

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Sachs, Backhouse and Mandhane JJ.

BETWEEN:)
)
 CALEDON RESIDENCES INC.) *Matthew Helfland and Matthew Patterson,*
) *Counsel, for the Applicant*
 Applicant)
)
 – and –)
)
 1685078 ONTARIO INC., 1685078) *Michael Cook and Liam Valgardson for the*
) *Respondent, 1685078 Ontario Inc.*
 ONTARIO INC. and THE)
)
 CORPORATION OF THE TOWN OF) *Paula Boutis, Counsel for the Town of*
 CALEDON) *Caledon*
)
 Respondents)
)
)
)
) **HEARD at Toronto:** November 12, 2025

2025 ONSC 6546 (CanLII)

Backhouse J.

[1] The applicant, Caledon Residences Inc. (“CRI”) seeks judicial review of the decision of the Ontario Land Tribunal (“OLT” or the “Tribunal”) dated December 24, 2024. CRI submits that when 1685078 Ontario Inc. (“Sunshine Group”) settled its draft plan of subdivision appeal with the Town of Caledon (the “Town”) on the eve of trial to which appeal CPI was a party, its right to procedural fairness was breached when the Tribunal declined to allow it to argue its case that a cost-sharing requirement be imposed on Sunshine Group.

[2] Sunshine Group submits that this court should decline to hear CRI’s application for judicial review because the statutory appeal mechanism, which is restricted to questions of law, requires potential appellants to seek leave to appeal. Alternatively, it argues that CRI was afforded the requisite procedural fairness.

[3] For the reasons set out below, the application is dismissed. Section 24(1) of *OLTA* indicates a clear legislative intention to subject the Tribunal’s decisions on questions of law to a

requirement that leave be sought. Since procedural fairness is a legal standard, the assessment of whether an administrative decision-maker complied with this duty is a question of law: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at paras. 30; *Patton v. Aviva Insurance Co. of Canada*, 2025 ONSC 4234 at para. 35 (Div. Ct.); *Shapiro v. Swingler*, 2021 ONSC 6191, at paras. 16 and 25 (Div. Ct.); *2541005 Ontario Ltd. v. Oro-Medonte (Township)*, 2023 ONSC 5569 at para. 35 (Div. Ct.).

[4] Judicial review in these circumstances would undermine the Legislature’s choice to subject questions of law to a leave motion. The statutory appeal mechanism is a meaningful and adequate means to challenge decisions on questions of law that are incorrect or were taken in a way that was procedurally unfair: *Humberplex Developments Inc. v. Ontario (AG)*, 2024 ONSC 2335 (Div Ct.).

[5] If it is an error to decline to hear this application for judicial review, these Reasons go on to consider the merits of the application. Section 51(36) of the *Planning Act, R.S.O., 1990, c.P13* sets out what happens when an appeal of a draft plan of subdivision is withdrawn. At that point, the matter was at an end and CRI had no further rights. There is no statutory framework for the Tribunal to hear submissions on imposing a cost sharing condition on the appellant after a withdrawal notice has been provided and there is no longer an appeal proceeding before it. The OLT is required to notify the approval authority of the withdrawal, and the legislation establishes that the approval authority, not the OLT, may then proceed to make the decision. The OLT correctly found that it had no jurisdiction to essentially require two private parties to enter into a cost-sharing agreement..

Background

[6] This matter arises out of two applications made by Sunshine Group for approval of a Draft Plan of Subdivision to permit the redevelopment of its property with a residential subdivision (“Draft Plan”) and for a Zoning By-law Amendment (“ZBA”). The Town failed to render a decision on the applications. In turn, Sunshine Group appealed the applications to the OLT under subsections 34(11) and 51(34) of the *Planning Act, R.S.O. 1990, c. P.13*.

