use considerations; (h) the main haulage routes and proposed truck traffic to and from the site; (i) the quality and quantity of the aggregate on the site; (j) the applicant's history of compliance with this Act and the regulations, if a licence or permit has previously been issued to the applicant under this Act or a predecessor of this Act; and (k) such other matters as are considered appropriate. **26. Matters to be considered by Minister** The Minister in considering whether to issue or refuse a wayside permit shall have regard to, (a) any comments provided by the municipalities in which the site is located;

Legislation & Section Number	Language
	(b) the effect of the operation of the pit or quarry on the environment and nearby communities; (c) the amount of aggregate estimated to be removed from the site; (d) the estimated cost of the aggregate for the project as compared with that from any alternative source of supply; (e) the proper management of the aggregate resources of the area; (f) any previous wayside permits for the site and adjacent lands; (g) the rehabilitation of the site and its compatibility with adjacent land; (h) any possible effects on ground and surface water resources; (i) any proposed aesthetic improvements to the landscape; (j) the main haulage routes and proposed truck traffic to and from the site; and (k) such other matters as are considered appropriate. **46(1) Royalties** The Minister shall determine the royalty per tonne that each aggregate permittee removing from the site aggregate or topsoil that is property of the Crown must pay, but in no case shall the royalty be less than the prescribed minimum royalty, and, in determining the royalty, the Minister shall have regard to the location, quantity, type and accessibility of the aggregate or topsoil and its intended use.
Back to School Act, 1998, S.O. 1998, c. 13, s. 17(2)	**17(2) Same** For greater certainty, in complying with subsection (1) the mediator-arbitrator shall have regard to the provisions of the *Education Act* as it may be amended by Bill 63 (*An Act to amend the Education Act with respect to instructional time*, which received first reading on September 28, 1998) or by any other Act, regardless of whether section 2 of Bill 63 applies to a provision of an agreement between the parties.
Back to School Act, 1998, S.O. 1998, c. 13, s. 17(6)	**17(6) Same** The mediator-arbitrator shall include in the award a written statement explaining how, in his or her opinion, the scheduled board can meet the costs resulting from the award without incurring a deficit and, for the purposes of the statement, the mediator-arbitrator shall have regard to relevant education funding regulations and Ministry of Education and Training policies.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Legislation & Section Number	Language
City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, s. 21(4), 104(2), 115(3)	**21(4) Restriction re officers, employees, etc.** No delegation of a legislative power shall be made to an individual described in clause (1)(c) unless, in the opinion of city council, the power being delegated is of a minor nature and, in determining whether or not a power is of a minor nature, city council, in addition to any other factors council wishes to consider, shall have regard to the number of people, the size of geographic area and the time period affected by an exercise of the power. **104(2) Same** In passing a by-law prohibiting or regulating the destruction or injuring of trees in woodlands, the City shall have regard to good forestry practices as defined in the *Forestry Act*. **115(3) Eligibility criteria** In appointing persons to the appeal body, the City shall have regard to any prescribed eligibility criteria.
Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 17(3)	**17(3) Order respecting notice** The court shall make an order setting out when and by what means notice shall be given under this section and in so doing shall have regard to, (a) the cost of giving notice; (b) the nature of the relief sought; (c) the size of the individual claims of the class members; (d) the number of class members; (e) the places of residence of class members; and (f) any other relevant matter.
Commodity Futures Act, R.S.O. 1990, c. C.20, s. 1.1(2)	**1.1(2) Principles to consider** In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles: 1. Balancing the importance to be given to each of the purposes of this Act may be required in specific cases. 2. The primary means for achieving the purposes of this Act are, i. requirements for timely, accurate and efficient disclosure of information, ii. restrictions on fraudulent and unfair market practices and

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	procedures, and iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants. 3. Effective and responsive commodity futures regulation requires timely, open and efficient administration and enforcement of this Act by the Commission. 4. The Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations. 5. The integration of commodity futures markets is supported and promoted by the sound and responsible harmonization and co-ordination of commodity futures regulation regimes. 6. Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.
Compensat-ion for Victims of Crime Act, R.S.O. 1990, c. C.24, s. 13(1), 17(1)	**13(1) Publication of evidence** The Board may make an order prohibiting the publication of any report or account of the whole or any part of the evidence at a hearing where the Board considers it necessary but in making an order under this subsection the Board shall have regard to the desirability of permitting the public to be informed of the principles and nature of each case. **17(1) Considerations of Board** In determining whether to make an order for compensation and the amount thereof, the Board shall have regard to all relevant circumstances, including any behaviour of the victim that may have directly or indirectly contributed to his or her injury or death.
Coroners Act, R.S.O. 1990, c. C.37, s. 20	**20. What coroner shall consider and have regard to** When making a determination whether an inquest is necessary or unnecessary, the coroner shall have regard to whether the holding of an inquest would serve the public interest and, without restricting the generality of the foregoing, shall consider, (a) whether the matters described in clauses 31(1)(a) to (e) are known; (b) the desirability of the public being fully informed of the circumstances of the death through an inquest; and

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	(c) the likelihood that the jury on an inquest might make useful recommendations directed to the avoidance of death in similar circumstances.
Drainage Act, R.S.O. 1990, c. D.17, s. 65(3), 118(3)	**65(3) Apportionment of assessment** The engineer in making the apportionment shall have regard to the part of the parcel affected by the drainage works, and shall make the apportionment in writing and file it with the clerk of the local municipality who shall attach it to the original assessment and shall send, by prepaid mail, a copy thereof to each of such owners, and, subject to subsection (5), the apportionment is binding upon the lands assessed. **118(3) In cases of settlement** Where in any such proceedings by or against a municipality a settlement is made, the damages and costs payable under the terms of the settlement by any municipality shall be borne and paid as directed by the referee or court, and in making such direction, the referee or court shall have regard to the provisions of subsection (2).
Education Act, R.S.O. 1990, c. E.2, s. 58.1(13)	**58.1(13) Same** A person who establishes a geographic area under a regulation made under subclause (2)(k)(ii) shall have regard to any relevant submissions made by any person.
Environmental Bill of Rights, 1993, S.O. 1993, c. 28, s. 47(8)	**47(8) Same** In reaching a determination under subsection (7), the appellate body shall have regard to the intent and purposes of this Act.
Family Law Act, R.S.O. 1990, c. F.33(9), 33(15), 37(2.6)	**33(9) Determination of amount** In determining the amount and duration, if any, of support for a spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including, (a) the dependant's and respondent's current assets and means; (b) the assets and means that the dependant and respondent are likely to have in the future; (c) the dependant's capacity to contribute to his or her own support; (d) the respondent's capacity to provide support; (e) the dependant's and respondent's age and physical and mental health;

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	(f) the dependant's needs, in determining which the court shall have regard to the accustomed standard of living while the parties resided together; (g) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved **33(15) Reasonable arrangements** For the purposes of clause (14)(a), in determining whether reasonable arrangements have been made for the support of a child, (a) the court shall have regard to the child support guidelines; and (b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines. **37(2.6) Reasonable arrangements** For the purposes of clause (2.5)(a), in determining whether reasonable arrangements have been made for the support of a child, (a) the court shall have regard to the child support guidelines; and (b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines.
Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, s. 12(3)	**12(3) Effect of statements** The Commission, the Superintendent and the Tribunal shall have regard to the policy statements in making decisions.
Insurance Act, R.S.O. 1990, c. I.8, s. 416(3)	**416(3) Effect of statement** The Superintendent and the Tribunal shall have regard to the policy statements issued under this section in making decisions under this Part.
Line Fences Act, R.S.O. 1990, c. L.17, s. 8(2)	**8(2) Matters to be considered** In making the award, the fence-viewers shall have regard to the suitableness of the fence to the needs of each of the adjoining owners or the occupants of their land, as the case may be, the nature of the terrain on which the fence is, or is to

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	be, located, the benefit to both owners of having the boundary between their lands marked by a fence and the nature of the fences in use in the locality and may have regard to any other factors that they consider relevant.
Mortgages Act, R.S.O. 1990, c. M.40, s. 52(2)	**52(2) Idem** In considering the application, the judge shall have regard to the interests of the tenant and the mortgagee.
Municipal Act, 2001, S.O. 2001, c. 25, s. 135(5)	**135(5) Factor to be considered** In passing a by-law regulating or prohibiting the injuring or destruction of trees in woodlands, a municipality shall have regard to good forestry practices as defined in the *Forestry Act*.
Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched., s. 45(2)	**45(2) Special needs** In choosing a location for a voting place, the clerk shall have regard to the needs of electors with disabilities.
Ontarians with Disabilities Act, 2001, S.O. 2001, c. 32, s. 4(5), 5, 13, 30(2)	**4(5) New leases** If, after this section comes into force, the Government of Ontario enters into a new lease for a building, structure or premises, or part of a building, structure or premises, for the occupation or regular use by its employees, the Government shall have regard to the extent to which the design of the building, structure or premises, or part of the building, structure or premises, complies with the guidelines, in determining whether to enter into the lease. **5. Government goods and services** In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the Government of Ontario shall have regard to the accessibility for persons with disabilities to the goods or services. **13. Municipal goods and services** In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the council of every municipality shall have regard to the accessibility for persons with disabilities to the goods or services. **30(2)** Subsection 45(2) of the Act is repealed and the following substituted: **(2)** Special needs

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	In choosing a location for a voting place, the clerk shall have regard to the needs of electors with disabilities.
Ontario Energy Board Act, 1998, S.O. 1998, Chapter 15, Schedule B, s. 78(3.4)	**78(3.4) Forecasting cost of electricity** In forecasting the cost of electricity for the purposes of subsection (3.3), the Board shall have regard to such matters as may be prescribed by the regulations.
Ontario Municipal Board Act, R.S.O. 1990, c. O.28, s. 67	**67. Inquiry by the Board** Upon an application being made to the Board for the approval required by section 65, the Board shall proceed to deal with the application in the manner provided by and shall have regard to the matters mentioned in section 63, and may hold such public hearings as to the Board may appear necessary.
Public Sector Labour Relations Transition Act, 1997, S.O. 1997, c. 21, Sched. B, s. 22(7)	**22(7) Purposes** In making a determination under this section, the Board shall have regard to the purposes of this Act.
Securities Act, R.S.O. 1990, c. S.5, s. 2.1	**2.1 Principles to consider** In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles: 1. Balancing the importance to be given to each of the purposes of this Act may be required in specific cases. 2. The primary means for achieving the purposes of this Act are, i. requirements for timely, accurate and efficient disclosure of information, ii. restrictions on fraudulent and unfair market practices and procedures, and iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.
Settled Estates Act, R.S.O. 1990, c. S.7, s. 19(5)	**19(5) When court may dispense with consent** An order may be made despite the fact that the concurrence or consent of any such person has not been obtained or has been refused, but the court, in

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	considering the application, shall have regard to the number of persons who concur in or consent to the application and who dissent there from or who submit or are to be deemed to submit their rights or interests to be dealt with by the court, and to the estates or interests that such persons respectively have or claim to have in the estate, and every order made upon such application has the same effect as if all such persons had been consenting parties thereto.
Shoreline Property Assistance Act, R.S.O. 1990, c. S.10, s. 11(3)	**11(3) Apportionment of rate** The council in making the apportionment shall have regard to the effect of the works on each part into which the parcel of land is divided and such other matters as it considers appropriate, and the decision of the council with respect to the apportionment is final.
Succession Law Reform Act, R.S.O. 1990, c. S.26, s. 62(1), 62(4)	**62(1) Determination of amount** In determining the amount and duration, if any, of support, the court shall consider all the circumstances of the application, including, (a) the dependant's current assets and means; (b) the assets and means that the dependant is likely to have in the future; (c) the dependant's capacity to contribute to his or her own support; (d) the dependant's age and physical and mental health; (e) the dependant's needs, in determining which the court shall have regard to the dependant's accustomed standard of living; (f) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures; **62(4) Idem** In estimating the weight to be given to a statement referred to in subsection (3), the court shall have regard to all the circumstances from which an inference can reasonably be drawn as to the accuracy of the statement.
Tile Drainage Act, R.S.O. 1990, c. T.8, s. 12(3)	**12(3) Apportionment of rate** The council in making the apportionment shall have regard to the effect of the drainage work on each part into which the parcel of land is divided and such other matters as it considers appropriate, and the decision of the council with respect to the apportionment is final.
Toronto Waterfront Revitalizat-ion Corporation Act, 2002, S.O. 2002, c. 28, s. 3(3)	**3(3) Same** The Corporation shall have regard to the Official Plan of the City of Toronto in carrying out its objects.

