CITATION: City of Hamilton v. Niagara Peninsula Conservation Authority, 2019 ONSC 1677
DIVISIONAL COURT FILE NO.: 18-927-JR
DATE: 20190430

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Wilton-Siegel, Thorburn and Favreau JJ.

BETWEEN:	
CITY OF HAMILTON Applicant	*D. Earthy* and *D. Veinot*, for the City of Hamilton, Applicant
– and –	
NIAGARA PENINSULA CONSERVATION AUTHORITY, THE REGIONAL MUNICIPALITY OF NIAGARA, HALDIMAND COUNTY, AND THE MINING AND LANDS COMMISSIONER OF ONTARIO Respondents	*P. DeMelo,* for the Niagara Peninsula Conservation Authority and the Regional Municipality of Niagara, Respondents *W. McKaig*, for Haldimand County, Respondent
	HEARD at Toronto: February 6, 2019

Wilton-Siegel J.

[1] The City of Hamilton ("Hamilton" or the "Applicant") seeks judicial review of a decision of the Mining and Lands Commissioner ("the Tribunal") December 21, 2017 ("the Decision"). The Tribunal dismissed the Applicant's appeal brought pursuant to s. 27(8) of the *Conservation Authorities Act*, R.S.O. 1990, c. C.27 (the "*CAA*") in respect of a levy for maintenance and administration costs apportioned to Hamilton in the 2015 fiscal year by the Niagara Peninsula Conservation Authority ("the NPCA"). It is Hamilton's position that the apportionment of the 2015 levy to it is to be calculated using only the assessed value of Hamilton lands that are situated within the jurisdictional lands of the NPCA. In this connection, the Applicant seeks certain declarations regarding the interpretation of s. 27(6) of the *CAA* and ss. 2(1)(b) and 2(2) of *O. Reg 670/00 – Conservation Authority Levies* ("*Regulation 670*"), among other relief. In the alternative, the Applicant seeks an injunction

preventing the NPCA from apportioning the 2015 levy to the Applicant calculated using the assessed value of the Applicant's lands that are not situated within the jurisdictional lands of the NPCA.

Background

[2] The respondent NPCA is a conservation authority having jurisdiction over lands falling within three participating municipalities: Hamilton, the Regional Municipality of Niagara ("Niagara") and Haldimand County ("Haldimand"). In this Endorsement, the NPCA, Niagara and Haldimand are collectively referred to as the "Respondents" and Hamilton, Niagara and Haldimand are collectively referred to as the "participating municipalities".

[3] Section 27 of the *CAA* gives the NPCA power to levy the participating municipalities for maintenance and administration costs. The apportionment of maintenance and administration costs to the participating municipalities is governed by ss. 27(2) and 27(3) of the *CAA* and *Regulation 670*, which was enacted pursuant to s. 27(16) of the *CAA*.

[4] Hamilton accounts for 9.7% of the lands under the jurisdiction of the NPCA. These lands fell within the former municipalities of Glanbrook, Stoney Creek and Ancaster, which were amalgamated into the City of Hamilton in 2001. The lands within the former municipalities represent 21.1% of the lands comprising the City.

[5] At the time of the amalgamation, Hamilton was concerned that amalgamation would increase its apportionment share if the lands comprising the City's urban core were to be factored into the assessment value calculation. Hamilton negotiated with the NPCA to keep its pre-amalgamation levy apportionment of 6.7%. This levy apportionment was lowered to 3.93% in 2004, remaining roughly the same until 2014.

[6] In 2015, the NPCA revisited the basis of its calculation of the apportionment ratios of the participating municipalities for maintenance and administration costs. The NPCA concluded that it was obligated to apply the rules in ss. 2(1)(b), 2(2) and 3 of *Regulation 670*, referred to collectively as the "modified assessment" method. These rules require that, in the present circumstances, both maintenance and administration costs are to be apportioned among the participating municipalities based on the ratio that each party's "modified assessment" bears to the total of the NPCA's "modified assessment", being the total of the three "modified assessment" values of the participating municipalities.

[7] The determination of the apportionment ratio requires a three-step calculation. First, pursuant to s. 3(1) of *Regulation 670*, the current value assessments "of all lands within a [participating] municipality all or part of which are within [the NPCA's] jurisdiction" are totaled and certain factors are multiplied against the current value assessments of the land in specified property classes. The result is the "modified current value assessment" of a participating municipality. Next, pursuant to s. 3(2), the participating municipality's "modified current value assessment" is multiplied by a ratio, the numerator of which is the area of the participating municipality within the jurisdiction of the conservation authority and the denominator of which is the total area within the participating municipality. The result is the "modified assessment" of the participating municipality. Finally, as mentioned,

pursuant to ss. 2(1) and (2), the ratio for apportionment purposes is derived as the ratio that each participating municipality's "modified assessment" bears to the total of the NPCA's "modified assessment", being, pursuant to s. 3(3), the total of the three "modified assessment" values of the participating municipalities.

[8] For the purposes of a participating municipality's "modified current value assessment" in the first step of the calculation, starting in 2015 the NPCA interpreted s. 3(1) of *Regulation 670* to require inclusion of the current value assessments of all lands within the municipality rather than all lands falling within the jurisdiction of the NPCA.

[9] Using this interpretation of s. 3(1) of *Regulation 670*, Hamilton's "modified current value assessment" was $14.8 billion, which represented 19.9201% of the NPCA's total "modified current value assessment". As a result, Hamilton's share of the NPCA levy rose from 4.1997% in 2014 to 19.9201% in 2015 which resulted in a substantial increase in the amount of the levy against Hamilton in 2015 over the amount in 2014.

[10] The Applicant appealed the NPCA levy to the Tribunal pursuant to pursuant to s. 27(8) of the *CAA*. The appeal was heard on May 29, 30 and 31, 2017. Each of the City and the NPCA called three witnesses. The Decision was released on December 21, 2017.

The Decision

[11] After setting out the background to the appeal before it, the Tribunal summarized the evidence of the witnesses for the parties and the final submissions of each of Hamilton, Niagara and the NPCA. The majority of this evidence and these submissions focused on the evidence pertaining to an alleged agreement to maintain the pre-amalgamation ratio for Hamilton. The Tribunal held that no such agreement had been reached. As this finding is not being challenged on this application, I have disregarded these submissions and will limit the remainder of this description of the Decision to the legal issues relevant to the present application.

