File No. CA 002-15

M. Orr	)	Thursday, the 21st day
Deputy Mining and Lands Commissioner	)	of December, 2017.

THE CONSERVATION AUTHORITIES ACT

IN THE MATTER OF

An appeal to the Mining and Lands Commissioner pursuant to subsection 27(8) of the **Conservation Authorities Act** by the City of Hamilton, against the 2015 General Levy Assessment of the Niagara Peninsula Conservation Authority, dated the 19th day of February, 2015;

B E T W E E N:

CITY OF HAMILTON

Appellant of the First Part

- and -

THE REGIONAL MUNICIPALITY OF NIAGARA
AND HALDIMAND COUNTY

Appellants of the Second Part

- and -

NIAGARA PENINSULA CONSERVATION AUTHORITY

Respondent

O R D E R

WHEREAS THIS APPEAL was received by this tribunal on the 13th day of March, 2015 and an Order To File documentation was issued by this tribunal on the 16th day of March, 2016, to the initial two parties, being the appellant, the City of Hamilton and the respondent, the Niagara Peninsula Conservation Authority;

. . . . 2

AND WHEREAS the tribunal heard a motion for party status in writing (the application having been filed on the 8th day of July, 2016) and issued a Procedural Order On Party Status on the 28th day of November, 2016, adding the Regional Municipality of Niagara and Haldimand County as parties to this matter;

AND WHEREAS a hearing was held in this matter on the 29th, 30th and 31st days of May, 2017 in the courtroom of the tribunal, in the City of Toronto, Province of Ontario;

1. **IT IS ORDERED** that this appeal be and is hereby dismissed.

2. **IT IS FURTHER ORDERED** that no costs shall be payable by any party to this appeal.

DATED this 21st day of December, 2017.

M. Orr
DEPUTY MINING AND LANDS COMMISSIONER

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REASONS AND FINDINGS

The matter was heard in the courtroom of the Mining and Lands Commissioner, 700 Bay Street, 24th Floor, in the City of Toronto, in the Province of Ontario on the 29th, 30th and 31st days of May, 2017.

Appearances

Ms. Byrdena MacNeil	Counsel for the City of Hamilton
Mr. Ken Hill	Counsel for the Niagara Peninsula Conservation Authority
Mr. Paul DeMelo	Counsel for the Regional Municipality of Niagara
Mr. Woodward McKaig	Counsel for Haldimand County

Introduction

[1] The Niagara Peninsula Conservation Authority (the "NPCA"), has, within its jurisdiction, three participating municipalities. They are the Region of Niagara (the "Region"); the City of Hamilton (the "City"), and Haldimand County ("Haldimand"). The City is the product of an

amalgamation with the municipalities of Stoney Creek, Ancaster, Dundas, Flamborough and Glanbrook which took place on January 1, 2001. Prior to amalgamation the old City of Hamilton[1] was a lower tier municipality within the Region of Hamilton-Wentworth and was not included in the NPCA's group of participating municipalities as it lay outside the NPCA's watershed. It came under the jurisdiction of one authority – Hamilton Conservation Authority. Also prior to amalgamation the NPCA collected levies from Glanbrook, Ancaster the Region and Haldimand. After amalgamation and with its new expanded municipal boundaries, the City came under the jurisdiction of four conservation authorities including the NPCA.

[2] In late fall of 2000, the NPCA, in response to the City's plea that amalgamation would substantially increase its apportionment share under the **Conservation Authority Act** (the "**Act**") and its new Regulation 670/00, (the "Regulation") agreed with the new City's three other conservation authorities to set a pre-amalgamation levy rate. This rate was slightly amended in 2004. In 2014, in preparation for its upcoming budget, the NPCA re-visited the apportionment share. In a letter dated February 26, 2015, the NPCA notified the City that the levy for 2015 amounted to $1,317,020.00. This represented an increase of $803,550.00 over the levy amount for 2014 which was $513,470.00. The NPCA's reason for the increase was that Regulation 670/00 called for an agreement between an authority and its participating municipalities to deal with apportionment values and that no such agreement could be found. Without an agreement in place, the Regulation stipulated that the formula set out in the Regulation had to be used. The NPCA had therefore used the formula to set the apportionment rate for 2015.

[3] Of the total levy amount for 2015, $1,162,559.00 represented the levy portion for administrative and maintenance costs.