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Waste Diversion Act, 2002, S.O. 2002, c. 6, s. 30(3)	**30(3) Fees** In making rules under clause (1)(b), the industry funding organization shall have regard to the following principles: 1. The total amount of fees paid by stewards under subsection 31(1) should not exceed the sum of the following amounts: i. The costs of developing, implementing and operating the program. ii. A reasonable share of costs not referred to in subparagraph i that are incurred by Waste Diversion Ontario in carrying out its responsibilities under this Act. iii. A reasonable share of costs incurred by the Ministry in administering this Act. 2. The fee paid by a steward should fairly reflect the proportion of the sum referred to in paragraph 1 that is attributable to the steward.
Waste Management Act, 1992, S.O. 1992, c. 1, s. 16(2)	**16(2) Environmental assessment** In preparing an environmental assessment for a landfill waste disposal site, the Corporation shall have regard to any policies established under subsection (1).
Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A, s. 48(23), 56(1)	**48(23) Deductions for CPP and QPP payments** In calculating the compensation payable by way of periodic payments under this section, the Board shall have regard to any payments of survivor benefits for death caused by injury that are received under the Canada Pension Plan or the Quebec Pension Plan in respect of the deceased worker. **56(1) Effect of payment, etc., from employer** When determining the amount of any payments under the insurance plan to be made to a worker or his or her survivors, the Board shall have regard to any payment or benefit relating to the accident that is paid by the worker's employer or provided wholly at the employer's expense.
Ont. Reg. 194 -- Rules of Civil Procedure, R.R.O. 1990, Reg. 194, s. 77.06(6), 77.07(3), 77.09.1(5), 78.12(4)	**77.06(6)** In choosing a track, the plaintiff shall have regard to all relevant considerations, including, (a) the complexity of the issues of fact or law; (b) the likely expense to the parties; (c) the importance to the public of the issues of fact or law;

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	(d) the number of parties or prospective parties; (e) the amount of intervention by the case management judge that the proceeding is likely to require; and (f) the time required for proper discovery, if applicable, and preparation for trial or hearing. **77.07(3)** On a motion under subrule (1), a case management judge or case management master shall have regard to the matters set out in subrule 77.06(6). **77.09.1(5)** In considering whether to assign a proceeding in accordance with this rule, the regional senior judge or designated judge shall have regard to all the relevant circumstances, including, (a) the purpose of case management; (b) the complexity of the issues of fact or law; (c) the importance to the public of the issues of fact or law; (d) the number and kind of the parties or prospective parties, and whether they are represented; (e) the number of proceedings involving the same or similar parties or causes of action; (f) the amount of intervention by the case management judge that the proceeding is likely to require; (g) the time required for discovery, if applicable, and for preparation for trial or hearing; (h) the number of expert witnesses and other witnesses; (i) the time required for the trial or hearing; and (j) any other factors that the judge considers relevant or that are raised by a party. **78.12(4)** In considering whether to assign an action to case management under subrule (1) or (3), the judge or case management master shall have regard to all the relevant circumstances, including the criteria set out in subrule 77.09.1(5).
Education Act, Ont. Reg. 412/00 -- Elections to and Representation on	**4(4)** In carrying out its duties under this section, the board shall have regard to the

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District School Boards, O. Reg. 412/00, s. 4(4)	following principles: 1. Municipalities with low populations should receive reasonable representation. 2. Evidence of historic, traditional or geographic communities should be taken into account. 3. To the extent possible, the identification of low population municipalities should permit the establishment of geographic areas that coincide with school communities. 4. Representation should not deviate unduly from the principle of representation by population.
Education Act, Ont. Reg. 400/05 -- Grants for Student Needs -- Legislative Grants for the 2005-2006 School Board, O. Reg. 400/05, s. 36(5), 49(2)	**36(5)** In determining an amount for the purposes of subsection (4), the Minister shall have regard to the effect of the circumstances referred to in clauses (4)(a) to (d) on the board's space needs. **49(2)** In making a determination under subsection (1) with respect to a pupil who is a French-speaking person, the Minister shall have regard to language of instruction.
Education Act, Ont. Reg. 145/04 -- Grants for Student Needs -- Legislative Grants for the 2004-2005 School Board, O. Reg. 145/04, s. 37(5)	**37(5)** In determining an amount for the purposes of subsection (4), the Minister shall have regard to the effect of the circumstances referred to in clauses (4)(a) to (d) on the board's space needs.
Education Act, Ont. Reg. 341/06 -- Grants for Student Needs -- Legislative Grants for the 2006-2007 School Board, O. Reg. 341/06, s. 39(5), 49(2)	**39(5)** In determining an amount for the purposes of subsection (4), the Minister shall have regard to the effect of the circumstances referred to in clauses (4)(a) to (d) on the board's space needs. **49(2)** In making a determination under subsection (1) with respect to a pupil who is a French-speaking person, the Minister shall have regard to language of instruction.

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Education Act, Ont. Reg. 170/00 -- Student Focused Funding -- Legislative Grants for the 2000-2001 School Board, O. Reg. 170/00, s. 37(5), 37(13)	**37(5)** In determining an amount for the purposes of subsection (4), the Minister shall have regard to the effect of the circumstances referred to in clauses (4)(a) to (d) on the board's space needs. **37(13)** The Minister shall determine loadings and categories of instructional space as follows: 1. Using school facilities data, the Minister shall identify categories of instructional space. In identifying categories of instructional space, the Minister shall have regard to but is not limited to the categories identified in the Report of the Pupil Accommodation Review Committee, dated August, 1998, which Report was released by the Ministry to school boards in September of 1998 and is available for public inspection at the offices of the Ministry of Education, 900 Bay Street, Toronto, Ontario, M7A 1L2. 2. The Minister shall assign a loading to each category of instructional space identified under paragraph 1, based on the number of pupils that can reasonably be accommodated in each category of instructional space. In determining the number, the Minister shall consider the factors that are, in his or her opinion, relevant, including but not limited to factors relating to the physical characteristics of the category of instructional space and the class size requirements of section 170.1 of the Act.
Education Act, Ont. Reg. 154/01 -- Student Focused Funding -- Legislative Grants for the 2001-2002 School Board, O. Reg. 154/01, s. 36(5), 36(16)	**36(5)** In determining an amount for the purposes of subsection (4), the Minister shall have regard to the effect of the circumstances referred to in clauses (4)(a) to (d) on the board's space needs. **36(16)** The Minister shall determine loadings and categories of instructional space as follows: 1. Using school facilities data, the Minister shall identify categories of instructional space. In identifying categories of instructional space, the Minister shall have regard to but is not limited to the categories identified in the Report of the Pupil Accommodation Review Committee, dated August, 1998, which Report was released by the Ministry to school boards in September of 1998 and is available for public inspection at the offices of the Ministry of Education, 900

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	Bay Street, Toronto, Ontario, M7A 1L2. 2. The Minister shall assign a loading to each category of instructional space identified under paragraph 1, based on the number of pupils that can reasonably be accommodated in each category of instructional space. In determining the number, the Minister shall consider the factors that are, in his or her opinion, relevant, including but not limited to factors relating to the physical characteristics of the category of instructional space and the class size requirements of section 170.1 of the Act.
Education Act, Ont. Reg. 156/02 -- Student Focused Funding -- Legislative Grants for the 2002-2003 School Board, O. Reg. 156/02, s. 36(5), 36(20)	**36(5)** In determining an amount for the purposes of subsection (4), the Minister shall have regard to the effect of the circumstances referred to in clauses (4)(a) to (d) on the board's space needs. **36(20)** The Minister shall determine loadings and categories of instructional space as follows: 1. Using school facilities data, the Minister shall identify categories of instructional space. In identifying categories of instructional space, the Minister shall have regard to but is not limited to the categories identified in the Report of the Pupil Accommodation Review Committee, dated August, 1998, which Report was released by the Ministry to school boards in September of 1998 and is available for public inspection at the offices of the Ministry of Education, 900 Bay Street, Toronto, Ontario, M7A 1L2. 2. The Minister shall assign a loading to each category of instructional space identified under paragraph 1, based on the number of pupils that can reasonably be accommodated in each category of instructional space. In determining the number, the Minister shall consider the factors that are, in his or her opinion, relevant, including but not limited to factors relating to the physical characteristics of the category of instructional space and the class size requirements of section 170.1 of the Act.
Education Act, Ont. Reg. 139/03 -- Student Focused Funding -- Legislative Grants for the 2003-2004 School Board, O. Reg. 139/03, s. 37(5), 37(20)	**37(5)** In determining an amount for the purposes of subsection (4), the Minister shall have regard to the effect of the circumstances referred to in clauses (4)(a) to (d) on the board's space needs. **37(20)** The Minister shall determine loadings and categories of instructional space as follows: 1. Using school facilities data, the Minister shall identify categories of

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	instructional space. In identifying categories of instructional space, the Minister shall have regard to but is not limited to the categories identified in the Report of the Pupil Accommodation Review Committee, dated August, 1998, which Report was released by the Ministry to school boards in September of 1998 and is available for public inspection at the offices of the Ministry of Education, 900 Bay Street, Toronto, Ontario, M7A 1L2. 2. The Minister shall assign a loading to each category of instructional space identified under paragraph 1, based on the number of pupils that can reasonably be accommodated in each category of instructional space. In determining the number, the Minister shall consider the factors that are, in his or her opinion, relevant, including but not limited to factors relating to the physical characteristics of the category of instructional space and the class size requirements of section 170.1 of the Act.
Education Act, Ont. Reg. 460/97 -- Transition from Old Boards to District School Boards, O. Reg. 460/97, s. 18(1)	**18(1)** In making an order under this Part, the Commission shall have regard to, (a) the needs of the designated board; (b) the needs of the supported board; and (c) where applicable, the interests described in subsection 33(4).
Highway Traffic Act, Ont. Reg. 424/97 -- Commercial Motor Vehicle Operators' Information Part II -- Safety Ratings, s. 16(1)	**16(1)** In assigning a safety rating, the Registrar shall have regard to the operator's safety record.
Insurance Act, Ont. Reg. 664 -- Automobile Insurance R.R.O. 1990, Reg. 664, s. 12(4)	**12(4)** If the arbitrator is requested to take into account a written offer under subsection (3), the arbitrator shall have regard to the terms of the offer, the timing of the offer, the response to the offer and the result of the proceeding.
Legal Aid Act, Ont. Reg. 710 – General R.R.O. 1990, Reg. 710, s. 47(1), 60.1(7), 80(4), Sched. 2, Sched. 3	**47(1)** In determining whether to issue a certificate, an area director shall have regard to the guidelines, if any, approved by Convocation. **60.1(7)** In setting a budget, those attending the case management meeting or the area