[12] The Tribunal described three submissions of the Applicant that are relevant for present purposes.

[13] First, the Applicant submitted that s. 27(6) of the *CAA* limits the assessment value to be used in s. 3(1) of *Regulation 670* to lands within the watershed of the NPCA and did not allow the NPCA to draw on a municipality's entire assessment value. The Applicant suggested that the Legislature did not intend a conservation authority to have the authority to calculate levies using an assessment base that extended beyond the rateable property over which it had jurisdiction and that any contrary interpretation would be unfair.

[14] Second, the Applicant argued that, to the extent s. 3(1) of *Regulation 670* authorized a conservation authority to calculate levies using an assessment base that extended beyond the rateable property over which it had jurisdiction, such provision would conflict with s. 27(6) of the *CAA*. It submitted that, because *Regulation 670* is "subordinate legislation", disregarding that result would lead to an "absurd" result.

[15] Third, the Applicant says that taxing laws are to be strictly construed, which implies in the present context that the NPCA cannot either levy outside its jurisdiction or assess as against lands outside of its jurisdiction. This argument also proceeds on the basis that s. 27(6) of the *CAA* limits a conservation authority's authority to charging a levy on rateable property located within the authority's watershed.

[16] The Tribunal then addressed the applicable legislation, providing a brief history of a municipality's right of appeal of a conservation authority levy under the *CAA* and the origin of *Regulation 670*, which came into effect on December 19, 2000, and setting out the applicable provisions of each. The Tribunal then made two critical findings.

[17] First, the Tribunal concluded that a participating municipality's "entire assessment base is used in the calculation set out in [*Regulation 670*]". In reaching this conclusion, the Tribunal concluded that "the notion of taking a municipality's entire assessment value as the starting point in the calculation appears to have been the rule for many years" and did not change with the enactment of *Regulation 670*.

[18] The basis for this conclusion was principally the evidence of an official of the Ministry of Natural Resources (the "MNR") accepted by the Ontario Municipal Board (the "Board") in its decision in *London (City) v. Kettle Creek Conservation Authority*, [1997] O.M.B.D. No. 103. The Tribunal stated that it had conducted its own research and uncovered this decision. The Tribunal relied on this decision without offering the parties an opportunity to make submissions on the probative value of this decision.

[19] The Tribunal noted that one of the issues in that decision was described as "the application of the averaging method vs. the actual area assessment." The Tribunal implicitly accepted that the "averaging method" referred to in *Kettle Creek* as the pre-*Regulation 670* approach to calculation of the apportionment ratio among participating municipalities and the "modified assessment" method under *Regulation 670* were functionally equivalent, at least to the extent that each started with the assessment base of all lands within a participating municipality rather than the assessment base of all lands that lie within a conservation authority's area of jurisdiction. The Tribunal also noted with approval the Board's finding that "the averaging method used by the Province constituted a fair and reasonable way of apportionment".

[20] Second, the Tribunal accepted the position of Niagara that s. 27(6) of the *CAA* "is directed at a municipality allowing it to collect monies to defray the costs of special services such as conservation authority levies". It noted that conservation authorities do not have the power to charge against rateable properties to defray their expenses and "must look to the municipalities for this". The Tribunal concluded that this was the only sensible interpretation of s. 27(6). Accordingly, the Tribunal rejected the Applicant's submission that, properly interpreted, s. 27(6) constituted a direction that only those lands within the watershed boundary are to be included in the apportionment calculation and that *Regulation 670* should be interpreted to comply with this approach to avoid an "absurd" result.

[21] The Tribunal then made the following four determinations that disposed of the three issues before it.

[22] First the Tribunal found there was no agreement among the NPCA and the participating municipalities respecting apportionment values for maintenance costs for 2015. As mentioned, this determination is not being challenged and need not be addressed further.

[23] Second the Tribunal held that the 2015 levy payable for maintenance costs complied with s. 27 of the *CAA* and *Regulation 670*. This result necessarily followed from the Tribunal's two findings described above. In particular, the Tribunal held that it could "find no support for Hamilton's interpretation of the wording in [s. 3(1) of *Regulation 670*] that the lands located outside of the NPCA's jurisdiction are to be excluded from the calculation".

[24] Third, the Tribunal held that the 2015 levy payable for administration costs had also been calculated in accordance with s. 2(2) of *Regulation 670* for the same reasons as set out above in respect of the levy payable for maintenance costs.

[25] Lastly, the Tribunal rejected the City's submission that "the levy is not appropriate in the circumstances unless the formula used to determine it uses more refined information dealing with only those lands located within the NPCA jurisdiction". The Tribunal considered that to do so amounted to granting the Applicant an exemption from *Regulation 670* which exceeded the Tribunal's authority. This finding addressed the requirement in s. 27(12)(b) of the *CAA* that, on an appeal of a conservation authority levy, a tribunal must address not only whether the levy complied with s. 27 of the *CAA* and *Regulation 670* but also whether the levy "is otherwise appropriate". The Tribunal's finding on this issue is not the subject of this application.

The Issues on this Application

[26] The Applicant raises two principal issues, which the Respondents accept as the issues in this application:

(1) Is there any basis to interfere with the Tribunal's interpretation of s. 27 of the *Conservation Authorities Act* and of *Regulation 670*?

(2) Did the Tribunal's reference to facts and conclusions reached in *Kettle Creek* breach the Applicant's right to procedural fairness?

Applicable Statutory Provisions

[27] The following sets out the statutory provisions at issue on this application.

The Conservation Authorities Act

[28] The following provisions of the *Conservation Authorities Act* are at issue in this application, including the relevant French language versions of the indicated subsections:

27 (2) Subject to the regulations made under subsection (16), after determining the approximate maintenance costs for the succeeding year, the authority shall apportion the costs to the participating municipalities according to the benefit derived or to be derived by each municipality, and the amount apportioned to each such municipality shall be levied against the municipality.

(2) Sous réserve des règlements pris en application du paragraphe (16), après avoir fixé les frais d'entretien approximatifs de l'année suivante, l'office les répartit entre les municipalités participantes selon les avantages que chacune retire ou retirera et les montants répartis sont prélevés sur chaque municipalité.

