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Judicial Review of Committee of Adjustment Decisions: Matters of Public or Private Importance?

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Is a decision from a municipal committee of adjustment (a "**CofA**"), a matter of public or private importance? A recent trilogy of cases from the Ontario Divisional Court has split on this very issue, raising the important question of whether, and when, aggrieved third parties have standing to apply for a judicial review of such decisions.

Background – The Province's Restriction of Third-Party Appeals and the Continuing Availability of Judicial Review

In late 2022, the Ontario government enacted the *More Homes Built Faster Act, 2022* ("**Bill 23**"). One component of Bill 23 was a significant restriction on so-called "third party appeals" of CofA decisions to the Ontario Land Tribunal ("**OLT**") or the Toronto Local Appeal Body ("**TLAB**"), therefore creating an asymmetrical appeal regime intended to streamline planning approvals.

Under the amended *Planning Act,* a "specified person", including applicants, municipalities and certain utilities companies, can continue to appeal CofA decisions they disagree with to the OLT or the TLAB. However, following Bill 23, such appeal rights are no longer available to third parties – including direct neighbours of CofA applicants.

Important to these discussions, is that Bill 23 was passed two years before the Supreme Court of Canada released its landmark decision in *Yatar v. TD Insurance Meloche Monnex.**[1]** Yatar* stands for the proposition that appeal rights, or a lack thereof, do not, on their own, oust the availability of judicial review; courts may still judicially review questions of fact or mixed fact and law, for example, when appeal rights are limited to questions of law only.

As a result, judicial review, once seen as an indirect or residual remedy, has become a meaningful pathway for relief that the legislature has otherwise withdrawn through restrictions on statutory appeals.

This dynamic was illustrated in *NOVA Chemicals Corp. v. Dow Chemical Canada ULC*, where the Divisional Court granted judicial review of a CofA decision brought by a third party.[2] That outcome diverges from the earlier-heard decisions in *Loeb v. Toronto (City)* and *Ho v. Ottawa*, which we examine below.[3]

Private and Public Interest Standing

Judicial review, like all remedies sought before the courts, requires standing. In *Cardinal v. Director of Kent Institution*, the Supreme Court of Canada held that when an administrative decision affects an individual's "rights, privileges, or interests", the duty of fairness is engaged and a breach of that duty is judicially reviewable.[4] While *Cardinal* concerned a breach on procedural grounds, courts have treated its "rights, privileges, or interests" threshold as applying equally to judicial review on substantive grounds.

What counts as a "right", a "privilege" or an "interest" must be that affected by law. As endorsed recently by the Ontario Divisional

Court in *Beaudoin v. City of Ottawa*:

[T]o have private interest standing, a person must have a direct personal legal interest in the issue. In respect to issues of public policy, to have standing an applicant must show that she is "exceptionally prejudiced" or is "specially interested" in the issue. "Interested" here means having a legal interest, not having one's intellectual passion aroused.[5]

This distinction matters, because where a party initiating an application has a personal legal interest in the outcome, standing exists as of right.[6]

Where a party lacks such private interest standing, a public interest standing may still be available. The test for public interest stranding was provided by a unanimous Supreme Court in *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General),* and requires courts to consider three factors*:*

1. whether there is a serious justiciable issue raised;
2. whether the plaintiff has a real stake or a genuine interest in it; and
3. whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts.[7]

As discussed below, the courts have effectively imported the test for the availability of judicial review into the analysis of the third factor. The result is that limits on statutory appeal rights, particularly those imposed by Bill 23, have been treated as signalling, albeit inconsistently, whether judicial review remains a "reasonable and effective" pathway for third parties to challenge CofA decisions.

Divergent Approaches to Standing, and the Importance of Substantive Reasons: *Loeb, Ho, and NOVA*

As indicated earlier, *Loeb* and *Ho* involved the rejection of applications for judicial review of CofA decisions, whereas in *NOVA* the application was granted. Each case involved an abutting neighbour who sought judicial review of a CofA minor variance decision. The contrasting outcomes therefore cannot be attributed to factual differences alone.

Loeb: Early Application of Public Interest Standing

In *Loeb*, released prior to *Yatar*, the Ontario Divisional Court dismissed an application for judicial review, brought by neighbours of a CofA applicant. Two of the judicial review applicants lived at the property abutting the rear-lot-line; a third lived across the street. All alleged a breach of the duty of procedural fairness and relied exclusively on public interest standing for the application to be heard. As the Court observed:

The Applicants rely on public interest standing, as opposed to private interest standing, to bring this application for judicial review. ***They did not assert that the proximity of their own properties to the property that was the subject matter of the Decision or the variances sought by the property owner affected their private interests*** *such that standing to seek judicial review ought to be available to them.****[8]***

(**Emphasis** added).

In refusing public interest standing, and thus the application for judicial review, the Divisional Court held:

1. there was no "genuine interest" because "the very interests that the Applicants assert in the substance of the minor variance application, including their ability to enjoy their own properties, are private in nature";[9] and
2. judicial review was not a "reasonable and effective way to bring the issue before the courts" considering Bill 23's removal of third-party appeals. The Court stated "it is unlikely that the legislator intended, by removing the right of third parties to appeal

to the TLAB, that those parties be able to proceed directly before this court [*via* judicial review].[10]

The court went on to find in the alternative that were public interest standing to be granted, there was no breach of the duty of procedural fairness. The participatory rights for CofA decisions are those set out within the *Planning Act* and its regulations, and the applicants had conceded those requirements had been met.[11] The court further noted that the CofA's reasons were not inadequate, noting that the record before the Committee sufficiently justified its reasoning.[12]

Ho: Continuity With *Loeb* Post-*Yatar*

In the aftermath of *Loeb*, the Supreme Court's decision in *Yatar* provided important guidance, particularly clarifying that limits on statutory appeal rights do not automatically preclude judicial review. Roughly a year and half later, the Divisional Court addressed *Ho,* evaluating a neighbour's claim to challenge another CofA decision. Despite the guidance from *Yatar*, the Court's reasoning in *Ho* remained strikingly similar to that in *Loeb*.

