

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Donald Husack )  
 )  
Applicant ) Marc Kemerer / Talia Gordner, for the  
 ) Applicant  
– and – )  
 )  
Long Point Region Conservation Authority ) Alex Ciccone, for the Respondent  
 )  
Respondent )  
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 ) **HEARD:** December 12, 2025

2026 ONSC 60 (CanLII)

**REASONS FOR JUDGMENT**

**THE HONOURABLE JUSTICE A.D. HILLIARD**

**Overview**

- [1] This Application concerns a permit issued by the Respondent, Long Point Region Conservation Authority (LPRCA), to Robert and Cheryl Ritchie (the Ritchies) for development on their property in Norfolk County. The Ritchies are not parties to the Application. The Applicant, Donald Husack, owns a property that borders the property for which the Ritchies were granted a permit. At issue is the construction of a retaining wall by the Ritchies contrary to the permit issued by the LPRCA.
- [2] Mr. Husack applies for an order compelling the LPRCA to direct the Ritchies to comply with a permit issued by the LPCA. The LPCA opposes the Application, taking the position there is no legal basis upon which the Court could make the order requested.
- [3] This Application raises two issues to be determined: (1) does the LPRCA have the authority to make an order enforcing its own permit; and (2) what is the role of this Court in reviewing a decision made by the LPRCA not to take any action in relation to its permit.

- [4] After reviewing the applicable legislation and jurisprudence, I have determined that the LPRCA does have the authority to make orders and take enforcement measures in relation to permits it issues, but upon review of the decision of the LPRCA to take no action, I am of the view that it was not unreasonable and is therefore entitled to deference.

### **Background**

- [5] Mr. Husack owns a property located at 57 Ordnance Avenue (the Husack Property), which is abutted to the south by a property owned by the Ritchies, located at 55 Ordnance Avenue (the Ritchie Property). Both properties are located within a provincial hazard flood zone along Lake Erie.
- [6] The LPRCA is a conservation authority duly constituted pursuant to the provisions of the *Conservation Authorities Act (CAA)*. The Ritchie and Husack properties fall within the jurisdiction of the LPRCA due to their proximity to Lake Erie and being within an area designated a flood hazard zone.
- [7] On June 21, 2022, the Ritchies applied for a permit from the LPRCA to construct a residential dwelling on their property, which permit application included a grading plan that addressed management of stormwater through a swale running along the southern boundary of the Ritchie Property. The application was reviewed and approved by the LPRCA and a permit was issued to the Ritchies on September 1, 2022.
- [8] After receiving their permit from LPRCA, the Ritchies applied for a building permit from Norfolk County. That building permit included a different grading plan than what had been submitted as part of the application to the LPRCA. The revised grading plan provided for a retaining wall instead of a swale to manage stormwater. Norfolk County approved the building permit application and issued the Ritchies a building permit in accordance with the revised grading plan. The LPRCA was not notified of the change to the grading plan prior to the issuance of the building permit by Norfolk County. The Ritchies did not apply to the LPRCA for a revised permit.
- [9] The Ritchies proceeded with construction in accordance with the building permit issued by Norfolk County, including the construction of the retaining wall provided for in the revised grading plan. The historic grading of the Ritchie Property included a swale along the southern boundary with the Husack Property that directed water southeast between the two properties. The retaining wall blocks movement of water from the Husack Property onto the Ritchie Property.
- [10] In May 2023, Mr. Husack notified the LPRCA that the Ritchies had deviated from the original grading plan pursuant to which the LPRCA permit was granted. A resource planner from the LPRCA replied to Mr. Husack's email and confirmed that permit applications are required for the location where the Ritchie property is located and that a grading plan was submitted and approved. The email response noted that if the grading was completed as approved, there would be no impact to neighbouring properties.

- [11] The LPRCA conducted a site visit from the public road on November 1, 2023 following up on Mr. Husack's complaint. Photos were taken and it was confirmed that the lot grading did not follow the approved LPRCA permit. Consequently, the Ritchies were notified on November 8, 2023 that the property was in violation of the LPRCA permit due to lot grading not being in compliance with the grading plan as submitted.
- [12] In response to the LPRCA, an updated site plan was submitted along with a letter from a professional engineer stating his opinion that the revised grading plan conformed with Norfolk County's design criteria. That additional information was reviewed by technical staff at the LPRCA and it was ultimately determined that the construction completed on the Ritchie Property conformed with the *CAA* and the *Prohibited Activities, Exemption and Permits Regulation*.
- [13] The LPRCA notified Norfolk County's building department that there was a discrepancy between the grading plan approved of by the LPRCA and that which was included with the building permit submitted to the municipality. Norfolk County responded by indicating that the building permit had been finalized and closed.
- [14] Mr. Husack was advised that as a result of its investigation into his complaint, the LPRCA determined that there were no concerns with the revised grading plan or the construction on the Ritchie Property as completed. A follow-up letter was sent to Mr. Husack's counsel on November 26, 2024 confirming that the LPRCA was satisfied that the work as completed on the Ritchie Property complied with the legislation and therefore no action would be taken.