(3) Subject to the regulations made under subsection (16), after determining the approximate administration costs for the succeeding year, the authority shall apportion the costs to the participating municipalities and the amount apportioned to each such municipality shall be levied against the municipality.

(3) Sous réserve des règlements pris en application du paragraphe (16), après avoir déterminé les frais d'administration approximatifs pour l'année suivante, l'office les répartit entre les municipalités participantes et les montants répartis sont prélevés auprès de chaque municipalité.

(4) Subject to the regulations made under subsection (16), an authority may establish a minimum sum that may be levied for administration costs by the authority against a participating municipality, and, where the amount apportioned to any municipality under subsection (3) is less than the minimum sum, the authority may levy the minimum sum against the municipality.

(5) The secretary-treasurer of the authority, forthwith after the amounts have been apportioned under subsections (2), (3) and (4), shall certify to the clerk of each participating municipality the total amount that has been levied under those subsections, and the amount shall be collected by the municipality in the same manner as municipal taxes for general purposes.

(6) Where only a part of a participating municipality is situated in the area over which the authority has jurisdiction, the amount apportioned to that municipality may be charged only against the rateable property in that part of the municipality and shall be collected in the same manner as municipal taxes for general purposes.

(6) Si une partie seulement de la municipalité participante est située dans la zone sur laquelle l'office exerce sa compétence, la quote-part de la municipalité ne peut être prélevée que sur les biens imposables qui se trouvent dans cette partie. La municipalité perçoit le montant de sa quote-part comme s'il s'agissait d'impôts municipaux perçus à des fins générales.

(8) A municipality against which a levy is made under this section may appeal the levy to the Mining and Lands Tribunal continued under the Ministry of Natural Resources Act.

(12) The Tribunal shall hold a hearing on the appeal and shall consider,

(a) whether the levy complies with this section and the regulations made under subsection (16); and

(b) whether the levy is otherwise appropriate.

(13) The Tribunal may, by order, confirm, rescind or vary the amount of the levy and may order the authority or the municipality to pay any amount owing as a result.

(14) No appeal lies from the decision of the Tribunal.

Regulation 670

[29] The following provisions of *Regulation 670* are at issue in this application:

In this Regulation,

"current value assessment" means the current value assessment of land, determined under the provisions of the Assessment Act, for a given year;

"property class" means a class of real property prescribed under the Assessment Act.

2. (1) In determining the levy payable by a participating municipality to an authority for maintenance costs pursuant to subsection 27 (2) of the Act, the authority shall apportion such costs to the participating municipalities on the basis of the benefit derived or to be derived by each participating municipality determined,

(a) by agreement among the authority and the participating municipalities; or

(b) by calculating the ratio that each participating municipality's modified assessment bears to the total authority's modified assessment.

(2) In determining the levy payable by a participating municipality to an authority for administration costs pursuant to subsection 27 (3) of the Act, the authority shall apportion such costs to the participating municipalities on the basis of the ratio that each participating municipality's modified assessment bears to the total authority's modified assessment.

3. The following rules apply for the purposes of section 2:

1. The modified current value assessment is calculated by adding the current value assessments of all lands within a municipality all or part of which are within an authority's jurisdiction and by applying the following factors to the current value assessment of the land in the following property classes:

Property Class	Factor
Residential/Farm	1
Multi-Residential	2.1
Commercial	2.1
Industrial	2.1
Farmlands	0.25
Pipe Lines	1.7
Managed Forests	0.25
New Multi-Residential	2.1
Office Building	2.1
Shopping Centre	2.1
Parking Lots and Vacant Land	2.1
Large Industrial	2.1

2. A participating municipality's modified assessment is the assessment calculated by dividing the area of the participating municipality within the authority's jurisdiction by its total area and multiplying that ratio by the modified current value assessment for that participating municipality.

3. The total authority's modified assessment is calculated by adding the sum of all of the participating municipalities' modified assessments for that authority.

The Court's Jurisdiction

[30] The Divisional Court has jurisdiction to hear applications for certiorari pursuant to ss. 2(1)1 and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1. The Divisional Court also has jurisdiction pursuant to s. 2(1)2 of the *Judicial Review Procedure Act* to grant the declaratory and injunctive relief sought by the Applicant because the Tribunal's decision is an exercise of "statutory power", in this case a statutory power of decision.

Standard of Review

[31] The City submits that the standard of review should be correctness. It submits that this standard is appropriate given that this is the first decision of the Tribunal regarding the apportionment of expenses among participating municipalities under the *CAA* and, in particular, regarding the interpretation of s. 27(6) of the *CAA* and *Regulation 670*. It suggests that Tribunal has no expertise in this area under the *CAA*, even if the *CAA* is one of the home statutes of the Tribunal.

[32] However, the Court of Appeal has recently addressed the standard of review of a decision of the Tribunal respecting a different section of the *CAA* in *Gilmor v. Nottawasaga Valley Conservation Authority*, 2017 ONCA 414. At paras. 37 and 38, the Court held that a reasonableness standard was appropriate for the following reasons:

> The Mining and Lands Commissioner is a somewhat unusual tribunal in that it exercises authority under several statutes in addition to the *CAA*, including the *Mining Act*, the *Oil, Gas and Salt Resources Act*, R.S.O. 1990, c. P.12, the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, the *Lakes and Rivers Improvement Act*, R.S.O. 1990, c. L.3, and the *Assessment Act*, R.S.O. 1990, c. A.31. The commissioner is not constituted by the CAA -- the commissioner is a creature of the *Ministry of Natural Resources Act*, R.S.O. 1990, c. M.31 -- but the commissioner is no less entitled to deference in interpreting and applying the CAA on that account. The institutional expertise of a tribunal performing duties under a particular statute does not depend on the tribunal's constitution under that statute, nor is it diminished by a legislative decision to assign decision-making authority to that tribunal over additional statutes, whether or not those statutes serve related purposes.
>
> The commissioner has, since 1982, exercised the Minister of Natural Resources' power to hear *CAA* appeals pursuant to a formal delegation of the minister's authority. No other administrative tribunal has appellate decision-making authority under the *CAA*. In my view, the *CAA* (and associated regulations) may be regarded as one of the commissioner's several "home acts". As a result, the reasonableness standard applies presumptively to appeals from the commissioner's decisions interpreting it. I note that this accords with this court's recent approach to an appeal from a decision of the commissioner under the *Mining Act*: *2274659 Ontario Inc. v. Canada Chrome Corp.*, [2016] O.J. No. 945, 2016 ONCA 145, 394 D.L.R. (4th) 471, at para. 44, leave to appeal to S.C.C. refused [2016] S.C.C.A. No. 172.