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	director, as the case may be, shall have regard to the guidelines, if any, approved by Convocation. **80(4)** In making a decision, the area director shall have regard to the guidelines, if any, approved by Convocation. **Schedule 2 – Fees in Criminal Matters, Notes** J. In any matter not dealt with by this Schedule, a Legal Accounts Officer shall allow a reasonable fee and, in determining the fee properly payable in respect of the matter, the Legal Accounts Officer shall have regard to this Schedule for comparable services. **Schedule 3 – Fees in Civil Matters, Notes** H. In any matter not dealt with by this Schedule, a Legal Accounts Officer shall allow a reasonable fee and, in determining the fee properly payable in respect of the matter, the Legal Accounts Officer shall have regard to this Schedule for comparable services. 23.1 Travel time shall be allowed at the rate of $43 per hour where a solicitor travels more than 10 kilometers, one way, from his or her office for an appearance as counsel on an adjournment, contested motion, examination for discovery, settlement conference, pre-trial hearing or trial on behalf of a client or where a solicitor necessarily travels more than 10 kilometers, one way, from his or her office to interview a client or a witness. The area director exercising discretion under this item shall have regard to the guidelines, if any, approved by Convocation. D. The area director exercising discretion under this Schedule shall have regard to the guidelines, if any, approved by Convocation. Amended 1995.
Municipal Act, 2001, Ont. Reg. 168/03 -- Municipal Business Corporations,O. Reg. 168/03, s. 3.1(4)	**3.1(4)** Within 10 years of the date the corporation is incorporated, the City shall undertake an evaluation and review of the corporation's operations and, in so doing, shall have regard to, (a) the usefulness and continued provision by the City of financial or other assistance to the corporation; and (b) the possible winding-up of the corporation.

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Prohibiting Profiting from Recounting Crimes Act, 2002, Ont. Reg. 236/03 -- Special Purpose Accounts, O. Reg. 236/03, s. 7(3)	**7(3)** In determining whether a direct victim claimant is eligible for compensation and the amount of compensation to be paid to an eligible direct victim claimant, the adjudicator shall have regard to all relevant circumstances, including any behaviour of the claimant that may have directly or indirectly contributed to the claimant's losses.
Remedies for Organized Crime and Other Unlawful Activities Act, 2001, Ont. Reg. 498/06 -- Payments Out of Special Purpose Accounts, O. Reg. 498/06, s. 8(4)	**8(4)** In determining whether a direct private victim or direct public victim claimant is eligible for compensation and the amount of compensation to be paid to an eligible claimant, the adjudicator shall have regard to all relevant circumstances, including any behaviour of the claimant that may have directly or indirectly contributed, (a) in the case of a direct private victim claimant, to the claimant's losses or to the unlawful activity; (b) in the case of a direct public victim claimant, to the claimant's pecuniary losses.
Workplace Safety and Insurance Act, 1997, Ont. Reg. 455/97 -- Pension Plan for Board Employees O. Reg. 455/97, s. 45.1(6)	**45.1(6)** In calculating the amount of the increase of a pension or deferred pension under subsection (5), the Board shall have regard to all prior indexing adjustments that have been made to the pension or deferred pension in each year.
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Alberta Health Care Insurance Act, R.S.A. 2000, c. A-20, s. 18(3)	**18(3)** In reassessing claims pursuant to subsection (2), the Minister shall have regard to all the circumstances that, without limitation, shall include (a) normal patterns of practice in Alberta of practitioners of the same profession who carry on similar types of practice in similar circumstances; (b) accepted standards of practice in Alberta of the profession of the practitioner concerned; (c) in cases referred to in subsection (2)(b), the amount that would have

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	been reasonable compensation for the service provided, in view of the time and degree of skill involved in providing the service.
Dangerous Goods Transportation and Handling Act, R.S.A. 2000, c. D-4, s. 29(2)	**29(2)** The court may make the order in addition to any other punishment imposed on the person and shall have regard to the nature and duration of the offence and the circumstances surrounding its commission.
Dependent Adults Act, R.S.A. 2000, c. D-11, s. 35(3)	**35(3)** In considering the matters referred to in subsections (1)(c) and (2), the Court shall have regard to the existence of any enduring power of attorney given by the person in respect of whom the application is made.
Dependants Relief Act, R.S.A. 2000, c. D-10.5, s. 3(3)	**3(3)** In estimating the weight to be given to a statement referred to in subsection (2)(c), the judge shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.
Family Law Act, S.A. 2003, c. F-4.5, s. 9(3)	**9(3)** In making a declaration of parentage, the court shall have regard to any subsisting presumption of parentage under section 8.
Family Law Act, S.A. 2003, c. F-4.5, s. 50(5)	**50(5)** In an application under this section, the court may make a finding that a person is a parent and in doing so, the court shall have regard to section 8, and sections 14 and 15 apply.
Family Law Act, S.A. 2003, c. F-4.5, s. 69	**69. Matters to be considered** In exercising its powers under sections 67 to 76, the court shall have regard to (a) the availability of other accommodation within the means of both the spouses or adult interdependent partners, (b) the needs of any children residing in the primary home, (c) the financial position of each of the spouses or adult interdependent partners, (d) any order made by a court with respect to the property or the support or maintenance of one or both of the spouses or adult interdependent partners, and

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	(e) any restrictions or conditions of any lease involving the primary home, if applicable.
Hydro and Electric Energy Act, R.S.A. 2000, c. H-16, s. 4(2)	**4(2)** Where the Board is considering an application for designation as an industrial system, the Board shall have regard to the following principles: (a) the designation must be consistent with the objective of giving appropriate economic signals so that integrated industrial processes can develop their own internal supply of electricity where that is the most economical source of generation; (b) the designation must support (i) the development of the economical supply of generation to meet the requirements of integrated industrial processes, (ii) the efficient exchange, with the interconnected electric system, of electric energy that is in excess of the industrial system's own requirements, and (iii) the making of decisions respecting the location of generation and consumption facilities so that the efficiency of the interconnected electric system is improved, including improved voltage stability and reduction of losses and congestion on transmission lines; (c) the designation must not facilitate (i) the development of independent electric systems that attempt to avoid costs associated with the interconnected electric system, and (ii) uneconomical by-pass of the interconnected electric system; (d) duplication of the interconnected electric system must be avoided where it is more economical to use the transmission facilities or electric distribution systems owned by persons in whose service area the industrial system is or will be located.
Labour Relations Code, R.S.A. 2000, c. L-1, s. 172	**172. Grouping of trade unions** The Board, in deciding which trade unions to group together in respect of a registration certificate, shall have regard to

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	(a) the Province-wide nature of bargaining, (b) the fact that local trade unions are affiliated with, or are locals of, one or more trade union organizations, and (c) the ability of the trade unions to bargain collectively as a group and to administer a collective agreement as a group, and any other matter the Board considers relevant.
Legal Profession Act, R.S.A. 2000, c. L-8, s. 117(2)	**117(2)** On an application under subsection (1), the Executive Director shall have regard to (a) the nature of the trust and the circumstances in which it arose, and (b) in the case of an application based on circumstances described in subsection (1)(a), whether the member has made reasonable efforts to locate the person entitled to the money and whether there is any reasonable prospect that the person can be located.
Matrimonial Property Act, R.S.A. 2000, c. M-8, s. 20	**20. Matters to be considered** In exercising its powers under this Part, the Court shall have regard to (a) the availability of other accommodation within the means of both the spouses, (b) the needs of any children residing in the matrimonial home, (c) the financial position of each of the spouses, and (d) any order made by a court with respect to the property or the support or maintenance of one or both of the spouses
Mental Health Act, R.S.A. 2000, c. M-13, s. 28(4)	**28(4)** In order to determine the best interest of the formal patient in relation to treatment, a person referred to in subsection (1)(a) or (c) shall have regard to the following: (a) whether the mental condition of the patient will be or is likely to be improved by the treatment; (b) whether the patient's condition will deteriorate or is likely to deteriorate without the treatment; (c) whether the anticipated benefit from the treatment outweighs the risk of harm to the patient; (d) whether the treatment is the least restrictive and least intrusive

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	treatment that meets the requirements of clauses (a), (b) and (c).
Natural Gas Marketing Act, R.S.A. 2000, c. N-1, s. 13(4)	**13(4)** In an arbitration under this section, the arbitral tribunal shall have regard to at least the following matters to the extent that evidence is adduced with respect to those matters: (a) the prices of substitutable energy sources (i) that compete with gas for the various end users of gas in the markets served by the buyer, where the buyer is not the end user of the gas, or (ii) that are available for use or consumption by the buyer in place of gas, where the buyer is the end user of the gas, taking into account any differences in the efficiencies of gas and those substitutable energy sources; (b) the prices of other gas (i) that competes in the same markets as those being served by the buyer, where the buyer is not the end user of the gas, or (ii) that is available for use or consumption by the buyer, where the buyer is the end user of the gas; (c) the explicit or implicit prices of other gas produced in Alberta and delivered under other gas contracts; (d) the prices for gas in markets outside Canada that could be served by gas produced in Alberta if there were no quantitative restrictions imposed on the export of gas from Canada by or under any law in force in Canada.
Oil and Gas Conservation Act, R.S.A. 2000, c. O-6, s. 6	**6. Estimate of expenditures** In preparing its estimate of net expenditures for any fiscal year, the Board shall have regard to its estimate of any deficit or surplus existing at the end of each fiscal year from funds received from the Government and from the imposition of taxes or fees under Part 10 in previous years.
Water, Gas and Electric Companies Act, R.S.A. 2000 , c. W-4, s. 30(3)	**30(3)** On considering the application, the Minister shall have regard to all the circumstances that appear to the Minister to be relevant and in particular, but not so as to limit the generality of the foregoing, shall have regard to

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	(a) the recommendations, if any, of the Director of Surveys or the Energy Resources Conservation Board, as the case may require, (b) the objection of an interested party, (c) any public interest that, in the opinion of the Minister, might be affected by the granting or refusal of the Minister's approval, and (d) the needs and general good of the residents of Alberta.
Youth Justice Act, R.S.A. 2000, c. Y-1, s. 15(5)	**15(5)** If the youth justice court considers it appropriate, the youth justice court may, instead of or in addition to imposing a fine under subsection (4), order (a) the young person to perform community service in accordance with section 16, and at the time and places the youth justice court fixes, and in determining the amount of community service to be performed, the youth justice court shall have regard to the fine it would have imposed and to the minimum wage in effect, (b) that the young person be placed on probation in accordance with section 17 for a period not exceeding 6 months, or (c) both the performance of community service described in clause (a) and probation described in clause (b).
Alberta Rules of Court, Alta. Reg. 390/68, s. 621(1)	**621(1)** Where a barrister and solicitor dies or becomes incapable of acting before his retainer has been completely performed by him, an application may be made by or on behalf of either party to the taxing officer to determine the amount due, if any, in respect of the services rendered under the retainer, and subject to subrule (2) the taxing officer in determining the amount shall have regard to terms of any agreement between the parties.
Climate Change and Emissions Managem-ent Act, Alta. Reg. 251/2004 -- Specified Gas Reporting Regulation Alta. Reg. 251/2004, s. 5(2)	**5(2)** The Director shall have regard to the following when making a decision on a request under subsection (1): (a) whether disclosure of the portions of the report could reasonably be expected to harm significantly the competitive position of the specified gas reporter; (b) whether disclosure of the portions of the report could reasonably be expected to interfere significantly with the negotiating position of the specified gas reporter; (c) whether disclosure of the portions of the report could reasonably be