### **Analysis**

#### **Does the LPRCA have the authority to order compliance with a permit?**

- [15] The LPRCA is a creature of statute. Any authority that the LPRCA does have must be grounded in the legislation or regulations.
- [16] It is not in dispute that the LPRCA has authority over the Ritchie Property. It is also not contested that any development of or construction on the Ritchie Property is prohibited under the *CAA* unless it is undertaken in compliance with a permit issued by the LPRCA.
- [17] In this case, the LPRCA issued a permit to the Ritchies for construction on their property. It is conceded by the LPRCA that the Ritchies did not comply with the permit as issued. However, there is nothing in the *CAA* that provides the LPRCA the authority to issue an order to the Ritchies to comply with the permit.
- [18] Enforcement under the *CAA* is governed by Part VII. The only orders that the LPRCA have the authority to issue under Part VII are stop orders pursuant to section 30.4.
- [19] A stop order would not be appropriate in this case as those orders require persons to stop engaging or not engage in an activity that contravenes the conditions of a permit. Issuing

a stop order to the Ritchies would be moot as they are no longer engaged in any activity on their property, so there is nothing they could be ordered to stop doing.

- [20] Had the LPRCA been notified of the change to the grading plan prior to or during construction on the Ritchie Property, it could have issued a stop order pursuant to section 30.4. However, it is important to note that the wording in the legislation is permissive and not mandatory. Section 30.4 states that an officer “may” make an order where there are reasonable grounds to believe that a person is contravening the conditions of a permit.
- [21] Pursuant to section 30.5(1)(c) of the CAA, it is an offence for a person to contravene the conditions of a permit issued under section 28.1. The general conditions of the permit issued to the Ritchies include that the project is to be carried out per the plans submitted. There is also a specific condition that the applicant agrees to maintain all existing drainage patterns.
- [22] I am satisfied that the Ritchies failed to comply with conditions of the LPRCA permit by constructing a retaining wall not provided for in the original grading plan submitted. Failure to abide by conditions of the permit is an offence contrary to section 30.5(1)(c). However, the Ritchies have not been charged with the offence of failing to comply with conditions of their permit.
- [23] There is nothing in the CAA that compels a conservation authority to charge persons who engage in activities that constitute an offence under the Act. The lack of any mandatory provision results in a conservation authority having the discretion to decide whether or not to pursue charges.
- [24] I have been provided no authority for the proposition that there are circumstances in which a conservation authority must take steps to enforce compliance with a permit.
- [25] Consequently, I have concluded that the answer to the question of whether the LPRCA has the authority to order compliance with a permit is not as simple as yes or no. The LPRCA would have had the authority to issue a stop work order had they been notified prior to or during construction at the Ritchie Property, but that power has been rendered moot by virtue of construction now being complete. The LPRCA has the authority to charge the Ritchies for failing to comply with the condition of their permit but has not exercised its discretion to lay a charge under the CAA.
- [26] I therefore find that the LPRCA does have tools at its disposal to enforce compliance with permits. However, the use of all of those tools is discretionary. In this case, the LPRCA has exercised its discretion not to take any steps to force the Ritchies to comply with the permit issued.

The Court’s role in the oversight of discretionary decisions made by regulatory bodies

- [27] Although it was only raised in a peripheral way by counsel for the LPRCA, I think it important to note at the outset that Mr. Husack brings this application as an interested third party and not a person who is directly impacted by or involved in the decision-

making regarding the issuance or enforcement of a permit. There could, therefore, have been an initial question as to whether or not Mr. Husack even has standing to bring an application for review of the LPRCA's decision.

- [28] There is a mechanism in the CAA for an individual who has applied for a permit from a conservation authority to seek a review of the decision made regarding the issuance of a permit, but that scheme does not apply to Mr. Husack as he is not the permit applicant. Furthermore, Mr Husack would likely not have standing to seek a review under the CAA in relation to the permit issued for the Ritchie Property.
- [29] However, for the purpose of this Application, I am satisfied that Mr. Husack is an interested person insofar as he is the owner of a property abutting the Ritchie Property and therefore is potentially impacted by drainage of stormwater onto and off of the Ritchie Property. It is the complaint to the LPRCA about the failure of the Ritchies to comply with the conditions of their permit that triggered the review and ultimate decision to take no enforcement action. I am therefore of the view that for the purpose of this Application, I need not consider the issue of Mr. Husack's standing to challenge the decision of the LPRCA in relation to the Ritchie Property.<sup>1</sup> I accept that Mr. Husack has standing as the decision was made as a direct result of his complaint.
- [30] The process by which courts can review decisions made by administrative bodies has been developed in the jurisprudence and recently clarified in the case of *Canada (Minister of Citizenship and Immigration) v Vavilov*:

Parliament and the provincial legislatures are constitutionally empowered to create administrative bodies and to endow them with broad statutory powers: *Dunsmuir*, at para. 27. Where a legislature has created an administrative decision maker for the specific purpose of administering a statutory scheme, it must be presumed that the legislature also intended that decision maker to be able to fulfill its mandate and interpret the law as applicable to all issues that come before it. Where a legislature has not explicitly prescribed that a court is to have a role in reviewing the decisions of that decision maker, it can safely be assumed that the legislature intended the administrative decision maker to function with a minimum of judicial interference. However, because judicial review is protected by s. 96 of the *Constitution Act, 1867*, legislatures cannot shield administrative decision making from curial scrutiny entirely: *Dunsmuir*, at para. 31; *Crevier v. Attorney General of Quebec*, [1981 CanLII 30 \(SCC\)](#), [1981] 2 S.C.R. 220, at pp. 236-37; *U.E.S., Local 298 v. Bibeault*, [1988 CanLII 30 \(SCC\)](#), [1988] 2 S.C.R. 1048, at p. 1090. Nevertheless, respect for these institutional design

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<sup>1</sup> The LPRCA did not challenge Mr. Husack's standing to bring an Application seeking relief against the LPRCA but rather did note that Mr. Husack would have no standing to bring any type of review under the CAA in relation to the issuance of the permit for the Ritchie Property.

choices made by the legislature requires a reviewing court to adopt a posture of restraint on review.<sup>2</sup>

- [31] It is not disputed that the LPRCA is a specialized administrative body who is tasked with applying the provisions of the *CAA* and its associated Regulations. A review of decisions made by administrative bodies are undertaken on the standard of reasonableness unless the decision falls within the exceptions carved out in *Vavilov*, which include questions of law which are reviewable on a standard of correctness.
- [32] I do not agree with Mr. Husack’s characterization of the LPRCA’s refusal to take action as an error in law. An exercise of discretion does not fall within the category of a general question of law. The decision not to take enforcement steps does not involve an interpretation of the provisions of *CAA*. As I indicated above, the measures available to the LPRCA to enforce conditions of a permit are all permissive rather than mandatory. Therefore, the decision not to act is within the jurisdiction of the LPRCA based on the authority granted to it under the *CAA*. Therefore, the standard of review to be applied is reasonableness.
- [33] As the Supreme Court confirmed in *Vavilov*, a reasonableness review is concerned with the decision-making process and its outcomes:

the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, [2015 FCA 117](#), 472 N.R. 171, that, “as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did”: para. 28; see also *Ryan*, at paras. [50-51](#). Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.<sup>3</sup>

- [34] The nature of this particular review is somewhat unusual insofar as what I am reviewing is an exercise of the LPRCA’s discretion to take no enforcement action after being advised that there was non-compliance with an issued permit.<sup>4</sup> In assessing the

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<sup>2</sup> [2019] 4 SCR 653 at para 24.

<sup>3</sup> *Ibid* at para 83.

<sup>4</sup> Whether the exercise of discretion not to act is reviewable by the Court was not argued and I was not provided with any caselaw in support of or against. I have assumed for the purpose of this analysis that the decision of the

reasonableness of that decision, I must consider the evidence as to why that decision was reached, as well as the outcome of that decision. I must ask whether the decision “bears the hallmarks of reasonableness – justification, transparency and intelligibility”.<sup>5</sup> Mr. Husack bears the burden of demonstrating that the decision made by the LPRCA is unreasonable.

