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Bill 23, More Homes Built Faster Act, 2022
The Good, the Bad and the Ambiguous: Conservation Authorities

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INTRODUCTION

We, the members of the Ontario Landowners Association, would like to salute the provincial government on the action they are taking to rein in the Conservation Authorities (C.A.s). For well over a decade, residents of Ontario have been contacting us due to the egregious and sometime abusive actions taken by the C.A.s, purportedly in the name of the environment.

From research it has been brought to our attention that it is not only the residents that are, directly, suffering, but Municipal jurisdiction that is also being placed in jeopardy.

Included in the Municipal Act are sections 96[1] (Drainage and Flood Control), 462[2] (Agreement re: flood control), 463[3] (Canals) and 207 (15)[4] (Agreements to prevent damage by floods) of the old Municipal Act, as well as the *Drainage Act* which includes "initiating municipality" means the local municipality "*undertaking the construction, improvement, repair or maintenance of a drainage works to which the Drainage Act applies*" which involves "*injuring liability*" *means the part of the cost of the construction, improvement, maintenance or repair of a drainage works required to relieve the owners of any land or road from liability for injury caused by water artificially made to flow from such land or road upon any other land or road*." This would also include planning, road allowances (including driveway/access to property), bridges, etc.

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[1] DRAINAGE AND FLOOD CONTROL
Power exercised outside municipality, flood control 96. Despite section 19, a municipality may, for the purpose of preventing damage to property in the municipality as a result of flooding, exercise its powers under subsection 10 (1) or 11 (1), paragraph 7 of subsection 10 (2), paragraph 7 of subsection 11 (2) or paragraph 6 of subsection 11 (3) in relation to flood control in the municipality, in another municipality or in unorganized territory. 2006, c. 32, Sched. A, s. 38.

[2] Agreement re: flood control 462. Despite the repeal of paragraph 15 of section 207 of the old Act, that paragraph continues to apply to land acquired by a municipality or land with respect to which a municipality has entered into a binding agreement to acquire before January 1, 2003. 2001, c. 25, s. 462..

[3] Canals **463.** Despite the repeal of the old Act, section 219 of that Act continues to apply to docks or slips authorized by a municipality to be constructed, maintained and used in its water canal before January 1, 2003. 2001, c. 25, s. 463

[4] Agreements to prevent damage by floods 15. For entering into agreement with Her Majesty in right of Ontario and for entering into agreement with one or more municipalities and Her Majesty in right of Ontario to acquire and hold for and on behalf of Her Majesty in right of Ontario any land and premises in the municipality or in any other municipality for the purpose of preventing damage by floods and for doing all such things as may be considered necessary for that purpose.(a) Such land and premises shall be used and disposed of as directed by the Lieutenant Governor in Council. (b) For the purposes of the *Assessment Act*, such land and premises shall be deemed a public park.

With the interference of the C.A.s and the demands for permits, fees, reports, and in some cases demands for land in exchange for permits, the C.A.s are undermining the ability of the Municipalities to exercise their jurisdiction as laid out in the *Municipal Act*. It would also seem that this interference undermines the intent of Bill 23 – *More Homes Built Faster Act* and only adds to the costs to the tax-payers.

As expressed in Canadian Water Resources Journal Vol. 17, No.3:

> "As the number and size of conservation authorities grew, all the operational problems of traditional bureaucracies began to appear. Any attempt at an integrated approach usually became diluted. Foresters planted trees while planners from the same authority approved subdivisions which led to the removal of these trees. Conservation areas were established around water management areas without taking into account the purpose and objectives of these areas.
> The individual landowner in Ontario can potentially deal with at least three different agencies with respect to tree planting on private land. Only one of these is a conservation authority. An individual developer must go through up to fifteen different approvals, many of them with regard to similar issues (e.g. protection of wetlands). Only one of these approvals is with the conservation authority. The image and the role of the conservation authority is not clear to the public, nor is it in many cases a particularly positive image…
> Not only is there redundancy between authorities and other agencies. There is redundancy in terms of operational capacity among authorities."[5]

Based on duplicity and multiple governmental entities the C.A.s are merely another expense to the people and have become redundant. If these issues cannot be rectified, we recommend that the Conservation Authorities be dissolved and the legislation for these entities be repealed.

> "At the same time, municipalities are becoming increasingly reluctant to bear any greater proportion of the funding load for conservation authorities. They, too, are being faced with the same sharp increases in administrative costs as are the authorities. ... They also express concerns about duplication, or redundancy between authorities and municipalities. Why pay conservation authorities for work which municipalities are already expected to undertake? Why inflict another layer upon the taxpayer?"[6]

Again, we would like to thank the provincial government for taking this initiative as it would seem to be in the best interest of the citizens/tax-payers of Ontario and their municipalities, in regards to the Conservation Authorities, and the violation of municipal jurisdiction.