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	expected to result in undue financial loss or gain to any person or organization; (d) the availability of the information in the portions of the report or the means to obtain the information from other public sources; (e) whether there are any other competing interests that would suggest that disclosure of the portions of the report is warranted.
Oil and Gas Conservat-ion Act, Alta. Reg. 151/71 -- Oil and Gas Conservation Regulations Alta. Reg. 151/71, s. 10.300(1)	**10.300(1)** Where it appears to the Board that the ultimate recovery of gas from a pool may be affected by the producing rate, the Board may by order prescribe a maximum daily allowable (Qmax) for each gas well in the pool or part of the pool, and in so doing shall have regard to (a) the tests made at the well pursuant to Directive 40, (b) reservoir modelling or other appropriate reservoir analysis techniques,
	British Columbia
Supreme Court Rules, B.C. Reg. 221/90, App. B, s. 2(2), 3(3)	**2(2)** In fixing the scale of costs the court shall have regard to the following principles: (a) Scale A is for matters of little or less than ordinary difficulty; (b) Scale B is for matters of ordinary difficulty; (c) Scale C is for matters of more than ordinary difficulty. **3(3)** In assessing costs where the Tariff indicates a range of units, the registrar shall have regard to the following principles: (a) one unit is for matters upon which little time should ordinarily have been spent; (b) the maximum number of units is for matters upon which a great deal of time should ordinarily have been spent.
Motor Vehicle Act, B.C. Reg. 26/58 -- Motor Vehicle Act Regulations B.C. Reg. 26/58, s. 29.11(1), 29.11(2)	**29.11(1)** In the selection of motor vehicles for the testing of durability, for the purposes of section 29.08(d), the manufacturer shall have regard to the combinations of engine displacements and transmissions, including automatic and manual transmission installations, so that the selections represent at least 70% of the

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29.15(2), 29.32	number of light duty vehicles sold in British Columbia by that manufacturer during his last preceding model year. **29.11(2)** Notwithstanding subsection (1), where the number of motor vehicles sold by a manufacturer in British Columbia in the last preceding model year is less than 10% of the total sales of motor vehicles in British Columbia in the same period, the manufacturer shall have regard to the combination chosen so that the number of motor vehicles tested for durability of the systems of devices or of the exhaust emissions systems shall be not fewer than 4 and not more than 8. **29.15(2)** Notwithstanding subsection (1), where the number of gasoline powered heavy duty motor vehicle engines sold by a manufacturer in British Columbia in the last preceding model year is less than 10% of the total sales of gasoline powered heavy duty motor vehicle engines in British Columbia in the same period, the manufacturer shall have regard to the combinations so chosen so that the number of engines tested for durability of the systems or devices or of the exhaust emission systems shall represent at least 50% of the number of gasoline powered heavy duty motor vehicle engines sold by the manufacturer during such model year, except that in no case shall the total number of such motor vehicle engines so tested be fewer than 2. **29.32 Number of tests required** In the selection of motor vehicles for the testing of evaporative emissions, for the purposes of section 29.29(d), where the number of motor vehicles sold by a manufacturer in British Columbia in the last preceding model year is less than 10% of the total sales of motor vehicles in British Columbia in the same period, the manufacturer shall have regard to the combination chosen so that the number of motor vehicles tested for durability of the evaporative emission control systems or devices shall be not fewer than 4 and not more than 8 and shall represent at least 50% of the number of light duty vehicles sold by the manufacturer during such model year.

Table 9: Other Ontario and Other Canadian Legislation: "Shall Be Consistent With," "Must Be Consistent With", "Is Consistent With"

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	Ontario
Back to School Act, 1998, S.O. 1998, c. 13, s. 17(1)	**17(1) Constraints: consistency with *Education Act*** The mediator-arbitrator shall make an award that, (a) is consistent with the *Education Act* and the regulations made under it; and (b) permits the scheduled board to comply with the *Education Act* and the regulations made under it.
Back to School Act (Simcoe Muskoka Catholic District School Board), 2002, S.O. 2002, c. 20, s. 17(1)	**17(1) Constraints re consistency with *Education Act* and regulations** The mediator-arbitrator shall make an award that, (a) is consistent with the *Education Act*, with Ontario Regulation 156/02 ("Student Focused Funding -- Legislative Grants for the 2002-2003 School Board Fiscal Year") and with the other regulations made under that Act; (b) permits the board to comply with the legislation mentioned in clause (a); and (c) can be implemented in a reasonable manner without causing the board to incur a deficit.
Back to School (Toronto Catholic Elementary) and Education and Provincial Schools Negotiations Amendment Act, 2003, S.O. 2003, c. 2, s. 17(1)	**17(1) Constraints re consistency with *Education Act* and regulations** The mediator-arbitrator shall make an award that, (a) is consistent with the *Education Act* and with the regulations made under that Act; (b) permits the board to comply with the Act and regulations mentioned in clause (a); and (c) can be implemented in a reasonable manner without causing the board to incur a deficit.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

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Business Records Protection Act, R.S.O. 1990, c. B.19, s. 1	**1. Business records not to be taken from Ontario** No person shall, under or under the authority of or in a manner that would be consistent with compliance with any requirement, order, direction or summons of any legislative, administrative or judicial authority in any jurisdiction outside Ontario, take or cause to be taken, send or cause to be sent or remove or cause to be removed from a point in Ontario to a point outside Ontario, any account, balance sheet, profit and loss statement or inventory or any resume or digest thereof or any other record, statement, report, or material in any way relating to any business carried on in Ontario, unless such taking, sending or removal, (a) is consistent with and forms part of a regular practice of furnishing to a head office or parent company or organization outside Ontario material relating to a branch or subsidiary company or organization carrying on business in Ontario;
Charitable Institutions Act, R.S.O. 1990, c. C.9, s. 12(5)	**12(5) Same** Despite subsection (4), a regulation made under clause (1)(z.6) that relates to the security, retention or disposal of a record of personal health information within the meaning of the *Personal Health Information Protection Act, 2004* applies to the extent that the regulation is consistent with that Act and the regulations made under it.
Child and Family Services Act, R.S.O. 1990, c. C.11, s. 29(10)	**29(10) Variation of agreement** The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it.
Child and Family Services Act, Ont. Reg. 70 -- General R.R.O. 1990, s. 124(2)	**124(2)** Notice under clause (1)(a) may be verbal but, if there are existing arrangements between the society and the band or native community, the notice shall be given in a manner that is consistent with those arrangements.
Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 25(3)	**25(3) Idem** In giving directions under subsection (2), the court shall choose the least expensive and most expeditious method of determining the issues that is consistent with justice to class members and the parties and, in so doing, the court may, (a) dispense with any procedural step that it considers unnecessary; and (b) authorize any special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Legislation & Section Number	Language
Commitment to the Future of Medicare Act, 2004, S.O. 2004, c. 5, s. 23(7)	**23(7) Same** If an accountability agreement requires that a health resource provider enter into a performance agreement, the health resource provider and its chief executive officer shall enter into a performance agreement within such period of time stipulated in the accountability agreement, and the terms of the performance agreement shall be consistent with the accountability agreement.
Condominium Act, 1998, S.O. 1998, c. 19, s. 156(2)	**156(2) Permitted restrictions** A restriction contained in the declaration shall be consistent with the conditions imposed by the approval authority in approving or exempting the description under section 9.
Courts of Justice Act, R.S.O. 1990, c. C.43, s. 51.9(3)	**51.9(3) Goals** The following are among the goals that the Chief Justice may seek to achieve by implementing standards of conduct for judges: 4. Ensuring that judges' conduct is consistent with the respect accorded to them.
Courts of Justice Act, O. Reg. 723/94, s. 1(3)	**1(3) General principle** These rules shall be construed liberally so as to obtain as expeditious a conclusion of every proceeding as is consistent with a just determination of the proceeding.
Courts of Justice Act, Ont. Reg. 200, R.R.O. 1990, Reg. 200, s. 3	**3.** These rules shall be construed liberally so as to obtain as expeditious a conclusion of every proceeding as is consistent with a just determination of the proceeding.
Courts of Justice Act, Ont. Reg. 722/94, O. Reg. 722/94, s. 1(3)	**1(3) General principle** These rules shall be construed liberally so as to obtain as expeditious a conclusion of every proceeding as is consistent with a just determination of the proceeding.
Crown Forest Sustainability Act, 1994, S.O. 1994, c. 25, s. 17(2), 17(5), 25(2), 27(5), 34(5), 38(3)	**17(2) Contents** The work schedule shall be prepared in accordance with the Forest Management Planning Manual and shall be consistent with, (a) the applicable forest management plan; and (b) any forest operations prescriptions that apply to the forest operations. **17(5) Forest management plan** A work schedule and any modification or revision to a work schedule under subsection (3) or (4) shall be consistent with the applicable forest management plan.

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	25(2) Forest management plan An agreement shall not be entered into under subsection (1) unless it is consistent with the applicable forest management plan. **27(5) Forest management plan** A licence shall not be renewed under subsection (4) unless the renewal is consistent with the applicable forest management plan. **34(5) Forest management plan** Any amendment to a licence shall be consistent with the applicable forest management plan. **38(3) Forest management plan** An agreement entered into under subsection (2) or a determination made in accordance with the procedure prescribed by the regulations shall be consistent with the applicable forest management plan.
Education Act, R.S.O. 1990, c. E.2, s. 230.19(2), 257.52(2), 302(1), 303(1)	**230.19(2) Same** The powers under this Part shall be exercised in a manner that is consistent with, (a) the denominational aspects of a Roman Catholic Board; (b) the denominational aspects of a Protestant separate school board; or (c) the linguistic or cultural aspects of a French-language district school board. **257.52(2) Same** The powers under this Division shall be exercised in a manner that is consistent with, (a) the denominational aspects of a Roman Catholic board; (b) the denominational aspects of a Protestant separate school board; or (c) the linguistic or cultural aspects of a French-language district school board. **Board's policies and guidelines governing conduct** **302. (1)** Every board shall establish policies and guidelines with respect to the conduct of persons in schools within the board's jurisdiction and the policies and

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	guidelines must address such matters and include such requirements as the Minister may specify. 2000, c. 12, s. 3. **Same, governing discipline** **(2)** A board may establish policies and guidelines with respect to disciplining pupils, and the policies and guidelines must be consistent with this Part and with the policies and guidelines established by the Minister under section 301, and must address such matters and include such requirements as the Minister may specify. 2000, c. 12, s. 3. **Same, promoting safety** **(3)** If required to do so by the Minister, a board shall establish policies and guidelines to promote the safety of pupils, and the policies and guidelines must be consistent with those established by the Minister under section 301 and must address such matters and include such requirements as the Minister may specify. 2000, c. 12, s. 3. **Same, governing access to school premises** **(4)** A board may establish policies and guidelines governing access to school premises, and the policies and guidelines must be consistent with the regulations made under section 305 and must address such matters and include such requirements as the Minister may specify. 2000, c. 12, s. 3. **Local codes of conduct** **303. (1)** A board may direct the principal of a school to establish a local code of conduct governing the behaviour of all persons in the school, and the local code must be consistent with the provincial code established under subsection 301 (1) and must address such matters and include such requirements as the board may specify. 2000, c. 12, s. 3.
Education Act, Ont. Reg. 181/98 -- Identification and Placement of Exceptional Pupils, s. 9(2), 12(2)	**9(2)** Where an education program is provided to a pupil pending a meeting or decision under this Regulation, (a) the program must be appropriate to the pupil's apparent strengths and needs; (b) the placement for the program must be consistent with the principles underlying section 17; and (c) appropriate education services must be provided to meet the pupil's apparent needs.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

