



Office of the
NPCA Board Chair

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November 23, 2018

Attention: Regional Municipality of Niagara Chief Administrative Officer
Regional Municipality of Niagara Regional Clerk
Area Municipal Heads of Council
Area Municipal Chief Administrative Officers / City Managers
Area Municipal Clerks

Good morning:

The Niagara Peninsula Conservation Authority (NPCA), at its meeting held Wednesday, November 21, 2018, received information from Kagan Shastri Lawyers regarding Order in Council (OIC) 2706/94 (dated October 12, 1994) which identifies the process to appoint Board Members to the Niagara Peninsula Conservation Authority – Full Authority Board.

Please find attached, a detailed opinion letter from Mr. P. DeMelo of Kagan Shastri Lawyers for your information and review; the following are conclusions and recommendations:

Conclusions and Recommendations

Given this review and our conclusions we would suggest that the NPCA advise its participating municipalities that in accordance with OIC 2076 that appointments to the Board from its participating municipalities are to be made in accordance with the manner that we have outlined and that as a further recommendation in order to ensure compliance with the Act and OIC 2076, as well as good practise in Niagara, that in order to ensure that the appointments for Niagara are representatives of the Region of Niagara that those appointments by the local municipalities should be forwarded to Regional Council and advanced as appointments to be made on behalf of Niagara to the Board.

Should you have any questions with regards to this opinion or should you become aware of any agreement, regulation or Order in Council that would impact our opinion we would be pleased to speak to you further regarding same.

Order in Council 2706/94 – excerpt:

4. For the municipalities which have been grouped together as one municipality, the heads of council of all municipalities within the group or their delegates shall meet at the call and under the chairmanship of the Chairman of the Niagara Peninsula Conservation Authority to appoint members to the Authority in accordance with the Conservation Authorities Act, a quorum at such a meeting being one-half of the municipal representatives and a majority vote of the representatives present being required to appoint a member to the Authority.

You will note that the following designations and provisions for appointments are to be made:

3. In the Regional Municipality of Niagara,
 - (a) The City of Niagara Falls and the Town of Fort Erie which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint four (4) members;
 - (b) The City of Port Colborne, the City of Welland, the Township of Wainfleet, the Town of Pelham, the city of Thorold and the Township of West Lincoln which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint four (4) members; and
 - (c) The City of St. Catharines, the Town of Lincoln, the Town of Grimsby and the Town of Niagara-on-the-Lake which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint four (4) members.

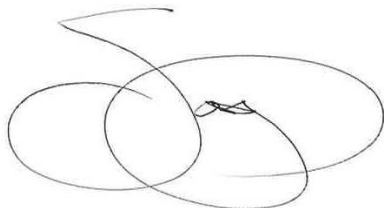
Upon the conclusion of your respective Municipalities public advertising for qualified candidates, please contact and confirm your availability, to meet with the NPCA Board Chair, to Lisa McManus, Clerk to the Authority at lmcmamus@npca.ca.

The NPCA Chair will endeavour to accommodate selection meetings at a mutually agreed upon date. At that time, the Mayor or their Head of Council designate will put forward qualified candidates to stand for NPCA Board appointment. Each Municipality is reminded to bring forward no less than 1 and no more than 4 qualified candidates as per the process outlined in Order in Council (OIC) 2706/94 (dated October 12, 1994) which identifies the process to appoint Board Members to the Niagara Peninsula Conservation Authority.

Please note, until Haldimand, City of Hamilton and Niagara Regional Council have ratified appointees chosen through selection meetings, the current representatives will continue to serve in their respective capacity.

The NPCA is pleased to assist Area Municipal Heads of Council (or delegates) in identifying the specific criteria or areas of expertise needed, as per the NPCA Mandate, when considering their area's selection of NPCA Board Member Appointments. A complete description of the role, responsibilities and time commitment is available through Lisa McManus, Clerk to the Authority, upon request.

Respectfully,

A handwritten signature in black ink, appearing to read 'Sandy Annunziata', with a large, stylized flourish extending upwards and to the left.

Sandy Annunziata
Board Chair, Niagara Peninsula Conservation Authority
:lm



**Kagan
Shastri** ^{LLP}
LAWYERS

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File:

November 22, 2018

Mark Brickell
Chief Administrative Officer/Secretary-Treasurer
Niagara Peninsula Conservation Authority
250 Thorold Road West - 3rd Floor
Welland, ON
L3C 3W2

Dear Mr. Brickell,

Further to our letter of November 12th and to the direction received by the NPCA Board of Directors ("Board") we have outlined our opinion and recommendation as to how the composition of the next Board should be finalized given the contents of our letter dated November 12th.

