**CITATION:** Craft et al. v. City of Toronto et al, 2019 ONSC 1151
**DIVISIONAL COURT FILE NO.:** 723/18
**DATE:** 20190516

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**
**DIVISIONAL COURT**

| **BETWEEN:** | |
|---|---|
| CRAFT ACQUISITIONS CORP. and P.I.T.S. DEVELOPMENT INC.<br><br>**– and –**<br><br>CANADIAN NATIONAL RAILWAY COMPANY and TORONTO TERMINALS RAILWAY COMPANY LTD.<br><br>Appellants<br><br>**– and –**<br><br>CITY OF TORONTO<br><br>Respondent<br><br>**– and –**<br><br>LOCAL PLANNING APPEAL TRIBUNAL<br><br>Statutory Party<br><br>**– and –**<br><br>HALTON COALITION, CITY OF MISSISSAUGA, CITY OF HAMILTON, CLUBLINK CORP. ULC and CLUBLINK HOLDINGS LTD., GREATER OTTAWA HOME BUILDERS' ASSOCIATION AND ONTARIO HOME BUILDERS' ASSOCIATION, TORONTO PORT AUTHORITY<br><br>Intervenors | *Ira Kagan, Paul DeMelo, David Winer* and *Kristie Jennings*, for the Appellants Craft Acquisitions Corp. and P.I.T.S. Development Inc.<br><br>*B. Heisey* for the Appellants, Canadian National Railway Company and Toronto Terminals Railway Company Ltd.<br><br>*B. O'Callaghan, Kelly Matsumoto,* and *Kiersten Franz* for the Respondent, City of Toronto<br><br>*S. Floras* for the Local Planning Appeal Tribunal<br><br>*B. van Niejenhuis* for the Intervenor Halton Coalition (Corp. of Oakville, Municipality of Halton, Halton Hills, and Town of Milton)<br><br>*L. Magi* and *A. Maxwell* for the Intervenor, City of Mississauga<br><br>*D. Earthy* and *J. Wice* for the Intervenor, City of Hamilton<br><br>*M. Flowers* and *K. Gossen* for the Intervenor ClubLink Corp and ClubLink Holdings Ltd. |

) *R. Aburto* and *M. Polowin* for the Intervenor
) Greater Ottawa Home Builders' Association
) and Ontario Home Builders' Association

) *R. Swan, A. Jeanrie,* and *I. Thompson* for the
) Intervenor Toronto Port Authority

) **HEARD at Toronto:** April 24 and 25, 2019

**Thorburn J. (Dissenting reasons)**

## REASONS FOR DECISION

## THE STATED CASE

[1] The Local Planning Appeal Tribunal ("LPAT" or the "Tribunal") brings this statutory stated case to the Divisional Court pursuant to s. 36 of the *Local Planning Appeal Act*, 2017 S.O. 2017, c.23 (the "Act"). This is the first hearing in which the interpretation of the Act has been called into question, and thus, its importance to municipal planning litigation in Ontario.

[2] LPAT seeks to have this panel answer the following three questions in respect of appeals before it under s. 38(1) of the Act (" Section 38(1) Appeals"):

(1) Since the terms "examine" and "cross-examine" have different meanings under the *Statutory Powers Procedure Act* ("SPPA"), does the word "examine" " as used in subsection 42(3)(b) of the *Act* and section 3 of O. Reg. 102/18 preclude the ability of a party to cross-examine a witness?

(2) With respect to a hearing pursuant to subsections 38(1) and 38(2) of the Act, do the principles of natural justice and procedural fairness allow the parties an opportunity to ask questions of a witness called and examined by the Tribunal?

a. If the answer to question 2 is "yes", are their questions limited to matters arising from questions asked by the Tribunal?

(3) With respect to a hearing pursuant to subsections 38(1) and 38(2) of the Act and where the Tribunal directs production of affidavits pursuant to subsection 33(2)(c), does the limitation in section 42(3)(b) of the Act and in section 3 of O. Reg 102/18 prevent the cross-examination of an affiant before a hearing and the introduction of a cross-examination transcript in a hearing?

a. If the answer to Question (3) is "no", can the evidence obtained in cross-examination be referred to in submissions in a hearing?

[3] The City has also asked the Court to address a fourth question which it submits is a "threshold question". This submission is addressed below.

[4] There is some urgency as this LPAT Appeal is scheduled to commence on May 27, 2019. Moreover, several other upcoming LPAT hearings including one involving the intervenor, Toronto Port Authority, have been adjourned pending the determination of the stated case in this proceeding.

## THE STATUTORY FRAMEWORK

### *LPAT's Decision to refer these Questions to the Divisional Court*

[5] LPAT conducts and determines all appeals relative to land use planning disputes and municipal governance of land use.

[6] Section 36(1) of the Act provides that LPAT may, of its own motion, state a case in writing for the opinion of the Divisional Court upon a question of law. LPAT is a statutory party to this proceeding pursuant to section 36(2) of the Act.

[7] Section 36(3) of the Act provides that after hearing submissions, the Divisional Court shall determine the stated case and remit it to LPAT with the court's opinion.

### *The Appeal Process*

[8] In 2018, the Ontario Municipal Board (the "OMB") was replaced by LPAT pursuant to the *Building Better Communities and Conserving Watersheds Act, 2017*, S.O. 2017, c.23 ("Bill 139") which provided for the repeal of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28 (the "*OMB Act*"), the enactment of the Act, and amendments to the *Planning Act*, R.S.O. 1990, c. P.13. All former members of the OMB became members of LPAT.

[9] LPAT decides the same type of land use planning issues as the OMB did, but pursuant to new legislation (the Act) and LPAT's *Rules of Practice and Procedure* ("Rules").

[10] One of the changes in the new Act is the creation of a new appeal system for five types of appeals pursuant to the *Planning Act*, including: appeals of a council decision to adopt or amend an official plan, appeals of a decision by an approval authority to approve a decision adopting or amending an official plan, appeals of a council decision to refuse a private amendment to an official plan or non-decision of a private amendment application, appeals of a council decision to refuse a private amendment to a municipal zoning bylaw or non-decision of a private amendment application, and appeals of a decision by a council to adopt a zoning bylaw or zoning bylaw amendment: See ss. 17(24) and (36), s. 22(7), and ss. 34(11) and (19) of the Act.

[11] Pursuant to s. 38(1) of the Act, the procedures to be followed in these *Planning Act* appeals are as follows:

> **Step 1:** the only issue to be decided is whether City Council's decision is consistent with provincial policy and conforms to a provincial plan and the applicable official plan. In this first decision (a "First Appeal"), LPAT will only decide whether or not the municipality/approval authority met the test of conformity and consistency, and if their decision:
>
> i. Was consistent with the Provincial Policy Statement;
>
> ii. Conforms with or conflicts with a provincial plan; or,
>
> iii. Conforms to an applicable Official Plan.
>
> If LPAT finds that Council's decision is consistent with provincial policy and conforms to a provincial plan and the applicable official plan, LPAT must dismiss the appeal. If LPAT decides Council's decision conforms, there are no further proceedings as that decision is final: See s. 17(49.2) of the *Planning Act*.
>
> **Step 2:** If and only if, LPAT finds that Council's decision is not consistent with provincial policy and/or does not conform to a provincial plan or the applicable official plan in s. 17(24.0.1) of the *Planning Act*, LPAT must remit the matter back to Council to give Council an opportunity to make a new decision.
>
> **Step 3:** Where LPAT has remitted a matter back to Council and a party appeals Council's new decision to LPAT, the matter proceeds to a second hearing (a "Second Appeal"). LPAT must again consider whether the decision is consistent with a provincial policy statement and conforms to a provincial plan or applicable official plan.
>
> However, at this Second Appeal, LPAT may make modifications to all or part of the plan, approve all or part of the plan, or refuse all or part of the plan. At this Second Appeal, LPAT has broader powers and in effect conducts a hearing *de novo*: See section 17 (49.7) of the *Planning Act*.

[12] By contrast, under the former *OMB Act*, all appeals were *de novo*.

## THE CONTEXT IN WHICH THIS STATED CASE AROSE

[13] This stated case arose in the context of appeals by Craft Acquisitions Corp., P.I.T.S. Development Inc., Canadian National Railway Co. and Toronto Terminals Railway Co. Ltd. (collectively the "Appellants") of a decision of the City Council of the City of Toronto (the "City").

[14] Craft Acquisitions Corp. and P.I.T.S. Development Inc. (together referred to as "Craft") agreed to purchase the air rights over approximately 21 acres of land, approximately 27 feet above the level of the railway tracks within the Union Station rail corridor. The air rights were sold by the Canadian National Railway Company and the Toronto Terminals Railway Company Ltd. (together referred to as "CNR").

[15] Craft proposed to build a mixed-use development including multiple high-rise residential towers and an office building on approximately one-half of the lands and to make the remaining area available to the City for a public park. CNR continues to own certain air rights under the contract of sale which have not yet been transferred to the purchasers.

***The Planning Review Process***

[16] During the planning review process, the City of Toronto conducted a planning analysis and heard from Craft, municipal staff and consultants regarding use of the land purchased by Craft. Parties were also given the opportunity to make limited oral submissions to a committee of City Council. There was no opportunity during the municipal consultation process for any interested party to call expert witnesses or to cross-examine the City's experts.