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	12(2) Committee decisions made under this Regulation must be consistent with the board's special education plan.
Education Act, Ont. Reg. 435/00 -- Opening or Closing Exercises, s. 2(2)	**2(2)** The principal's decision about reciting the pledge of citizenship must be consistent with the policies and guidelines, if any, established by the board.
Education Act, Ont. Reg. 400/05, O. Reg. 400/05, s. 36(16)	**36(16)** The Minister shall determine loadings and categories of instructional space as follows: 1. The Minister shall identify categories of instructional space for all elementary facilities and secondary facilities of the board. In identifying categories of instructional space, the Minister shall use the categories identified in the Report of the Pupil Accommodation Review Committee, dated August, 1998, which Report was released by the Ministry to school boards in September, 1998, and is available for public inspection at the offices of the Education Finance Branch of the Ministry of Education, Mowat Block, 900 Bay Street, 21st Floor, Toronto, Ontario, M7A 1L2. Where the Report does not include an appropriate category for an instructional space, the Minister shall identify the category of that space in a manner that is consistent with the categorizations in the Report.
Education Act, Ont. Reg. 145/04, O. Reg. 145/04, s. 37(24)	**37(24)** Subsection (27) or (28) applies in relation to an elementary facility or secondary facility of the board if all of the following conditions are satisfied: 1. The facility is acquired by the board as a result of a proposal issued by another board in the 2003 calendar year under Ontario Regulation 444/98 to dispose of the facility at no cost. 2. Within 30 days after offering to acquire the facility at no cost, the board notifies the Minister in writing of the offer and provides such information and material as the Minister may require to verify that the acquisition of the facility, i. is consistent with the long-term accommodation plan of the board, ii. would benefit the pupils of the board, iii. would result in more effective use of public assets, and iv. would reduce the need of the board for the construction of new school facilities.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

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Education Act, Ont. Reg. 341/06, O. Reg. 341/06, s. 39(22)	**39(22)** The Minister shall determine loadings and categories of instructional space as follows: 1. The Minister shall identify categories of instructional space for all elementary facilities and secondary facilities of the board. In identifying categories of instructional space, the Minister shall use the categories identified in the Report of the Pupil Accommodation Review Committee, which is available as described in subsection 3(7). Where the Report does not include an appropriate category for an instructional space, the Minister shall identify the category of that space in a manner that is consistent with the categorizations in the Report. 2. The Minister shall assign a loading to each category of instructional space identified under paragraph 1, based on the number of pupils that can reasonably be accommodated in each category of instructional space. In determining the number, the Minister shall consider the physical characteristics of the category of instructional space and the class size requirements under the Act.
Education Act, Ont. Reg. 181/98, Identification and Placement of Exceptional Pupils O. Reg. 181/98, s. 17(1), 17(2)	**17(1)** When making a placement decision on a referral under section 14, the committee shall, before considering the option of placement in a special education class, consider whether placement in a regular class, with appropriate special education services, (a) would meet the pupil's needs; and (b) is consistent with parental preferences. **17(2)** If, after considering all of the information obtained by it or submitted to it under section 15 that it considers relevant, the committee is satisfied that placement in a regular class would meet the pupil's needs and is consistent with parental preferences, the committee shall decide in favour of placement in a regular class.
Education Act, Ont. Reg. 446/98 -- Reserve Funds O. Reg. 446/98, s. 2(7)	**2(7)** A district school board shall not use funds from the reserve fund referred to in subsection (1) for the purpose described in clause (1)(b) unless the following requirements have been met: 3. Within the period that begins three months after the meeting referred to in subparagraph iv of paragraph 1 and ends one year after that meeting, the board

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	must pass a resolution that, i. <u>is consistent with</u> the notices and information provided under paragraph 1, and ii. directs the withdrawal of funds from the reserve fund referred to in subsection (1) and the use of those funds for the purpose described in clause (1)(b).
Education Act, Ont. Reg. 170/00, O. Reg. 170/00, s. 37(22)	**37(22)** Subsection (23) or (24) applies in relation to an elementary or secondary school of a board if, (c) before the agreement referred to in clause (a) was entered into, the Minister indicated in writing that, in his or her opinion, the transfer provided for by the agreement, (i) <u>is consistent with</u> the long-term accommodation plans of both boards, (ii) would benefit pupils of both boards, (iii) would result in more effective use of public assets, and (iv) would reduce the needs of both boards for the construction of new school facilities.
Education Act, Ont. Reg. 154/01 -- Student Focused Funding, O. Reg. 154/01, s. 36(24)	**36(24)** Subsection (25) or (26) applies in relation to an elementary or secondary school of a board if, (c) before the agreement referred to in clause (a) was entered into, the Minister indicated in writing that, in his or her opinion, the transfer provided for by the agreement, (i) <u>is consistent with</u> the long-term accommodation plans of both boards, (ii) would benefit pupils of both boards, (iii) would result in more effective use of public assets, and (iv) would reduce the needs of both boards for the construction of new school facilities.
Education Act, Ont. Reg. 156/02 -- Student Focused Funding, O. Reg. 156/02, s. 36(28)	**36(28)** Subsection (29) or (30) applies in relation to an elementary or secondary school of the board if all of the following conditions are satisfied:

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	1. The school is acquired by the board as a result of a proposal issued by another board in the 2001 calendar year under *Ontario Regulation 444/98* to dispose of the school at no cost. 2. Within 30 days after offering to acquire the school at no cost, the board notifies the Minister in writing of the offer and provides such information and material as the Minister may require to verify that the acquisition of the school, i. <u>is consistent with</u> the long-term accommodation plan of the board, ii. would benefit the pupils of the board, iii. would result in more effective use of public assets, and iv. would reduce the need of the board for the construction of new school facilities.
Education Act, Ont. Reg. 139/03 -- Student Focused Funding, O. Reg. 139/03, s. 37(33)	**37(33)** Subsection (34) or (35) applies in relation to an elementary or secondary school of a board if, (a) in the 2002 calendar year, the board agreed with another board to dispose of the elementary school or secondary school of the board to the other board, in consideration for the conveyance to it of an elementary school or secondary school of the other board; (b) the agreement referred to in clause (a) was not an agreement that implemented an order of the Education Improvement Commission; and (c) before the agreement referred to in clause (a) was entered into, the Minister indicated in writing that, in his or her opinion, the transfer provided for by the agreement, (i) <u>is consistent with</u> the long-term accommodation plans of both boards, (ii) would benefit pupils of both boards, (iii) would result in more effective use of public assets, and (iv) would reduce the needs of both boards for the construction of new school facilities.
Election Act, R.S.O. 1990, c. E.6, s. 17.9	**17.9 Duty of Chief Election Officer** When a regulation has been made under section 17.8, the Chief Election Officer

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	shall prepare the list of members, and of alternates, if any, and the necessary personal information in accordance with the following rules: 2. The sampling methodology used under paragraph 1 shall be consistent with the prescribed eligibility criteria. In all other respects, the Chief Election Officer has discretion to establish the sampling methodology. 5. The selection methodology used under paragraph 4 shall be consistent with the prescribed eligibility criteria. In all other respects, the Chief Election Officer has discretion to establish the methodology.
Environmental Assessment Act, R.S.O. 1990, c. E.18, s. 9.1(4)	**9.1(4) Same** The decision of the Tribunal must be consistent with the approved terms of reference for the environmental assessment.
Environmental Bill of Rights, 1993, S.O. 1993, c. 28, s. 57, 97(2), 98(1)	**57. Functions** In addition to fulfilling his or her other duties under this Act, it is the function of the Environmental Commissioner to, (a) review the implementation of this Act and compliance in ministries with the requirements of this Act; (b) at the request of a minister, provide guidance to the ministry on how to comply with the requirements of this Act, including guidance on, (i) how to develop a ministry statement of environmental values that complies with the requirements of this Act and is consistent with other ministry statements of environmental values, and (ii) how to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry; **97(2) Same** For the purpose of determining whether an agreed plan is consistent with section 95, the court may, (a) appoint one or more experts under the rules of court; and (b) on consent of the parties, hear submissions or receive reports from any mediator, fact finder or arbitrator involved in the negotiation.

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	98(1) Court Developed Restoration Plan If the parties do not agree on a restoration plan or if the court is not satisfied that a plan agreed to by the parties is consistent with section 95, the court shall develop a restoration plan consistent with section 95 and, for the purpose, the court may, (a) order the parties to engage in further negotiations for a restoration plan on the terms that the court considers appropriate; (b) order one or more parties to prepare a draft restoration plan; (c) appoint one or more persons to investigate and report back on any matter relevant to the development of a restoration plan; (d) appoint one or more non-parties to prepare a draft restoration plan; and (e) make any other order that the court considers appropriate.
Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1, s. 6.1, 9(1)	**6.1 Limitation on power of Board** Despite any provision in section 4, 5 or 6 that gives the Board the power to determine whether a farm practice is a normal farm practice, the Board shall determine that a farm practice is a normal farm practice for the purposes of this Act if the practice is consistent with a regulation made under the *Nutrient Management Act, 2002*. **9(1) Guidelines, etc.** The Minister may issue directives, guidelines or policy statements in relation to agricultural operations or normal farm practices and the Board's decisions under this Act must be consistent with these directives, guidelines or policy statements.
Fiscal Transparency and Accountability Act, 2004, S.O. 2004, c. 27, s. 4(1), 4(4)	**4(1) Balanced budget** For each fiscal year, the Executive Council shall plan for a balanced budget unless, as a result of extraordinary circumstances, the Executive Council determines that it is consistent with prudent fiscal policy for the Province to have a deficit for a fiscal year. **4(4) Same** The recovery plan must be consistent with the principles governing Ontario's fiscal policy.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Legislation & Section Number	Language
Forestry Act, R.S.O. 1990, c. F.26, s. 5	**5. Program** The Minister may establish programs to protect, manage or establish woodlands and to encourage forestry that is consistent with good forestry practices.
Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, s. 21(1)	**21(1) Personal privacy** A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, (e) for a research purpose if, (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
Greater Toronto Transportation Authority Act, 2006, S.O. 2006, c. 16, s. 42(2)	**42(2) Same** The Lieutenant Governor in Council may make regulations, (a) prescribing additional objects and duties of the Corporation; (b) authorizing the Corporation to establish and impose fees and charges and to utilize other mechanisms for revenue generation, (i) for doing anything the Corporation is required or permitted to do under this or any other Act, subject to any limitations and restrictions set out in the regulation, or (ii) to generate funding for any purpose that is consistent with the Corporation's objects;
Highway 407 Act, 1998, S.O. 1998, c. 28, s. 54(9)	**54(9) Use of information** For the purposes of the *Freedom of Information and Protection of Privacy Act*, personal information in the custody or under the control of the Ministry of Transportation or the Ontario Transportation Capital Corporation may be used by the Ministry of Transportation or the Ontario Transportation Capital Corporation for the purposes described in subsection (5) and that use shall be deemed to be for a purpose that is consistent with the purpose for which the personal information was obtained or compiled.
Justices of the Peace Act, R.S.O. 1990, c. J.4, s. 13(3)	**13(3) Goals** The following are among the goals that the Associate Chief Justice Co-ordinator of Justices of the Peace may seek to achieve by establishing standards of conduct for justices of the peace: 4. Ensuring that conduct of justices of the peace is consistent with the respect accorded to them.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Legislation & Section Number	Language
Local Health System Integration Act, 2006, S.O. 2006, c. 4, s. 15(3)	**15(3) Restrictions** The integrated health service plan shall be consistent with a provincial strategic plan, the funding that the network receives under section 17 and the requirements, if any, that the regulations made under this Act prescribe.
Long-Term Care Act, 1994, S.O. 1994, c. 26, s. 68(1)	**68(1) Regulations** The Lieutenant Governor in Council may make regulations, 42. relating to the security, retention or disposal of a record of personal health information within the meaning of the *Personal Health Information Protection Act, 2004,* but only to the extent that a regulation made under this paragraph is consistent with that Act and the regulations made under it;
Municipal Act, 2001, Ont. Reg. 168/03 -- Municipal Business Corporations O. Reg. 168/03, s. 3.1(2), 22(1), 22(2), 22(4.1)	**3.1(2)** The City of Brampton may incorporate a single corporation under Part III of the *Corporations Act* for one or more of the following economic development purposes: 4. To establish a program for providing grants that is consistent with any of the purposes set out in paragraph 1, 2 or 3 or with the purpose set out in paragraph 6. **22(1)** A municipality may only sell land to a corporation if the sale is consistent with the purpose of the corporation and the land is vacant land. **22(2)** A municipality may lease or otherwise dispose of any land to a corporation only if the lease or other disposition is consistent with the purpose of the corporation and is for a period, including any possible renewal of the lease or other option to extend the period of disposition, of not more than 40 years. **22(4.1)** Despite subsection (1), the City of Brampton may sell land that has existing buildings or structures on it to a corporation incorporated under subsection 3.1(2) if the sale is consistent with the City exercising its authority under subsection 28(6) or (7) of the *Planning Act*.
Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, s. 14(1)	**14(1) Personal privacy** A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