[4] The City objected to the increased levy for 2015, claiming that a long-standing agreement was in place and that its purpose was to keep the City's apportionment costs at a certain level. The City claims that the levy does not comply with the act and Regulation and that it is not otherwise appropriate. Finally, the City also takes issue with the length of time it was given to deal with the change to the levy amount.

[5] The NPCA, the Region and Haldimand all argued that there was no agreement and that as a result, the formula in the Regulation must be used for the levy calculation. They all argue that the levy complies with the legislation and that it is otherwise appropriate.

[6] The Region and Haldimand had requested and were granted party status to the appeal earlier in the year.

Issues

1. With respect to the 2015 levy payable for **maintenance** costs, is there agreement among the NPCA and its participating municipalities as required by Subsection 2 (1) (a) of Ontario Regulation 670/00?

[1] For the sake of clarity, use of the phrase "the old City of Hamilton" will signify its pre-amalgamation status.

2. If there is no agreement, does the levy for 2015 comply with Section 27 of the **Act** and Ontario Regulation 670/00? Is it otherwise appropriate?

3. With respect to the 2015 levy payable for **administration** costs, does it comply with the **Act** and Ontario Regulation 670/00? Is it otherwise appropriate?

Witnesses for the City of Hamilton

The City called three witnesses.

Andrew Burt

[7] Mr. Burt appeared under subpoena. He had retired from the NPCA in 2008 having been employed there since 1984. His position as chief executive officer meant that he was responsible for staff, preparation and submission of reports (including budget reports) to the NPCA boards and dealing with municipalities.

[8] Mr. Burt's testimony covered the following points:

1. Having municipal councillors on the authority's board was beneficial in that they had knowledge of budget processes and budget needs on both sides of the table.
2. He described the budget process that he oversaw during his tenure and the role of staff in that process.
3. Preliminary estimates were formulated during the summer months and a preliminary budget went to the board in the early fall. Participating municipalities were provided with the board approved budget in late October, early November. Comments regarding the preliminary budget usually came in the form of verbal communication from senior municipal staff and by board members' direct communications back to Mr. Burt. Presentations would be made to councils and committees or perhaps to regional chairs. Municipalities had 30 days to comment and final approval came the following February.
4. Levy notices were then sent out.
5. Prior to amalgamation, the Authority, area-wise, took in approximately 97% of the Township of Glanbrook, about half of Stoney Creek and a "significant portion" of the Town of Ancaster. It did not take in the old City of Hamilton.

6. Levy calculations utilized a methodology provided by the then Ministry of Natural Resources (the "MNR") using assessment information obtained the Municipal Property Assessment Corporation ("MPAC").[2] Mr. Burt described the information as "discounted

[2] Exhibit 2a for the City of Hamilton provided additional information regarding the levy calculations.

equalized assessment". [3] The MNR method was fairly simple in nature and was described by Mr. Burt as "the broad-brush approach to assigning assessment".

7. The percentage of geographical area of a municipality that was located within the NPCA watershed had a bearing on the tabulation of assessment values. If 80 percent of geographical area was located within the watershed and the assessment figure provided to the Authority was $100 million, then 80 percent of that $100 million would be considered to be within the watershed. The assessment for each of the aforementioned three municipalities was totaled and that constituted the total assessment allocated back to the Region of Hamilton-Wentworth. Using the MNR method, this resulted in the three aforementioned municipalities contributing about 6.7 percent to the levy and the remainder was covered by the Region of Niagara.
8. With amalgamation on January 1, 2001, the new City's assessment value would increase from 6.7 percent to 19 percent. This was due to the fact that Hamilton's urban core would be factored into the calculation. He reported as much to his board on October 19, 2000. He also met on October 23rd with officials from the new City of Hamilton, the Hamilton Conservation Authority and the Grand River Conservation Authority (the "GRCA"). They decided to go back to their individual boards with the recommendation that levy apportionments beheld at pre-amalgamation levels.
9. In effect, the apportionment level would be "frozen" and would be based on the same area percentages of the former area municipalities. Staff could not rationalize the reason for including the urban core in the calculation since there had not been a change in watershed boundaries.
10. This was how the 2001 levy apportionment levels were set in the authority's budget. The preliminary budget was sent to the participating municipalities and the Ministry of Natural Resources (the "MNR").