[33] I see no basis for distinguishing the reasoning in *Gilmor*. The *CAA* is a home statute of the Tribunal and it has institutional experience in interpreting that statute, even if it has not previously addressed the specific provisions at issue on this application. This expertise is not diminished by the Tribunal's constitution under a different statute, nor by the fact that it has authority over several statutes. Further, the questions at issue do not fit within any of the categories set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paras. 58 to 61. Lastly, the absence of a privative clause gives rise to a strong indication of a reasonableness standard: *Dunsmuir* at para. 52. Accordingly, I conclude that the applicable standard of review on this application is one of reasonableness.

[34] The classic statement of the content of reasonableness is set out in para. 47 of *Dunsmuir*:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquiries into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[35] Accordingly, as expressed in *Dunsmuir*, reasonableness is concerned with whether a decision exhibits the characteristics of justification, transparency and intelligibility within the decision-making process and also requires consideration of whether a decision falls within the range of possible, acceptable outcomes which are defensible on the facts and the applicable law.

[36] The City also raises an issue of denial of natural justice pertaining to the Tribunal's reliance on the *Kettle Creek* decision of the Board. In addressing an issue of this nature, a court does not engage in an assessment of the appropriate standard of review. Rather, the court is required to assess whether the rules of procedural fairness have been adhered to given the particular circumstances giving rise to the allegation and the appropriate procedures and safeguards required to comply with the principles of natural justice in the particular circumstances of each case: see *London (City) v. Ayerswood Development Corp.*, [2002] O.J. No. 4859 (C.A.) at para. 10.

Analysis and Conclusions

[37] In this application, the City asserts: (1) that the Tribunal's determination that the NPCA's apportionment of administration and maintenance expenses among the participating municipalities did not comply with the provisions of the *CAA*, in particular s. 27(6) and the relevant provisions of *Regulation 670*; and (2) that the Tribunal's recourse to, and reliance

on, the *Kettle Creek* decision constituted a denial of natural justice. I will address these issues in turn.

Was the Tribunal's Determination Reasonable?

[38] The first question requires a determination as to whether the Decision was reasonable. As described above, the Decision was based on two findings of the Tribunal: (1) that s. 27(6) of the *CAA* does not provide that only those lands within the watershed boundary of the NPCA are to be included in the apportionment calculation under *Regulation 670*; and (2) that the entire current value assessment base of a municipality is to be used in the calculation set out in *Regulation 670*, specifically in s. 3(1). I will address each of these determinations in order after setting out the applicable principles of statutory interpretation.

Applicable Principles of Statutory Interpretation

[39] The parties do not dispute that the guiding principle of statutory interpretation is the "modern" approach as expressed by the Supreme Court in *Bell ExpressVu Limited Partnership v. Rex*, [2002] SCC 42 at para. 26 as follows:

> In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: [citations omitted].

[40] Hamilton also contends that, in conducting an exercise of statutory interpretation, (1) due respect and meaning must be given to all of the words in a statutory provision; (2) that there is a presumption that legislatures are capable and intent on drafting legislation that is rational and internally coherent; and (3) that there is a presumption that a legislature does not intend an "absurd" result: see *Rizzo v. Rizzo Shoes Ltd.*, [1998] 1 S.C.R. at para. 27. I accept the foregoing as applicable principles of statutory interpretation.

The Interpretation of s. 27(6) of the CAA

[41] Hamilton argues that the Tribunal's finding that s. 27(6) was directed at a municipality's authority to collect taxes to defray the levy of a conservation authority rather that at the delineation of the rateable lands to be included by a conservation authority for apportionment purposes was unreasonable.

[42] Before the Tribunal and on this application, Hamilton argued that s. 27(6) provides, among other things, that only those lands of a participating municipality that fall within a conservation area's area of jurisdiction can be included in the calculation of the

apportionment ratio under *Regulation 670*. If this interpretation is correct, because *Regulation 670* is subordinate legislation under the *CAA*, s. 27(6) would arguably require that the current value assessment base in the first step of the calculation of the apportionment ratio be restricted to the current value assessment base of the lands within the conservation authority's area of jurisdiction.

[43] Hamilton submits that s. 27(6) should be interpreted as addressing two separate issues. It says that the first part of the provision – "Where …in that part of the municipality" – pertains to a conservation authority's power to apportion expenses to lands within its area of authority and the remainder of the subsection – "and shall be collected …general purposes" – permits or requires a municipality to collect the amount apportioned to it by the conservation authority solely from such lands, rather than to spread the levy across all lands within the municipality.

[44] Hamilton's argument effectively proceeds on the basis that, in apportioning the expenses contemplated by ss. 27(2) and (3), a conservation authority is also "charging" property in a participating municipality. On this basis, s. 27(6) effectively requires a conservation authority to take into consideration only the assessments of lands within its area of jurisdiction in undertaking the calculation in *Regulation 670*.

[45] The Tribunal rejected the City's interpretation of s. 27(6). As mentioned, the Tribunal concluded that s. 27(6) "should be read as allowing a *municipality* having part of its lands located within the boundary of an authority to charge the apportionment amount against those lands only…It is directed at a *municipality* allowing it to collect monies to defray the costs of special services such as conservation authority levies." [emphasis added] In other words, s. 27(6) is directed solely to municipalities. The Tribunal concluded that the sole function of s. 27(6) was to provide a participating municipality with the right, but not the obligation, to collect the amount of a conservation authority's levy solely from the lands within the area of jurisdiction of the conservation authority. The Decision also implies that there is no connection between s. 27(6) and *Regulation 670*.