[17] After the planning review process and the municipal consultation process were completed, the City of Toronto adopted Official Plan Amendment 395 ("OPA 395") to allow for what is known as the "Rail Deck Park".

[18] OPA 395 provides that the City will build a deck platform approximately 27 feet above the level of the railway tracks which will support a new publicly constructed and owned park on all of the land acquired and to be acquired by Craft. OPA 395 will restrict the future zoning of the land to a public park.

***Appeal of the City of Toronto's Decision***

[19] Two appeals were filed with LPAT by Craft and CNR in respect of OPA 395 pursuant to s. 17(24) of the *Planning Act*.

[20] As these appeals are First Appeals under section 38(1) of the Act, the only issue to be decided is whether to remit the matter back to the City for a new decision on the basis that City Council's decision is inconsistent with a policy statement, fails to conform with or conflicts with a provincial plan or fails to conform with the municipality's official plan: see section 17(24.0.1) of the *Planning Act*. The only remedies available to LPAT are to either dismiss the appeal or remit the matter to the City so the City can make a new decision.

***Procedure Followed on this Appeal***

[21] The City was required to prepare an Enhanced Municipal Record (an "EMR") in accordance with Rule 26.04 of LPAT's *Rules of Practice and Procedure* ("the Rules"). The Record includes everything that was part of the public record prior to the adoption of OPA 395, written and oral, to the date of City Council's decision to adopt OPA 395.

[22] Craft and CNR were also required to file a Case Synopsis and an Appeal Record pursuant to LPAT Rules 26.11. The joint Case Synopsis of Craft and CNR contains the position of these parties and submissions, references to the evidence, case law and the relief sought. The joint Appeal Record of Craft and CNR includes an affidavit of land use planner, Ian Graham (the "Graham Affidavit") pursuant to LPAT Rule 26.12(e). The Graham Affidavit includes Graham's opinion that OPA 395 fails to have regard to matters of provincial interest under s. 2 of the *Planning Act*, is inconsistent with the public policy statement, and does not conform to the Official Plan.

[23] Thereafter, the City filed a Responding Record and a responding Case Synopsis.

[24] The City's Responding Record includes an affidavit of land use planner, Joe Burridge (the "Burridge Affidavit") pursuant to LPAT Rule 26.15(c). The Burridge Affidavit includes Burridge's opinion that OPA 395 conforms to the *Planning Act* and matters of provincial interest, is consistent with the policy statement, conforms to the City of Toronto Official Plan and "advances the Major Objectives for the Railway Lands, as per the Railway Lands West and Central Secondary Plans."

***The Case Conference***

[25] A mandatory case management conference ("CMC") was held in September 2018 pursuant to s. 39(1) of the Act. LPAT may choose whether or not to hold an oral hearing. After a review of the joint Appeal Record of Craft and CNR and the Responding Record of the City, LPAT elected to hold a five day hearing to commence on May 27, 2019.

[26] Section 33(2) of the Act empowers LPAT,

> [A]t any stage of a proceeding… [to] (c) require a party to the proceeding or a person other than a party who makes a submission to the Tribunal in respect of the proceeding to produce evidence for examination by the Tribunal; and (d) require a party to the proceeding to produce a witness for examination by the Tribunal. (Emphasis added)

[27] LPAT Rule 26.24 also provides that:

> In addition to its other powers in the conduct of a hearing, the Tribunal may require the attendance at the hearing of any person whose affidavit or declaration formed part of the appeal record or the responding appeal record, or whose report or submission formed part of any record filed, and the Tribunal may examine any such person(s). The Tribunal may also require that any party produce documentation that the Tribunal may find relevant, and to appear before the Tribunal to answer any questions related to that documentation. (Emphasis added)

[28] Pursuant to s. 33(2)(d) of the Act, LPAT ordered five individuals to attend as witnesses: Graham, Burridge, and three City land use planners who did not swear an affidavit. The Appellants seek to cross examine those witnesses.

[29] Section 42(3)(b) of the Act provides that,

> If the Tribunal holds an oral hearing of an appeal described in subsection 38(1), the only person who may participate in the oral hearing are the parties.
> ...
> (3) At an oral hearing of an appeal described in subsection 38(1) or (2)
> ...
> (b) no party or person may adduce evidence or call or examine witnesses.
> (Emphasis added)

[30] Section 3 of Regulation 102/18 under the Act (the "Regulation") further provides that no party or person may call or examine witnesses prior to the hearing of a Section 38(1) Appeal.

## THE ISSUE

[31] The parties dispute whether LPAT has jurisdiction to direct witnesses to attend an oral hearing of a Section 38(1) Appeal and the extent, if any, to which the parties are allowed to cross-examine witnesses before or at such a hearing.

[32] Resolution of this issue involves the statutory interpretation of sections 33 and 42 of the Act and Section 3 of the Regulation, which involves an examination of the statute as a whole, the SPPA, and other provincial statutes, as well as reviewing the principles of statutory interpretation and the intention of the legislators.

## JURISDICTION

[33] It is agreed that the three questions put before this court by LPAT may be determined by the Divisional Court in accordance with section 36 of the Act.

[34] The City argues that the three questions in the stated case cannot be answered properly without first "determining whether the first appeal will proceed only on the record that was before council." The City argues that LPAT presumes that it has the jurisdiction to require new evidence in the form of affidavits pursuant to Rules 26.12(e) and 26.15(c). However, the propriety of these Rules cannot be presumed, and this Court is required to determine whether the Rules are consistent with the purpose of the legislation.

[35] The City therefore seeks to have the panel address a fourth question, which is:

Does LPAT have jurisdiction to require the parties to provide additional evidence to it?

[36] While this Court has no inherent jurisdiction to answer this question as it does not form part of the stated case, LPAT agreed in oral submissions that the Divisional Court should address

whether the presumption in Question 3 is correct: that is, whether LPAT can direct production of affidavit evidence. That question will be addressed in the context of answering the three questions before us.

## THE POSITIONS OF THE PARTIES

### *The Position of the Parties seeking Cross-Examination*

*A. The Wording of the Provisions in the Statute*

[37] Section 43(1) of the Act provides the Minister with the authority to make regulations that "… includ[e] prescribing the conduct and format of hearings, practices regarding the admission of evidence and the format of decisions."

[38] The moving parties, Craft and CNR, and the intervenors, Clublink, Ontario Home Builders' Association and Greater Ottawa Home Builders' Association, and Toronto Port Authority (together referred to as "the moving parties" or the "Private Sector Parties")), note that s. 33(2)(c) and (d) of the Act specifically empower LPAT, at any stage of a proceeding, to require a party to produce evidence for examination by LPAT and to produce a witness for examination. There is nothing to indicate that the record of evidence is closed and therefore, by virtue of the express wording in section 33, it must remain open.

[39] The moving parties submit that section 42 of the Act and section 3 of Regulation 102/18 prevent a party from adducing evidence or calling or "examining" a witness before or at a hearing. However, neither section 42 of the Act nor section 3 of the Regulation expressly precludes a party from *cross-examining* witnesses ordered by LPAT to give evidence. As such cross-examination in respect of evidence adduced at the direction of LPAT is permitted.

[40] The moving party CNR further submits that the *Act* draws a distinction between "parties" and "participants". While both are permitted to make written submissions on an appeal, only parties are permitted to participate in oral hearings. Participation must therefore mean more than simply making submissions. Parties, as distinct from other participants, must therefore be allowed to cross-examine. (Sections 40(1) and 42(1) of the Act).

[41] The intervenor, ClubLink, adds that s. 42(3)(b) should not be read to prevent cross-examination since "the evidence [before council] is unsworn and generally incapable of being tested in that context." ClubLink argues that it is therefore unreasonable to expect the LPAT to be able to appropriately inquire into and weigh the evidence without the assistance of cross-examination.

[42] The moving parties agree that questions posed by way of cross-examination by parties should be limited to matters arising from evidence adduced at the behest of and questions asked by LPAT.

*B. The Wording in the SPPA and Other Provincial Statutes*

[43] Section 31(1)(b) of the Act provides that proceedings shall comply with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22 ("SPPA"), unless there is a conflict with the Act, its regulations, or rules, in which case the Act prevails.

[44] The moving parties take the position that there is nothing in the Act that conflicts with section 10.1 of the SPPA. Section 10.1 of the SPPA provides that, at a hearing, a party may "examine witnesses and … conduct cross-examinations…" This provision in the SPPA draws a distinction between "call and examine witnesses" and "conduct cross-examinations".

[45] The moving parties suggest that the inclusion of the words "call or examine witnesses" in s. 42(3)(b) of the Act and (unlike the SPPA) the omission of any reference to cross-examination reflects a conscious decision on the part of the Legislature to allow a party to cross-examine witnesses called by LPAT. Given this distinction, it can be presumed that the Legislature intended only to prohibit calling and examining witnesses. Had the Legislature intended to prohibit cross-examinations as well, it would have said so.