As you will recall our letter of November 12th, identified that Order in Council 2076/94 ("OIC 2076") has set the composition of the Board at fifteen (15) members comprised of individuals appointed by the participating municipalities. Specifically, the Board is constituted as follows:

12 Members appointed by the Niagara Region

2 Members appointed by the City of Hamilton

1 Member appointed by Haldimand County

As we advised, OIC 2076 has not been rescinded or amended and we have confirmed same with the Provincial Archive offices. Given that OIC 2076 has not been rescinded or amended, and given that OIC 2076 does not contain an expiration clause it is our opinion that the Board must be constituted as set out in the Order. Specifically:

NOW THEREFORE pursuant to section 8 of the Conservation Authorities Act, R.S.O. 1990, c. C.27, for the purpose of appointing members the following designations and provisions for appointments are to be made:

1. In the Regional Municipality of Haldimand-Norfolk,
 - (a) The Town of Dunnville and the Town of Haldimand which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint one (1) member.

2. In the Regional Municipality of Hamilton-Wentworth,
 - (a) The City of Stoney Creek, the Town of Ancaster and the Township of Glanbrook which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint two (2) members.

3. In the Regional Municipality of Niagara,
 - (a) The City of Niagara Falls and the Town of Fort Erie which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint four (4) members;
 - (b) The City of Port Colborne, the City of Welland, the Township of Wainfleet, the Town of Pelham, the City of Thorold and the Township of West Lincoln which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint four (4) members; and
 - (c) The City of St. Catharines, the Town of Lincoln, the Town of Grimsby and the Town of Niagara-on-the-Lake which lie within the jurisdiction of the Authority are designated as one municipality and are jointly to appoint four (4) members.

As we have noted this composition as established by OIC 2076 is different than the composition which would exist under the **Conservation Authorities Act** ("Act"). Our letter of November 12th outlines the operable sections of the Act that would apply if not for the OIC 2076 and would refer you to same for those details.

As for the composition of the Board for the upcoming term, given the requirement in OIC 207 we recommend that the participating municipalities be advised that may appoint members in accordance with the following:

Haldimand County - One (1) Member

With respect to Haldimand County we note that OIC 2076/94 specifically makes reference Haldimand-Norfolk and to the Town of Dunnville and the Town of Haldimand, both of which were amalgamated in 2001 into Haldimand County. Pursuant to Section 13 of the Act they are deemed to have continued as Haldimand County after the amalgamation and

as such we read Section 1 of OIC 2076/94 as requiring the appointment of one (1) member from Haldimand County.¹

City of Hamilton - Two (2) Members

With respect to the City of Hamilton we note that OIC 2076/94 specifically makes reference to the Regional Municipality of Hamilton-Wentworth, and as part of the City of Stoney Creek, the Town of Ancaster and the Township of Glanbrook which were all amalgamated in 2001 into the City of Hamilton. Pursuant to Section 13 of the Act they are deemed to have continued as the City of Hamilton after the amalgamation and as such we read Section 2 of OIC 2076/94 as requiring the appointment of two (2) members from Haldimand County.

Region of Niagara - Twelve (12) Members

Unlike the City of Hamilton or Haldimand County, Niagara Region did not experience an amalgamation or alteration of boundaries after OIC 2076/94 and as such it continues as the participating municipality, although the appointments should be made as outlined further in this letter.

We understand that the current Board is composed of members in the numbers identified above and that in accordance with Section 14(4.3) of the Act the appointment of those members will continue until immediately before the first meeting of the authority after his or her replacement is appointed. We note that Section 14(4.2) provides that appointments shall be for a term of up to four years as may be determined by the Council which makes the appointment. Given that the appointments to the current Board are set to expire it is important that the participating municipalities be advised of the appointments to be made and the manner in which those appointments are to be made in order to ensure conformity with OIC 2076 for the next Board.

Appointments from Region of Niagara

With respect to the Region of Niagara (“Niagara”) as we have noted OIC 2076 prescribes how the twelve (12) members are to be apportioned amongst the local municipalities. Specifically, the local municipalities are grouped together into three separate groupings from which four (4) members each are to be appointed. Section 8 of the Act permits this to occur and as identified in OIC 2076 this grouping for Niagara (as well as for the former Haldimand-Norfolk and Hamilton-Wentworth) appears to have been requested by the Board at that time of passage of OIC 2076. As it relates to Niagara, OIC 2076 requires that appointments be made on the following basis:

City of Niagara Falls, Town of Fort Erie Jointly four (4) members to be appointed

City of Port Colborne, City of Welland,
Township of Wainfleet, Town of Pelham,
City of Thorold, Township of West Lincoln Jointly four (4) members to be appointed

¹Section 13 of the Act:

Where a new municipality is erected or two or more municipalities are amalgamated or any area is annexed to a municipality and any part of the resulting municipality is within the area over which an authority has jurisdiction, such resulting municipality shall be deemed to have been designated a participating municipality by the Lieutenant Governor in Council. R.S.O. 1990, c. C.27, s. 13.