[7] CRI is the owner of the neighboring plot of land which it developed as a residential subdivision. CRI sought party status to the Sunshine Group’s appeals for the purpose of asking the Tribunal to impose a cost sharing condition with respect to infrastructure it paid for that it alleges benefited the Sunshine Group development. There was no objection to CRI’s request for party status to seek a cost-sharing condition and the OLT ordered that CRI be added as a party. At a June 11, 2004 Case Management Conference, the OLT set the matter down for a hearing, and attached as schedule 1 of its Order an issues list that set out each party’s issues to be adjudicated at the hearing of the appeals.

With regard to the Draft Plan appeal, CRI raised three issues:

1. Does the proposed development benefit from or rely on infrastructure that was installed by CRI in respect of the Caledon Estates subdivision?

2. Should cost sharing be a condition of draft plan approval to address infrastructure installed by CRI which benefits, or is relied on by, the proposed development?
3. What is the appropriate wording of a cost sharing condition?

[8] The appeals were scheduled to be heard on December 9, 2024. On December 6, 2024, Sunshine Group and the Town entered into Minutes of Settlement that did not impose the CRI's sought after cost sharing condition. The settlement provided that Sunshine Group would withdraw its Draft Plan appeal and that the Town and Sunshine Group would request, on consent, that the Tribunal approve the zoning by-law amendment instrument included in the Minutes. Following the execution of the Minutes of Settlement, Sunshine Group informed CRI and the OLT of the settlement.

[9] At the commencement of the hearing on December 9, 2024, the OLT heard submissions from the parties with regard to the withdrawal of the Draft Plan appeal and the ZBA appeal. The ZBA appeal remained before the OLT for a settlement hearing as between the Town and Sunshine Group. CRI had party status to that appeal, but had not identified any issues related to that appeal.

CRI's submissions before the Tribunal

[10] CRI made two submissions before the Tribunal. First, it argued that the Tribunal should refuse the withdrawal of the Draft Plan appeal in order to allow CRI to argue its case on the merits with respect to the imposition of a cost-sharing agreement. When the Tribunal accepted the Draft Plan appeal withdrawal, CRI next requested that the Tribunal either:

- Withhold its final order on the ZBA approval pending the finalization of a cost sharing agreement between Sunshine Group and CRI; or
- Impose a Holding Provision on the ZBA approval, which could be lifted once a cost sharing agreement was finalized between Sunshine Group and CRI.

[11] CRI argued that had the Town and Sunshine Group filed settlement materials 10-15 days in advance, as was the usual practice, CRI would have had an opportunity to bring a motion to amend the Issues List relating to the ZBA appeal to add a cost sharing issue. The Tribunal rejected this argument, finding that it was not the usual practice for parties to file settlement materials 10-15 days in advance. It found that many settlements are finalized on the eve of, or morning of, the commencement of a hearing, or even during the course of the hearing itself.

[12] CRI relied upon *Re City of York Official Plan Amendment 105 and Zoning By-law 2171-91 (No. 4)*, 1991 CarswellOnt 6020, 27 O.M.B.R. 57 ("*York*"), arguing that a party does not have an absolute right to withdraw an appeal. CRI submitted that there is no statutory rule that the Tribunal must accept a withdrawal. The Tribunal may, in exceptional circumstances, refuse a withdrawal. In *York*, the Ontario Municipal Board reversed an earlier acceptance of a withdrawal of an appeal because it had the inadvertent effect of a building permit being denied. The Tribunal distinguished the *York* decision and found that there were no exceptional circumstances in this case.

Statutory framework

[13] The *Planning Act* allows for appeals to the OLT from decisions and appeals where no decision is rendered for approval of a plan of subdivision (s.51(34)) and/or a zoning bylaw amendment (s.34(11)). Withdrawal of an appeal to the OLT based on a non-decision for approval of a plan of subdivision is governed by s.51(36) of the *Planning Act*:

Withdrawal

[51\(36\)](#) If an appeal under subsection (34) is withdrawn, the Tribunal shall notify the approval authority and the approval authority may proceed to make a decision under subsection (31).