*C. Applying the Principles of Statutory Interpretation to the Provisions in the Statute*

[46] The word "examine" should be read narrowly so as not to prevent a party from cross-examining a witness ordered by LPAT to give evidence. A narrow interpretation is consistent with the fact that:

a. There is a common law presumption in favour of cross-examination at or before an oral hearing and any ambiguity should be construed narrowly to allow parties to cross examine: See *Innisfil (Township) v. Vespra (Township)*, [1981] 2 S.C.R. 145 at p. 167. If the Legislature had intended to remove the right of cross-examination, it would have used express language to prevent cross-examination. (This is particularly true when 3 of the 5 witnesses ordered to attend the hearing never filed affidavits);

b. The rules of statutory interpretation provide that, to abrogate the rules of natural justice, express language or necessary implication must be found in the statutory instrument: See *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105, at p. 1113; and

c. In 28 other provincial statutes, legislators have chosen to refer to both examination and cross-examination which indicates that since cross-examination is not mentioned in section 42(3), that right is not removed leading to the conclusion that the legislators left open the possibility that parties could cross-examine a witness LPAT ordered to be produced.

*D. Policy Considerations*

[47] The purpose of the Act is to enable LPAT to consider whether the City is in compliance with provincial policy and conforms to a provincial plan and the official plan, and make orders necessary to make that determination. Because the policy considerations under the *Planning Act* are complex and documentation (as in this case) can be voluminous, expert opinions are filed to enable LPAT to make an informed decision.

[48] In smaller centres, where the evidentiary base may not be comprehensive or complete, LPAT's ability to adduce evidence and the parties' ability to cross-examine will ensure that LPAT has all the necessary information before it, while respecting the limits sought to be imposed by the legislators by limiting the parties' ability to cross-examine only those witnesses called at the direction of LPAT.

[49] The moving parties submit that without cross-examination, the conflicting expert opinions may remain untested and unchallenged, depriving LPAT of an informed understanding of the differences between the expert opinions that are there to assist LPAT in making a decision. Allowing a party to cross-examine witnesses will also assist LPAT to maintain its impartiality by having the parties, not LPAT, challenge witnesses called by LPAT.

[50] Lastly, the moving parties argue that it is in the interests of natural justice and procedural fairness to allow the parties to test the evidence.

***LPAT's Position***

[51] LPAT submits that the Act and the SPPA are clear in conferring LPAT's authority to control its own practices and procedures, and deference ought therefore to be afforded to LPAT's decision, as expressed in Rules 26.12(e) and 26.15(c), to require affidavits to be included in the Appeal Records.

[52] LPAT submits that s. 61 of the *Planning Act* makes it clear that council's role is a legislative one while LPAT performs a quasi-judicial function, to which the principles of procedural fairness attach. LPAT notes that "The Tribunal is required to assess specialized expert evidence presented by multiple parties on complex qualitative and quantitative matters and to determine an outcome that is in the Provincial and public interest. Opinions may need to be tested for the Tribunal to make an informed choice."

[53] LPAT submits that the "jurisprudence which describes the nature of a hearing before the OMB continues to be relevant and now applies to the Tribunal." LPAT notes that the OMB was "required to 'act judicially' in the disposition of a *Planning Act* appeal, by according the parties a 'full and fair hearing' and by considering their submissions."

[54] The LPAT also argues that its decisions have a broad impact on the public and must consider the provincial interest. Because of the importance of these decisions and the complex nature of the evidence, the LPAT argues that "the Court should confer a broad and liberal

interpretation to the Tribunal's enabling authority." The LPAT, however, suggests no answers to the questions brought by it to this Court.

***The Position of the Municipalities***

*A. The Wording of the Provisions in the Statute*

[55] The City and the intervenors, Mississauga, Hamilton and the Halton Coalition (together referred to as "the municipal group" or the "Municipal Parties") are divided as to whether LPAT can seek further evidence.

[56] The City of Toronto submits that no new evidence should be permitted to be adduced on this First Appeal as the only purpose of this First Appeal is to decide whether council's decision conforms and if not, to send it back to council.

[57] The City submits that LPAT should not be allowed to require municipal parties to include affidavits in Appeal Records that were not before municipal council, as provided in Rules 26.12(e) and 26.15(c) of LPAT's *Rules of Practice and Procedure*. The City notes that the Rules do not have the force of law as they have not been enacted as regulations under the Act. The City submits that the only power LPAT has on a section 38(1) appeal is the power to examine a party under s. 33(2)(a) and the power to examine a non-party who makes a submission to LPAT under s. 33(2)(b) on the basis that these powers are not overridden by the specific and mandatory prohibition in s. 42(3)(b).

[58] The City also submits that the Enhanced Municipal Record is sufficient. Pursuant to the new test for s. 38 appeals, appellants must identify which parts of provincial policies or the official plan the instrument fails to comply with or is inconsistent with. Knowing that this is the test to be met, parties know what to file with council before a decision is rendered. This material may be filed on appeal to LPAT. Moreover, there is nothing in the Act or Regulations that requires a planning opinion from an expert. The City notes that Toronto Port Authority, for example, elected not to file a planning opinion, but if new evidence is allowed on Appeal, they will be able to file a planning opinion for the first time on Appeal having elected not to do so at first instance.

[59] Halton takes the position that section 42(3)(b) is a clear prohibition to forbid parties from adducing evidence or calling or examining witnesses and that legislators chose these words knowing they were removing procedural rights from the parties. Halton takes the position that section 42(3)(b) limits LPAT's discretion under s. 33(2) and the combined effect of the provisions is that the parties must breach s. 42(3)(b) by adducing evidence at the behest of LPAT. This, they submit, should not be allowed. Moreover, the clear statutory provision prohibiting a party from adducing or calling evidence overrides any common law duty of fairness.

[60] Hamilton disagrees with the City's assertion that no new evidence is permitted during s. 38 appeals and submits that LPAT has the right to call and examine witnesses. Had the Legislature intended to prohibit all new evidence, it would have made that clear. Hamilton submits that LPAT may ask "probing questions" and consider submissions from the parties on what questions to ask

a witness. Hamilton takes the position however, that a party may not cross-examine a witness called at the request of LPAT.

[61] The municipal group submits that the wording of s 42(3)(b) and s. 3 of the Regulation precludes a party from cross-examining a witness. The word "examination" in section 42(3)(b) should be read to include all forms of examination: direct, cross and re-examination.

[62] The municipal group further argues that the wording in section 33 empowering LPAT to adduce evidence is general and discretionary, and therefore subject to the more specific mandatory prohibition against a party adducing, calling or examining a witness in s. 42 of the Act. Moreover, section 3 of the Regulation provides that in addition to the prohibition in section 42 of the Act that, "no party or person may adduce evidence or call or examine witnesses" at the hearing, section 3 prevents a party from "call[ing] or examin[ing] witnesses prior to the hearing of such an appeal."

*B. The Wording in the SPPA and Other Provincial Statutes*

[63] While the SPPA may make a distinction between examining and cross-examining, there is no basis to read that distinction into the Act. In any case, the provisions of the Act prevail over that of the SPPA where there is conflict, pursuant to s. 31(3) of the Act.

*C. Applying the Principles of Statutory Interpretation to the Provisions in the Statute*

[64] The municipal group submits that s. 42(3)(b) of the Act should be interpreted in a manner that reflects the following:

1) Section 42 is not ambiguous, the wording clearly prohibits a party from adducing, calling or examining a witness at a proceeding;

2) There is no need to interpret section 42 narrowly as the parties are given the opportunity to lead evidence and make submissions before council, and thus the decision to decide appeals based solely on the record before council does not breach the rules of procedural fairness;

3) LPAT's decision on this section 38(1) appeal is limited to whether the City's decision is consistent with provincial policy and conforms to a provincial plan and the applicable Official Plan. The only evidence relevant to this assessment is the evidentiary record before municipal council. No more evidence need be adduced and since the record has been filed, the issue can and should be addressed by submissions of counsel;

4) The procedural restrictions on adducing evidence and examining witnesses only applies to First Appeals since s. 38(1)(a) provides that those sections do not apply to Second Appeals; and

5) In Rule 53.01 of the *Rules of Civil Procedure*, the word "examine" is expressly defined to "consist of direct examination, cross-examination and

> re-examination". This is evidence that the word "examine" is used to include cross-examination. The clear and specific prohibition against examining a witness should therefore include cross-examination before and at the hearing.

*D. Policy Considerations*

[65] The municipal group submits that appeals should generally be decided without adducing new evidence or permitting examinations, given the extensive opportunities available to proponents to advance evidence and submissions to the municipality prior to the municipal decision and the narrow range of permitted remedies on First Appeals governed by s. 38(1) of the Act. This process is fair and in accordance with the principles of *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 34 that include consideration of: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the agency.

[66] Moreover, they note that, absent a *Charter* right, the Legislature may choose to oust the common law presumption of procedural fairness: See *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781, at paras. 19-24.

[67] The municipal group argues that had the Legislature intended to only allow cross-examination, it would have said so.

[68] The municipal group notes that it is also consistent with the express intention of legislators to deal with appeals more expeditiously, in a less adversarial way, and to show more deference to council. The City submits therefore that any conflict should be consistent with the intention of the then Minister of Municipal Affairs who stated in the Legislative Assembly on September 11, 2017 that:

> We propose to reinforce a municipality's role in the land use planning process by reducing the tribunal's ability to overturn municipal decisions. The proposed tribunal's jurisdiction would be limited to considering whether a municipal decision is consistent and conforms with provincial and local plans and policy. If the tribunal found that a municipal decision is inconsistent or does not conform, the matter would be returned to the municipality for reconsideration.