The Court first rejected the applicant's claim to private interest standing. The applicant argued that "as the Owner's immediate [next door] neighbour, he is the person most directly affected" and therefore had the necessary personal legal interest. The Court dismissed this argument and, somewhat unusually, relied on the findings of the very CofA decision under challenge – namely that there would be "no unacceptable adverse impact" on the neighbour's property – to conclude that no private legal interest had been engaged.

This acceptance of the CofA's findings appears to reflect that the grounds for judicial review were procedural rather than substantive; even the applicant's argument on inadequate reasons focused on missing elements of analysis, not errors within the analysis (ergo, over adverse impacts) that was provided.

Turning to public interest standing, the Court drew heavily from Loeb, ultimately holding that that the application did not satisfy the *Downtown Eastside* factors, and concluding that:

*What the Applicant seeks to do through his application for judicial review is, essentially come through the back door where the front door has been barred because he has no right of appeal".**[13]***

Put another way, the court again appears to import the analysis precluded under *Yatar,* in finding that the public interest test was not satisfied.

NOVA: A Departing View on Standing and Adequate Reasons

NOVA presents a markedly different approach to both standing and the adequacy of CofA reasons. There, the applicant, NOVA, sought judicial review of a CofA decision relating to an abutting property owned and operated by its competitor in the petrochemical and plastics industry, Dow. In early 2025, Dow applied for a minor variance to facilitate an expansion of its facility, principally by reducing setback requirements and increasing building height adjacent to NOVA's property.

NOVA filed extensive materials opposing the application, but the committee approved the application after limited discussion, and allegedly told NOVA to "take it up on appeal".[14] NOVA subsequently brought an application for judicial review, in part on the grounds that the reasons for the CofA's decision were inadequate.

Unlike *Loeb* and *Ho*, the Court in *NOVA* did not engage in an analysis of public interest standing. Instead, it accepted, without difficulty, that NOVA was "an aggrieved or affected party" and observed that "it is not uncommon for the owner of a neighbouring property to be granted standing to challenge a planning decision."[15] Relying on *Yatar*, the Court rejected the suggestion, found in *Loeb* and echoed in *Ho*, that the Bill 23 amendments implied a legislative bar on judicial review.[16]

Turning to the merits, NOVA argued that the Committee's reasons were inadequate because there was no basis for determining the reasoning for its decision, contrary to the Vavilovian principle that reasons are at the heart of intelligible, transparent, and justified administrative decision-making. The Committee's reasons for its decision, in full, were:

*The Committee feels the variance is minor in nature, meets the intent of both the Official Plan and Zoning By-law, and is desirable for the development and use of the land.**[17]***

Dow argued the opposite: that the adequacy of reasons is not, in itself, a standalone ground for quashing a decision, and that even "template reasons" can suffice. The Court accepted NOVA's position, holding that although written reasons need not capture the entire record, "the reasons given by the Committee are reasons in name only. They give no clue as to the justification for the Decision."[18]

Importantly, the Court cautioned that this conclusion would not apply where the basis for the decision is "readily apparent from the record but not expressed in written reasons," and that inadequacy of reasons may not warrant intervention where the deficiency is "not material to the decision rendered".[19]

Conclusion

Ho and *NOVA* illustrate sharply divergent approaches to the availability of judicial review in the CofA context post-*Yatar*. Whereas *Ho* denies private interest standing to an abutting neighbour and effectively treats the Bill 23 amendments as signalling a legislative intention to preclude judicial review, *NOVA* takes the opposite view, recognizing neighbouring owners as aggrieved parties with standing, and reaffirming *Yatar's* instruction that limits on statutory appeals cannot, without more, foreclose access to judicial review.

The resulting jurisprudence leaves significant uncertainty for municipalities, applicants, and affected neighbours alike. Future cases will need to clarify whether *Ho*'s incorporation of Bill 23's effects into the public interest standing analysis is doctrinally sound, and what factual or legal factors must be present for a neighbour to establish private interest standing to challenge a CofA decision.

[1] 2024 SCC 8 [*Yatar*].

[2] 2025 ONSC 4334 [*NOVA*].

[3] (2024 ONSC 277) [*Loeb*] and 2025 ONSC 5428 [Ho], respectively. Note that while the decision in *Ho* was released later than the decision in *NOVA, supra* note 2, it was heard prior.

[4] 1985 CanLII 23 (SCC), [1985] 2 SCR 643 [*Cardinal*] at 645.

[5] 2025 ONSC 3870 at para 18, citing *Landau v. Ontario (Attorney General)*, 2013 ONSC 6152 [*Landau*] at para 16.

[6] *Landau, supra* note 5 at para 16.

[7] 2012 SCC 45 at para 37 [*Downtown Eastside*], recently cited authoritatively by the Ontario Court of Appeal in *Carroll v. Toronto-Dominion Bank 2021*, ONCA 38 at para 34.

[8] *Loeb, supra* note 3 at para 20.

[9] *Ibid* at para 26.

[10] *Ibid* at para 27.

[11] *Ibid* at paras 25 and 33.

[12] *Ibid* at paras 39 – 45.

[13] *Ho, supra* note 3 at para 30.

[14] *NOVA, supra* note 2 at para 57.

[15] *Ibid* at paras 21 and 22.

[16] *Ibid* at paras 19, 24 and 25.

[17] Ibid at para 14.

[18] *Ibid* at para 54.

[19] *Ibid* at paras 56 and 57.

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