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	(e) for a research purpose if, (i) the disclosure <u>is consistent with</u> the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained, (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
Niagara Escarpment Planning and Development Act, R.S.O. 1990, c. N.2, s. 24(3)	**24(3) Other permits** No building permit, work order, certificate or licence that relates to development shall be issued, and no approval, consent, permission or other decision that is authorized or required by an Act and that relates to development shall be made, in respect of any land, building or structure within an area of development control, unless the development is exempt under the regulations or, (a) a development permit relating to the land, building or structure has been issued under this Act; and (b) the building permit, work order, certificate, licence, approval, consent, permission or decision <u>is consistent with</u> the development permit.
Northern Services Boards Act, R.S.O. 1990, c. L.28, s. 7(7), 38(2)	**7(7) Assignment of contracts** A Board may by by-law accept the assignment of any contract or agreement entered into by a corporation incorporated under Part III of the *Corporations Act* where the subject-matter of the contract or agreement <u>is consistent with</u> the powers of the Board. **38(2) No derogation** Despite any other provision of this Part, an order, (a) shall not derogate from standards for the provision of services imposed under any Act; and (b) <u>shall be consistent with</u> principles of taxation that apply to municipalities.
Nursing Homes Act, R.S.O. 1990, c. N.7, s. 38(5)	**38(5) Same** Despite subsection (4), a regulation made under paragraph 18 of subsection (1) that relates to the security, retention or disposal of a record of personal health information within the meaning of the *Personal Health Information Protection*

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	Act, 2004 applies to the extent that the regulation is consistent with that Act and the regulations made under it.
Nutrient Management Act, 2002, S.O. 2002, c. 4, s. 63(2)	**63(2)** The Act is amended by adding the following section: 6.1 Limitation on power of Board Despite any provision in section 4, 5 or 6 that gives the Board the power to determine whether a farm practice is a normal farm practice, the Board shall determine that a farm practice is a normal farm practice for the purposes of this Act if the practice is consistent with a regulation made under the *Nutrient Management Act, 2002*.
Occupational Health and Safety Act, Ont. Reg. 854 -- Mines and Mining Plants R.R.O. 1990, s. 22(3)	**22(3)** The measurements under clause (2)(a) shall be consistent with accuracy standards for third order horizontal control surveys based on Ontario Specifications for Horizontal Control Surveys, 1979.
Occupational Health and Safety Act, Ont. Reg. 857 -- Teachers R.R.O. 1990, Reg. 857, s. 1	**1.** The purpose of this Regulation is to make the Act apply to teachers in a manner that is consistent with the *Education Act*.
Ontario College of Teachers Act, 1996, Ont. Reg. 347/02 -- Accreditation of Teacher Education Programs O. Reg. 347/02, s. 9(1)	**9. Requirements for accreditation** **9(1)** A program of professional education may be granted accreditation under this Regulation if the following conditions are satisfied: 1. The provider of the program is a permitted institution. 2. The program has a clearly delineated conceptual framework. 3. The program is consistent with and reflects, i. the College's "Standards of Practice for the Teaching Profession" and the "Ethical Standards for the Teaching Profession", ii. current research in teacher education, and iii. the integration of theory and practice in teacher education.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

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Partnerships Act, R.S.O. 1990, c. P.5, s. 27(1)	**27(1) Presumption of continuance after expiry of term** Where a partnership entered into for a fixed term is continued after the term has expired and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.
Pension Benefits Act, Ont. Reg. 909 – General, R.R.O. 1990, s. 4(5)(iv)	**Payments - General** 5. In the case of a jointly sponsored pension plan, iv. the actuarial assumptions used to determine the sums referred to in subparagraphs i, ii and iii of the projected pensionable earnings shall be consistent with those used in the report for the going concern valuation based on the benefit allocation method.
Pension Benefits Act, Ont. Reg. 909 -- General R.R.O. 1990, Reg. 909, s. 4(2.2)	**4(2.2)** Despite subsections (1) and (2), the amount of contributions required to be made to a pension plan that provides defined benefits may be determined by using an actuarial cost method other than a benefit allocation method if, (a) the actuarial cost method that is used is consistent with accepted actuarial practice; and (b) the rules set out in subsection (2.3) are satisfied.
Pension Benefits Act, Ont. Reg. 99/06 -- Stelco Inc. Pension Plans O. Reg. 99/06, s. 11(6)	**11(6)** If the annual report includes a schedule respecting benefit improvements or respecting wind up benefits, the following rules apply: 1. The assets and liabilities of the plan in respect of any benefit improvements and wind up benefits must be determined and disclosed separately from the assets and liabilities of the plan that are in respect of the original benefits. 2. The normal cost in respect of the benefit improvements must be disclosed separately from the normal cost of the plan that is not in respect of the benefit improvements; and the normal cost must be determined in a manner that is consistent with the determination made in the interim report filed with respect to the benefit improvements.
Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A, s. 77(3), 89(20), 92(3)	**77(3)** Section 12 of the Act, as amended by the Statutes of Ontario, 1993, chapter 2, section 10, 1994, chapter 26, section 70, 1996, chapter 2, section 61 and 1997, chapter 15, section 3, is amended by adding the following subsections: **(4)** Exception

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	A regulation made under clause (1)(z.6) shall not apply to a record of personal health information within the meaning of the *Personal Health Information Protection Act, 2004*. **(5)** Same Despite subsection (4), a regulation made under clause (1)(z.6) that relates to the security, retention or disposal of a record of personal health information within the meaning of the *Personal Health Information Protection Act, 2004* applies to the extent that the regulation <u>is consistent with</u> that Act and the regulations made under it. **89(20)** Paragraph 42 of subsection 68(1) of the Act is repealed and the following substituted: 42. relating to the security, retention or disposal of a record of personal health information within the meaning of the *Personal Health Information Protection Act, 2004*, but only to the extent that a regulation made under this paragraph <u>is consistent with</u> that Act and the regulations made under it; **92(3)** Section 38 of the Act, as amended by the Statutes of Ontario, 1993, chapter 2, section 43, 1994, chapter 26, section 75, 1996, chapter 2, section 74 and 1997, chapter 15, section 13, is amended by adding the following subsections: **(5)** Same Despite subsection (4), a regulation made under paragraph 18 of subsection (1) that relates to the security, retention or disposal of a record of personal health information within the meaning of the *Personal Health Information Protection Act, 2004* applies to the extent that the regulation <u>is consistent with</u> that Act and the regulations made under it.
Railways Act, R.S.O. 1950, c. 331, s. 101(2)	**101(2) Where no rear vestibules** Every company operating its cars without rear-end vestibules shall allow the conductors employed on such cars to stand inside the cars during such period so far as <u>is consistent with</u> the proper performance of their duties.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

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Sabrina's Law, 2005, S.O. 2005, c. 7, s. 2(3)	**2(3) Contents of individual plan** An individual plan for a pupil with an anaphylactic allergy shall be consistent with the board's policy and shall include: 1. Details informing employees and others who are in direct contact with the pupil on a regular basis of the type of allergy, monitoring and avoidance strategies and appropriate treatment. 2. A readily accessible emergency procedure for the pupil, including emergency contact information. 3. Storage for epinephrine auto-injectors, where necessary.
Savings and Restructuring Act, 1996, S.O. 1996, c. 1, Sched. M, Pt. I, s. 1	**(11)** Regulations Despite any Act, the Lieutenant Governor in Council may make regulations setting out the powers that may be exercised by the Minister or a commission established under section 25.3 in implementing a restructuring proposal. **(12)** Conflicts An order of the Minister or commission implementing a restructuring proposal prevails over any Act or regulation with which it conflicts so long as the order is consistent with the regulation made under subsection (11).
Social Contract Act, 1993, S.O. 1993, c. 5, s. 20(2), 31(2)	**20(2) Powers** The adjudicator shall review the plan and shall, (a) confirm the plan if it complies with subsection 16(2); or (b) amend the plan so that, in the opinion of the adjudicator, it is consistent with subsection 16(2). **31(2) Powers** The adjudicator shall review the program and shall, (a) confirm the program if it meets the criteria set out in section 27; or (b) amend the program so that, in the opinion of the adjudicator, it is consistent with the criteria set out in section 27.
Social Housing Reform Act, 2000, S.O. 2000, c. 27, s. 110(2)	**110(2) Alteration of formula** The Minister may, under subsection (1), prescribe requirements that alter the formula for calculating the subsidy payable to a housing provider as set out in sections 103 to 108 if, in the opinion of the Minister, the economic conditions in respect of the rental housing sector prevailing in Ontario or a part of Ontario are such that the application of the formula does not produce a result that is consistent with the objectives of this Act.