[69] It is also consistent with then Attorney General's comment that it was the government's intention "to create an appeal system that is faster and fairer … as opposed to having what's referred to as de novo hearings."

[70] The municipal group suggests that the purpose of the new legislation, when viewed in light of the legislative history, is to force municipal councils to make responsible planning decisions that take into account the interests of all stakeholders when making its decision and not (as some

perceived to be the case) to make politically attractive but wrong decisions, relying on the expectation that the OMB would "get it right" without exposing municipal politicians to backlash.

***Positions of those appearing before the Court in Respect of the Questions to be Answered***

| | LPAT | Craft & PITS | CN & TTR | Club Link | Home Builders' Association | Port Authority | City | Mississauga | Halton Coalition | Ham ilton |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| 1 | ■ | No | No | No | ■ | No | Yes | Yes | Yes | Yes |
| 2 | ■ | Yes | Yes | Yes | ■ | Yes | No | No | No | No |
| 2a | ■ | No | No | No | ■ | No | n/a | n/a | n/a | n/a |
| 3 | ■ | No | No | No | No | No | Yes | Yes | Yes | Yes |
| 3a | ■ | Yes | Yes | Yes | Yes | Yes | n/a | n/a | n/a | n/a |

## ANALYSIS OF THE ISSUES

***Relevant Provisions of the Act, the Regulation and the Rules***

[71] Section 33(2) of the *Act* affords LPAT broad powers of examination in all LPAT appeals as follows:

> (2) At any stage of a proceeding, the Tribunal [LPAT] may,
>
> (a) examine a party to the proceeding;
>
> (b) examine a person other than a party who makes a submission to the Tribunal in respect of the proceeding;
>
> (c) require a party to the proceeding or a person other than a party who makes a submission to the Tribunal in respect of the proceeding to produce evidence for examination by the Tribunal; and
>
> (d) require a party to the proceeding to produce a witness for examination by the Tribunal.

[72] Section 38 provides that,

> The practices and procedures set out in section... 42 apply with respect to appeals to the Tribunal under subsections 17 (24) and (36), 22 (7) and 34 (11) and (19) of the *Planning Act* of a decision made by a municipality or approval authority in respect of an official plan or zoning by-law or the failure of a municipality to make a decision in respect of an official plan or zoning by-law, *except for an appeal*,
>
> (a) that is *in respect of a new decision that the municipality or approval authority was given an opportunity by the Tribunal to make, where the Tribunal determined that the decision is inconsistent with a policy statement issued under subsection 3 (1) of the Planning Act, fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan;*
>
> (b) where the Tribunal has received a notice from the Minister responsible for the *Planning Act*, in accordance with the *Planning Act*, that a matter of provincial interest is, or is likely to be, adversely affected by the plan or by-law or the parts of the plan or by-law in respect of which the appeal is made; or
>
> (c) that is an appeal under subsection 22 (7) or 34 (11) of the *Planning Act* in respect of the failure of a municipality to make a new decision that it was given an opportunity by the Tribunal to make.

[73] In other words, the prohibitions in section 42 do not apply to a Second Appeal of a municipal Council decision.

[74] Section 42(3) of the Act provides that,

> (3) At an oral hearing of an appeal described in subsection 38 (1) or (2),
>
> > (a) each party or person may make an oral submission that does not exceed the time provided under the regulations; and
> >
> > (b) no party or person may adduce evidence or call or examine witnesses.

[75] The limitation in s. 42(3) applicable to a First Appeal to LPAT is supplemented by the provisions of ss. 2 and 3 of the Regulation made under the Act as O. Reg.102/18 (the "Regulation"), which reads as follows:

> 2. (1) For the purposes of clause 42(3)(a) of the Act,
>
> > (a) an oral submission made by a party shall not exceed 75 minutes; and

> (b) an oral submission made by a person other than a party shall not exceed 25 minutes.
>
> ...
>
> 3. In addition to the restriction under clause 42 (3) (b) of the Act on the calling or examining of witnesses at an oral hearing of an appeal described in subsection 38 (1) or (2) of the Act, no party or person may call or examine witnesses prior to the hearing of such an appeal.

[76] Rule 32 of the *Rules of Practice and Procedure* gives the Tribunal broad authority to enact rules governing its practices and procedures including: "when and how the Tribunal may hear from a person other than a party." This Rule clearly envisages that there may be more than the evidence filed in the Appeal Records and parties' submissions at the hearing of a section 38(1) LPAT appeal.

[77] Rule 26.24 provides that,

> In addition to its other powers in the conduct of a hearing, the Tribunal may require the attendance at the hearing of any person whose affidavit or declaration formed part of the appeal record or the responding appeal record, or whose report or submission formed part of any record filed, and the Tribunal may examine any such person(s). The Tribunal may also require that any party produce documentation that the Tribunal may find relevant, and to appear before the Tribunal to answer any questions related to that documentation.

*Relevant Provisions of the Statutory Powers Procedure Act*

[78] Section 10.1 of the SPPA provides that at a hearing, a party may:

> (a) call and examine witnesses and present evidence and submissions; and
>
> (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

***Applying the Principles of Statutory Interpretation***

*Interpreting the relevant sections of the Act*

[79] The provisions of the Act, the *Planning Act* and the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22 (the "SPPA") must be read harmoniously, and in accordance with the principles of natural justice and the intention of the legislators.

[80] The provisions of the Act must also be read in a manner consistent with the provision in s. 31(3) of the Act which provides that where the SPPA conflicts with the Act, the Act, its Regulations, and Rules prevail over the provisions in the SPPA.

[81] Moreover, section 31(2) of the Act gives LPAT the authority to control its own process:

> (2) The Tribunal shall, in respect of each proceeding before it, adopt any practices and procedures provided for in its rules or that are otherwise available to the Tribunal that in its opinion offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceedings.

[82] The first step in determining the parties' right to cross-examination is to consider the relevant sections of the Act. As noted by the Supreme Court in *Ocean Port Hotel Ltd. v. British Columbia* (supra) at paras. 21 and 22,

> Confronted with silent or ambiguous legislation, courts generally infer that Parliament or the legislature intended the tribunal's process to comport with principles of natural justice: *Minister of National Revenue v. Coopers and Lybrand*, [1979] 1 S.C.R. 495, at p. 503; *Law Society of Upper Canada v. French*, [1975] 2 S.C.R. 767, at pp. 783-84. ...
>
> However, like all principles of natural justice, the degree of independence required of tribunal members may be ousted by express statutory language or necessary implication. See *Innisfil (Corporation of the Township of) v. Corporation of the Township of Vespra*, [1981] 2 S.C.R. 145...

[83] The Act and the Rules provide that the Appellants must identify the parts of provincial policies or official plan they say the instrument fails to comply or is inconsistent with.

[84] Section 33(2)(c) of the Act expressly empowers *LPAT* to order a party or a non-party to produce evidence for examination by LPAT at any stage of the proceeding to assist in LPAT's determination as to whether Council's decision complies. This section applies to both first and second LPAT appeals.

[85] Section 42(3) of the Act clearly prohibits *a party* from adducing, calling or examining a witness at the hearing and section 3 of the Regulation prohibits *a party* from calling or examining a witness before a First Appeal only.

[86] Section 42(3)(b) does not address LPAT's power in First and Second Appeals to order that evidence be provided to assist it in making a decision as to whether the municipality is in compliance.

[87] In my view, a reading of sections 33(2)(c) and 42(3)(b) together, requires a party to comply with LPAT's directive to adduce evidence, as nothing in section 42(3)(b) limits LPAT's power to order that evidence be adduced pursuant to s. 33(2) of the Act.

[88] The next question is whether a party is entitled to cross-examine where evidence is adduced on the directive of LPAT.

[89] There is no express provision in the Act to prevent a party from *cross-examining* a witness who gives evidence on the order of LPAT.

[90] While the principles of natural justice may be ousted by express statutory language or necessary implication there is no such express statutory language or necessary implication present in the Act.

[91] Moreover, while many other provincial statutes (including the *SPPA*) refer to examination and cross-examination separately, the Act does not. Lastly, unlike section 53.01 of the *Rules of Civil Procedure*, where the word "examine" is expressly defined to "consist of direct examination, cross-examination and re-examination", there is no such expansive definition of "examination" in the Act.

[92] For these reasons, whether or not the City is correct that "the enhanced Municipal Record is sufficient", the legislators have empowered LPAT to seek additional evidence and ask questions of the parties and witnesses ordered by LPAT to attend where LPAT sees fit. Where LPAT elects to do so, there is no prohibition to preclude cross-examination of those witnesses by the parties.

*Interpreting the Provisions in the Context of the SPPA*

[93] Section 31(1)(b) of the Act provides that the Act is to comply with the *SPPA* unless a provision in the Act conflicts with the *SPPA*. In this case there is no such conflict as the *SPPA* expressly allows for the cross-examination of witnesses and there is nothing in the Act to expressly prevent cross-examination in these limited circumstances.

*The Principles of Natural Justice and Procedural Fairness*

[94] The principles of natural justice and procedural fairness favour the right to cross-examine witnesses called at the behest of LPAT. Any prohibition on a right otherwise available to parties to test evidence adduced, is to be construed narrowly and to deny a right to cross-examine, there must be express language: See *Kane (supra)*. Here there is no such express language.