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[5] Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.

[6] Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.

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SCHEDULE 2
CONSERVATION AUTHORITIES ACT

Between Feb 1, 2021 and the present *Conservation Authorities Act,* the Minister was changed from the "*Minister of Natural Resources and Forestry*" to the "*Minister of the Environment, Conservation and Parks or such other member of the Executive Council as may be assigned the administration of this Act under the Executive Council Act*." It is in the public interest that the provincial government has amended the *Conservation Authorities Act* back to the "*Minister of Natural Resources and Forestry*"[7] as this is in keeping with the original mandate of the Conservation authorities.[8]

These principles and intentions of the C.A.s were explained quite clearly in the 1948 Hansard. The Minister of Planning and Development, the Honourable Dana H. Porter:

> "…in 1946, known as the Conservation Authorities Act, and the principle[9] upon which that Act was based was that the municipalities concerned in a river valley could join together and set up an organization which has been defined as a Conservation Authority. That organization has power to adopt a scheme for the control of floods, and in general the conservation of resources in the area, and has power also of expropriation of land and power to carry out any works that may be required to effect an improvement of conditions in the area."

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[7] "1 The definition of "Minister" in section 1 of the *Conservation Authorities Act* is repealed and the following substituted:
"Minister" means the Minister of Natural Resources and Forestry or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*;"
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[8] "**Purpose**
0.1 The purpose of this Act is to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario. 2017, c. 23, Sched. 4, s. 1." Conservation Authorities Act, R.S.O. 1990, CHAPTER C.27

[9] PRINCIPLE (Black's Law Dictionary, 9th Edition, 2009, p. 1313) – A basic rule, law, or doctrine.

And in the 1990 version of the *Conservation Authorities Act* the "objects" were stated in section 20:

> **"Objects**
>
> **20.** (1) The objects of an authority are to establish and undertake, in the area over which it has jurisdiction[10], a program designed to further the conservation[11], restoration, development and management of natural resources[12] other than gas, oil, coal and minerals. R.S.O. 1990, c. C.27, s. 20."

And yet in the 2020 version to present the Objects of the C.A.s seem to have been blurred as there seems to be some ambiguity as to the true legislatively defined "objects." With the amendment from the C.A.'s objects (1990 version) to the present

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[10] Public land is viewed by the Ministry as a non-renewable resource and a platform that with wise management will support the long term health of ecosystems (e.g. aquatic resources, forest and wildlife resources as well as their biological foundations). PL 4.02.01, Application Review and Land Disposition Process, July 24, 2008, p. 2

[11] Under the concept of sustainable development, Ontario's natural resources constitute natural "capital". Resources over and above those essential for long-term sustainability requirements become available over time as "interest" for use, enjoyment and development. Application Review and Land Disposition Process, July 24, 2008, p. 1
Development which maintains the natural capital and allows for the accumulation of this natural interest is sustainable. .. Approximately 87% of Ontario's land base is public land administered by the Ministry of Natural Resources. PL 4.02.01, Application Review and Land Disposition Process, July 24, 2008

[12] And whereas by an Order in Council adopted upon a report from the Right Honourable W.L. Mackenzie King, Prime Minister of Canada, and approved by His Excellency the Governor General on the first day of August, 1928, it was provided, pursuant to an agreement in that behalf entered into with representatives of the Government of the Province that the Province would be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation, …, following consideration of the report of the Commission, a transfer would be made by Canada to the Province of the **unalienated natural resources** within the boundaries of the Province subject to any trust existing in respect thereof and without prejudice to any interest other than that of the Crown in the same.
Transfer of Public Lands Generally
1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the Constitution Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Provinces, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement, and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement and that the Province shall not be liable to account to Canada for any such payment made thereafter. Constitution Act, 1930, 20-21 George V, c. 26 (U.K.)

version the entire intent of the C.A. Act has/have been undermined, as in the C.A. Act the definition of "project" is: "*project" means a work undertaken by an authority for the furtherance of its objects.*"

With the "objects" having been amended there is no structure to the purpose or "objects" of the C.A.s. We recommend that the province reinstitute the original section 20 for clarity in the Act.

> **"Objects**
> **20** (1) The objects of an authority are to provide, in the area over which it has jurisdiction,
> (a) the mandatory programs and services required under section 21.1;[13]
> (b) any municipal programs and services that may be provided under section 21.1.1;[14] and

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[13] **Mandatory programs and services**
21.1 (1) An authority shall provide the following programs or services within its area of jurisdiction:
1. Programs or services that meet any of the following descriptions and that have been prescribed by the regulations:
i. Programs and services related to the risk of natural hazards.
ii. Programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title.
iii. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006*.
iv. Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations.
2. Programs or services, other than programs or services described in paragraph 1, that have been prescribed by the regulations on or before the first anniversary of the day prescribed under clause 40 (3) (i). 2020, c. 36, Sched. 6, s. 8 (1).
Same, Lake Simcoe Region Conservation Authority
(2) In addition to the programs and services required to be provided under subsection (1), the Lake Simcoe Region Conservation Authority shall provide, within its area of jurisdiction, such programs and services as are prescribed by the regulations and are related to its duties, functions and responsibilities under the *Lake Simcoe Protection Act, 2008*. 2020, c. 36, Sched. 6, s. 8 (1).
Standards and requirements
(3) Programs and services required to be provided under subsections (1) and (2) shall be provided in accordance with such standards and requirements as may be set out in the regulations. 2020, c. 36, Sched. 6, s. 8 (1).