OLT's Decision

[14] The OLT issued written reasons on December 24, 2024. At para.26, the OLT states:

Following the consideration of the submissions of the Parties, the Tribunal denied Caledon Residences Inc.'s requests to either withhold its final order pending the entering into of a cost sharing agreement between Caledon Residences Inc. and the Appellant or consider the addition of the H [Hold] to the ZBA. The approval of the ZBA, on an interim basis, conditional solely upon the entering into of a cost sharing agreement between the Parties is tantamount to requiring two private parties to enter into an agreement. Approval of a ZBA on this basis is not the appropriate forum to address a cost sharing agreement and is outside of the Tribunal's jurisdiction.

[15] CRI requested an internal review of the Decision. In an April 17, 2025 Internal Review Decision, Vice Chair Michael Kraljevic concluded that this was not an instance where the request for review established a convincing and compelling case that there was an error of law that warranted review, and dismissed the Request.

Issues

1. Is judicial review appropriate or suitable in this case?
2. Did the Tribunal's decision breach procedural fairness?

Court's Jurisdiction

[16] This Court has jurisdiction over applications for judicial review pursuant to ss. 2(1) and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1.

Standard of Review

[17] For questions of procedural fairness, the standard of review is akin to correctness.

Issue 1. Is Judicial Review appropriate or suitable in this case?

[18] Sunshine Group submits that this court should decline to hear CRI's application for judicial review because the statutory appeal mechanism, which is restricted to questions of law, requires potential appellants to seek leave to appeal. Section 24 (1) of the *Ontario Land Tribunal Act, 2021*, c 4, Sch 6 ("*OLTA*") provides:

24 (1) Unless another Act specifies otherwise, an order or decision of the Tribunal may be appealed to the Divisional Court, with leave of that court on motion in accordance with subsection (3), but only on a question of law.

[19] The applicant submitted that it did not bring a motion for leave to appeal because it did not think it met the leave criterion requiring that the question be of sufficient general or public importance to merit the attention of the court. The deadline has passed to seek leave to appeal under subrule 61.03 (1)(b) of the *Rules of Civil Procedure*, RRO 1990, Reg 194. A motion for an extension of time remains available to CRI under rules 2.03 and 3.02. Sunshine Group submits that while it believes that the "general or public importance" criteria is met, the test for leave is not met with respect to the merits of the appeal and there is no reason to doubt the correctness of the decision.

Analysis

[20] In *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 at para.54, the Supreme Court of Canada emphasized that reviewing courts are required to begin their inquiry by determining whether to exercise their discretion to judicially review a decision. CRI's application for judicial review is based solely on whether there was a breach of procedural fairness. Since procedural fairness is a legal standard, the assessment of whether an administrative decision-maker complied with this duty is a question of law: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at paras. 30; *Patton v. Aviva Insurance Co. of Canada*, 2025 ONSC 4234 at para. 35 (Div. Ct.); *Shapiro v. Swingler*, 2021 ONSC 6191, at paras. 16 and 25 (Div. Ct.); *2541005 Ontario Ltd. v. Oro-Medonte (Township)*, 2023 ONSC 5569 at para. 35 (Div. Ct.).

[21] Section 24(1) of *OLTA* indicates a clear legislative intention to subject the Tribunal's decisions on questions of law to a requirement that leave be sought. Allowing judicial review in these circumstances would undermine the Legislature's choice to subject questions of law to a leave motion. In *Humberplex Developments Inc. v. Ontario (AG)*, 2024 ONSC 2335 (Div Ct.) the court held that questions of procedural fairness raised in an application for judicial review were more appropriately addressed in the motion for leave to appeal and appeal and that they provide an adequate alternative remedy that is consistent with the applicable statutory scheme, under which applicants can address questions of law (including procedural fairness) in the context of an appeal. The statutory appeal mechanism is a meaningful and adequate means to challenge decisions on questions of law that are incorrect or were taken in a way that was procedurally unfair.

[22] Accordingly, I would decline to exercise my discretion to hear CRI's application for judicial review.