[95] LPAT's power to adduce new evidence and the parties' right to cross-examine on that evidence only where LPAT orders that new evidence to be adduced, is consistent with the deference to be afforded to LPAT, as an expert tribunal to manage its own hearings and to act as independent arbiter and decision-maker. It is also consistent with the common law presumption that, to the extent there is ambiguity, any ambiguity should be construed narrowly to allow parties to cross-examine. Lastly, it is reflective of the fact that LPAT performs a quasi-judicial function to which the principles of procedural fairness attach.

[96] In this case, the limited right to cross-examine will ensure that the parties have an opportunity to address the five new affidavits filed on the directive of LPAT pursuant to section 33(2) of the Act.

[97] Most importantly, while the issue to be determined is whether the municipality was in compliance, if the determination is made that it was, that determination is final and there is no Second Appeal the parties can bring as stipulated in section 38(2) of the Act.

[98] There is however, no right in the Act or elsewhere to allow parties to cross-examine on any evidence other than on new evidence adduced at the direction of LPAT.

*The Intention of the Legislators*

[99] The municipal parties correctly note that the intention of the legislators was to create a shorter, more streamlined First Appeal, as the only issue to be determined is whether the municipal decision is consistent with a policy statement issued under the *Planning Act*, fails to conform with or conflicts with a provincial plan, or fails to conform with an applicable official plan and is thereby non-compliant.

[100] However this does not mean LPAT may never require further evidence be adduced as noted by the then Attorney General at third reading of Bill 139 (now the Act) as follows:

> The Tribunal would also have the power to ensure hearings are efficient and fair by requiring parties to produce evidence or witnesses for examination by the Tribunal, where appropriate.

[101] The objectives of the legislators are satisfied by the right of cross-examination only of witnesses called at the behest of LPAT, as the scope of a section 38(1) Act appeals is narrow, there need not be a hearing *de novo* or any new evidence adduced (beyond what was before municipal council) unless LPAT, as an expert tribunal, expresses the need for same, and by limiting the parties' oral submissions to 75 minutes.

[102] Moreover, it is important that where LPAT orders that new evidence be adduced, a party be permitted to cross-examine and thereby test that evidence as, if LPAT decides after hearing that evidence that Council's decision complies, that decision is final and there is no further appeal. As such it is important that parties be entitled to test that evidence to ensure that the decision is fair.

[103] Since the only issue on this section 38(1) LPAT appeal is whether Council's decision is consistent with applicable policies and official plans, it is unlikely that LPAT will need to engage in a lengthy contest of opinions in most cases. However, these decisions address issues of policy and law and expert assistance may be sought by LPAT.

[104] If the parties are given the chance to cross-examine where new evidence is adduced at the behest of LPAT, LPAT will have the opportunity to be fully informed about issues relevant to its decision including expert opinion evidence which may or may not have been fully addressed in the Appeal Record.

[105] In short, since LPAT has the power to require the production of affidavits and compel affiants to give evidence in order to assist LPAT to determine whether the municipality's decision is consistent with provincial policy and conforms to a provincial plan and the applicable Official Plan, the parties

must be entitled to test that evidence by way of cross-examination such that LPAT is in the best position to determine the issue before it.

**CONCLUSION**

[106] In summary, for the reasons set out above, I find that sections 33 and 42 of the Act, the Regulation and the Rules can and should be read harmoniously such that a party is prohibited from adducing or calling or examining witnesses unless evidence is ordered by LPAT to be adduced. In those limited circumstances only, the parties have the right to cross-examine to test that evidence. This is consistent with LPAT's quasi-judicial function, the principles of natural justice and procedural fairness, and the intention of the legislators. It is also important for the parties to be entitled to test evidence to have the best chance at arriving at a fair decision on what may be their one and only LPAT appeal.

[107] For these reasons , my answers to the questions posed in respect of this section 38(1) First Appeal is as follows:

1. Since the terms "examine" and "cross-examine" have different meanings under the *Statutory Powers Procedure Act* ("SPPA"), does the word "examine" " as used in subsection 42(3)(b) of the *Act* and section 3 of O. Reg. 102/18 preclude the ability of a party to cross-examine a witness?

ANSWER: NO

2. With respect to a hearing pursuant to subsections 38(1) and 38 (2) of the *Act*, do the principles of natural justice and procedural fairness allow the parties an opportunity to ask questions of a witness called and examined by the Tribunal?

ANSWER: YES. ONLY IN RESPECT OF A WITNESS CALLED AND EXAMINED BY LPAT

2B. If the answer to question 2 is "yes", are their questions limited to matters arising from questions asked by the Tribunal?

ANSWER: YES.

3. With respect to a hearing pursuant to subsections 38(1) and 38(2) of the *Act* and where the Tribunal directs production of affidavits pursuant to subsection 33(2)(c), does the limitation in section 42(3)(b) of the LPAT Act and in section 3 of O. Reg 102/18 prevent the cross-examination of an affiant before a hearing and the introduction of a cross-examination transcript in a hearing?

ANSWER: NO. BUT CROSS-EXAMINATION MAY TAKE PLACE ONLY IN RESPECT OF EVIDENCE ADDUCED BY LPAT ORDER

3B. If the answer to Question (iii) is "no", can the evidence obtained in cross-examination be referred to in submissions in a hearing?

ANSWER: YES.

Thorburn J.

**Linhares de Sousa and Wilton-Siegel J.J.**

[108] As mentioned, the Local Planning Appeal Tribunal brings this statutory stated case to the Divisional Court pursuant to s. 36 of the *Local Planning Appeal Act*. LPAT has requested that this panel answer the three questions set above in respect of Section 38(1) Appeals.

[109] We have reviewed the dissenting judgment of our colleague and adopt her description of the statutory framework for this stated case and the context in which this stated case arose. We also agree with her statement of the issue before this Court and the jurisdiction of this Court. However, we reach different conclusions regarding the answers to the three questions on which the LPAT seeks this Court's advice.

[110] We will set out our reasons for our conclusions in three parts. First, we will set out our view of the applicable principles of statutory interpretation and certain observations regarding the contextual framework within which these questions are being addressed that inform our analysis. Then, we will discuss our analysis and conclusions regarding the statutory interpretation of the Act in respect of two issues: (1) the extent to which the parties are able to provide evidence upon which they rely prior to any hearing of a Section 38(1) Appeal; and (2) the extent to which the parties are able to provide evidence by way of cross-examination of witnesses at any oral hearing of a Section 38(1) Appeal. Finally, we will set out our answers to the three questions on this stated case and the specific basis of those conclusions.

## APPLICABLE PRINCIPLES OF STATUTORY INTERPRETATION

[111] The guiding principle of statutory interpretation is the "modern" approach as expressed by the Supreme Court in *Bell ExpressVu Limited Partnership v. Rex*, [2002] SCC 42 at para. 26 as follows:

> In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical

> and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: [citations omitted]].

[112] In conducting an exercise of statutory interpretation the following principles also give expression to the general principle cited above: (1) due respect and meaning must be given to all of the words in a statutory provision; (2) there is a presumption that legislatures are capable and intent on drafting legislation that is rational and internally coherent; and (3) there is a presumption that a legislature does not intend an "absurd" result: see *Rizzo v. Rizzo Shoes Ltd.*, [1998] 1 S.C.R. at para. 27.

## THE CONTEXTUAL FRAMEWORK

[113] All parties in this proceeding agree that, in any analysis of the procedural rights of participants in a Section 38 Appeal, the purposes of the *Act* are important. In our view, there are three objectives of the Legislature in enacting Bill 139 that are significant for present purposes.

[114] First, the nature of the appeal is important. Bill 139 had the effect of transforming appeals before the OMB, which were *de novo* appeals effectively involving an action between the parties that was determined on the basis of a standard of "good planning", into a qualitatively different proceeding. Appeals from municipal decisions regarding official plan and by-law amendments are now limited to a consideration of whether the municipal decision is inconsistent with a policy statement issued under s. 3(1) of the *Planning Act*, fails to conform with or conflicts with a provincial plan, or fails to conform with an applicable official plan (herein collectively referred to as being "Non-Compliant"). Such appeals no longer involve an action between the parties, much less an action between competing development proposals, nor are they decided in a *de novo* hearing on the merits of a proposed development. Instead, the appeals are limited to a determination by the Tribunal of whether the appellant has demonstrated that the municipal decision is Non-Compliant which, in turn, focusses on the decision-making of the municipal council.

[115] Second, the amendments in Bill 139 were intended to ensure that Section 38(1) Appeals would be conducted in an expeditious and cost-effective manner consistent with a fair and just resolution of the merits of the proceeding. To this end, the *Act* reflects a number of express provisions in sections 39, 40 and 42, including the requirement for a case management conference in s. 39(1) to control and direct proceedings before the Tribunal, broad discretion in favour of the Tribunal to determine whether or not additional parties or other persons may participate in the proceedings, a right in favour of the Tribunal to conduct written hearings, and the restrictions on the conduct of any oral hearing set out in s. 42 which are discussed further below.