[9] On November 6, 2000, Mr. Burt wrote to Mr. Ron Running, Manager, Water Resources at the Ministry of Natural Resources, asking the Ministry to support the freeze. Mr. Burt also advised Mr. Running of the October meeting held between representatives of the NPCA, Hamilton Region, Halton Region and the Grand River Conservation Authorities as well as the City of Hamilton. They had agreed to ask the Minister to "*make specific reference in the regulation requiring that the municipal assessment apportionments for each of the 4 C.A.'s remain the same as has been historically used….*" He described this as a "reasonable compromise" pending resolution of "the question of geo-referencing". [4]

[10] Resolutions (attached to the letter sent to the aforementioned Mr. Running) were passed by the authority's board on October 20, 2000, regarding the assessment levies for then Haldimand-Norfolk and Hamilton-Wentworth. Both resolutions referred to the fact that the two municipalities would be the subject of amalgamation; that historically the annual conservation

[3] "Equalized assessment" is defined in subsection 27(1) of the Conservation Authorities Act, R.S.O 1990, c C. 27 as "the assessment upon which taxes are levied in the year preceding the year in which the proportion will be payable as adjusted by the application of the equalization factor based on the assessment provided by the Ministry of Revenue."

[4] Geo-referencing was used in a 2002 pilot study that involved overlaying the watershed boundary of the NPCA on municipal assessment maps containing roll numbers. Where 51 percent of a property was located in a particular authority's jurisdiction, then the assessment value of that property would be assigned to that authority. Using this method, it was determined that 3.93 percent of the new City of Hamilton's assessment value actually fell within the NPCA boundary. The participants in this study included Conservation Ontario, MPAC, and the MNRF. The source for this information is an exhibit submitted in the motion for party status heard prior to this hearing.

authority levy had been calculated on the basis of the geographical area of the area municipalities within the watershed jurisdiction of the NPCA; that the watershed boundaries would remain the same, and that *"the percentages of municipal area assessment used for [these municipalities] within the watershed of the NPCA [would] be continued for the purposes of apportioning levy costs of general benefitting projects and programs."*

[11] The Town of Haldimand was informed of the 2001 budget particulars (including the current value assessment calculation) by letter. The notice also included a chart entitled "2001 Levy Apportionment – Preliminary Budget" setting out a ratio that indicated the percentage that each municipality's current value assessment vis-à-vis the total current value assessment within the NPCA's watershed. The chart shows that the percentage of the Town of Haldimand's CVA within the NPCA watershed was 1.9376 %; the City of Hamilton's percentage was 6.9088 %, and the Region of Niagara's was 91.1536 %.

[12] According to Mr. Burt, these percentages were refined through geo-referencing which involved laying a watershed boundary map over top of a municipal assessment map, and then having staff from the NPCA and MPAC review same and assign roll numbers back to a specific watershed. The resulting percentage figures were Niagara Region 95.29 %; Town of Haldimand 0.78% and the City of Hamilton 3.93%. These percentages then made their way into Mr. Burt's 2003 report to the Board which dealt with the 2004 general levy apportionment formula. The report was approved by the Board and submitted to the participating municipalities, as well as to the MNR. According to Mr. Burt, all three participating municipalities paid their levies under the 2004 formula – until at least 2008, which is when he retired.

[13] Under cross-examination, Mr. Burt was insistent that the NPCA had always done its apportionment in accordance with the **Act**. In terms of the Regulation, his response as to how apportionment was calculated was "…the regulation says by calculating the ratio that each participating municipality's modified assessment bears to the total modified assessment of the authority." In his view, while the authority's board did not ignore the legislation, there "was some latitude for discretion on the part of the board."

[14] Mr. Burt also indicated that a "staff level agreement" existed amongst the various conservation authorities dealing with the Hamilton amalgamation as to how to apportion levy assessments. His testimony was that he and staff had a better understanding of assessment values within the watershed because of the pilot study information and that was information that they could not ignore. He also indicated that staff at the NPCA had agreed that the levy apportionment for all their municipalities be held at "basically the same level prior to amalgamation, or restructuring…." This would affect Haldimand and Hamilton. He was repeatedly asked if an agreement existed between the NPCA and its participating municipalities.

[15] He replied that no formal agreement was signed. There was agreement of members on the NPCA board regarding levy apportionment and these members were municipal representatives. In Mr. Burt's words, "[t]here's no formal agreement in a document. There's agreement by the board members that represent those municipalities at our board in terms of how the levy is to be apportioned."

