



THE REGIONAL MUNICIPALITY OF NIAGARA SPECIAL COUNCIL AGENDA

CL 21-2018

Friday, December 28, 2018

2:00 p.m.

Council Chamber

Niagara Region Headquarters, Campbell West

1815 Sir Isaac Brock Way, Thorold, ON

Pages

1. CALL TO ORDER

2. ADOPTION OF AGENDA

2.1 Changes in Order of Items

3. DISCLOSURES OF PECUNIARY INTEREST

4. CORRESPONDENCE

4.1 Receive for Information

4.1.1 CL-C 80-2018

A Better Niagara Court Application re NPCA Board

3 - 6

5. MOTION FOR CLOSED SESSION

6. CLOSED SESSION

6.1 Confidential Verbal Update Regarding A Matter of Advice that is Subject to Solicitor-Client Privilege - Legal Advice Respecting Appointment Process to NPCA Board

6.2 Confidential Verbal Update Regarding A Matter of Advice that is Subject to Solicitor-Client Privilege - Legal Advice Respecting Employment Matters - Chief Administrative Officer

6.3 Confidential Verbal Update Regarding A Matter of Advice that is Subject to Solicitor-Client Privilege - Legal Advice Respecting Employment Matters - Organizational Update

7. REPORT FROM CLOSED SESSION

8. BY-LAWS

9. ADJOURNMENT

If you require any accommodations for a disability in order to attend or participate in meetings or events, please contact the Accessibility Advisory Coordinator at 905-980-6000 (office), 289-929-8376 (cellphone) or accessibility@niagararegion.ca (email).

MEMORANDUM

CL-C 80-2018

Subject: A Better Niagara Court Application re NPCA Board

Date: December 28, 2018

To: Regional Council

From: Mickey Cruickshank, Legal Counsel

This court application was before Justice Ramsay in the Superior Court of Justice on December 21, 2018 at 10 a.m. In attendance were Erin Pleet (counsel for A Better Niagara), Dan Bartley (counsel for Hamilton), Dave Barrick (permitted to speak on behalf of NPCA) and I.

I advised the court that I did not presently have instructions. I further indicated that Council does not have its regularly scheduled meeting until January 17, 2019. Justice Ramsay indicated that he would not allow the matter to be adjourned for that length of time. He voiced the opinion that Niagara Region would be unlikely to take a position opposed to the Application, and I agreed that one could reasonably draw that conclusion, but that I simply did not have instructions.

With regard to Hamilton, the Applicant's lawyer consented to Hamilton being added as a party to the matter, and Justice Ramsay orally accepted that Hamilton is now a party. Hamilton's lawyer indicated that their next council meeting is also not until late January, 2019, and thus they required an adjournment to receive instructions.

Counsel for the Applicant indicated that NPCA had not responded to the Application or any correspondence regarding this matter. After a brief recess during which time David Barrick came forward to speak for the NPCA, Justice Ramsay allowed Mr. Barrick to speak on behalf of the NPCA. Mr. Barrick indicated that the NPCA had not been able to secure representation yet and also needed time to do so.

Justice Ramsay made an interim order (copy of his typed endorsement attached) effectively upholding Council's December 6, 2018 resolution, thus appointing the named members to the NPCA Board effective December 6, 2018, and replacing the previous board members. He made this order based on his assessment of some urgency and the need for clarity as to who was running the NPCA, and also based on his interpretation of the legislation.

Justice Ramsay then adjourned all remaining issues on the Application to **January 2, 2019**.

Given the very tight timeline of a January 2, 2019 return date, I recommend that Council make best efforts to conduct a special meeting to provide direction and instructions to staff on the issues included in this Application.

Ideally, once instructions are given by Council, staff will be able to file a formal response (which may also include applicable case-law and legal argument) for the January 2, 2019 hearing.

Respectfully submitted and signed by,

Mickey Cruickshank
Legal Counsel

Appendix 1: Court endorsement

A Better Niagara v. Niagara Peninsula Conservation Authority and the Regional Municipality of Niagara
CV-18-1204

December 21, 2018

The City of Hamilton has not had a chance to instruct its counsel and neither has the Region of Niagara. The Region of Niagara's position, however, will inevitably be that its appointments to the board of the Conservation Authority are valid. Neither municipality will be in a position to instruct counsel until late January. The Conservation Authority heard about the Application but was only served yesterday.

In the circumstances I think that the court has to make some sort of order immediately. The present situation is intolerable. The constitutional order needs to be restored. The governance of the Conservation Authority cannot remain in chaos. I will not make any order that affects Hamilton or Niagara adversely. As for the Conservation Authority, how it is affected depends on who it is, which seems to be in dispute at the moment.

The following summary of the law cannot seriously be doubted:

Section 2 of the Conservation Authorities Act gives municipalities the right to appoint members of the board of a conservation authority according to the population of the municipality.

Section 4, however, provides that in the case of a two-tier municipality, the upper tier has the right to appoint members and it can appoint as many members as each lower tier municipality would have appointed if they had been single tier municipalities.

Niagara Region has 12 constituent lower tier municipalities. It can appoint at least 12 members to the board of the Niagara Peninsula Conservation Authority. Hamilton appoints two and Haldimand appoints one. This Application does not concern the Hamilton and Haldimand appointments.

Section 14 of the Act gives the appointing municipality the right to appoint members for a term, or, under subsection 14 (4.3) to replace members at any time.

The following facts are matters of public record, published by the Region of Niagara and the Niagara Peninsula Conservation authority:

On December 6, 2018 the Council of the Regional Municipality of Niagara met and exercised its right to replace members by passing the following resolutions:

1. That twelve (12) Regional Councillors representing Niagara Region, one from each municipality in the Niagara Region, BE APPOINTED to replace the current Niagara Region representatives, on an interim basis, on the Niagara Peninsula Conservation Authority Board, effective immediately for a period of three months until it is determined how to proceed with the Board composition.
2. That Councillors Bylsma, Chiocchio, Foster, Gibson, Greenwood, Heit, Huson, Insinna, Jordan, Steele, Whalen, Zalepa, BE APPOINTED to the Niagara Peninsula Conservation Authority Board for a three month period.

I make the following orders:

1. I declare that as of December 6, 2018, Councillors Bylsma, Chiocchio, Foster, Gibson, Greenwood, Heit, Huson, Insinna, Jordan, Steele, Whalen and Zalepa are members of the board of the Niagara Peninsula Conservation Authority, and S. Annunziata, B. Baty, F. Campion, P. Darte, M. DiFruscio, A. Jeffs, P. MacPherson, J. Maloney, T. Quirk and B. Timms are not.
2. All remaining relief is adjourned to January 2, 2019 at to be spoken to. Once the new board is seated it will be in a position to advise counsel as to its position.

"J.A. Ramsay J."