[116] Third, the amendments in Bill 129 significantly change the role of the Tribunal from that of the OMB. While I agree with the Appellants that it is not correct to characterize the Tribunal exclusively as an investigative or inquisitorial body, the role of the Tribunal entails a very

substantial investigative function, as opposed to the purely quasi-judicial function performed by the OMB.

[117] In this regard, among other provisions, the *Act* grants the Tribunal extensive powers of examination in s. 33(2). The Tribunal may examine not only a party to a proceeding but also any other person other than a person making a submission to the Tribunal in respect of the proceeding. The Tribunal also has the right to require a party or such other person to produce evidence for examination by the Tribunal and to require a party to produce a witness for examination by the Tribunal. The Tribunal thus has the primary and leading role in the introduction of evidence. In addition, s. 32(1) of the *Act* gives the Tribunal broad powers to make rules governing its practices and procedures. Significantly, the *Act* also provides in s. 32(5) that unless the Tribunal's failure to comply with its rules or the exercise of its discretion causes a "substantial wrong that affected the final disposition of the matter", the Tribunal's actions will not constitute a ground for setting aside the decision on an appeal or an application for judicial review.

[118] Conversely, the Act significantly limits and changes the participation of parties to a Section 38(1) Appeal. As mentioned above, the participants in any proceeding before the Tribunal are restricted to addressing a single issue – whether the municipal decision is Non-Compliant. Section 42(3)(b) provides that, at any oral hearing of a Section 38(1) Appeal, no participant may adduce evidence or call or examine witnesses. While the Private Sector Parties dispute the contention of the Municipal Parties that this provision prohibits cross-examination of any witnesses, they do not dispute that s. 42(2)(b) prevents the parties and other participants from introducing any evidence of their own whether by documentary production or examination of their own witnesses at any such hearing. Section 42(3)(a) also contemplates a limit on oral submissions, subject to the discretion of the Tribunal, which is addressed in section 2 of the Regulation.

[119] As a result of these aspects of a Section 38(1) Appeal, the manner in which *viva voce* evidence is presented at an oral hearing has also been transformed. The parties no longer control the introduction of evidence. Instead, the Tribunal determines the extent and nature of any *viva voce* evidence through its control of the witnesses that will be called to give testimony. The dynamic is also fundamentally altered by the fact that, in the first instance at least, it is the Tribunal that conducts the examination of the witnesses. This has a significant implication for the context in which any rights of examination that the parties may have are to be understood and assessed, as is discussed below.

[120] In summary, the *Act* contemplates the active intervention of the Tribunal in a Section 38(1) Appeal that departs significantly from the traditional quasi-judicial function of the Board and a significantly reduced and changed involvement of participants in any proceeding before the Tribunal. The Appellants describe the change as replacing an appeal process in which parties "push" evidence on the Board with a process in which the Tribunal "pulls" the evidence it needs from the parties. In general terms, we think this accurately describes this aspect of the changes to the hearing of appeals of municipal decisions regarding official plans and by-law amendments.

## CONCLUSIONS REGARDING THE CONTRACTUAL INTERPRETATION OF THE *ACT*

[121] The issues in this stated case involve the extent to which the parties are entitled to put evidence upon which they rely before the Tribunal. Broadly, this engages two separate questions:

1. The extent to which the parties are able to provide evidence upon which they rely prior to any hearing of a Section 38(1) Appeal, whether written or oral; and

2. The extent to which the parties are able to provide evidence by way of cross-examination of witnesses at any oral hearing of a Section 38(1) Appeal.

### *Legal Framework for the Analysis of the Three Stated Questions*

[122] To address the three stated questions, it is necessary to consider the extent to which a party to a Section 38(1) Appeal has an independent right to place its own evidence in the record of such proceeding. For example, can a party introduce evidence of a competing development proposal on the lands at issue that the party says would be superior to the municipality's proposed use with a view to arguing that such evidence demonstrates the municipality's decision is Non-Compliant? In this regard, we think the following four considerations are significant.

[123] First, as a general rule, the procedural rights of a party to a Section 38(1) Appeal are governed by the principles of natural justice. Accordingly, a determination of the procedural rights of a party in respect of any stage of a proceeding before the Tribunal will require an assessment of the factors set out in *Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817 that are relevant to a determination of the content of the duty of fairness in any given situation. These include, on a non-exhaustive basis: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the agency itself.

[124] Second, on the other hand, as discussed above, the *Act* confers an investigative role on the Tribunal. An important element of this mandate is the extensive rights of examination granted the Tribunal and the restriction on the rights of parties at an oral hearing of a Section 38 Appeal to adduce evidence and examine witnesses.

[125] Third, notwithstanding the investigative aspect of the Tribunal's function, there is no dispute that the Tribunal also exercises a statutory power of decision that engages the *Statutory Powers Procedure Act*. The rights afforded under the *Statutory Powers Procedure Act* that are relevant for the present proceeding are limited to rights of a party under s. 10.1 thereof, which pertain solely to any oral hearing that may be ordered by the Tribunal.

[126] Lastly, it is also not disputed that rights to procedural fairness that might otherwise apply in a hearing before an administrative tribunal can be expressly overridden or limited by the Legislature: see *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 SCR 781 at paras. 19-24. In this case, the *Act* affects such rights in two ways. Section 31(3) provides that the provisions of the *Act*, regulations made under the *Act* and the Rules prevail over the provisions of the *Statutory Powers Procedure Act* to the extent of any conflict. The interrelation between the *Statutory Powers Procedure Act* and the *Act* in respect of the foregoing provisions is discussed below. In addition, as mentioned, s. 42(3)(b) of the *Act* specifically abridges certain rights that would otherwise exist in favour of parties to a Section 38(1) Appeal in respect of oral hearings. For present purposes, however, the important point is that, apart from oral hearings which engage the foregoing provisions, the procedural rights of a party to a Section 38(1) Appeal are governed by the principles of natural justice.

[127] With this background, we turn to the two questions set out above.

***The Introduction of Evidence Prior to an Oral Hearing***

[128] The parties have raised two separate issues regarding the introduction of evidence into the record of the proceeding prior to any oral hearing of a Section 38(1) Appeal: (1) the right of the Tribunal to call for additional evidence; and (2) the right of a party to introduce evidence not required by the Tribunal. I will address each in turn.

*The Right of the Tribunal to Call for Additional Evidence*

[129] The Municipal Parties take the position that a party to a Section 38(1) Appeal does not have a right to introduce any evidence in such an appeal and that the Tribunal has no power to authorize a party to do so. The Municipal Parties assert that, as a matter of law, the *Act* does not contemplate the introduction of any evidence in respect of a Section 38(1) Appeal beyond the evidence that was before the municipal council when it took the decision which is being appealed, that is, the EMR. In particular, the Municipal Parties submit that the Tribunal cannot require an appellant to provide the evidence contemplated by Rule 26.12(e) and cannot accept the evidence contemplated by Rule 26.15(c) if a municipality chooses to file such evidence.

[130] As we understand their argument, the Municipal Parties submit that this result is a matter of the intention of the Legislature, that is, of statutory interpretation which overrides any rights that a party might have under the rules of natural justice. We do not agree with this position for the following reasons which address the arguments made by the Municipal Parties.

[131] First, there is nothing in the *Act* or the *Planning Act* that suggests, must less states, that the record before the Tribunal is intended to be closed off with the EMR. In fact, as the Private Sector Parties note, it is possible to identify certain circumstances contemplated by the *Planning Act* in which the record would necessarily need to be supplemented.

[132] Second, and more importantly, as mentioned, the Tribunal's unique role necessarily requires that it be able to inform itself of the issues raised by an appellant. This right is enshrined

in s. 33(2) above. The Tribunal's exercise of that right necessarily entails the addition of evidence to the record. As this question involves a matter of mixed fact and law, the practice appears to be to put such position forward in the form of an opinion of a land use planner or other expert, both before the municipal council and in any appeal proceedings. Such evidence is clearly important for both informing the Tribunal and for refining the issues before it. At a minimum, the Tribunal needs to know the particular facts upon which a party relies. This cannot necessarily be fully appreciated by a mere review of the EMR which is, in many cases, going to be a very voluminous document. In addition, the Tribunal needs to know the specific basis for an appellant's assertion that a municipal decision is Non-Compliant.

[133] Third, we do not agree with the Municipal Parties that the Tribunal's powers under s. 33(2)(c) and (d) are abridged by the provisions of s. 43(2)(b) in respect of an oral hearing. The Municipal Parties submit that the prohibition against a party "adducing evidence" is contravened by a party's compliance with Rules 26.12(e) and 26.15(c), that is, a party will contravene s. s. 43(2)(b) by complying with the Rules. The Municipal Parties argue that, by causing such a contravention, the Tribunal has exceeded its powers under the *Act* from which it must follow that the Rules 26.12(e) and 26.15(c) are invalid as *ultra vires* the Tribunal.

[134] We do not agree for the reason that s. 43(2)(b) applies only to adducing evidence at an oral hearing. Section 43(2)(b) does not address the procedure by which the record is developed prior to any oral hearing of a Section 38(1) Appeal for consideration by the Tribunal at such hearing. It is, in our opinion, a provision whose purpose is to ensure that the oral hearing is conducted in an efficient manner. More significantly, the restriction of the operation of 42(3)(b) to oral hearings renders the Municipal Parties' interpretation unreasonable in three respects.