[14] **Municipal programs and services**
21.1.1 (1) An authority may provide, within its area of jurisdiction, municipal programs and services that it agrees to provide on behalf of a municipality situated in whole or in part within its area of jurisdiction under a memorandum of understanding, or such other agreement as may be entered into with the municipality, in respect of the programs and services. 2020, c. 36, Sched. 6, s. 8 (1).
Memorandum, agreement available to public
(2) An authority shall make a memorandum of understanding or other agreement available to the public in such manner as may be determined in the memorandum or agreement. 2020, c. 36, Sched. 6, s. 8 (1).
Periodic review of memorandum, agreement
(3) An authority and a municipality who have entered into a memorandum of understanding or other agreement shall review the memorandum or agreement at such regular intervals as may be determined in the memorandum or agreement. 2020, c. 36, Sched. 6, s. 8 (1).
Terms and conditions

(c) any other programs or services that may be provided under section 21.1.2.[15] 2020, c. 36, Sched. 6, s. 6 (1).

Same

(2) Subject to any other Act relating to gas or oil resources, authorities may enter into agreements to allow exploration, storage and extraction by others in order to share in the revenue from use of gas or oil resources owned by them if,

(a) the use is compatible with the conservation, restoration, development and management of other natural resources; and

(b) extraction occurs on land adjacent to, but not on, conservation authority land. 1998, c. 18, Sched. I, s. 10; 2020, c. 36, Sched. 6, s. 6 (2)."

In light of the fact that it took "participating" municipalities to create the C.A.'s there should be no memorandums of understanding nor any additional agreements between the C.A.s and the Municipalities. The municipalities should always maintain superiority

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(4) Programs and services that an authority agrees to provide on behalf of a municipality shall be provided in accordance with,

(a) the terms and conditions set out in the memorandum of understanding or agreement; and

(b) such standards and requirements as may be prescribed. 2020, c. 36, Sched. 6, s. 8 (1).

Conflict

(5) If there is a conflict between the terms and conditions set out in the memorandum of understanding or agreement and the prescribed standard and requirements, the prescribed standards and requirements prevail. 2020, c. 36, Sched. 6, s. 8 (1).

[15] **Other programs and services**

21.1.2 (1) In addition to programs and services described in sections 21.1 and 21.1.1, an authority may provide, within its area of jurisdiction, any other programs and services that it determines are advisable to further the purposes of this Act. 2020, c. 36, Sched. 6, s. 8 (1).

Agreement

(2) On and after the day prescribed by the regulations, if financing under section 25 or 27 by a participating municipality is necessary in order for an authority to provide a program or service authorized to be provided under subsection (1), the program or service shall not be provided by the authority unless an agreement that meets the following criteria has been entered into between the authority and the participating municipality in respect of the program or service:

1. The agreement must provide for the participating municipality to pay to the authority,

i. an apportioned amount under section 25 in connection with a project related to the program or service, or

ii. an apportioned amount under section 27 in respect of the program or service.

2. The agreement must include provisions setting out the day on which the agreement terminates and a requirement that it be reviewed by the parties within the period specified in the regulations for the purpose of determining whether or not the agreement is to be renewed by the parties.

3. The agreement must meet such other requirements as may be prescribed by the regulations. See: 2020, c. 36, Sched. 6, s. 8 (2).

Terms and conditions

(3) Programs and services that an authority agrees to provide under an agreement described in subsection (2) shall be provided in accordance with,

(a) such terms and conditions as may be set out in the agreement; and

(b) such standards and requirements as may be prescribed. See: 2020, c. 36, Sched. 6, s. 8 (2).

Conflict

(4) If there is a conflict between the terms and conditions set out in an agreement described in subsection (2) and the prescribed standards and requirements, the prescribed standards and requirements prevail. See: 2020, c. 36, Sched. 6, s. 8 (2).

over the C.A.s so they can ensure the C.A.s are not abusing the tax-payers or the citizens through over-zealous actions, and considering Municipalities are responsible for flooding and drainage issues this leaves municipalities open to litigation due to interference by the C.A.s.

