

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."