[135] First, because s. 43(2)(b) only applies to adducing evidence at an oral hearing, it would not apply to prohibit the introduction of such evidence for use at a written hearing. Such differential treatment in the right of introduction of evidence is unreasonable. Second, given that the evidence to which the Municipal Parties object will have been placed in the record well before any oral hearing, the position of the Municipal Parties requires acceptance of the view that reference by a party in its oral submissions at the oral hearing to the evidence provided in compliance with Rules 26.12(e) and 26.15(c) will constitute "adducing evidence". We think that this is untenable as a matter of common sense. Third, even if the words "adducing evidence" had the broad meaning attributed to them by the Municipal Parties, s. 42(3)(b) would not prohibit reference to such evidence in written submissions if the Tribunal were to conduct the Section 38(1) Appeal by way of a written hearing. This distinction with respect to submissions is also unreasonable.

[136] Lastly, we do not accept the argument of the Municipal Parties that the effect of permitting a party to introduce evidence of the nature contemplated above would eliminate any distinction between a First Appeal and a Second Appeal in respect of official plan and bylaw amendments. Apart from the issue of right of cross-examination which would, given the determination herein, maintain a distinction, a party on a Second Appeal might be entitled to introduce evidence of a much more indirect nature in support of its position that the municipal decision was Non-Compliant.

*The Right of a Party to Introduce Evidence Not Required By the Tribunal*

[137] Based on the analysis of the legal framework above, we conclude that, while the Tribunal has the authority call for evidence that it considers relevant to the issue in a Section 38(1) Appeal, a party to such a proceeding has no independent right to put forward evidence unless such evidence is necessary to make its case, which determination is to be made in the first instance by the Tribunal. We reach this conclusion on the basis of the following analysis of the application of the *Baker* factors in the circumstances of a Section 38(1) Appeal.

[138] First, the decision taken is a narrow question of mixed fact and law – is the municipal decision Non-Compliant? It is not a decision taken in the context of an action between the parties. Instead, it is a decision regarding whether the appellant has satisfied the onus on this focussed issue. As further discussed below, the decision is therefore taken in the context of a process that departs significantly from a traditional court process. In particular, it does not contemplate a trial *de novo* in which the parties, rather than the Tribunal, determine the evidentiary record. Second, the features of the statutory scheme in the *Act* described above establish, as a matter of legislative intent, that the Tribunal, rather than the parties, is the principal determinant of what evidence is necessary to permit the Tribunal to make an informed determination of the issue before it. Third, we accept that the Tribunal's decision can have an important, if indirect, effect on the property rights of an appellant. Fourth, the legitimate expectations of a party on an appeal are limited to the expectation that the party would be able to put forward all material evidence that is relevant for its argument that the municipal decision is Non-Compliant. Lastly, the Tribunal's process, in Rules 26.12(e) and 26.15(c), provides a party with the right to file documentation setting out the facts upon which it relies and opinion evidence, as well as oral or written submissions, regarding whether the municipal decision is Non-Compliant.

[139] Based on the foregoing, we conclude that the provisions of the *Act*, and to the extent relevant, procedural fairness, provide that a party can only produce evidence to the extent that the Tribunal, in its discretion, calls for such evidence, subject to the requirement of procedural fairness that the parties must be given a fair opportunity to put their case before a hearing of the Tribunal before a decision is rendered.

[140] We note, however, that the evidence before the Court in this stated case does not reflect any particular practical problem in this regard. As discussed above, the Rules provide that the appeal record and responding record are to set out the material facts upon which the parties rely and contemplate the possibility of opinion evidence at the option of a party. It is not suggested that this evidence does not assist the Tribunal. More importantly, given the focussed nature of the question before the Tribunal, the evidence before the Court suggests that the opinion evidence contemplated by such Rules would necessarily be limited to expert opinion evidence on the question of mixed fact and law before the Tribunal.

[141] Further, for the reasons set out above, the Tribunal has a clear need for the factual and opinion evidence contemplated by Rule 26.15(c) for the reasons described above. On this basis, we think that a party to a Section 38(1) Appeal must have a right under the principles of natural justice to provide such evidence as an adjunct of the party's right to put forward its position.

*Conclusions Regarding the Introduction of Evidence*

[142] Accordingly, we conclude that, prior to any hearing of a Section 38(1) Appeal, the Tribunal has the right to call for evidence that, in its opinion, will assist it in understanding the issue for its determination in such appeal but an appellant or other party has no right to introduce further evidence except to the extent that it is necessary to allow the party to put forward its case that the municipal decision was Non-Compliant. In particular, to address the example set out above, any evidence of an allegedly superior development proposal would not be admissible as it would require the Tribunal to make a determination on the merits of conflicting proposals, rather than to make the more focussed determination required of it under the *Act*. In any event, any request to place further evidence in the record of the proceeding must be raised at the case conference contemplated by s. 39(1) of the *Act*. A decision of the Tribunal to reject any such evidence would be subject to an appeal only on the standard set out in s. 32(5) of a "substantial wrong that affected the final disposition of a matter."

***The Introduction of Evidence by Way of Cross-Examination***

[143] Turning to the second issue, we conclude that the statutory interpretation of s. 42(3)(b) should be informed by the principle that, under the *Act*, the Tribunal is entitled to require such evidence from the parties as will, in the Tribunal's opinion, permit it to make an informed decision on the issue before it. In this regard, however, it is relevant that, as an aspect of its unique role, the Tribunal has an independent right to examine the witnesses of the parties, including in particular their expert witnesses. In the Rail Deck Park appeal, the Tribunal has indicated that it intends to exercise this right to examine the expert witnesses of the parties and, in addition, to examine three other land use planners employed by the City.

[144] The Private Sector Parties submit that they have a right of cross-examination of all such witnesses under the statute. We are not persuaded that the *Act* provides this right both on a textual analysis and a contextual analysis. For clarity, in reaching this conclusion, we have rejected the submission that s. 43(2)(b) of the *Act* and s. 3 of the Regulation are ambiguous on this issue such that these provisions should be construed narrowly to provide a right of cross-examination, as our colleague suggests.

[145] The principal argument of the Private Sector Parties is that s. 42(3)(b) does not expressly exclude the operation of s. 10.1(b) of the *Statutory Powers Procedure Act*, which provides a party to an oral hearing with a right of cross-examination, subject to a relevance qualification. They suggest that the statutory interpretation of s. 42(3)(b) should be informed by the distinction in s. 10.1 between the terms "examine" and "cross-examination" as evidence of a Legislative intention to restrict s. 43(2)(b) to a right of direct examination.

[146] As we understand the argument, s. 10.1 of the *Statutory Powers Procedure Act* draws a distinction between the right of examination in s. 10.1(a), which is understood to mean the right of direct examination of a party's own witnesses, and the right of cross-examination in s. 10.1(b) of the witnesses of the other parties to a proceeding. It is suggested that the similarity in wording between s. 10.1(a) of the *Statutory Powers Procedure Act* and s. 42(3)(b) of the *Act* and the absence

of any counterpart to s. 10.1(b) of the *Statutory Powers Procedure Act* in s. 42(3) of the *Act* evidences a legislative intention that the *Act* would only restrict the right of direct examination and not the right of cross-examination.

[147] However, the language of s. 43(2)(b) is "adduce evidence or call or examine witnesses". This is, on its face, very broad language which is certainly capable of embracing all forms of examination of witnesses, if not actually requiring it. For this purpose, we adopt the following definition of "adduce" proposed by the Appellants which is derived from *Black's Law Dictionary*, 5th Edition, 1979 (St Paul, Minn; West Publishing): "[t]o present, bring forward, offer, introduce". This is a very broad concept in respect of evidence. In particular, on this definition, "adducing evidence" would appear to include both production of documentary evidence and examination in chief of witnesses. In other words, using this definition would appear to exhaust all manner of introduction of evidence apart from cross-examination. On this approach, therefore, the words "examine witnesses" must mean "cross-examine witnesses" in order to give some meaning to those words.

[148] In addition, the argument of the Private Sector Parties places great emphasis on the similarity of the words "adduce evidence or call or examine witnesses" in s. 42(3)(b) of the *Act* and the phrase "call and examine witnesses and present evidence and submissions" in s. 10.1(a) of the *Statutory Powers Procedure Act*. I accept that there are similarities in this language. However, the fact is that the Legislature chose different language, and arguably more expansive language using the conjunction "or", from which it can be inferred that it did not intend an exact overlay of s. 10.1 and s. 42(3)(b).

[149] In support of their position, the Private Sector Parties have identified a number of other statutes in which a distinction has been drawn between an "examination" and a "cross-examination", suggesting a narrow definition of the former term. We agree with the Municipal Parties, however, that the use of these terms must be examined in each distinct statutory context. We do not think that the use of these terms to bring precision in other contexts necessarily points to a legislative intention to use the terms "examine" or "examination" in the narrow sense of direct examination in all statutory contexts in which such terms are used. It is contradicted by other statutory provisions in which the term "examination" is intended to cover all forms of examination. For example, s. 5.4(1) of the *Statutory Powers Procedure Act* itself refers to a tribunal's right to make orders for "the oral or written examination of a party." This provision clearly intends the term "examination" to include cross-examination as well as direct examination.