[23] In the event I have erred in declining to hear the application for judicial review, the merits of the procedural unfairness claim will be considered. The merits also form part of the test on a motion for leave to appeal which may help inform the parties going forward. Going on to consider the merits of the procedural unfairness argument, given the unique circumstances of this case, should not be relied upon as a precedent in the future for bringing a judicial review application on a question of law to avoid the leave requirement in s. 24(1).

2. Did the Tribunal's decision breach procedural fairness?

CRI's submissions on the merits

[24] CRI submits that the Tribunal's decision breached its right to procedural fairness. It submits that it was owed procedural fairness on the higher end of the spectrum based on the factors in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. CRI participated as a party in all stages of the appeal. It submitted an issues list, accepted by the OLT, that included issues respecting cost-sharing as a condition of draft plan approval. CRI delivered written witness statements and reply witness statements. Its witnesses participated in mandatory experts meetings. It attended case management conferences, and was scheduled to deliver submissions, call evidence, and conduct cross-examinations during the hearing of the appeal – which was scheduled for multiple days on the consent of all parties.

[25] CRI received less than one business day's notice that its issues would effectively be removed from the Tribunal's jurisdiction, depriving CRI of any meaningful opportunity to respond or adapt its case strategy. CRI submits that the Tribunal should have found that these were exceptional circumstances that could warrant refusing the withdrawal of the appeal and that CRI had a legitimate expectation that its cost-sharing issue would still be addressed by the Tribunal. The Tribunal violated the fundamental principle that a party has a right to be heard, consistent with CRI's legitimate expectations based on the Tribunal's Rules and past practice. CRI does not suggest that the Tribunal was bound to order approval of a cost sharing condition. However, it was procedurally unfair to deprive CRI of the chance to address the issue of cost-sharing, which also may have been relevant to whether there were exceptional circumstances to refuse the withdrawal. The Tribunal should have refused the withdrawal in order to offer the best opportunity for a fair, just, and expeditious resolution of the merits of the cost-sharing request as opposed to avoiding deciding the issue on the merits, which was the result of the withdrawal of the appeal.

Town's Submissions

[26] The Town submits that the OLT's decision to allow the withdrawal of the Draft Plan appeal was not only proper, but in fact non-discretionary and required by the *Planning Act* itself. The *York* decision relied upon by CRI before the Tribunal predated the section 51(36) *Planning Act* provisions which came into force in 1994 and is likely not good law.

[27] The Town further submits that neither the Tribunal withholding the final order nor imposing a holding provision were available to the Tribunal in the circumstances of this matter. It submits that the holding provisions in the *Planning Act* are a planning tool for the approval

authority acting in its public interest capacity and not a direct vehicle for enforcing or facilitating private agreements. In this regard it references Section 36 (1) of the *Planning Act*:

36(1) **The council of a local municipality** may, in a by-law passed under section 34, by the use of the holding symbol “H” (or “h”) in conjunction with any use designation, specify the use to which lands, buildings or structures may be put at such time in the future as the holding symbol is removed by amendment to the bylaw [emphasis added].

[28] The Town further references Subsection 51(26) of the *Planning Act* which speaks to a municipality entering into agreements imposed as a condition to the approval of a draft plan of subdivision:

51(26) **A municipality or approval authority, or both,** may enter into agreements imposed as a condition to the approval of a plan of subdivision and the agreements may be registered against the land to which it applies and the municipality or the approval authority, as the case may be, is entitled to enforce the provisions of it against the owner and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land [emphasis added].

These are agreements between municipalities and the applicant(s), not between solely private parties. While a municipality may ask for confirmation that participating landowners to cost sharing agreements have their contributions confirmed, as either conditions of draft plans or through Hold provisions, this does not apply in the absence of a voluntary agreement between the parties.

Analysis

Withdrawal of Draft Plan appeal

[29] Whether or not the OLT has jurisdiction to refuse a withdrawal of a Draft Plan appeal in exceptional circumstances, CRI concedes that there was nothing nefarious in the settlement reached between Sunshine Group and the Town. There was no error in law in the Tribunal’s determination that the circumstances in this case did not rise to the level of exceptional and that there was no basis to refuse the withdrawal of the appeal.