In 1946 the definition of “participating municipality” was:

> (h) "participating municipality" means, subject to section 4, a municipality which,
> (i) is either wholly or partly within a watershed,
> (ii) may benefit by a scheme established therein, and
> (iii) is declared by the Lieutenant-Governor in Council to be a participating municipality for the purposes of such scheme;
> Rev. Stat. c. 246

And was amended in 1970 to 2013 as:

> "2013 “participating municipality” means a municipality that is designated by or under this Act as a participating municipality"

In the 1946 through to 1990 the definition for "referee" means referee appointed under *The Municipal Drainage Act* having jurisdiction over that part of Ontario where the watershed is situated. The 1990 act stated "referee" means the referee appointed under the *Drainage Act*. The *Drainage Act* is legislation that the C.A.s must comply with. Having all reference to the *Drainage Act* and the "referee" removed from the *Conservation Authorities Act* misleads the reader into believing that there are no other entities that have control over the C.A.s.

In as much the Ministry of Natural Resources and Forestry (MNRF) are aware that there are rules, procedures and policy established regarding “conservation authority” land/property/jurisdiction.

> *“Ontario Ministry of Natural Resources Policy PL4.03.01 December 1, 2001*
> *Land Management Section*
> *4.2.2 Land Use Conditions*
> *Occasional patents issued after 1959 may contain a land use condition authorized by Section 18, to the effect of the following: “It is a condition of these letters patent that the land granted shall be used for _____ purposes only.”*
>
> *Typically, land use conditions have been imposed to confine the use of lands to agricultural, conservation authority or municipal purposes. Rarely, the clause may indication that the lands shall not be used for particular purpose.”*[16]

With the Conservation Authorities under the administration of the MNRF perhaps some semblance of reasonableness may be instilled throughout Ontario. One merely has to

[16] *Ontario Ministry of Natural Resources Policy PL4.03.01* December 1, 2001, p. 5

consider drainage, either by the private property owner, or other government institutions.

This was brought forward in the extended abuse expressed in the David White case. It would seem the C.A.'s had and continue to undermine not only Mr. White, his family and his farm, but, also, they were not acting in the public interest.

David White. This is his story as relayed to me and through his court documents, etc. Mr. White and his family were/are farmers and private property owners. He and his family have been fighting for around 20 years with the Niagara Peninsula Conservations Authority (N.P.C.A.) and their municipality. The situation here was one created by the N.P.C.A. with the damming of the St. John's Creek, changing the flow of water from South to North. The changing of the water flow and the damming of the creek caused Mr. White's property to flood. During this battle Mr. White's parents fell ill under the stress of the situation and Mr. White's father, according to friends, suffered a heart attack and died as the direct result of the attack by the N.P.C.A. abuse.

Finally, in 2008, David White was charged under the *Conservation Authorities Act*, Section 28. According to the Sentencing records, Mr. White was charged with "*the placement of these non-native materials in that area without authorization from the N.P.C.A."*[17]*.*

The non-native materials were part of the fill, Mr. White was using to protect his private property from flooding, brought on by the damming of the creek by the N.P.C.A. *"That soil contained a small amount of asphalt residual from a government road repair that had been previously gathered and piled at the rear of the property by owner, George White. The pushed soil also contained one or two cement blocks which were depicted at trial in site photos and acknowledged by David White."*[18] The Justice, on this count expressed at sentencing that *"there is no punishment to be meted out for that offence."*[19]

The second charge was for an incident in 2009 where Mr. White actually put some straw and a couple of pipes in the water to assist in draining his family property. According to the sentencing records he again didn't get permission from the N.P.C.A. to do this, and so they charged him. They wanted him to have to restore everything and they wanted him fined anywhere from $3,000.00 to $5,000.00. They also wanted it ordered that he not be permitted to do anything on his property without their permission. The Justice actually used some common sense.

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[17] ONTARIO COURT OF JUSTICE, IN THE MATTER OF THE PROVINCIAL OFFENCES ACT R.S.O. 1990, HER MAJESTY THE QUEEN v. DAVID WHITE, Information No. 08-4141, 09-4163

[18] ONTARIO COURT OF JUSTICE, IN THE MATTER OF THE PROVINCIAL OFFENCES ACT R.S.O. 1990, HER MAJESTY THE QUEEN v. DAVID WHITE, Information No. 08-4141, 09-4163.

