



CELA's analysis of the proposed amendments in Schedule 7 of Bill 23

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The Canadian Environmental Law Association has long experience representing members of the public and community groups at the Ontario Land Tribunal (“OLT”). CELA is opposed to the proposed amendments to the *Ontario Land Tribunal Act, 2021* in Schedule 7 of Bill 23 and recommends the schedule be withdrawn.

### **Ontario Land Tribunal Jurisdiction Involves Many Different Public Interest Matters**

The proposed amendments to the *Ontario Land Tribunal Act, 2021* affects all matters within OLT jurisdiction. The OLT is an amalgamation of a number of tribunals and adjudicates issues relating to:

- 1- Environmental matters previously heard by the Environmental Review Tribunal, including applications and appeals under the following statutes:

- Clean Water Act 2006*
- Environmental Assessment Act*
- Environmental Bill of Rights, 1993*
- Environmental Protection Act*
- Nutrient Management Act 2002*
- Ontario Water Resources Act*
- Pesticides Act*
- Resources Recovery and Circular Economy Act, 2016*
- Safe Drinking Water Act, 2002*
- Waste Diversion Transition Act, 2016*

Members of the OLT also conduct hearings under the *Niagara Escarpment Planning and Development Act*, the *Oak Ridges Moraine Conservation Act, 2001*, and the *Greenbelt Act, 2005*.

- 2- The OLT includes the former Mining and Lands Tribunal. It hears disputes relating to mining and appeals of decisions made by conservation authorities, which involve owners who want to develop lands in floodplains and wetlands.
- 3- The OLT considers claims for compensation for land expropriations, which were formerly heard by the Board of Negotiation under the *Expropriations Act*.

- 4- The OLT hears matters under the *Ontario Heritage Act*, for instance the proposed designation of a property as having cultural heritage value or interest, amendments to designation by-laws, and archaeological licensing. These matters were formerly heard by the Conservation Review Board.
- 5- The OLT hears planning appeals related to Official Plan amendments, zoning by-law amendments, and other planning approvals.

The OLT looks at issues of wide public interest. Most of its decisions do not involve “winners or losers”.

Many of the statutes falling into the jurisdiction of the OLT focus on open and fair decision-making. For instance, section 1.1 of the *Planning Act* states that its purpose is to provide for planning processes “that are fair by making them open, accessible, timely and efficient” and to encourage cooperation and coordination among various interests.<sup>1</sup> Similarly, the *Environmental Bill of Rights, 1993* similarly provides that its environmental protection, conservation and restoration mandate is to be fulfilled by creating a “means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario” and increased accountability of the Government of Ontario for its environmental decision-making.<sup>2</sup>

### Costs Regime at the OLT

CELA recommends that the costs regime at the Tribunal, which is regulated by Rule 23.9 of the Ontario Land Tribunal’s *Rules of Practice and Procedure*, be maintained.<sup>3</sup> Rule 23.9 only allows for costs to be awarded against a party for unreasonable, frivolous or vexatious conduct, or if the party has acted in bad faith. This costs regime reflects the broad public interest mandate of the tribunal.

The proposed amendment to s.20 of the *Ontario Land Tribunal Act, 2021* adds a new subsection which states that the Tribunal has the power to order an unsuccessful party to pay a successful party’s costs. Although the Tribunal maintains the power to set its own procedure, we strongly oppose any proposal that may encourage a change to the costs regime at the tribunal.

OLT hearings are very expensive and inaccessible due to the high cost of retaining experts. In our experience, the cost of mounting a case at the tribunal is already a barrier to participation, irrespective of the seriousness of the potential impact of an application, including on the health of members of the community, or the strength of a potential appeal.

Tribunal hearings are often a few weeks and involve several parties and multiple expert witnesses. Access to justice would be severely hindered by creating the risk of an

<sup>1</sup> *Planning Act*, RSO 1990, c. P.13, s.1.1(d), (e)

<sup>2</sup> *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, s. 3(a) and (b)

<sup>3</sup> Ontario Land Tribunal, *Rules of Practice and Procedure*, June 1, 2021, Rule 23.9 <[OLT | Rules of Practice and Procedure \(gov.on.ca\)](https://www.olt.on.ca/rules-of-practice-and-procedure)>

astronomical costs award that would potentially cover expensive private counsel and multiple expert witnesses.

### **No Expansion of Summary Dismissal Powers or Arbitrary Timelines**

CELA is also opposed to the proposed amendments to s.19(1)(b.1) and 19(1)(1.1), which provide expanded power for the Tribunal or another party, on a motion, to seek dismissal of proceedings without a hearing. Although an independent Tribunal always has the power to control its own process, we are concerned that unrepresented litigants at a hearing may be disproportionately impacted by these new rules. It is difficult for unrepresented litigants to navigate a complex tribunal process. It is therefore particularly concerning that a member of the public or a community group may have their appeal dismissed without a hearing if they inadvertently do not comply with an order, for instance, or fail to understand the implications of a Tribunal order.

Introducing further interlocutory steps may also have the unintended consequence of delaying a hearing on the merits and increasing costs to all parties.

Section 29 provides for regulation-making authority to set timelines for hearings. We are concerned about setting arbitrary timelines for proceedings without regard to the complexity of a proceeding or to ensure there is adequate time for all involved parties to retain experts.

**Recommendation: CELA recommends that Schedule 7 of Bill 23 be withdrawn.**