[46] For the following seven reasons, I find the Tribunal's conclusion that s. 27(6) did not address the issue of the lands to be included in the calculation under *Regulation 670* to be not only reasonable but correct. It is not necessary for present purposes to address the further question, which involves a further interpretation of s. 27(6), of whether under this provision the municipality is obligated, or merely has a right, to collect the amount of a conservation authority's levy solely from the lands within the area of jurisdiction of the conservation authority.

[47] First, the scheme of s. 27 is clear on a plain reading of that section, including in particular s. 27(6). It provides a complete code for the apportionment and collection of a conservation authority's levy for administration and maintenance expenses.

[48] Subsections 27(2) and (3) provide for the apportionment of maintenance and administration expenses, respectively, among participating municipalities and a conservation authority levy to raise the apportioned amounts from the municipalities. *Regulation 670* supplements such provisions by providing how the apportionment among the participating

municipalities is to be derived for the purposes of ss. 27(2) and (3). Section 27(5) then contemplates a certification procedure by the conservation authority to each municipality with respect to the total amount calculated for the purposes of, and levied under, ss. 27(2) and (3) by the authority against a participating municipality.

[49] In contrast, subsections 27(5) and 27(6) deal with the collection by a municipality of the amount of the conservation authority's levy, that is, collection of an amount to fund the municipality's payment of the conservation authority levy against it. In the last sentence of subsection 27(5), that provision gives a general power to a participating municipality to collect the amount of a conservation authority levy in the same manner as municipal taxes for general purposes.

[50] Section 27(6) then addresses the case where only a part of the lands within the municipality fall within the area of the conservation authority's jurisdiction. It provides that a municipality may "charge" in the sense of "allocate" or "apportion" and "levy" the amount of the conservation authority's levy solely against the lands within the area of jurisdiction of the authority. This is consistent with the definition of "charge" in *Black's Law Dictionary* (West Group: St. Paul, Minn, 1999) (7th ed.), which includes "4. to impose a lien or claim; to encumber <charge the land with a tax lien> ...6. To demand a fee; to bill <the clerk charged a small filing fee>." On the other hand, Hamilton's interpretation of s. 27(6) requires that the term "charged" be synonymous with the term "calculated". That is not a meaning that the word "charge" can carry under any circumstances. In other words, the Hamilton's interpretation requires very different language in s. 27(6).

[51] Second, this interpretation of s. 27(6) is consistent with the municipal tax regime in two respects. First, there is no issue that tax collection activities can only be conducted by the municipalities. As the Tribunal noted, a conservation authority has no authority to levy or collect any amount against property within its area of jurisdiction. The concept of a conservation authority "charging" properties is either inconsistent with the meaning of that term or with the absence of any taxing ability on the part of such an authority. Second, and more importantly, the Respondents' position that s. 27(6) is directed at a municipality's taxing authority makes sense because it provides a participating municipality with a right or obligation that it would not otherwise have in the absence of this provision, namely the right or obligation to charge i.e. tax less than all of the lands within the municipality for a specific purpose.

[52] Third, Hamilton's interpretation renders irrelevant the last phrase in s. 27(6) – "shall be collected in the same manner as municipal taxes for general purposes" – as this phrase has already been set out in s. 27(5). These words only have meaning if they address the manner of collection of taxes by a municipality in the circumstances in which a participating municipality exercises a right, or is required, to collect the amount of a conservation authority levy solely from the lands within the area of the authority's jurisdiction.

[53] Fourth, I do not accept Hamilton's submission that the use of the verb "prélever" in s. 27(6) as well as in ss. 27(2) and (3) supports its interpretation of s. 27(6). Essentially, Hamilton argues that the verb "prélever" is exclusively associated with actions of the conservation authority. However, I consider that "prélevée" in the first sentence of s. 27(6) in the French

version thereof is appropriately used to describe the municipality's action in "charging" in the sense of "allocating" or "apportioning" and "levying" the amount of the conservation authority's levy against the lands within the area of jurisdiction of the authority. In this regard, the definition of "prélever" in *Jeffery v. London Life Insurance Co.*, [2010] O.J. No. 4186 (S. Ct.) at paras. 63-65, based on *Le nouveau petit Robert*, 2008 ed., is relevant:

... The verb "prélever" has a meaning in English synonymous with "debit", "removal" or "deduction."

The French terms "prélever" ... [is] defined as follows:

> prélever: Prendre (une partie d'un ensemble, d'un total). Syn.: enlever, extraire, ôter, retenir, retrancher. ...

Translated into English "prélever" means to deduct, set apart (portion) in advance; to levy, to remove, to take away, paying to another.

[54] Fifth, for the following reasons, I do not accept Hamilton's submission regarding the necessary implication of the Board decision in *Kettle Creek* respecting the interpretation of s. 27(6).

[55] The Tribunal noted that Hamilton argued before it that the "averaging method" was contrary to s. 27(6) of the *CAA,* as the City of London had done in *Kettle Creek.* However, Hamilton is correct in pointing out that the Tribunal appears not to have recognized that the "averaging method" was applied by the MNR in the pre-*Regulation 670* period by virtue of the Regulations that were enacted pursuant to s. 366.1 of the *Municipal Act*, R.S.O. 1990, c. M.45, repealed 1997, c. 5, s. 55 for each of the years 1992 to 1997 inclusive. In the case of each of these Regulations, Part IV set out a mechanism for determining the apportionment ratios for participating municipalities of conservation authorities based on the respective "discounted equalized assessments" of the municipalities. In each case, the Regulations contained the following provision:

> 29(3) Where only part of a municipality against which an apportionment is made by a conservation authority in 1993 is located within the conservation authority area, the discounted equalized assessment for that part of the municipality shall be deemed to be the discounted equalized assessment for the whole municipality for the purposes of this Part.

[56] Hamilton submits that the necessary implication of the Board decision in *Kettle Creek* is that s. 27(6) would have operated to limit the current value assessment base included for apportionment calculation purposes to the current value assessment base of the lands of a participating municipality within the area of jurisdiction of the conservation authority absent the provisions of s. 29(3) of these Regulations. I do not agree however. In *Kettle Creek*, the Board did not need to interpret s. 27(6) in view of the application of s. 29(3) in the applicable Regulations. The issue of the proper interpretation of s. 27(6) was therefore never addressed in *Kettle Creek.* Moreover, based on the structure of s. 27 of the *CAA*, I

think it is more likely that s. 29(3) of the Regulations was directed at overriding ss. 27(2) and 27(3) of the *CAA* in respect of the apportionment of expenses rather than s. 27(6).

