

## Come one, come all! Ontario establishes new ‘super tribunal’ to hear land and environmental matters: The Ontario Land Tribunal

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On June 1, 2021, Ontario opened the doors to a new “super” tribunal established to hear land and environmental matters in Ontario – the Ontario Land Tribunal (OLT). Pursuant to the *Ontario Land Tribunal Act, 2021* (the Act), five existing tribunals – the Ontario Land Tribunal, the Board of Negotiation, the Conservation Review Board and the Mining and Lands Tribunal (collectively, the Former Tribunals) – will merge into the OLT.

In this update, we highlight implications of the Act and the establishment of the OLT, which received Royal Assent in early May through its inclusion in omnibus [Bill 245, Accelerating Access to Justice Act, 2021](#) (Bill 245).

### The Ontario Land Tribunal

Each of the Former Tribunals heard matters in distinct subject areas, all of which will now be heard by the OLT. The LPAT, for example, chiefly heard cases related to land use, some aspects of heritage conservation and expropriations, while the ERT heard appeals and applications related to, among other things, environmental clean-up orders and environmental licences and permits.

The Act establishes the process by which the Former Tribunals will be merged into the OLT.

Highlights related to the OLT’s composition are as follows:

- Current members of the Former Tribunals will continue as OLT members until the expiration of their terms of office.
- OLT members will continue to be appointed by the Lieutenant Governor in Council, who will also designate a chair and vice-chairs from among those members.
- The designated chair of the OLT will supervise and direct the affairs of the OLT, including the assignment of OLT members to preside over proceedings.

Highlights with respect to procedure are as follows:

- The OLT will have exclusive jurisdiction over all matters falling under the purview of the Former Tribunals, including determining all questions of law and fact, and will have authority to make orders, give directions and impose conditions to that end.
- The OLT may adopt any available practices and procedures that, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the

proceedings.

- Neither the failure to comply with the rules, nor the exercise of discretion, is a ground to set aside an OLT decision on an application for judicial review or an appeal, unless the OLT's failure or exercise of its discretion causes a substantial wrong affecting the final disposition of a proceeding.
- In general, non-parties to a proceeding may make submissions to the OLT in writing only.
- The OLT may dismiss a proceeding without a hearing where, among other reasons, the Tribunal believes the proceeding has no reasonable prospect of success.

## Implications of the Act and the Ontario Land Tribunal

Where an undertaking would require multiple approvals under multiple pieces of legislation before multiple tribunals, the Act establishes a new process to address the consolidation of multiple hearings. This, in turn, eliminates the need for the Office of Consolidated Hearings, which previously provided for the establishment of a Joint Board to adjudicate all matters related to the approval of an undertaking, and which has now been abolished by Bill 245 through the repeal of the *Consolidated Hearings Act*.

These changes have the potential to render the land use development process more efficient by creating a single forum to resolve matters and eliminate overlap between disputes.

Other notable implications of the Act include:

- **Expanded powers to dismiss a proceeding:** The OLT's discretion to dismiss a proceeding without a hearing where the proceeding has "no reasonable prospect of success" appears broader than the discretion conferred upon the Former Tribunals. For example, pursuant to the *Planning Act*, the LPAT could only dismiss a proceeding without a hearing where (i) there was no apparent land use planning ground upon which the subject of the appeal could be approved or refused, (ii) the appeal was not made in good faith or is frivolous or vexatious, (iii) the appeal was made only for the purpose of delay, or (iv) the appellant's conduct constituted an abuse of process. The ERT's discretion in this regard was even narrower. Ultimately, the breadth of the OLT's discretion to dismiss a proceeding will depend on how this discretion is exercised by its members.
- **Increased flexibility for some:** The OLT's discretion to adopt the available practices and procedures that it believes offer the best opportunity for a fair, just and expeditious resolution of a proceeding provides for greater flexibility than that enjoyed by several of the Former Tribunals, including the ERT. This may enable more efficient and effective hearing processes in certain instances. For those accustomed to the LPAT, however, whose enabling statute already provides the flexibility to select from among the available practices and procedures that would result in the fairest and most expeditious result, the Act is likely to present more of the status quo.
- **Reduced participation rights for some:** Under the OLT, participants (versus parties) will generally be limited to written submissions. The Act states that "except as may be provided for under this or any other Act, a person who is not a party to a proceeding may make submissions to the [OLT] with respect to the proceeding in writing only." This is in contrast

to the ERT, whose rules permitted various evidentiary rights (such as acting as a witness and giving oral testimony at the hearing) and both oral and written submission rights to those assigned presenter or participant status. Under the OLT, those interested in the outcome of an environmental appeal will no longer have the option of presenter status, and they will be more limited in what they can do as a participant in an appeal. This may have the effect of causing such interested parties to seek party status before the OLT in environmental cases, in order to obtain the participation rights to which they are accustomed. This could result in ill-fitting party status requests, delays, and complications in environmental proceedings.

- **Member expertise:** It will be interesting to see how members are assigned to hear particular matters. By virtue of being a member of one of the Former Tribunals, any member of the OLT has the jurisdiction to hear any matter under of the Acts that give the OLT its jurisdiction. It is fair to assume that the OLT chair will take member's expertise, as well as any desire to expand that expertise, into consideration when assigning members to hearings.
- **Online Submission Portal:** The OLT has established a new [Online Document Submission portal](#) to enable persons to submit electronic documents to the OLT. This is a change for each of the Former Tribunals, none of which had such a portal available.

Those who have experience before the LPAT will likely find the changes to be minor, even if certain matters are dealt with in new ways. For others, such as those with exclusive experience before the ERT, the changes may be more pronounced and require an ability to adapt to the new forum and its processes.

*Note: The OLT has posted the [Rules of Practice and Procedure \[PDF\]](#) which came into force upon the proclamation of the Act on June 1<sup>st</sup>. These new rules were revised from an earlier draft previously posted in January 2020, after taking into account comments received through public consultation.*