[16] Mr. Burt was questioned as to his understanding of Section 3 clause 1 in the Regulation. He testified that the NPCA did not base the levy on the total assessment within the new City of

Hamilton. He stated, "…what we did is we looked at the lands within the municipality's area within the NPCA watershed." In response to the observation from counsel that the regulation did not say that, Mr. Burt responded by saying that "[w]e continued to do it the way we had done it historically because we thought that was fair and equitable."

[17] He was also questioned about the fact that he never advised the board through a report of the existence of the Regulation or the fact that it prescribed how to determine the apportionment. As he put it, "[w]e continued to do it consistent with the previous legislation, members understood…." Nor did he advise the participating municipalities about the Regulation. When questioned about his interpretation of the Regulation, he admitted that no agreement existed between the NPCA and its participating municipalities regarding apportionment.

[18] He admitted under cross examination by counsel for the NPCA that staff from various conservation authorities met with the new City of Hamilton but that other "member" municipalities (from the NPCA) were not present nor were they copied on the letter he sent to Mr. Running at the MNR.

[19] In re-examination, Mr. Burt was asked questions regarding a letter from the then Minister of the MNR [5] and his interpretation of the wording in that letter. He was of the view that the wording did not lead him or staff to believe that a written agreement was required and they did not approach it on that basis. As for the words "with the mutual agreement of all affected parties", the approach they took was a product of the process they followed in creating a budget and making the participating municipalities aware of the dollar figures involved. For example, the 2004 budget process made use of the pilot study information which identified assessment values that lay specifically within the NPCA watershed. Mr. Burt and staff communicated that to the authority's board of directors and subsequently to the municipalities. He "assumed that there was consensus and agreement" on the part of the municipalities if he heard nothing to the contrary. When asked if he thought there was any significance to the phrase "all or part of which" found in section 3(1) of the regulation, he replied in the negative.

[20] Mr. Burt was asked by me about his involvement in the consultation process leading up to the creation of the Regulation. He stated that he participated because of his interest in creating a more accurate means of determining assessment values. This was connected to using geo-referencing. He was not privy to any draft of the Regulation itself.

Joseph Rinaldo

[21] Mr. Rinaldo was the general manager of finance and corporate services for seven years with the City of Hamilton and retired in 2008. His evidence covered the following points:

1. He was hired by the transition board overlooking the creation of the new City of Hamilton in July 2000. His duties included financial services amongst a host of others. His work brought him into contact with boards and agencies that looked to municipal

[5] The letter is addressed to the Chair of the Grand River Conservation Authority; is dated December 5, 2000, and is in response to a letter from that authority to the Minister dated November 2, 2000 "regarding the new City of Hamilton and the Grand River Conservation Authority (GRCA) levy apportionment for 2001." The letter is copied to the GRCA, the NPCA and the Halton Region Conservation Authority.

funding, including conservation authorities. For the New City of Hamilton that meant he was dealing with four authorities including the NPCA.

2. Mr. Burt advised him in the fall of 2000 of the expected levy increase resulting from amalgamation. A meeting took place between the City and its four authorities to discuss this issue. The pre-amalgamation levy apportionment percentage should be maintained based on the fact that the watershed boundaries for the NPCA had not changed. There was no basis to assume a greater levy. He testified that all three of the NPCA's participating municipalities would have been told about the City's apportionment issues, and he understood that the MNR was apprised as well and that the ministry was "in support". The pre-amalgamation rate or formula as put in place and was maintained with a slight modification in 2004. This would avoid "over-taxation" of the City's residents.
3. He testified as to the pilot project and the use that it was put to in refining assessment information as well as the affect it had on lowering the City's apportionment value from 6.8 percent to 3.9 percent. Haldimand's value dropped slightly and the Region's increased by 5 percent. The City and its four conservation authorities agreed to use these refined values.
4. He referred to two charts (included in a report to council) depicting various percentages as being the "agreement" reached by the City and its four conservation authorities (including the NPCA).
5. He met with the Region's staff as well as with Haldimand's staff to discuss apportionment issues and that he would have referred to the compromise reached by the City with its four authorities.

[22] Under cross-examination he indicated as follows:

1. Approving a budget that "uses a certain apportionment - to me that's actually approving it." It was the same as approving an action.
2. When questioned about the report to City council dated February 24, 2004, and the fact that the agreement being referred to in that document consisted of charts setting out levy amounts pertaining to the City and its four authorities, he admitted that while there was no written agreement as such "[w]hat we had is an agreement that we had reached together with the conservation authority which was submitted to all of the participating municipalities." There was no reference to the Region or Haldimand.
3. He could not point to a resolution on the part of participating municipalities that indicated agreement with the refined 2004 apportionment values.
4. In response to questions concerning the lack of a reference to the regulation 670/00 in his report to council he admitted there was no reference, "because we actually came up with an agreement that we thought … everybody had agreed to."