[57] Lastly, I would also note that this interpretation of the operation of s. 27(6) is consistent with the provisions of s. 5 of *Ontario Regulation 569/98* which was in effect immediately prior to *Regulation 670* becoming effective. That Regulation read as follows:

> Any municipality newly created in 1998 as a result of municipal restructuring is responsible for the same apportionment as the sum of the former parts and the new municipality shall collect levies, as the council deems appropriate,
>
> by general levy; or
>
> by special levy to residents directly within the conservation authority.

[58] In its factum, the City also argued that the Tribunal failed to apply certain principles of taxation, although it did not press this argument at the hearing. In any event, I do not think that the tax principles upon which the City relied are applicable in the present context for two reasons. First, as mentioned, the NPCA is not a taxing authority. Second, insofar as the City seeks to imply a limitation on the lands whose assessment may be considered in the calculation of the apportionment ratios from the alleged limits of the NPCA's authority to "charge" lands pursuant to s. 27(6), this argument depends upon an interpretation of that provision that I have rejected for the reasons set out above.

[59] Accordingly, I conclude that the Tribunal's interpretation of the meaning of s. 27(6) was reasonable. As Hamilton points out, however, this determination addressed a submission of the City that supplemented, but was not necessary for, its position regarding the interpretation of s. 3(1) of *Regulation 670* to which I now turn.

The Interpretation of Regulation 670

[60] As discussed above, *Regulation 670* sets out a three-step calculation process to determine the apportionment ratio among participating municipalities in respect of administration and maintenance expenses of a conservation authority. For present purposes, the issue is whether the current value assessment amount to be included in the first step of the calculation process is the current value assessment base for the entire municipality or only the current value assessment base for the lands within the conservation authority's area of jurisdiction. This requires an exercise of statutory interpretation regarding the meaning of the phrase "all lands within a municipality all or part of which are within an authority's jurisdiction" in s. 3(1).

[61] The Tribunal held that these words required that a municipality's entire current value assessment base be used in the calculation. As mentioned, the principal basis for this determination appears to be the Tribunal's conclusion that the Legislature did not intend to change the basis of the calculation under *Regulation 670* from that which operated prior to the coming into force of *Regulation 670*. As also mentioned above, the Tribunal relied

upon the *Kettle Creek* decision as evidence that the regime in place prior to enactment of *Regulation 670* took the entire assessment base of a municipality into consideration.

[62] The City argues that the Tribunal erred in three principal respects in reaching this conclusion.

[63] First, the City says that, in failing to provide the parties with an opportunity to make submissions on the *Kettle Creek* decision, the Tribunal offended the principles of natural justice. I will return to this issue later in this Endorsement.

[64] In addition, the City makes the following two submissions that are relevant to the issue of the reasonableness of the Decision, which I will address in turn.

[65] The City says that the Tribunal based its decision on an understanding of the pre-*Regulation 670* regime that was incorrect. It says that, properly understood, the *Kettle Creek* decision actually supports its interpretation of s. 27(6) and, by implication, its interpretation of *Regulation 670*. Although I accept that the Tribunal may not have understood the significance of s. 29(3) of the governing Regulations for the pre-*Regulation 670* regime, I have rejected this argument for the reasons discussed above.

[66] The City also argues that the Tribunal failed to conduct an exercise of statutory interpretation despite having put its interpretation of s. 3(1) of *Regulation 670* to the Tribunal.

[67] I do not entirely agree with the City's submission that the Tribunal failed to conduct an exercise of statutory interpretation regarding s. 3(1) of *Regulation 670*. The Tribunal does state in paragraph 105 of the Decision that it could "find no support for the City's interpretation of the wording in [s. 3(1) of *Regulation 670*] that the lands located outside of the NPCA's jurisdiction are to be excluded from the calculation". This suggests that the Tribunal understood that it was required to interpret the meaning of the wording in s. 3(1) of *Regulation 670* and purported to interpret the provision. Nevertheless, there are a number of difficulties with the Tribunal's conclusion regarding the meaning of s. 3(1).

[68] First, in its consideration of the interpretation of *Regulation 670*, the Tribunal did not engage in a textual analysis of the wording of s. 3(1). It also did not consider whether the provisions of ss. 1-3 of *Regulation 670*, when considered collectively, assisted in the interpretation of s. 3(1). The Tribunal limited its analysis to the statement that it could find no support for the City's position without indicating the nature of any inquiry it undertook in reaching that conclusion. There is therefore no indication of the Tribunal's reasoning underlying its finding, other than its statement in paragraph 87 that "[i]n my view, the use of a municipality's entire assessment base in the calculation has not changed through the enactment of [*Regulation 670*]."

[69] Second, I do not think that the Tribunal could reasonably have drawn any conclusion regarding the interpretation of *Regulation* 670 from the evidence before it regarding the pre-*Regulation 670* regime, principally in the form of the findings of the Board in *Kettle Creek*, and the absence of any legislative intent to change such regime in promulgating *Regulation* 670. There are two elements to this conclusion.

[70] The Tribunal proceeded on the basis of its belief that the MNR, which was responsible for calculating the figures that produced the apportionment ratios for conservation authorities under the *CAA* prior the *Regulation 670*, used an adjusted assessment base for all lands within a participating municipality. I am not persuaded, however, that the Tribunal had a sufficiently complete understanding of the pre-*Regulation 670* regime, including in particular the manner in which expense apportionment ratios were calculated in respect of participating municipalities, to use its understanding to reach its conclusion regarding the proper interpretation of s. 3(1) of *Regulation 670.* In this regard, the following considerations are relevant.

[71] In reaching its decision regarding the interpretation of s. 3(1) of *Regulation 670*, the Tribunal relied on the statements in *Kettle Creek* that it had been "the [MNR's] policy over the last 20-30 years to use the averaging method as a standard practice" and that the MNR relied on s. 29(3) set out above in the applicable Regulations enacted pursuant to s. 366.1(2) of the *Municipal Act* as authority for this practice. The Tribunal therefore proceeded on the basis that the MNR, which was responsible for calculating the figures that produced the apportionment ratios for conservation authorities under the *CAA* prior to *Regulation 670*, used an adjusted assessment base for all lands within a participating municipality.