[19] ONTARIO COURT OF JUSTICE, IN THE MATTER OF THE PROVINCIAL OFFENCES ACT R.S.O. 1990, HER MAJESTY THE QUEEN v. DAVID WHITE, Information No. 08-4141, 09-4163

According to the Justice, Mr. White, having fired his trial lawyer, he retained a new lawyer which presented information that had not been presented at trial. Due to the presentation of this new information the Justice ruled granting Mr. White a completely suspended sentence.[20] Mr. White had been trying for approximately 20 years to get this

[20] "With regards to consideration for the harm done and the potential harm, this Court noted at trial that the water entering the White properties on the two offence dates by way of the water course was water which flowed or overflowed from elsewhere in the Town of Fort Erie through a succession of open ditches connected by under road culverts. These open ditches were fed, in part, by water runoff from roads and from private property, which included water channeled from manmade swales meandering through farmers fields in the Town of Fort Erie and nearby the White properties. In light of the co-mingled and unknown content of the water entering the White properties from Fort Erie and despite the prosecution's opinion, it is impossible for the Court to deduce the actual and overall degree of negative impact that David White's actions had on the total quality of, a) the soil content in the area adjacent to the water course; b) the impact on the water entering the Willoughby Marsh from the White properties, and; c) from the total water flow.

Given the relatively minimal amount of non-native material involved in the commission of the June 2008 offence, it is logical to deduce that the impact of David White's actions were more than the de minimus standard but less than relatively significant in nature.

Even so, the prosecution is particularly concerned about David White acting in a premeditated fashion. Prosecution has referred to specific findings made by this Court and the Reasons for Judgment outlining the Court's acceptance of David White's knowledge. While these offences are not mens rea offences, a willful disregard for the law can negatively influence sentencing impacting on the need to order compliance to ensure the prevention of future harm.

In this case though, it is the Court's view that while David White's actions were not reasonable in the circumstances and while the Court is satisfied he knew about the N.P.C.A. prior permission requirement, his behaviour was much less about defiance toward lawful authority and much more about: a) oversight relating to the pushing and therefore, to the depositing of the soil with the asphalt and cement block on the hazardous land; and, b) about confusing various problematic collateral issues with his obligation under this regulation. In fact, through his actions David White demonstrated his respect for the law and his concern for the environment.

Mr. White did the June 2008 work and then contacted all of the stakeholders to come to his property to show them. This is not an act of defiance. David White also constructed a makeshift silt damn at the top of his parents property to prevent silt migration. …, the efforts made by David White are noted as a mitigating factor. … the action was also a demonstration of concern for the environment. …

These efforts are mitigating and illustrate David White's effort, not only for self-preservation but also to promote compliance. They include efforts to seek annexation of Willow Road, attending at and calling the Town of Fort Erie, attending at and calling the City of Niagara Falls, speaking with the Conservation Authority staff, going to the press, and finally, inviting all of the agencies over to brainstorm about a positive resolution. Mr. White tried to petition the Town of Fort Erie under the Drainage Act but was directed to pursue that avenue with the City of Niagara Falls.

For the reasons given at trial, these multiple efforts did not prevent a conviction. Nevertheless, David White's actions demonstrate mitigating responses and a genuine respect for a lawful resolution. This sentencing hearing was previously adjourned to permit David White to address compliance by removing any of the remaining 2008 non-native soil at the water course on his parent's property. I presume the pipes and the straw from the July 2009 offence are no longer in the water course. I recognize David White's reluctance to allow a site visit by the N.P.C.A. given the consequences of his last invitation to the N.P.C.A. For those reasons, I draw no negative inference from his lack of response to this previous suggestion from the Court.

The consequences of David White's actions have impacted on the regulatory scheme supervised by the N.P.C.A., but the N.P.C.A. does not exist in a vacuum and neither does the Court. Despite the Court's encouragement for collective dialogue and re-evaluation it appears that the problematic collateral issues that also affect the N.P.C.A.'s relationship with David White have remained unresolved. It is, however, important to note that based on the limited evidence heard at trial, the Court finds merit in David White's

situation resolved. He has been charged and lost his father to this situation. He has had to pay, out of his own pocket, for lawyers, his time away from his work, the stress of not having anywhere to turn to for help, and now after all of that he had found the Ontario Landowners Association, received information and now he is given a suspended sentence.

Mr. White, like so many others, should never have had to go through any of this. Perhaps in light of the over reach by the Conservation Authorities, and as Ontario is the only province that has these entities, the C.A.s should merely be dissolved. After all they have become redundant and seem to be one of the main causes for flooding in Ontario.

The Conservation Authorities, etc., need there to be a continuance of situations for their existence, leaving the residents to wonder if the situations of flooding are a natural event or staff being incompetent, negligent, or something worse? The report done by the Rideau Valley Conservation Authority - Technical Memorandum, February 20, 2013 states:

> " The project has been done in accordance with the technical guidelines set out under the Canada-Ontario Flood Damage Reduction Program (FDRP) (MNR, 1986), and the technical guide for the flood hazard delineation in Ontario (MNR, 2002) as laid out by the Ontario Ministry of Natural Resources….

