CITATION: Pleasant View Protection Corp. v. Niagara Escarpment Comm., 2025 ONSC 3426
DIVISIONAL COURT FILE NO.: 200/23 JR
(Hamilton)
DATE: 20250620

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Stevenson SFJ and D.L. Corbett and Emery JJ.

B E T W E E N :	)	
	)	
Pleasant View Protection Corp.	)	*Eric Gillespie*, for the Applicant
	)	
Applicant	)	
	)	
- and -	)	
	)	
Niagara Escarpment Commission	)	*Kristina Yeretsian and Jonathan Sydor*,
	)	for the Respondent
Respondent	)	
	)	*Scott Snider and Anna Toumanians*, for the
	)	Respondent Columbia Northcliffe Campus
	)	Inc.
	)	
	)	**HEARD by ZOOM:** November 12, 2024

REASONS FOR DECISION

D.L. Corbett J.

[1] In 2020, Columbia International College ("CIC") applied to the Niagara Escarpment Commission ("NEC") to amend the Niagara Escarpment Plan ("NEP") to permit the use of a former convent as a private secondary school to be operated by CIC.

[2] When it receives an application, the NEC must consider whether the application should be considered by the NEC. As part of this preliminary review, the NEC considers whether the requested amendment would permit an "urban use" of the subject property. If so, the application is deferred to be considered under a full NEP review (described below).

[3] In this case, on preliminary review, the NEC found that the application could be processed, based in part on a staff report that the proposed amendment did not amount to an "urban use".

[4] The proposal was subjected to full public consultation, after which the NEC revisited its earlier conclusion as to whether the proposed amendment would be an "urban use" and it referred the application to the Ontario Land Tribunal ("OLT") for a hearing.

[5] As a result of this referral, the merits of the application, including whether the proposed amendment would be an urban use, will be before the OLT for decision.

Summary and Disposition

[6] The merits of CIC's application, including whether the proposed amendment to the NEP would be for an "urban use" of the property, will all be before the OLT for decision. Consequently, the effect of the NEC decision to refer the application to the OLT is interlocutory: it does not decide the merits of any aspect of the underlying application, but rather directs the process to be followed. For this reason, I conclude that this application is premature and ought not be entertained by this court. Therefore, for the following reasons, I would dismiss this application, with costs to both CIC and the NEC from the applicant.

Analysis

(a) The Legislative Scheme

[7] The governing legislation is the *Niagara Escarpment Planning and Development Act*, RSO 1990, c. N.12 ("*NEPDA*" or the "Act").

[8] Application may be made to the NEC "by any person… requesting an amendment" to the NEP (Act, s. 6.1(2)). No one shall request to amend the NEP in respect to land designated "Escarpment Protection Area" seeking to "permit urban uses" (Act, s.6.1(2.2)). Notwithstanding this prohibition, an application to amend the NEP to permit "urban uses" may be made "during the review set out in subsection 17(1)" of the Act. Section 17(1) of the Act provides that the Minister "shall cause a review" of the NEP to be carried out at the same time the review of the "Greenbelt Plan" is carried out under the *Greenbelt Act, 2005*, 2005, c. 1, s. 25(2); 2009, c. 12, Sched. L, s. 7.

[9] The lands owned by CIC, which are the subject of its application to permit it to operate a school, are part of the "Pleasant View Survey" and are subject to "Special Provisions" set out in Part 2.21 of the NEP. Thus, the net effect of the provisions summarized above, as they relate to this application for judicial review, is as follows:

a. CIC's application may be made to and considered by the NEP so long as CIC's proposed amendment will not permit "urban uses" of the subject land.

b. If CIC's application would permit "urban uses" of the subject land, then the NEP will not consider the merits of the application, but rather conclude that the application should be brought during the periodic review of the NEP and the Greenbelt Plan.

[10] The NEC reviews proposed amendments to the NEP, determines if a proposed amendment is restricted by the Act, and makes recommendations respecting proposed amendments to the Minister of Natural Resources and Forestry (*NEPDA*, ss. 6.1(2), 6.1(2.2), 6(3) and 10(9).

[11] In 2020, NEC staff advised the NEC that the proposed amendment would not constitute an "urban use". After an extensive process before the NEC, a subsequent staff report in 2023 came to a contrary view.

[12] In the context of competing staff reports, and competing submissions from interested parties (including the Applicant and the proponent CIC), the NEC concluded that the issue of whether the proposed amendment would be an "urban use" should be referred to an OLT hearing pursuant to s. 10(3) of the *NEPDA*.

Prematurity

[13] The NEC has not decided the merits of the proposed amendment. Rather, the merits will be decided by the OLT. The NEC has not decided that the proposed amendment is, or is not, an "urban use". It has stated a provisional, interlocutory view on this point, but the merits of whether the proposed amendment would be an "urban use" will be for the OLT to decide. Indeed, nothing has been decided other than to refer the issues to the OLT for decision. The Applicant has expressly acknowledged these points (Applicant's Factum, paras. 56 and 63).