[30] I am not persuaded by CRI’s argument that by allowing the withdrawal of the Draft Plan appeal without permitting CRI the chance to argue its case on the issue of cost-sharing on the merits, was procedurally unfair to CRI. While the withdrawal of the Draft Plan appeal and then the OLT’s refusal to allow CRI to lead evidence with respect to a new issue under the ZBA did mean CRI could not argue the case it had prepared, that is contemplated by the legislation itself and is a consequence of not being the appellant. The Draft Plan appeal withdrawal and its consequences were enabled by the Legislature in s.51(36) of the *Planning Act* and were always a possible outcome.

[31] CRI had full participatory rights in the Draft Plan appeal in accordance with the common law and the OLT Rules up until the point where the appeal no longer existed. Section 51(36) of the *Planning Act* sets out what happens when a draft plan appeal is withdrawn. At that point, the matter is at an end and CRI had no further rights. There is no statutory framework for the Tribunal to hear submissions on cost sharing between two private parties after a withdrawal notice has been provided and there is no longer an appeal proceeding before it. The OLT is required to notify the approval authority of the withdrawal, and the legislation establishes that the approval authority, not the OLT, may then proceed to make the decision. This is a risk a non-appellant takes when it participates in an appeal. The principles in *Baker* are applicable while the appeal remains alive, but are irrelevant in the context of a withdrawal when jurisdiction reverts to the approval authority.

Zoning By-Law appeal

[32] CRI did not refer the court to any statutory provisions or caselaw that would give the OLT the authority to withhold its final order on the ZBA pending the finalization of a cost sharing agreement between Sunshine Group and CRI or impose a holding provision on the ZBA until a cost sharing agreement was finalized between Sunshine Group and CRI.

[33] In *Shelving and Racking v. Ashfield-ColborneWawanosh (Township)* 2022 CarswellOnt 19241 at paras 38 & 39, the OLT held that it would be inappropriate to use a Holding symbol to compel the Township's involvement in private matters, in that case a dispute over maintaining a drain which was the subject of a private cost sharing agreement.

[34] CRI was permitted to make oral submissions on both the withdrawal of the Draft Plan appeal and CRI's requested relief under the ZBA appeal. Even if CRI had been allowed to introduce a new issue to the ZBA appeal and argue cost sharing following the withdrawal of the Draft Plan appeal, I am not persuaded that it was open to the Tribunal to have required Sunshine Group to enter into a cost sharing agreement, whether through a Holding provision, by withholding approval pending the parties executing a cost sharing agreement or by any other means. Once the Draft Plan appeal was withdrawn, the OLT was correct to find that it was not the appropriate forum for what was tantamount to requiring two private parties to enter into an agreement and was outside the Tribunal's jurisdiction.

Conclusion

[35] The court should not exercise its discretion to hear this judicial review application which concerns a question of law, given s. 24(1) of the *OLTA* which grants a right to appeal on a question of law upon leave of the court. If I am in error in declining to hear the judicial review application, I would in any event dismiss the application for judicial review on its merits because as set out above, CPI has not established that there was procedural unfairness. The application is dismissed.

[36] Based on the parties' agreement, Sunshine Group, as the successful party, shall be entitled to costs in the amount of \$10,000. The Town does not seek costs.

Backhouse J.

I agree

Sachs, J.

I agree

Mandhane, J

Released: November 28, 2025

CITATION: Caledon Residences Inc. v. Ontario Land Tribunal, 2025 ONSC 6546
DIVISIONAL COURT FILE NO.: 25-81
DATE: 20251128

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:

CALEDON RESIDENCES INC.

Applicant

-and-

ONTARIO LAND TRIBUNAL

Respondents

REASONS FOR JUDGMENT

BACKHOUSE, J.

Released: November 28, 2025