And, again, from this report:

> "This actually caused the lake water level to be (artificially) higher by up to 0.8 m during flood events; but lacking good record of log operation, we are unable to

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argument linking the deterioration of the conditions on the White properties with the timing of government action on the Fort Erie side of the water course, coupled with the lack of necessary maintenance in culverts on the other side of the water course beyond the White properties and beyond the Willoughby Marsh. … The complaints of David White lend themselves to the question asking whether the consequences suffered by the White's are the natural result of a floodplain or a wet land designation or whether they are the result of excessive use of rights by government and/or government negligence through in action or something else entirely. …Plainly speaking, I cannot tell government agencies what to do even if I wanted to do so. Consequently, I urge Mr. White not to confuse this Court with other adjudicative bodies like the Drainage Act tribunal or other courts with inherent jurisdiction, like the Superior Court of Justice that may have the authority to offer resolution in situations where application is made for a ruling on those issues.

Further, even where completely unintended by either party, this Court cannot be used nor ought it to be perceived to be used as a tool of leverage in an ongoing dispute between various government agencies and David White.

…This Court is therefore reluctant to make an order under s. 28. Despite the ongoing collateral issues this Court cannot abdicate sentencing responsibilities for the two offences committed. However, having a full regard for the totality of circumstances and the totality of sentencing obligations and after a complete and conscientious review of the matter, this Court is satisfied that any reasonably informed member of the public who is versed in both the applicable law and the unusual and mitigating circumstances heard at trial would agree that the ends of justice would best be served by way of a suspended sentence on both counts."

improve the model at this time… somewhat distorts the flow released through the dam… Tests showed that the effect of fully opening the… Dam results in approximately a 12% reduction in the 1:100 year design flood…"

Continuing with the same report…

"…watershed model, built using the Mike11 program of the Danish Hydraulic Institute (DHI, 2003, 2004) and originally developed in 2007 (RVCA, 2007), was updated and refined in 2008 with new data on cross-sections, bridges and culverts. **Estimated discharges associated with flood** …The resulting flood lines were adopted by the RVCA Board of Directors on December 16, 2010 as the **best available estimate of the extent of flooding under regulatory flood conditions**"[21]

Not only are the regulations based on "estimates" but is there any real science to the 1 in 100 year flood plans? How did the Conservation Authorities even determine that there was a 1% chance in any given year of a 100 year flood event? This seems to be a very high percentage of chance, given any real historical information and considering Hurricane Hazel was in 1954. Is this the only event that the numbers are based on? If so then the cost of all of this science, the lack of due diligence and now the intentional flooding[22] is reason enough for the Conservation Authorities to be dissolved. As for the staff involved, they should be removed, as they have created multi-million-dollar incidents that should never have happened.

To fully understand the implications of Conservation Authorities and Conservation Ontario's policy, one only has to look at the 2007 Nottawasaga Valley Conservation Authority (NVCA) Land Securement Strategy, page 14, section 5 – Alternatives to Land Securement, 5.1 – The Planning Process:

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[21] Rideau Valley Conservation Authority - Technical Memorandum, February 20, 2013

[22] "Eastern Ontario mayors demand IJC reduce river and lake water levels" BY KRAIG KRAUSE GLOBAL NEWS, September 27, 2019https://globalnews.ca/news/5958400/eastern-ontario-reduce-water-levels/
Governor Cuomo and Attorney General James File Expanded Lawsuit Against International Joint Commission Over Substantial Flooding Damages
https://www.governor.ny.gov/governor-cuomo-and-attorney-general-james-file-expanded-lawsuit-against-international-joint
"November 15, 2019 - Building on the New York State Department of Environmental Conservation's lawsuit against the International Joint Commission, then-Governor Andrew M. Cuomo and Attorney General Letitia James filed an expanded lawsuit on behalf of New York State against the IJC for failing to implement its flood protocol for the Moses-Saunders Power Dam. Specifically, the IJC operated under a protocol known as "Plan 2014," which required that when water levels reach extremely high levels, the dam "shall be operated to provide all possible relief to the riparian owners upstream and downstream." As a result of the IJC's actions and failures to act in response to flooding in 2017 and 2019, New York incurred substantial and potentially avoidable damages…."

"As part of NVCA's involvement in the planning process under the *Planning Act*, (i.e., Official Plan Amendments, Draft Plans of Subdivision, re-zoning and land severance applications) environmentally significant areas may be identified through supporting studies and where appropriate designated open space, environmental protection or other designation that would restrict future development. The opportunity to acquire some of these lands may arise from time to time. NVCA staff will review these opportunities when they arise. NVCA has a policy for this which came into effect on May 10, 2002 and it is described in their publication titled "Conservation Land Protection and Acquisition Policy – Through Ontario's Land Use Planning Process."
This process is reactionary as it only occurs once a landowner makes an application. In order to receive approvals, the proponent must convey land or an easement for conservation or parkland."

This only adds to more of a reason for the Conservation Authorities and Conservation Ontario to be dissolved. They are effectively violating a Supreme Court ruling[23] and/or are doing indirectly what they cannot affect, lawfully, directly.

