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March 12, 2021

To the Standing Committee on the Legislative Assembly

**Re: Ontario Bill 245: *Accelerating Access to Justice Act, 2021*
Schedules 6 and 10**

The Muskoka Lakes Association (MLA) represents more than 2000 families within Muskoka, extending from Seguin Township in the north to Gravenhurst in the south, as well as Bracebridge and the Township of Muskoka Lakes. Our association includes residents on the three big lakes and the numerous small lakes within Muskoka.

The MLA has reviewed Bill 245: *Accelerating Access to Justice Act, 2021* (the “Bill”), and is of the view that **Sections 6 and 10 should be withdrawn from the Bill for the reasons described below.**

1. Loss of Expertise

Schedule 6 of the Bill proposes to amalgamate five tribunals - the Local Planning Appeals Tribunal (LPAT), the Mining and Lands Tribunal, the Conservation Review Board, the Board of Negotiation, and the Environmental Reviews Tribunal (ERT) - into one tribunal called the Ontario Land Tribunal (OLT).

The practical effect of amalgamating the five tribunals is that any member of the OLT may preside over any proceeding that was previously within the exclusive jurisdiction of one of the five tribunals. The effect is that specialist tribunals will be transformed into generalist tribunals. The subject matter expertise currently held by these tribunals provides access to justice, which will be lost if this amalgamation proceeds.

2. Bill 245 inappropriately limits non-party participation

Schedule 6 of the Bill proposes to greatly limit non-party participation at public hearings. In particular, section 17 of the Bill states that a non-party can make submissions to the OLT in writing only.

Both the ERT and the LPAT allow non-parties at hearings to make oral submissions. This provides an important mechanism for individuals and citizen groups, particularly those who are unrepresented, to participate in hearings without facing the risk of an adverse cost award by virtue of being a party.

Schedule 6 of the Bill and the draft OLT Rules will undoubtedly result in a significant loss of public participation rights, thereby depriving OLT members of relevant evidence and perspectives, and adversely impacting access to justice. The MLA participates in many such hearings which provides a low-cost alternative to have our position heard.

3. Bill 245 significantly expands the OLT's authority to summarily dismiss an appeal

Section 19(1)(c) of Schedule 6 allows the OLT, on the motion of any party or its own initiative, to dismiss the proceeding without a hearing if the OLT is of the opinion that the proceeding has “no reasonable prospect of success.”

This would expand the tribunal's authority to dismiss without a hearing (currently set by section 4.6 of the Statutory Powers Procedure Act) which currently only allows dismissals for proceedings outside the tribunal's jurisdiction or for proceedings that are frivolous, vexatious, or in bad faith.

The proposed new test is undefined in Schedule 6, and it is unclear whether section 19 empowers the OLT to partially dismiss an appeal, as opposed to dismissing an appeal in its entirety. In addition, section 19 fails to include any meaningful criteria to assist the OLT (and hearing parties) in determining when the “no reasonable prospect of success” test is – or is not – satisfied on the facts or in law.

The OLT's broad discretion to summarily dismiss a matter pursuant to section 19 of Schedule 6 raises concerns that proceedings may be terminated abruptly and unfairly after a preliminary assessment before the appellant's evidence (including opinion evidence from experts) has even been presented to the OLT. This risk is considerably exacerbated by the loss of subject-matter expertise that will result from amalgamation, as described above.

4. Schedule 10 improperly eliminates ministerial appeals

Schedule 10 of the Bill proposes to eliminate appeals to the Minister from decisions made by tribunal members under environmental legislation.

At present, decisions of the Environmental Review Tribunal under the EPA may be appealed to the Minister on questions of fact or policy. The existence of ministerial appeal rights provides an important safeguard since appeals from ERT decisions to Divisional Court are restricted to a question of law. Again, this risk is considerably exacerbated by the loss of subject-matter expertise that will result from amalgamation which may result in more appeals based on facts and technical interpretation.

5. Other Ontario governmental measures that undermine access to justice

The implications of Schedules 6 and 10 should be considered in conjunction with other changes that the Ontario government has recently made in relation to the ERT and LPAT.

Although these changes pre-date Bill 245 and are therefore not a direct consequence of Schedules 6 and 10, it is nevertheless important to situate the Bill within the broader context of other government measures that, individually and collectively, impede access to justice. For example, the provincial government has significantly increased the filing fees for commencing an appeal to the LPAT. Beginning on July 1, 2020, fees for appeals to the LPAT of an official plan amendment and zoning by-law amendment were set at \$1,100, which was more than a three-fold increase. The imposition of costly filing fees will deter the public from commencing legitimate appeals and constitutes an inappropriate financial barrier to access to justice. The MLA is a lake association with limited resources and should have access to appeal tribunals without significant financial hardship imposed by a system being designed to keep neighbours, interested parties and champions of policy out.

In conclusion, the MLA is extremely concerned that the merger proposal combined with other provisions in Schedules 6 and 10 described above will impair access to justice and diminish the quality and credibility of administrative decision-making under Ontario's environmental and land use statutes.

Accordingly, the MLA recommends that both Schedules 6 and 10 be withdrawn from Bill 245.

Respectfully submitted,



Susan Eplett
Vice President and Chair, Government and Land Use Committee

cc. Hon. Doug Downey, Attorney General
Tonia Grannum, Committee Clerk
Katie Edwards, General Manager, MLA