

# THE GR COURT DOCKET

September 30, 2021

## GR lawyers succeed in having action over cancelled building permit transferred to correct court

By Stephen Thiele and Kenneth Jull

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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Each jurisdiction has different levels of court.

In Ontario, there is the Small Claims Court, the Ontario Superior Court of Justice, the Divisional Court and the Court of Appeal for Ontario. As well, there is the Ontario Court of Justice.

The matters that each of these courts are allowed to hear are prescribed by statute. This division permits the flow of cases to be managed and also permits for some specialization among the judiciary.

Accordingly, where a party commences a proceeding in the wrong court, an opponent can challenge jurisdiction to either have the proceeding dismissed or moved to the proper court. While this may appear technical and tactical, there are strong public policy reasons for ensuring that matters are brought and heard within the correct court.

### **The relevant facts of *Rudyk v. Halton Region Conservation Authority***

In [\*Rudyk v. Halton Region Conservation Authority\*, 2021 ONSC 5692](#), Justice Sharma recently determined that an

application seeking relief for a voided building permit started in the Ontario Superior Court of Justice ought to have been brought in the Divisional Court as a judicial review application. As a result, the applicant was in the wrong court and his proceeding was transferred there for determination at a later date.

The applicants had been in the process of renovating a garage in their home and in 2018 had received the necessary permits from both the City of Burlington and the Halton Region Conservative Authority (“HRCA”) to do so.

In 2019 HRCA discovered that the entire home had been demolished. In HRCA's view, the permit for the garage addition was void, given that the building to which the addition was to be attached no longer existed. HRCA contended that the applicants were now engaged in the construction of a new home. This required a new permission application because a geotechnical assessment of slope stability needed to be completed for the construction of any new structure adjacent to steep slopes, in order to ensure the safety of future residents of the home.

HRCA contended that the applicants were challenging its statutory powers and statutory power of decision and therefore the proceeding was governed by the Judicial Review Procedure Act (“JRPA”). Under section 6 of the JRPA, an application for judicial review needed to be made to the Divisional Court. Moreover, in Toronto the practice direction requires that even urgent matters be transferred to the Divisional Court.

### **The court’s decision**

Justice Sharma accepted that the factual allegations made by the applicants and the legal issues on which the applicants sought orders challenged the exercise of HRCA’s statutory power and decision-making under the [Conservation Authorities Act](#) and [Ontario Regulation 162/06](#).

[Section 2](#) of the regulation expressly prohibits “development” in certain areas within HRCA’s jurisdiction, which included areas that were “river or stream valleys that have depressional features associated with a river or stream”, or “other areas where development could interfere with the hydrologic function of a wetland.” Since the relief sought by the applicants called into question the HRCA’s authority to regulate matters which the applicants said was not “development” and to void a permit previously issued, Justice Sharma concluded that the applicant’s proceeding was a judicial review and that it should be transferred to the Divisional Court.

Justice Sharma noted that bringing the proceeding at issue in the correct court was important because it affected appeal routes and would create new grounds of appeal if the Superior Court of Justice decided the matter without acknowledging the Divisional Court’s jurisdiction over judicial review applications.

### **Representation by Gardiner Roberts LLP**

The HRCA was represented by Ken Jull, a partner and senior litigation lawyer at Gardiner Roberts LLP.