This is why Conservation Ontario and the Conservation Authorities have become redundant and why they are continuing to grasp for power. They know they are redundant because the Municipalities should (i) remove/dissolve them; (ii) take over the functions of the C.A.s considering the onus/obligations fall on the municipalities; (iii) and there is no future need for the C.A.s or Conservation Ontario.[24] This report continues with the statement that:

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[23] Annapolis Group Inc. *v.* Halifax Regional Municipality, 2022 SCC 36
[45] To this, we would add that, because the test focusses on *effects* and *advantages*, substance and not form is to prevail. A court deciding whether a regulatory measure effects a constructive taking must undertake a realistic appraisal of matters in the context of the specific case, including but not limited to: … (c) The substance of the alleged advantage. The case law reveals that an advantage may take various forms. For example, permanent or indefinite denial of access to the property or the government's permanent or indefinite occupation of the property would constitute a taking (*Sun Construction*, at para. 15). Likewise, regulations that leave a rights holder with only notional use of the land, deprived of all economic value, would satisfy the test. It could also include confining the uses of private land to public purposes, such as conservation, recreation, or institutional uses such as parks, schools, or municipal buildings…"

[24] "**Political Issues**
…The idea of amalgamation of many of the smaller authorities was suggested in the inter-ministerial report and perhaps because of this has met with a great deal of resistance from some quarters. In some ways the issue of amalgamation has led to more perceptual challenges than tangible ones. It has been argued that probably the biggest problem newly amalgamated authorities will encounter will be that of what colour to paint their trucks.
An Association for the Future
Clearly the Association is faced with the same choices that authorities must contend with. Either by choice or by default the status quo can be followed, with the danger that other organizations, groups or government agencies can surpass and possibly replace the role of the authorities and consequently the Association.
The alternative is for the Association to build on its already strong base and respond to the issues and opportunities as outlined above. Its three principal roles (coordination, resource support and external liaison) will be needed more than ever. The Association will have to take the lead in playing a motivating

"Financial Concerns
Many conservation authorities have been actively involved in capital projects such as flood control works and recreation development. Such projects have become less common in recent years. The structural approach to flood control has been implemented for most of the damage centres where it could be economically justified. ... The problem is further compounded all conservation authorities have had to bear with respect to such things as payroll, benefits, support costs and overhead.
The current grant system (as well as any prospective ones) inhibits program innovation."[25]

This also falls on the Municipalities as they are involved under sections 11, 96[26], 462[27], 463[28] and 207 (15)[29] of the old Municipal Act, as well as the *Drainage Act* which includes "initiating municipality" means the local municipality "*undertaking the construction, improvement, repair or maintenance of a drainage works to which the Drainage Act applies*" which involves "*injuring liability*" *means the part of the cost of the construction, improvement, maintenance or repair of a drainage works required to relieve the owners of any land or road from liability for injury caused by water artificially made to flow from such land or road upon any other land or road*." With the agreements

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role with all the thirty-eight authorities in order to promote and achieve the concept of integrated program delivery. These problems can be solved. However they require political will and public support. The ACAO must coordinate the efforts of its thirty-eight member conservation authorities to develop that support and will." Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.

[25] Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.

[26] DRAINAGE AND FLOOD CONTROL
Power exercised outside municipality, flood control 96. Despite section 19, a municipality may, for the purpose of preventing damage to property in the municipality as a result of flooding, exercise its powers under subsection 10 (1) or 11 (1), paragraph 7 of subsection 10 (2), paragraph 7 of subsection 11 (2) or paragraph 6 of subsection 11 (3) in relation to flood control in the municipality, in another municipality or in unorganized territory. 2006, c. 32, Sched. A, s. 38.

[27] Agreement re: flood control 462. Despite the repeal of paragraph 15 of section 207 of the old Act, that paragraph continues to apply to land acquired by a municipality or land with respect to which a municipality has entered into a binding agreement to acquire before January 1, 2003. 2001, c. 25, s. 462..

[28] Canals **463.** Despite the repeal of the old Act, section 219 of that Act continues to apply to docks or slips authorized by a municipality to be constructed, maintained and used in its water canal before January 1, 2003. 2001, c. 25, s. 463

[29] Agreements to prevent damage by floods 15. For entering into agreement with Her Majesty in right of Ontario and for entering into agreement with one or more municipalities and Her Majesty in right of Ontario to acquire and hold for and on behalf of Her Majesty in right of Ontario any land and premises in the municipality or in any other municipality for the purpose of preventing damage by floods and for doing all such things as may be considered necessary for that purpose.(a) Such land and premises shall be used and disposed of as directed by the Lieutenant Governor in Council. (b) For the purposes of the *Assessment Act*, such land and premises shall be deemed a public park.

(MOUs) between the Municipalities and the Conservation Authorities it would seem that even the municipalities are not exempt from either participation or abuse with/by the C.A.s.