[72] There is, however, no express statement as to what constituted the "averaging method". It appears, but is not certain, that the "averaging method" means use of the "discounted equalized assessment" for the entire municipality as defined in the applicable Regulations. There is also, however, no description of the manner in which the MNR calculated the "discounted equalized assessments" of participating municipalities. Further, there is no certainty that the "discounted equalized assessment" was functionally equivalent to the "current value assessment base" of a municipality for the purposes of a comparison of the pre and post-*Regulation 670* regimes. Even if it was, there was no evidence in the *Kettle Creek* decision or otherwise regarding the involvement of the MNR in the calculation of the apportionment ratios prior to 1999. In particular, there was no evidence regarding the manner in which MNR took into account the area of a municipality falling within a consideration authority's jurisdiction in its calculation of a "discounted equalized assessment" for the municipality.

[73] In short, the Tribunal could not proceed to reach a conclusion on the meaning of s. 3(1) of *Regulation 670* solely on the basis of its belief that the MNR used assessment values for all lands within a participating municipality. In addition to the limitations in its understanding of that approach, the Tribunal required a more complete understanding of the entire formula applied by the MNR, including in particular, the manner in which the MNR took into account the proportion of a municipality within a conservation authority's area of jurisdiction.

[74] In addition, even assuming that the Tribunal had a complete understanding of the pre-*Regulation 670* regime, it does not appear that there was any evidence before it regarding the legislative history of *Regulation 670* beyond the brief description summarized above. The mere absence of any evidence from either of the parties on this issue is not sufficient as a matter of law to ground a finding of an absence of any legislative intent to change the apportionment ratio calculation regime on the promulgation of *Regulation* 670, particularly

in view of the implementation of several significant governmental policies in the municipal sector that was occurring at the time.

[75] I am also not persuaded that the Court has any fuller understanding of the foregoing matters such that it is in a position to substitute its own view of the pre-*Regulation 670* regime. In this regard, I note that the parties indicated to the Court that, in the event that the Court were to find the Tribunal's reasons to be deficient, they would prefer that the Court substitute its own reasons rather than remit the matter to the Tribunal for a further hearing.

[76] Notwithstanding the City's production before this Court of the Regulations in place for the years 1992 to 1998 under the *Municipal Act*, in the absence of a full understanding of the calculation set out in the Regulations, there is no clarity on a number of material issues regarding the manner in which the MNR calculated the "discounted equalized assessments material" of a municipality in those years. In particular, as mentioned, it is not clear how, if at all, the area within a conservation authority's jurisdiction was reflected in the calculation of the apportionment ratios in the circumstances where only part of the lands of a municipality fell within a conservation authority's jurisdiction. Second, with the benefit of the Regulations in place between 1992 and 1997 described above, it is clear that, in calculating a "discounted equalized assessment", it was necessary to apply a "discount factor" and a "prescribed equalization factor" which were apparently set out in schedules to the Regulations that were not provided to the Court. Even with the benefit of these schedules, without an understanding of the principles used by the MNR to derive the numbers in these schedules, it is not possible to understand the calculation described in the Regulations. It is therefore not clear what a "discounted equalized assessment" of a municipality represents. Third, on the assumption that these calculations were conducted before the implementation of current value assessments, it is unclear whether there was any significant difference between the assessments across a municipality that would give rise to a perceived unfairness if the municipality's entire assessment based was used for the purposes of the calculations. In addition, and in any event, there was no evidence before either the Tribunal or the Court regarding the legislative intent in enacting *Regulation 670*.

[77] In summary, the Tribunal's approach to the interpretation of ss. 1-3 of *Regulation 670* might have assisted in the interpretation of the *Regulation* if there had been a sufficient evidentiary base. However, in my view, in the absence of a much more comprehensive factual understanding of the background for such an analysis, neither the Tribunal nor the Court can reasonably have regard to the limited evidence regarding the pre-*Regulation 670* regime for the calculation of apportionment ratios among participating municipalities and for any legislative intent to preserve such regime with the enactment of *Regulation 670*. In any event, the Tribunal was required to interpret the provisions of *Regulation 670* as it was enacted.

[78] The issue remains whether, notwithstanding these inadequacies in the Tribunal's reasons, the outcome is nevertheless reasonable, as recent jurisprudence has emphasized that the fundamental issue on a judicial review application is whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[79] In this regard, the following statements of Abella J. in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 S.C.R. 708 at paras. 14 and 15 are particularly pertinent:

> Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses - one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at ss.12: 5330 and 12: 5510). It is a more organic exercise - the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
>
> In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

[80] In that decision at para. 12, Abella J. also noted with approval the following statement of Professor Dyzenhaus:

> "Reasonable" means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator, the tribunal's proximity to the dispute, its expertise, etc, then it is also the case that its decision should be presumed to be correct even if its reasons are in some respects defective. [Emphasis added.]
>
> (David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in Michael Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 304)

[81] Accordingly, I have proceeded to address the reasonableness of the result in the Tribunal's Decision respecting the interpretation of s. 3(1) of *Regulation 670*. For the reasons that follow, I conclude that the Decision is reasonable both on a textual reading of s. 3(1) and on a contextual analysis of the provision.

[82] First, the plain meaning of s. 3(1) is consistent with this interpretation. In my view, the phrase "all or part of which are within an authority's jurisdiction" modifies the word "municipality" rather than the word "lands". The phrase is intended to confirm that the calculation requires inclusion of the assessments for all lands within a municipality

regardless of whether all or only part of the lands within the municipality fall within the conservation authority's jurisdiction. The definition of "part" includes "some but not all of something": see the *Concise Oxford English Dictionary*, Oxford University Press, (New York; 10th ed.). On this basis, the phrase should be read as "all lands within a municipality all or some of which lands are within an authority's jurisdiction."

[83] The City says that the phrase "all lands within a municipality all or part of which are within an authority's jurisdiction" must be read as "all lands within a municipality all or part of which [lands] are within an authority's jurisdiction." I do not agree. Consistent with the interpretation above, the phrase can also be read as "all lands within a municipality all or part of [the lands of] which are within a municipality." Moreover, if the intention had been to limit the assessed lands to be included in the calculation under s. 3(1) to those lands within a municipality that fall within an authority's jurisdiction, the language could have read simply "all lands within a municipality that are within an authority's jurisdiction."