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Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, s. 25.1(3)	**25.1(3) Consistency with Acts** The rules shall be consistent with this Act and with the other Acts to which they relate.
Substitute Decisions Act, 1992, Ont. Reg. 26/95 -- General, Form 3	**C. Notice Regarding Extraordinary Matters:** The law limits or restricts a guardian's authority to make decisions in the following areas relating to personal care: Sterilization The law prohibits a substitute decision maker from consenting to non-therapeutic sterilization of a person who is mentally incapable of such a decision. Any proposal to consent on behalf of the person to his or her sterilization as medically necessary for the protection of the person's health must be consistent with the law and should appear in the Guardianship Plan or be the subject of an amendment in the Guardianship Plan prior to consent being given. Regenerative Tissue Donation The law restricts the authority of a substitute decision maker regarding decisions to permit regenerative tissue donations by a person who is mentally incapable of such a decision. Any proposal to authorize the removal of regenerative tissue for implantation in another person's body must be consistent with the law and should appear in the Guardianship Plan or be the subject of an amendment to the Guardianship Plan prior to permission being given.
Substitute Decisions Act, 1994, Ont. Reg. 100/96 -- Accounts and Records of Attorneys and Guardians O. Reg. 100/96, s. 4	**4. Confidentiality and Disclosure of Accounts and Records** An attorney or guardian shall not disclose any information contained in the accounts and records except, (a) as required by section 5 or permitted by section 6; (b) as required by a court order; (c) as required otherwise under the Act or any other Act; or (d) as is consistent with or related to his or her duties as attorney or guardian.
Surveys Act, R.S.O. 1990, c. S.30, s. 55	**55. Re-establishment of lost corners, etc.** A surveyor in re-establishing a line, boundary or corner shown on a plan of subdivision shall obtain the best evidence available respecting the line, boundary or corner, but if the line, boundary or corner cannot be re-established in its original position from such evidence, the surveyor shall proceed as follows:

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	2. If a corner on a line or boundary is lost, the surveyor shall re-establish it by the method that accords with the intent of the survey as shown on the plan of subdivision and, if it is consistent with the intent of the survey as shown on the plan of subdivision, the surveyor shall determine the distance between the two nearest undisputed corners, one being on either side of the lost corner, and the surveyor shall re-establish the corner by dividing the distance proportionately as shown on the plan of subdivision having due regard for any road allowance, highway, street, lane, walk or common shown on the plan of subdivision.
Victims' Bill of Rights, 1995, S.O. 1995, c. 6, s. 2(2)	**2(2) Limitations** The principles set out in subsection (1) are subject to the availability of resources and information, what is reasonable in the circumstances of the case, what is consistent with the law and the public interest and what is necessary to ensure that the resolution of criminal proceedings is not delayed.
Vital Statistics Act, R.S.O. 1990, c. V.4, s. 36(4)	**36(4) Notation on birth registration to be consistent with result of surgery** The Registrar General shall, upon application made to him or her in accordance with this section, cause a notation to be made on the birth registration of the applicant so that the registration is consistent with the results of the surgery.
Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A, s. 42(1), 126(6), 161(3)	**42(1) Labour market re-entry assessment** The Board shall provide a worker with a labour market re-entry assessment if any of the following circumstances exist: 1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury. 2. If the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings. 3. If the worker's employer is not co-operating in the early and safe return to work of the worker. **126(6) Board review** If there is a referral under subsection (4), the Board shall review the policy to determine whether it is consistent with, or authorized by, the Act or whether it applies to the case. **161(3) Duty to monitor** The Board shall monitor developments in the understanding of the relationship

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	between work and the prevention of injury and occupational disease and the relationship between workplace insurance and injury and occupational disease, (a) so that generally-accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent wtih the purposes of this Act; and
	British Columbia
Securities Act, B.C. Reg. 342/2003 -- National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, Sched. A, s. 5.3	**5.3 Reserves and Resources Classification** Disclosure of reserves or resources shall be consistent with the reserves and resources terminology and categories set out in the COGE Handbook.
	Manitoba
The Registered Respiratory Therapists Act, R.S.M. 1987, c. R115, s. 5(3)	**5(3) Standards to be adopted** The standards for the education of registered respiratory therapists prescribed by a regulation under clause (1)(d) shall be consistent with the standards of education for students of respiratory therapy adopted by The Canadian Society of Respiratory Therapists.
	New Brunswick
Community Planning Act, R.S.N.B. 1973, c. C-12, s. 42(2), 42(2.2), 60(3), 64(4), 77(4)	**42(2)** A by-law under subsection (1) shall be consistent with an applicable regional plan, rural plan under subsection 27.2(1), municipal plan or basic planning statement. **42(2.2)** A by-law under subsection (2.1) shall be consistent with an applicable regional plan or rural plan under subsection 77.2(1). **60(3)** A by-law under this section shall be consistent with any applicable regional plan, rural plan under subsection 27.2(1), municipal plan, basic planning statement, development scheme or urban renewal scheme. **64(4)** A by-law under this section shall be consistent with any applicable regional plan, municipal plan, rural plan under subsection 27.2(1) or 77.2(1), basic planning

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	statement, development scheme or urban renewal scheme. **77(4)** With respect to a regulation under this section applicable in an area designated under subsection (2) or paragraph (2.2)(a), the regulation shall be consistent with a rural plan, if any, in effect in the area.
Education Act, S.N.B. 1997, c. E-1.12, s. 36.9(2)	**36.9(2)** A district education plan shall be consistent with the provincial education plan and shall include (a) a vision, including a mission statement, goals and values, (b) a strategy respecting the delivery and evaluation of educational programs and services within the school district, including educational priorities, objectives and a work plan, (c) accountability measures for evaluating pupil achievement, monitoring school district performance and monitoring the achievement of strategic objectives, and (d) strategies to ensure the preservation and promotion of the language and culture of the official linguistic community for which the school district is organized.
Pipeline Act, 2005, N.B. Reg. 2006-3 -- Pipeline Filing Regulation -- Pipeline Act, 2005, s. 8(20)	**8(20)** An application under subsection 25(1) of the Act to abandon a pipeline which results in installations being permanently removed from service shall include, in addition to the other information required, a description of (a) the methods to be used for site assessment, which shall be consistent with applicable engineering codes or government-approved guidelines;
	Nova Scotia
Public Service Commission Act, R.S.N. 1990, c. P-43, s. 6(2)	**6(2)** A commissioner shall discharge the duties assigned to him or her under this Act and the regulations and the other duties that the minister assigns which shall be consistent with this Act.
Retail Sales Tax Act, R.S.N. 1990, c. R-15, s. 97	**97. Allocation of eligible items** The allocation of eligible items to capital or operating programs shall be determined initially by the project operator, having regard to the description of

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	the project capital program and, where necessary, to the general practices of the project operator, in applying Canadian generally accepted accounting principles, but the allocation for purposes of this Part shall be consistent with the allocation made for purposes of the royalty agreement.
Atlantic Institute of Education Act, R.S.N.S. 1989, c. 26, s. 13(1)	**13(1) Consistency** An agreement made pursuant to Section 12 shall be consistent with Part I.
Community Colleges Act, S.N.S. 1995-96, c. 4, s. 71(2)	**71(2) Consistency with plans** The annual estimate referred to in subsection (1) shall be consistent with the multi-year operating and capital plans of the College.
Education Act, S.N.S. 1995-96, c. 1, s. 89(2)	**89(2) Consistency of by-law with regulations** A by-law made pursuant to subsection (1) shall be consistent with the regulations made by the Minister pursuant to this Act respecting the permanent closure of public schools.
Municipal Government Act, S.N.S. 1998, c. 18, s. 181(7)	**181(7)** The standards of a by-law passed pursuant to this Section shall be consistent with the standards prescribed pursuant to the *Building Code Act* and regulations.
	Prince Edward Island
Companion Animal Protection Act, S.P.E.I. 2001, c. 4, s. 7(4)	**7(4) Consultation with veterinarian** Where a standard of care for a companion animal is not prescribed by the regulations, an inspector or officer, as the case may be, shall consult a veterinarian for the purpose of determining what actions are necessary to relieve the companion animal's distress or to improve the conditions that are causing the distress, and the order issued under subsection (2) shall be consistent with the veterinarian's instructions.
Licensed Practical Nurses Act, S.P.E.I. 1999, c. 35, s. 16(2)	**16(2) Practice regulations** The practice and characteristics of practice of a licensed practical nurse shall be prescribed by regulation pursuant to section 9 and shall be consistent with the education and training of a licensed practical nurse.
	Saskatchewan
The Clean Air Act, S.S. 1986-87-88, c. C-12.1, s. 18(2)	**18(2)** A bylaw made pursuant to subsection (1) shall be consistent with this Act and the regulations and has no effect until it has been approved by the minister.

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The Planning and Development Act, 1983, S.S. 1983-84, c. P-13.1, s. 73.1(3), 76(4), 84.1(6), 84.2(4)	**73.1(3)** Where the council or development officer imposes terms or conditions on an approval pursuant to subsection (2), the terms and conditions shall be consistent with the general development standards made applicable to minor variances by the zoning bylaw. **76(4)** Where a person applies for a development permit in respect of a development or use subject to special regulations, performance standards or development standards prescribed pursuant to clause 73(b), the development officer, in issuing a development permit, shall incorporate in the permit the special regulations, performance standards or development standards with which the development or use shall comply and the regulations or standards so incorporated shall be consistent with the regulations and standards as set out in the bylaw. **84.1(6)** Where the council, pursuant to subsection (5), imposes terms and conditions on a development permit, the terms and conditions imposed by the council shall be consistent with general development standards made applicable to the demolition of buildings by the zoning bylaw. **84.2(4)** Where the council, pursuant to subsection (3), imposes terms and conditions on a development permit, the terms and conditions imposed by the council shall be consistent with general development standards made applicable to architectural control of buildings by the zoning bylaw.
The Wascana Centre Act, R.S.S. 1978, c. W-4, s. 11(1.1)	**11(1.1)** Every bylaw made under clause (1)(a) shall be consistent with the master plan.
Securities Act, 1988, R.R.S., c. S-42.2, Reg. 3 -- The Securities Commission (Adoption of National Instruments) Regulations R.R.S., c. S-42.2, Reg. 3, App. [1]	**5.3 *Reserves* and *Resources* Classification** Disclosure of *reserves* or *resources* shall be consistent with the *reserves* and *resources* terminology and categories set out in the *COGE Handbook.*

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	Yukon
Education Act, R.S.Y. 2002, c. 61, s. 39(3)	**39(3)** The rules established pursuant to this section shall be applied without discrimination to all students and shall be consistent with this Act and the regulations.
Parks and Land Certainty Act, R.S.Y. 2002, c. 165, s. 26, 36(2)	**26. Park purpose and special restrictions** A management plan or site plan for a park shall be consistent with the type and purpose of the park and any directions or conditions for the park contained in the order establishing the park. **36. Park-related development** **36(2)** Park-related development in a park shall be consistent with this Act, the regulations and the approved management plan for the park.
Territorial Court Judiciary Pension Plan Act, 2003, S.Y. 2003, c. 29, Sched. 3, Pt. 9, s. 16(4), Sched. 2, Pt. 9, s. 17(4)	**16(4)** Despite subsection (3), a member's pension benefits payable under the supplementary judiciary pension plan may be divided on marriage breakdown. The terms, procedure, eligibility and payment options regarding this division of pension shall be consistent with those as described in the *Pension Benefits Division Act* (Canada). **17(4)** Despite subsection (3), a member's pension benefits payable under the judiciary retirement compensation arrangement may be divided on marriage breakdown. The terms, procedure, eligibility and payment options regarding this division of pension shall be consistent with those as described in the *Pension Benefits Division Act* (Canada).
	Federal
Kanesatake Interim Land Base Governance Act , S.C. 2001, c. 8, s. 11(1)	**11(1) Environmental protection** If federal laws contain no standards of environmental protection with respect to a matter, a Kanesatake Mohawk law, or an action or measure taken by the Council, with respect to that mater shall be consistent with the standards of environmental protection that apply generally in the province with respect to the matter.