In the case of Conservation Ontario and the Conservation Authorities, it is merely to extend beyond their legislative authority and to create a revenue stream, which again, is beyond their legislated mandate. The Canadian Water Resources Journal explains that:

> "The bulk of Provincial funding to conservation authorities has been funnelled through the Ministry of Natural Resources. Recently the Minister responsible has announced new funding formulas, as well as the concept of "core" and "non-core" programs. Authorities will be encouraged to seek partnerships for non-core programs, as direct funding will not be available. Often authorities find themselves in competition among themselves, with other special purpose bodies, or indeed with the Ministry of Natural Resources for this sort of funding."[30]

Firstly, funding would have to come through MNRF as it is 1 of the 2 over-seeing bodies. Secondly, the non-core programs include recreation and therefore are the C.A.s over-reaching and violating their original mandate, objects/purpose. The report continues to support that the C.A.s and Conservation Ontario are redundant.

> "Operational Role
> As a result of the 1941 Guelph Conference, Professor A. F. Coventry published a pamphlet which, among other points, stated that:
> "...Natural Resources form a delicate balanced system in which all parts are interdependent and they cannot be successfully handled, piecemeal" (as quoted in Richardson , 1974).
> This is one of the fundamental concepts which underlay the subsequent formation of conservation authorities and their organization on a watershed basis. At the outset of their formation, there were attempts made at undertaking projects and addressing issues in an integrated fashion, or to use Coventry's term recognizing "... a delicate balanced system".
> As the number and size of conservation authorities grew, all the operational problems of traditional bureaucracies began to appear. Any attempt at an integrated approach usually became diluted. Foresters planted trees while planners from the same authority approved subdivisions which led to the removal of these trees. Conservation areas were established around water management areas without taking into account the purpose and objectives of these areas.
> The individual landowner in Ontario can potentially deal with at least three different agencies with respect to tree planting on private land. Only one of these is a conservation authority. An individual developer must go through up to fifteen different approvals, many of them with regard to similar issues (e.g. protection of wetlands). Only one of these approvals is with the conservation authority. The

[30] Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.

image and the role of the conservation authority is not clear to the public, nor is it in many cases a particularly positive image…
Not only is there redundancy between authorities and other agencies. There is redundancy in terms of operational capacity among authorities. "[31]

Based on duplicity and multiple governmental entities the C.A.s are merely another expense to the people and have become redundant.

"… Very few of the authorities have any data or evidence as to what their role or their potential role is with regard to resource management. The public often regards conservation authorities either as parks agencies or regulatory agencies. In the case of the Grand River Conservation Authority it was commonly referred to for many years as the organization that caused the 1974 flood. This singular view on the part of the public is often coupled with little recognition on the part of municipalities or the provincial government of the potential role of authorities as delivery agents of integrated resource management. Without an effective profile and credible image within the communities that it serves, the conservation authority becomes in danger of being overlooked and even eclipsed by municipal governments, provincial agencies and public interest groups. This leads to redundancy in services with obvious implications for the long-term viability of authorities.
Redundancy is a political issue in itself. Conservation authorities often find themselves in direct competition with the Ministry of Natural Resources at the local level. It is ironic that this is the same provincial agency which is charged with administering the bulk of provincial grants to conservation authorities. Conservation authorities and the Ministry of Natural Resources often comment on the same issues with regard to plans of subdivision (and not always consistently with each other), undertake duplicate programs in forestry, run parks, and do fisheries and stream rehabilitation work. At the same time "upper tier" municipalities have been delegated certain responsibilities under the Planning Act which are also covered under the Conservation Authorities Act. Thomson (1990) identified 10 provincial agencies and over 40 pieces of legislation within the Province of Ontario which have relevance to water planning and management. Water planning and management has commonly been regarded as a prime function of authorities, but with this level of redundancy the problems in terms of institutional efficiency and confusion among the public and industry can only serve to call into question the continued role of conservation authorities in this area."[32]

[31] Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.

[32] Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.

Conclusion

In conclusion putting the remnants of the C.A.s under the administration of the Minister of Natural Resources and Forestry; decreasing and or eliminating the C.A.s interference with municipal authority; and completely removing the C.A.s from any planning processes and/or building code process, (which is beyond the jurisdiction of the C.A.s), is what should happen. If these issues cannot be rectified, we recommend that the Conservation Authorities be dissolved and the legislation for these entities be repealed.

> "At the same time, municipalities are becoming increasingly reluctant to bear any greater proportion of the funding load for conservation authorities. They, too, are being faced with the same sharp increases in administrative costs as are the authorities. ... They also express concerns about duplication, or redundancy between authorities and municipalities. Why pay conservation authorities for work which municipalities are already expected to undertake? Why inflict another layer upon the taxpayer?"[33]

[33] Canadian Water Resources Journal Vol. 17, No.3, 2013, p. 270 – 276.