

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

A BETTER NIAGARA

Applicant

- and -

**THE NIAGARA PENINSULA CONSERVATION AUTHORITY and THE REGIONAL
MUNICIPALITY OF NIAGARA**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for hearing before a Judge on Friday, December 21, 2018 at 10:00 a.m. or as soon after that time as the application can be heard at 102 East Main Street, City of Welland, in the Province of Ontario, L3B 3W6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Issued by
Local registrar

Superior Court of Justice
102 East Main Street
Welland, Ontario
L3B 3W6

TO: NIAGARA PENINSULA CONSERVATION AUTHORITY

3rd Floor West,
250 Thorold Rd.
Welland, ON
L3C 3W2

AND TO: REGIONAL MUNICIPALITY OF NIAGARA

Niagara Region
1815 Sir Isaac Brock Way
P.O. Box 1042
Thorold, ON
L2V 4T7

APPLICATION

1. The Applicant, A Better Niagara, makes application for:
 - (a) An order declaring and affirming the right of the Regional Municipality of Niagara (the “Niagara Region”) to replace its twelve Niagara Peninsula Conservation Authority (the “NPCA”) board appointees with the twelve new members that were designated at the Niagara Region Council meeting of December 6, 2018;
 - (b) An order declaring that the NPCA must comply with instructions received from the new Niagara Board appointees in accordance with all relevant policies and procedures;
 - (c) An order declaring that the NPCA was not within its jurisdiction to instruct the Niagara Region that the proper constitution of the NPCA board is five members from Niagara;
 - (d) An order declaring that in accordance with the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, sections 2(2) and 4(1)(b), the Niagara Region has the right to appoint up to 27 members to the NPCA board;
 - (e) Abridging time for service, if necessary;
 - (f) Costs of this proceeding, if costs are pursued against the Applicant; and
 - (g) Such further and other relief as the Applicant may advise and this Honourable Court may permit.

2. The grounds for the application are:

- (a) On December 6, 2018, the Niagara Region held a public Council meeting in which a motion was passed replacing its twelve appointees to the NPCA Board effective immediately, in accordance with the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, section 14(4.3);
- (b) The NPCA board members have refused to step down or otherwise recognize that their terms as board members are at an end. The NPCA has refused to recognize the twelve appointees and is insisting that the Niagara Region is only entitled to appoint five members to the NPCA Board;
- (c) The Board composition of a conservation authority is set out in the *Conservation Authorities Act*, and is tied to the population of each municipality within the watershed area of the conservation authority;
- (d) Section 2(2) of the *Conservation Authorities Act* sets out the number of representatives a municipality may appoint to a conservation authority board, in accordance with its population base in the watershed. Where the population base is 250,000 to 500,000, the municipality is entitled to five representative board members;
- (e) However, Niagara Region is an upper tier municipality acting in the place of local municipalities, and instead falls under section 4(1)(b) of the *Conservation Authorities Act*, which states that Niagara Region “shall appoint to each such authority the number of members to which the local municipalities would otherwise have been entitled as participating municipalities.”;

- (f) Under section 4(1)(b), Niagara Region's 12 municipalities results in Niagara Region having the right to appoint 27 Board members to the NPCA, though historically the Niagara Region only appointed 12 (one for each lower-tier municipality);
 - (g) A Better Niagara brings this proceeding by way of application because it is unlikely that there are any material facts in dispute. This application is also urgent: there is confusion as to who is in charge of the NPCA. The NPCA is an important regulator and protector of the Niagara Region's environment with mandated responsibilities under the *Conservation Authorities Act* and each day that goes by there is significant risk of damage to the Niagara environment, and damage to the NPCA's reputation and authority to enforce its environmental protection mandate;
 - (h) A Better Niagara is an interested party. It is a non-profit entity formed to advocate for good governance and accountability in the Niagara Region and specifically at the NPCA. It is made up of engaged citizens and voters and is concerned about the undemocratic nature of what has transpired;
 - (i) Rules 14(3), 38 and and 39 of the *Rules of Civil Procedure*; and
 - (j) Such further and other grounds as the Applicant may advise and this Honourable Court permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The affidavit of Elizabeth Benneian, to be sworn; and

- (b) Such further and other evidence as the Applicant may advise and this Honourable Court permit.

December 18, 2018

A BETTER NIAGARA

Attention: Elizabeth Benneian

3150 Culp Road

Jordan Station

L0R 1S0

Tel: 905-562-3819

Email: lizcdn@yahoo.com

Applicant

A BETTER NIAGARA
Applicant

and

**THE NIAGARA PENINSULA CONSERVATION
AUTHORITY et al**
Respondents

Court File No.:

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Welland

NOTICE OF APPLICATION

A BETTER NIAGARA

Attention: Elizabeth Benneian

3150 Culp Road

Jordan Station

L0R 1S0

Tel: 905-562-3819

Email: lizcdn@yahoo.com

Applicant