- [35] Mr. Husack relies on the decision of Justice of the Peace Coopersmith in *Lake Simcoe Conservation Authority v Saad*<sup>6</sup> for the proposition that non-compliance with permits create potential risks that are within the purview of the conservation authority to address. Although that is a correct statement of the law generally, the decision in *Saad* is distinguishable on the facts as it arose out of charges that had been laid against a landowner for contravention of Regulations made under the CAA.
- [36] I was also referred to the case of *Stojkovski v. Essex Region Conservation Authority* to support the argument that land development must be consistent with the Provincial Planning Statement (PPS), as the presence of an existing hazard is a given when a permit is being applied for. Although I accept that general proposition, this case is also distinguishable on the facts. In *Stojkovski*, the Ontario Land Tribunal issued a decision pursuant to an appeal filed by Mr. Stojkovski after the Essex Region Conservation Authority (ERCA) refused to issue a permit for land development. After reviewing the facts and the applicable legislation, the Tribunal allowed the appeal in part and directed the ERCA to issue a development permit. In this case, the LPRCA did issue a permit and there was no appeal commenced in relation to that decision.
- [37] Although reasons are not required for all administrative decisions, the LPRCA did provide Mr. Husack with the reasons for its decision not to take action to enforce its permit, first by email directly responding to Mr. Husack and then by letter to Mr. Husack’s counsel. The initial email indicated that LPRCA staff had reviewed the updated grading plan and determined that the plan addressed stormwater and drainage on the Ritchie Property. The follow up letter sent in November 2024 provides further details as to the information that was reviewed by LPRCA staff and the conclusion reached that the work completed on the Ritchie Property conforms with the legislation and therefore no further action would be taken.
- [38] I am satisfied that the reasons provided adequately explain the LPRCA’s decision to take no further action to enforce the original permit. The information provided to Mr. Husack in its totality, both the email and the follow up letter to counsel, are sufficient to facilitate meaningful review. The reasons also provide adequate justification of the decision and transparency in the decision-making process.

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LPRCA not to take enforcement measures is reviewable. However, I am not making any finding about whether similar discretionary decisions by administrative bodies are, as a general proposition, subject to judicial review on the standard of reasonableness.

<sup>5</sup> *Ibid* at para 99.

<sup>6</sup> 2016 ONCJ 328.

- [39] As for Mr. Husack's argument that the LPRCA failed to provide reasons on how it came to the conclusion that the drainage issue was being properly addressed, the LPRCA has no legal obligation to Mr. Husack to explain how it concluded that the change to drainage on the Ritchie Property does not require any further action. Even if there were a requirement for the LPRCA to provide reasons, an explanation was provided by way of the affidavit evidence of Leigh-Anne Mauthe, filed in this Application.
- [40] The issue of how the LPRCA concluded, either correctly or not, that the drainage issue was being properly addressed is beyond the scope of this review. The decision under review is the LPRCA's decision not to take any steps to enforce its permit. There is nothing in the legislation requiring the LPRCA to enforce conditions of permits issued. Therefore, the decision whether to issue a stop order or to lay charges for failing to comply is completely discretionary. The LPRCA's decision not to take enforcement measures was based upon its assessment of drainage on the Ritchie Property in part, but also was made taking into consideration whether or not the works as constructed complied with the CAA and its regulations.
- [41] The argument that the LPRCA's decision fails to comply with the PPS and is therefore unreasonable is based on a misunderstanding of the legislative scheme by which the LPRCA is granted regulatory authority. There is nothing in the CAA that positively requires the LPRCA to make decisions in compliance with the PPS.
- [42] Mr. Husack also argued that failure to enforce its permit overrides the LPRCA's mandate set out in the CAA and its obligations under the PPS. The decision not to take any enforcement measures against the Ritchie Property does not override the CAA or the PPS. Again, there is nothing in the CAA that mandates conservation authorities to take steps to enforce conditions of permits issued. Similarly, there is nothing in the PPS that could be read as requiring conservation authorities to pursue enforcement of their permits. The mandate to act in accordance with public safety and environmental protection does not require conservation authorities to act in every instance where there is non-compliance with conditions of a permit.
- [43] The question posed by Mr. Husack's counsel as to what the purpose of the LPRCA is if they are not going to enforce their own permits is beyond the scope of this Application. It is not for me to determine whether the LPRCA *should* have taken steps to enforce the permit issued for the Ritchie Property but whether it was reasonable in the circumstances for the LPRCA to decline to initiate any enforcement proceedings.

### **Conclusion**

- [44] Overall, I am satisfied that the LPRCA's decision not to take enforcement steps was reasonable and should not be interfered with.
- [45] Having concluded that the decision of the LPRCA is reasonable and is therefore entitled to deference, I will leave for another day the question as to whether the Court can even grant the remedy sought by Mr. Husack if the decision was found to be unreasonable.

[46] If the parties are unable to come to an agreement on the issue of costs, brief written submissions may be filed no longer than 3 pages in length, double-spaced, 12-point font, exclusive of Bills of Costs and Offer(s) to Settle within 30 days of receipt of this judgment.

[47] Otherwise, the Application is dismissed.

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A.D. Hilliard

**Released:** January 5, 2026

**CITATION:** Husack v Long Point Conservation, 2026 ONSC 60  
**COURT FILE NO.:** CV-25-00000079  
**DATE:** 2026/01/05

2026 ONSC 60 (CanLII)

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A.D. Hilliard, J

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