City of St. Catharines, Town of Lincoln,
Town of Grimsby,
Town of Niagara-on-the-Lake

Jointly four (4) members to be appointed

We note that OIC 2076 specifically references the term “*jointly to appoint*” as opposed to terms that would suggest that these grouping would recommend individuals to be appointed by the Council for Niagara, which would suggest that those appointments are to be made by those grouping of municipalities. In fact, OIC 2076 in Section 4 specifically identifies how this is to occur and provides as follows:

For the municipalities which have been grouped together as one municipality, the heads of council of all municipalities within the group or their delegates shall meet at the call and under the chairmanship of the Chairman of the Niagara Peninsula Conservation Authority to appoint members to the Authority in accordance with the Conservation Authorities Act, a quorum at such a meeting being one-half of the municipal representatives and a majority vote of the representatives present being required to appoint a member to the Authority.

A strict reading of this section would mean that the heads of the councils (i.e. Mayors or their designates) of the municipalities that have been grouped together will meet at a time set by the Chair of the NPCA to appoint the members to the Board from that grouping, which is thereafter to be done in accordance with the provisions of the Act. Under the Act, appointments are required to be made by the respective Councils² which would normally indicate that Council for Niagara would appoint 12 members.³ Section 4 of OIC 2076 however seems to provide for a potentially different methodology since it provides that the meeting of the Mayors and the Chair will determine the appointments by way of a majority vote. We cannot determine whether or not this procedure was followed by the NPCA and by the three participating municipalities, including Haldimand-Norfolk and Hamilton-Wentworth, after the passage of OIC 2076 and prior to the amalgamations in 2001 although we understand that it is not how the appointments to the Board

² Section 14 of the Act:

14 (1) Members of an authority shall be appointed by the respective councils of the participating municipalities in the numbers set out in subsection 2 (2) for the appointment of representatives. 2017, c. 23, Sched. 4, s. 12 (1).

³ As we have noted given the amalgamations that occurred in 2001, the Councils for Haldimand and the City of Hamilton would stand in the place of the former municipalities and would make the appointments themselves.

have been established more recently, and in particular as it relates to the composition of the twelve (12) members from Niagara.

Based on a review of OIC 2076 it is our recommendation that the current Chair advise the Region of Niagara that appointments will be received in the manner described above and that a meeting will be called as early as possible where the Mayors or their delegates will attend and finalize the appointments amongst the identified groupings by way of a majority vote as per Section 4 of OIC 2076. While OIC 2076 would suggest that it is not necessary for the appointments from Niagara to be made by the Council of Niagara directly, there is nothing in the Act or OIC 2076 that would prevent the local municipalities from meeting with the Chair of the NPCA and voting to appoint members as required in the numbers outlined and thereafter forwarding those individuals who have been appointed as names to be put forward by Council for Niagara as appointments to be accepted by the NPCA. In this way there would be compliance with OIC 2076 and at the same time would also ensure conformity with the process under the Act for appointments from the participating municipalities. While we are uncertain of the specific process by which Niagara makes appointments to various boards and how the membership on those boards is distributed amongst the local municipalities, and have not been requested to investigate same, in this case OIC 2076 identifies how that should occur as it relates to the NPCA Board and our recommendation is that until such time as there is an agreement that would alter this required approach that the actions which we have outlined, including the recommendation that appointments be forwarded and then submitted by Council for the Region, would be a prudent way to proceed to ensure compliance.

Appointments from Haldimand County and City of Hamilton

As we have noted, for Haldimand County and the City of Hamilton the procedure has been altered by virtue of the fact that the previous lower-tier municipalities have been amalgamated in 2001 and as such we would recommend that appointments be received directly from the Councils of the various municipalities as follows:

Haldimand County	One (1) member
City of Hamilton	Two (2) members

Conclusions and Recommendations

Given this review and our conclusions we would suggest that the NPCA advise its participating municipalities that in accordance with OIC 2076 that appointments to the Board from its participating municipalities are to be made in accordance with the manner that we have outlined and that as a further recommendation in order to ensure compliance with the Act and OIC 2076, as well as good practise in Niagara, that in order to ensure that the appointments for Niagara are representatives of the Region of Niagara that those appointments by the local municipalities should be forwarded to Regional Council and advanced as appointments to be made on behalf of Niagara to the Board.

Should you have any questions with regards to this opinion or should you become aware of any agreement, regulation or Order in Council that would impact our opinion we would be pleased to speak to you further regarding same.

Sincerely,
KAGAN SHASTRI LLP

A handwritten signature in black ink, appearing to read "Paul M DeMelo", enclosed within a large, horizontal, oval-shaped scribble.

Paul M DeMelo