[150] Most importantly, the argument of the Private Sector parties fails to recognize the differences between an examination of witnesses by parties to a proceeding as it is understood in a traditional quasi-judicial context and an examination of witnesses by the parties to a Section 38(1) Appeal. In a Section 38(1) Appeal, the only witnesses who testify at an oral hearing will be witnesses called and examined by the Tribunal. Any examination of a witness by the parties to the appeal will only occur after the Tribunal has concluded its examination. In these circumstances, the only meaningful examination of a witness by a party to such a proceeding would therefore be cross-examination of the witness.

[151] In the case of a witness whose affidavit evidence is already in the record as part of the appeal record or a responding record, the affidavit evidence is the evidence that would be adduced from the witness in a direct examination. In addition, whether or not the evidence of a witness has previously been submitted in an affidavit, the Tribunal's examination serves the same purpose. It effectively constitutes direct examination of the witness. There is therefore no room left for the concept of direct examination by a party of its own witness in the context of an oral hearing of a Section 38(1) Appeal. In these circumstances, any examination by a party of its own witness after completion of the Tribunal's examination of the witness is not properly characterized as direct examination as that term is generally understood. Put another way, the distinction between an examination, in the sense of direct examination, and cross-examination that is meaningful in an action between two or more parties ceases to be meaningful in the very different context of a Section 38(1) Appeal.

[152] The Private Sector Parties have also raised a number of contextual considerations that they suggest should inform the interpretation of s. 42(3)(b). We have rejected these considerations for the reasons set out below.

[153] The Private Sector Parties submit that the Tribunal requires the benefit of cross-examinations to be able to understand the issues before it. They say the issues are sufficiently complex that even an experienced, expert tribunal cannot be expected to understand the differences between conflicting opinions in the absence of cross-examinations.

[154] However, the evidence before the Court on this stated case does not evidence such a concern as a practical matter. The expert opinions in the Rail Deck Park appeal that are before the Court in this stated case come very close to constituting the written submissions of the parties. It is not apparent why the material differences of the parties cannot be elucidated by intelligent questioning by the Tribunal members. Nor do we think that such questioning should, if properly conducted, give rise to a reasonable apprehension of bias on the part of the Tribunal members. Further, as discussed above, given the manner in which such evidence has been placed in the record, including examination of witnesses at an oral hearing by the Tribunal, the nature of any examination by a party of its own witnesses would appear to be unnecessary except to the extent that the party seeks to rehabilitate a witness' testimony, which would involve a departure from direct examination as it is generally understood.

[155] As a related matter, it is also suggested that cross-examination is required to bring out prior contradictory statements of expert witnesses. We do not think that this consideration is sufficient on its own to raise a policy concern for the absence of cross-examination rights. Experts are required to conform to certain professional and legal standards set out in the Rules and, as exemplified in the Rail Deck Park appeal, to the Tribunal's order respecting additional witnesses whose evidence is not included in the appeal record or the responding record. There is no evidence of any such concern in the materials before us relating to that appeal. In any event, any such circumstances, which would require demonstration of clear issues of credibility rather than merely differences of opinion and/or different factual circumstances, are likely to be rare and can be dealt with in more specific procedures if and when they arise.

[156] CNR argues that the effect of OFA 395 is to confiscate the property rights of the Appellants without compensation. They say that, in the absence of statutory language that expressly excludes rights of cross-examination, the Court should find that such rights have not been excluded in furtherance of a policy preference in the case law for the protection of property rights.

[157] While this argument is made specifically with reference to the Rail Deck Park appeal, we have considered it in the larger context of the official plan amendments and by-law amendments that are the subject matter of Section 38(1) Appeals. We do not think that the fact that a municipal decision may have such an impact constitutes an appropriate tool of statutory interpretation in considering whether a right of cross-examination exists in a Section 38(1) Appeal for the following reasons.

[158] Whether or not a municipal decision can be characterized as a confiscation of property rights will, of course, depend on each particular situation. It is not appropriate to proceed on the basis that all Section 38(1) Appeals will entail a confiscation of property rights. Further, and significantly, municipal actions that involve an alleged confiscation of property rights can, and should be, addressed in other legal proceedings which directly address the availability of substantive rights of protection of a party's property rights under our legal system. Lastly, it is not clear that there is any necessary link between an absence of a right of cross-examination in the present context and an increased risk of confiscation of property rights by municipal authorities, that is, that cross-examination rights would add any material protection against such a result in the case of an oral hearing of a Section 38(1) Appeal.

[159] There are two further reasons for concluding that s. 42(3)(b) is intended to exclude rights of cross-examination of witnesses as well as examination in chief of a party's own witnesses. These considerations were raised in the more general discussion of the right of a party to introduce evidence but are equally applicable, and should be expressly noted, in the context of a party's right of cross-examination.

[160] First, the limitation on cross-examination by a party of the witnesses of another party is consistent with the absence of an action between those parties and the unique role of the Tribunal as discussed above. As noted in in paragraph 6 of *Canada (Minister of Citizenship and Immigration) v Miltimore,* [2012] FCJ No 1122, which was cited by the Appellants, and in other cases cited to the Court, the right of cross-examination under the principles of natural justice is more compelling the closer the functioning of a tribunal approaches a court process. In the present context, the hearing of a Section 38(1) Appeal departs from a court process in significant ways that have been discussed above.

[161] In addition, as discussed above, on the basis of the evidence before the Court regarding the likely nature of the opinion evidence at issue, the appropriate context in which to address any issue that might be raised on cross-examination would appear to be the final submissions of the parties. In other words, given the unique nature of a Section 38(1) Appeal, the right that is afforded by a right of cross-examination in a more traditional quasi-judicial adjudication is adequately protected by the right to provide a party's own expert opinion and to make submissions regarding the deficiencies of the municipality's' decision.

[162] Accordingly, for the foregoing reasons, we conclude that the term "examine witnesses" in s. 43(2)(b) extends to cross-examination as well as direct examination of witnesses.

## THE ANSWERS TO THE STATED QUESTIONS

[163] Given the foregoing analysis, we answer the three questions in this stated case as follows:

(i) Since the terms "examine" and "cross-examine" have different meanings under the *Statutory Powers Procedure Act*, does the term "examine" as used in subsection 42(3)(b) of the [*Act*] and section 3 of O.Reg. 102/18 preclude the ability of a party to cross-examine a witness?

For the reasons set out above, we conclude that the term "examine" in s. 42(3)(b) of the *Act* and in section 3 of the Regulation includes cross-examination of a witness. For this reason, we answer Question #1 in the affirmative.

(ii) With respect to a hearing pursuant to subsections 38(1) and 38 (2) of the [*Act*], do the principles of natural justice and procedural fairness allow the parties an opportunity to ask questions of a witness called and examined by the Tribunal?

(iii) If the answer to Question (ii) is "yes", are their questions limited to matters arising from the questions asked by the Tribunal?

Given the conclusion above that s. 42(3)(b) precludes cross-examination, the Legislature has expressly excluded the right pursuant to the principles of natural justice that parties to a Section 38(1) Appeal would otherwise have to ask questions of a witness called and examined by the Tribunal at an oral hearing. For this reason, we answer Question #2 in the negative and it is not necessary to address Question #3.

(iv) With respect to a hearing pursuant to subsections 38(1) and 38(2) of the [*Act*] and where the Tribunal directs production of affidavits pursuant to subsection 33(2)(c) therein, does the limitation in subsection 42(3)(b) of the [*Act*] and in section 3 of O. Reg 102/18 prevent the cross-examination of an affiant before a hearing and the introduction of a cross-examination transcript in a hearing?

(v) If the answer to Question (iv) is "no", can the evidence obtained in cross-examination be referred to in submissions in a hearing?

Given the conclusion above that the term "examine" in s. 42(3)(b) of the *Act* and in the Regulation includes cross-examination of a witness, we also conclude that s. 3 of the Regulation precludes cross-examination of an affiant before any hearing of a Section 38(1) Appeal. For this reason, we answer Question #4 in the affirmative and it is therefore not necessary to address Question #5.

[165] No party seeks costs and no costs are awarded.

Linhares de Sousa J.
per Wilton-Siegel J.

Linhares de Sousa J.

Wilton-Siegel J.

**Released:** May 16, 2019

**CITATION:** Craft et al. v. City of Toronto et al, 2019 ONSC 1151
**DIVISIONAL COURT FILE NO.:** 723/18
**DATE:** 20190215

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**BETWEEN:**

CRAFT ACQUISITIONS CORP. and P.I.T.S. DEVELOPMENT INC.

Applicants

**– and –**

CITY OF TORONTO, CANADIAN NATIONAL RAILWAY COMPANY and TORONTO TERMINALS RAILWAY COMPANY LTD.

**– and –**

LOCAL PLANNING APPEAL TRIBUNAL

Respondents

**– and –**

HALTON COALITION, CITY OF MISSISSAUGA, CITY OF HAMILTON, CLUBLINK CORP. ULC and CLUBLINK HOLDINGS LTD., GREATER OTTAWA HOME BUILDERS' ASSOCIATION AND ONTARIO HOME BUILDERS' ASSOCIATION, TORONTO PORT AUTHORITY

Proposed Intervenors

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**REASONS FOR DECISION**

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**Date of Release**: May 16, 2019