[14] Judicial review is a discretionary remedy. Absent exceptional circumstances, this court will not interfere with interim determinations, such as the NEC's decision to refer the merits to the OLT and will await a final determination of issues at the completion of the administrative process: *Killian* v. *College of Physicians and Surgeons*, 2022 ONSC 5931 (Div. Ct.); *Berge* v. *College of Audiologists and Speech Pathologists of Ontario*, 2022 ONSC 1220 (Div. Ct.). As stated by the Federal Court of Appeal in *C.B. Powell Limited* v. *Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 FCR 332 (cited with approval by the Ontario Court of Appeal in *Volochay* v. *College of Massage Therapists of Ontario*, 2012 ONCA 541):

> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.

> [32] This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway: see, e.g., *Consolidated Maybrun*, above, at paragraph 38; *Greater Moncton International Airport Authority v. Public Service Alliance of Canada*, 2008 FCA 68, at paragraph 1; *Ontario College of Art v. Ontario (Human Rights Commission)*, 1993 CanLII 3430 (ON SCDC), 11 O.R. (3d) 798 (Div. Ct.). Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker's findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience: see, e.g., *Consolidated Maybrun*, above, at paragraph 43; *Delmas v. Vancouver Stock Exchange*, 1994 CanLII 3350 (BC SC), 119 D.L.R. (4th) 136 (B.C.S.C.), affd, 1995 CanLII 1305 (BC CA), 130 D.L.R. (4th) 461 (B.C.C.A.); *Jafine v. College of Veterinarians of Ontario*, 1991 CanLII 7126 (ON SC), 5 O.R. (3d) 439 (Gen. Div.). Finally, this approach is consistent with and supports the concept of judicial respect for administrative decision makers who, like judges, have decision-making responsibilities to discharge: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 48.

[15] Even in cases where an administrative decisionmaker decides a preliminary question on a final basis (such as jurisdiction), this court will not ordinarily entertain an early application on the basis of prematurity. Here, the preliminary point has not been decided on a final basis. It is very difficult to see how it is even arguable that a decision has been made that requires intervention from this court: the issue raised by the Applicant is live before the OLT and has not been disposed of on a final basis. See *Thales DIS Canada Inc.* v. *Ontario (Transportation)*, 2023 ONCA 866, *Gill* v. *College of Physicians and Surgeons*, 2021 ONSC 7549 (Div. Ct.); *National Car Rental Inc.* v. *Municipal Property Assessment Corp.*, 2023 ONSC 2989 (Div. Ct.); *Kadri* v. *Windsor Regional Hospital*, 2019 ONSC 5427 (Div. Ct.); *Sudbury and District Health Nurses* v. *Ontario Nurses Association*, 2023 ONSC 4219; *Mansuri* v. *Dominion of Canada General Insurance Co.*, 2023 ONSC 5764 (Div. Ct.); *Ontario Health Insurance Plan (General Manager)* v. *Rao*, 2017 ONSC 5548 (Div. Ct.).

[16] In my view, this application is clearly and obviously premature and ought not be entertained by this court.

Other Issues Raised by the Applicant

[17] The Applicant makes the following arguments:

a. The NEC had no jurisdiction to make the impugned decision;

b. The NEC's process was unfair; and

c. The NEC's reasons are inadequate;

[18] These arguments may be disposed of briefly in light of my conclusion that the entire application is premature.

[19] The jurisdictional argument is largely circular and leads to a dead end. The Applicant argues that pursuant to s. 10(3), the NEC had no jurisdiction to hold a hearing, but instead had to refer the proposed amendment to a hearing before the OLT. If this argument prevailed, then the remedy from this court would be to direct the very hearing that has been directed by the NEC.

[20] The procedural fairness arguments are similarly of no moment. Any procedural unfairness that may have happened in the NEC process may be cured by a fair process before the OLT. It need not be addressed by this court.

[21] The NEC's failure to give reasons for its procedural ruling does not mandate intervention from this court. The competing staff reports and submissions before the NEC provide a rich context for the NEC's conclusion that the question of whether the proposed amendment would constitute an "urban use" is a contentious issue worthy of the process before the OLT.

Additional Observation

[22] The court understands that process before the OLT was deferred pending decision from the court on this application.

[23] This court did not stay the process before the OLT. There is no statutory stay pending an application for judicial review.

[24] Unless this court has ordered a stay, administrative bodies should not stay their processes pending judicial review in this court, unless there are truly exceptional circumstances. Otherwise, judicial review applications may be used as tools for delaying administrative processes, contributing to the very problem the principle of prematurity seeks to prevent.

Disposition

[25] I would dismiss the application, with costs in the amount of $17,000, inclusive, payable to each of NEC and CIC by the Applicant within thirty days.

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D.L. Corbett J.

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I agree: Stevenson SFJ

_____

I agree: Emery J.

Released: June 20, 2025

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BETWEEN:

Pleasant View Protection Corp.

Applicant

– **and** –

Niagara Escarpment Commission

Respondent

REASONS FOR DECISION

D.L. Corbett J.

Released: June 20, 2025