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Safe Containers Convention Act, R.S.C. 1985, c. S-1, Ann. I	**Regulation 1 -- Safety Approval Plate** 1. (a) A Safety Approval Plate conforming to the specifications set out in the Appendix of this Annex shall be permanently affixed to every approved container at a readily visible place, adjacent to any other approval plate issued for official purposes, where it would not be easily damaged. (b) On each container for which the construction is commenced on or after January 1, 1984 all maximum gross weight markings on the container shall be consistent with the maximum gross weight information on the Safety Approval Plate. (c) On each container for which the construction was commenced before January 1, 1984 all maximum gross weight markings on the container shall be made consistent with the maximum gross weight information on the Safety Approval Plate not later than January 1, 1989.
Indian Act, Can. Reg. 82-171 – Stuart-Trembleur Lake Band, SOR/82-171, Sched.I**,** s. 14, 29, 34	**Management and Working Plans** **14.** A management and working plan shall be deemed to be a part of, and shall be consistent with, this licence. **Roads** **29.** The locations, specifications and standards of every road to be built by the Licensee to provide access to or in the licence area, (a) shall, except branch or spur roads on land that is subject to a cutting permit, be included in road permits entered into between the Minister and the Licensee; and (b) shall be consistent with the management and working plans in effect when a permit is issued. **Forest Protection** **34.** A fire protection pre-organization plan approved by the Regional Manager shall

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	be deemed to be part of the management and working plan then in effect and shall be consistent with this licence.
Seized Property Management Act, Can. Reg. 95-76 -- Forfeited Property Sharing Regulations, s. 11	**Calculation and Payment of Shares** **11.** Where a government of a province signs a memorandum of understanding with the Government of Canada respecting the allocation by the province of a portion of a share received under section 10, the allocation of that portion shall be consistent with the memorandum of understanding.

Table 10 - Other Ontario and Other Canadian Legislation: "Shall Conform With"

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	Ontario
Greenbelt Act, 2005, S.O. 2005, c. 1, s. 7(1), 7(4), 24(3)	**7(1) Decisions to conform to plan** A decision that is made under the *Ontario Planning and Development Act, 1994*, the *Planning Act* or the *Condominium Act, 1998* or in relation to a prescribed matter by a municipal council, local board, municipal planning authority, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, shall conform with the Greenbelt Plan. **7(4) Comments, advice** Comments, submissions or advice provided by a minister of the Crown, a ministry, board, commission or agency of the Government of Ontario or a conservation authority established under section 3 of the *Conservation Authorities Act* that affect a planning matter relating to lands to which the Greenbelt Plan applies shall conform with the Greenbelt Plan. **24(3) Same** Despite subsection (2), a decision referred to in section 7 with respect to an application, matter or proceeding that was commenced before December 16, 2004 and that is prescribed shall conform with such policies of the Greenbelt Plan as may be prescribed.
Oak Ridges Moraine Conservation Act, 2001, S.O. 2001, c. 31, s. 7(1), 11(1)	**7(1) Effect of Plan** A decision that is made under the *Planning Act* or the *Condominium Act, 1998* or in relation to a prescribed matter, by a municipal council, local board, municipal planning authority, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, shall conform with the Oak Ridges Moraine Conservation Plan. **11(1) Amendments to Plan** Any amendments to the Plan, (a) shall be made in accordance with section 12; and (b) shall conform with the objectives of the Plan set out in section 4.

Legislation & Section Number	Language
Places to Grow Act, 2005, S.O. 2005, c. 13, s. 14(1)	**14(1) Effect of growth plan** A decision under the *Planning Act* or the *Condominium Act, 1998* or under such other Act or provision of an Act as may be prescribed, made by a municipal council, municipal planning authority, planning board, other local board, conservation authority, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, or made by such other persons or bodies as may be prescribed that relates to a growth plan area shall conform with a growth plan that applies to that growth plan area.
Fire Protection and Prevention Act, 1997, Ont. Reg. 388/97 -- Fire Code O. Reg. 388/97, Pt. 4, Section 4.1, Subsection 4.1.6, s. 4.1.6.3(5), 4.12.4.1(1), 5.2.2.2	**4.1.6.3(5)** Clean-up shall conform with Part X (Spills) of the *Environmental Protection Act*. **4.12.4.1(1)** Except as provided in Sentences (2) to (4), a laboratory shall conform with the requirements of Section 2.8. **4.12.6.1 Electrical equipment** Electrical equipment shall conform with Subsection 4.1.4. **5.2.2.2 Handling and discharge** The handling and discharge of fireworks and pyrotechnics shall conform with the Fireworks Manual and Pyrotechnics Special Effects Manual, as published by the Explosives Regulatory Division, Natural Resources Canada.
	Alberta
Oil and Gas Conservation Act, Alta. Reg. 151/71 -- Oil and Gas Conservation Regulations, s. 9.020(1)	**9.020(1)** An application under section 26(1)(b) of the Act for approval of a new scheme or a major modification to an existing scheme for the processing of gas shall be filed with the Board and shall conform with the requirements of section 15.050.
	British Columbia
Motor Vehicle Act, B.C. Reg. 26/58 -- Motor Vehicle Act Regulations, s. 23.02, 23.03	**23.02 Schedule 1 signs authorized** All traffic signs corresponding to those depicted in Schedule 1 of this regulation shall conform with respect to shape, colour, minimum dimensions, symbols, wording and reflectorization to the standard traffic signs shown and described in Schedule 1.

Legislation & Section Number	Language
	23.03 Schedule 2 signs authorized All traffic signs corresponding to those depicted in Schedule 2 of this regulation, if erected after June 30, 1978, shall conform with respect to shape, colour, minimum dimensions, symbols, wording and reflectorization to the standard traffic signs shown and described in Schedule 2.
	Manitoba
The Child and Family Services Act, S.M. 1985-86, c. 8, s. 19.4(2)	**19.4(2) Requirements and service of application** An application under subsection (1) shall conform with any prescribed requirements, and notice of the application shall be given to the persons and in the manner as may be prescribed.
The Consumer Protection Act, R.S.M. 1987, c. C200, s. 61(1)	**61(1) Requirements of written agreement** If an agreement for a retail sale or retail hire-purchase to which this Part applies is in writing, (a) it shall be signed by the vendor and the buyer and shall conform with the requirements prescribed by the minister; and (b) the vendor shall provide a duplicate copy of the agreement to the buyer at the time the agreement is entered into.
The Cooperatives Act, S.M. 1998, c. 52, s. 17(3)	**17(3) Existing names** A former Act cooperative is not required to change its name to conform with subsection (2), but if such a cooperative makes any change to its name after the coming into force of this Act, the new name shall conform with subsection (2).
Workplace Safety and Health Act, Man. Reg. 228/94 -- Operation of Mines Regulation, s. 222	**222. Electrical cable** An employer shall, in consultation with the workplace safety and health committee, establish a procedure for handling electrical cable energized in excess of 750 volts, and the procedure shall conform with CSA Standard CAN3- M421-93.
	New Brunswick
Agricultural Land Protection and Development Act, S.N.B. 1996, c. A-5.11, s. 21(7)	**21(7)** Subsection 40(2) of the Act is repealed and the following is substituted: **40.** **(2)** A non-conforming use may continue notwithstanding the zoning by-law or regulation or rural plan or regulation made under paragraph 77.01(1)(c) but (a) if such use is discontinued for a consecutive period of ten months, or such further period as the advisory committee or commission, as

Legislation & Section Number	Language
	the case may be, considers fit, it shall not be recommenced and any further use of the land, building or structure shall conform with the zoning by-law or regulation or rural plan or regulation under paragraph 77.01(1)(c); and (b) if a building or structure so used has, in the opinion of the advisory committee or commission, as the case may be, been damaged to the extent of at least half of the whole building or structure, exclusive of the foundation, the building or structure shall not be repaired or restored or used except in conformity with the zoning by-law or regulation or rural plan or regulation under paragraph 77.01(1)(c), unless the advisory committee or commission agrees otherwise, and, in the case of a by-law, the council may purchase or otherwise acquire the parcel of land on which such building or structure is situated.
Community Planning Act, R.S.N.B. 1973, c. C-12, s. 40(2)	**40(2)** A non-conforming use may continue notwithstanding the zoning by-law or regulation or rural plan but (a) if such use is discontinued for a consecutive period of ten months, or such further period as the advisory committee or commission, as the case may be, considers fit, it shall not be recommenced and any further use of the land, building or structure shall conform with the zoning by-law or regulation or rural plan; and
Motor Vehicle Act, R.S.N.B. 1973, c. M-17, s. 244(2), 245(4)	**244(2)** The portable reflector unit or standard displayed as required under subsection (1) shall conform with the requirements of section 243. **245(4)** The flares, fusees, lanterns, flags or reflector units displayed as required in this section shall conform with the requirements of section 243.
	Prince Edward Island
Electrical Inspection Act, R.S.P.E.I. 1988, c. E-3, s. 2	**2. *Canadian Electrical Code*, standards** All electrical installations and electrical work done in Prince Edward Island shall conform with the requirements of the latest authorized edition of the *Canadian Electrical Code*, and any amendments, variations, additions, or deletions made thereto in regulations made by the Lieutenant Governor in Council.

"Have regard to," "Shall be consistent with" and "Shall Conform With": When Do They Apply and How Do You Apply Them?

Legislation & Section Number	Language
Highway Traffic Act, R.S.P.E.I. 1988, c. H-5, s. 140(5)	**140(5) Type of flares, etc.** The flares, fusees, lanterns and flags to be displayed as required in this section shall conform with the requirements of section 139.
Planning Act, R.S.P.E.I. 1988, c. P-8, s. 15(2)	**15(2) Bylaws, conformity with plan** The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails.
	Yukon
Occupation-al Health and Safety Act, Yuk. Reg. O.I.C. 2006/178 -- Occupational Health and Safety Regulations O.I.C. 2006/178, s. 15.59(2)	**15.59(2) Diesel fuel standard** The fuel for a diesel engine shall conform with *CAN/CSGB Standard 3.16-99, Mining Diesel Fuel,* or other similar standard acceptable to the director.
	Federal
Canada Labour Code, Can. Reg. 86-304 -- Canada Occupational Health and Safety Regulations SOR/86-304, s. 10.49	**10.49** The provisions of Part 4 of the National Fire Code apply as follows: (f) rooms used for container storage of flammable liquids and combustible liquids shall conform with subsection 4.2.9, with the exception of article 4.2.9.3; (g) cabinets used for container storage of flammable liquids and combustible liquids shall conform with subsection 4.2.10; (i) storage tanks for flammable liquids and combustible liquids shall conform with section 4.3, with the exception of paragraph 4.3.13.1(1)(d), articles 4.3.13.5 and 4.3.15.2 and sentences 4.3.16.1(3) and (4); (j) piping and transfer systems for flammable liquids and combustible liquids shall conform with section 4.4, with the exception of articles 4.4.6.2, 4.4.11.1 and 4.4.11.2; and (k) flammable liquid and combustible liquid installations on piers and wharves shall conform with section 4.7, with the exception of article 4.7.10.2.