[84] Second, any ambiguity in the words in s. 3(1) is resolved by consideration of the formula set out in *Regulation 670* in its entirety for the following reasons.

[85] The concept in the second step of the calculation of an adjustment to reflect the proportion of lands within a conservation authority's area of jurisdiction relative to the total of all lands in the municipality implies a starting point which includes the assessment value of all lands in the municipality.

[86] In addition, the City's reading has the result that the calculation of the apportionment ratio under *Regulation 670* takes the relative area of the lands within a conservation authority's area of jurisdiction into consideration twice – once in step one and again in step two. This cannot have been the intention of the Legislature. The City acknowledges that this is likely an unintended result. However, it says, in effect, that it should be entitled to rely on this error and, by implication, it should be left to the Legislature to remedy the error.

[87] Third, while the parties agree that the result of the NPCA's calculation is that the City's apportionment ratio has increased from approximately 4% to approximately 20%, they disagree on whether this result should be regarded as "absurd" and therefore unintended for the purposes of statutory interpretation.

[88] It must be acknowledged that neither of the positions of the parties is satisfactory for different reasons. The City's position would include the current value assessment base of the City's area within the NPCA's jurisdiction but, as mentioned, double deducts for that consideration by applying s. 3(2) of *Regulation 670* resulting in an apportionment ratio of 1.8% according to the City's calculations. This ratio is materially less than the proportion of the City's area that falls within the NPCA's area of jurisdiction. On the other hand, the Respondents' position provides a benefit to Niagara and Haldimand, and an increased cost to the City, as a result of the amalgamation without any change in the benefits delivered by the conservation authority to each municipality.

[89] The Respondents submit that the result of the NPCA's calculation is not "absurd" but rather is the natural result of application of the formula set out in *Regulation 670*. The City says

that this result is unfair and therefore "absurd". It says there is no reason why the residents of the City should incur higher taxes merely because of the amalgamation when they are not deriving any additional benefit from the conservation authority. In this regard, it refers to Ont. Reg. 569/98 set out above, which governed prior to promulgation of *Regulation 670*. This Regulation provided that the amalgamated municipality would be responsible for the same apportionment as the sum of the former municipalities amalgamated into it.

[90] In addressing this issue, it is significant that, because the formula in *Regulation 670* adjusts for the proportion of a municipality within the area of a conservation authority's jurisdiction, the increase in Hamilton's apportionment ratio results principally from the higher average modified assessment base of Hamilton by virtue of its urban core compared to Niagara and Haldimand. The Tribunal relied on statements in *Kettle Creek* that suggested that such a result was actually intended as a policy matter or was otherwise considered fair and reasonable. I do not think that the Court can reach such a conclusion on the evidence in the record. However, it is entitled to take notice of the existence of opposing views on the appropriate outcome from a policy perspective. In this context, in the absence of any evidence regarding the legislative intent at the time of the amalgamation of the City and the promulgation of *Regulation 670*, I do not think that the Court can reasonably conclude that the increase in the City's apportionment ratio as a result of the amalgamation was unintended and therefore "absurd". Conversely, in my opinion, the existence of the double deduction in the calculation under *Regulation 670* under the City's interpretation of s. 3(1) is properly characterized as "absurd" and demonstrates the legislative intent in respect of s. 3(1).

Conclusion Regarding the Tribunal's Decision

[91] Based on the foregoing, I conclude that the Decision was reasonable insofar as it concluded that the 2015 levy payable for maintenance and administration costs complied with s. 27 of the *CAA* and *Regulation 670*.

The City's Allegation of a Denial of Natural Justice

[92] As mentioned, the Applicant also submits that it was denied natural justice by the Tribunal when it relied on the *Kettle Creek* decision in reaching its determination in the Decision without providing the Applicant an opportunity to make submissions regarding the relevance of that case. The Respondents submit that the Tribunal was entitled to rely on the *Kettle Creek* decision in the manner and for the purpose that it did in reaching its conclusion regarding the interpretation of s. 3(1) of *Regulation 670*.

[93] It would have been desirable for the Tribunal to have provided the parties with an opportunity to make submissions on the probative value of the evidence in *Kettle Creek* that the Tribunal intended to rely on. Among other things, it might have resulted in the Tribunal obtaining a fuller appreciation of the pre-*Regulation 670* regime to enable it to engage in the analysis of legislative intent that it purported to undertake in the Decision.

[94] However, the Court has concluded that the Decision was reasonable for reasons that not only did not rely on the evidence in *Kettle Creek* but specifically excluded the use of such

evidence in support of the Decision. The Court considers that it was neither necessary nor permissible for the Tribunal to rely on the evidence in *Kettle Creek* to reach its determination in the Decision.

[95] For this reason, in my view, the Tribunal's failure to provide an opportunity to the parties to make submissions regarding the probative value of the evidence in *Kettle Creek* does not constitute a denial of natural justice that justifies an order setting aside the Decision.

[96] Accordingly, I conclude that the Decision was not vitiated or otherwise rendered unreasonable as a result of the Tribunal's failure to provide the Applicant with an opportunity to make submissions regarding the relevance of the *Kettle Creek* decision.

Conclusion

[97] Based on the foregoing, the City's application is denied. Costs in the agreed amounts, on an all-inclusive basis, of $20,000 are payable by the City to the NPCA and Niagara, collectively, and of $15,000 are payable by the City to Haldimand.

Wilton-Siegel, J.

I agree

Thorburn, J.

I agree

Favreau, J.

Released: April 30, 2019

CITATION: City of Hamilton v. Niagara Peninsula Conservation Authority, 2019 ONSC 1677
DIVISIONAL COURT FILE NO.: 18-927 JR
DATE: 20190430

CITY OF HAMILTON

Applicant

– and –

NIAGARA PENINSULA CONSERVATION AUTHORITY, THE REGIONAL MUNICIPALITY OF NIAGARA, HALDIMAND COUNTY, AND THE MINING AND LANDS COMMISSIONER OF ONTARIO

Respondents

REASONS FOR JUDGMENT

Wilton-Siegel, J.

Released: April 30, 2019