5. When asked how this information would make its way to the other municipalities, he stated that it would be presented by the conservation authorities but that he never went to the other participating municipalities to confirm that it had happened. It was his understanding that the NPCA did so through Mr. Burt.
6. He referred to a need for clarification in terms of the wording of subsection 27(6) of the **Act** and the wording of the Regulation.

[23] Mr. Rinaldo was questioned regarding the phrase "by agreement among the authority and participating municipalities" and agreed that one had to have the agreement of the participating municipalities. However he believed that they did have agreement from the municipalities.

Through Mr. Burt he was advised that the other municipalities were aware of things. He agreed that the regulation set out two options regarding apportionments – by agreement or by formula.

Mile Zegarac

[24] Mr. Zegarac, general manager of finance and corporate services for the City since January 7, 2013, stated that his department was responsible for compiling the City of Hamilton's budgets including the processing of conservation authority levies. His evidence covered the following points:

1. Timelines for the City's budget process were described. A budget guideline is presented to city departments, boards and agencies including conservation authorities. The authorities usually receive this information in August/September. The budget guideline has historically been zero or close to it, inflation sometimes being a factor. The city goes through a "Christmas shutdown" each December. A supplementary document is provided to council in December, late January to keep it apprised of upcoming issues including apportionment issues.
2. He was made aware of a "potential material change" to the City's apportionment. A committee of council members was informed in January 2015 and the authority's staff made their budget presentation that same month. The apportionment change would have resulted in a 350 percent increase in the City's share of the NPCA levy.
3. The ability to pay should reflect current, not future growth. Apportionment percentages should reflect assessment values that were actually occurring within the NPCA's watershed and should not draw on the entire municipal assessment base which would include Hamilton's urban core. The urban core was not included in the pre-amalgamation values and it should not be included now.
4. Reference was made to two charts and he was cross-examined on them by counsel for the Region. The charts came from the MNR. Mr. Zegarac agreed that the first chart or table which gave Hamilton's CVA apportionment percentage as 4.1997 per cent was done in accordance with part (a) of the Regulation. He also agreed that the second chart which stated that the percentage share was 19.921 per cent was done in accordance with the formula set out in part (b) of the Regulation. He agreed that under part (b) of the Regulation [6] one took into account the assessment value for the entire municipality when making the calculation.

5. Under cross-examination he explained his understanding of subsection 27(6) of the **Act** and the Regulation. He agreed that the regulation describes the method used for determining apportionment. However, he testified that the regulation lacked clarity and that "the ratio could be better defined as it relates to derived benefits." He also testified that it was not clear that the intention of the formula was to "dictate" derived formula; that the formula was not consistent with the legislation, and that those sections in the **Act** that spoke to "derived benefit" were not consistent with section 3 of the Regulation.
6. As for subsection 27(6), his view was that the legislation was reflecting a "beneficiary pay approach" and that a municipality could spread the costs across its tax base or focus the cost on taxpayers found within the area under an authority's jurisdiction.

[6] Ontario Regulation 670/00, clause 2(1) (a) and (b).

7. He agreed that subsection 27(6) had nothing to do with determining apportionment but with how to collect the charge itself.
8. In response to a question as to how Hamilton deals with administration and maintenance costs vis-à-vis taxes, he indicated that the costs are spread across all the taxpayers in the City. In fact, the City spreads the costs for all four conservation authorities across the general levy.

Witnesses for the NPCA

Peter Graham

[25] Mr. Graham has been employed by the NPCA as Director of Watershed Management since 2014. He canvassed his counterparts in other conservation authorities as to whether they used the "default" formula as per clause 2(1)(b) of the regulation using figures provided by the ministry or if they determine their apportionment some other way. Thirty-six authorities were canvassed, twenty-one responded, and twenty indicated that they used the formula. The Grand River Conservation Authority indicated that maintenance, administrative and capital costs are rolled into one and then apportioned in a general levy using the formula. In response to a question as to a watershed that took in a large city, he responded that the Mississippi Valley Conservation Authority took in the City of Ottawa. [7]

[26] In cross-examination by counsel for the City, Mr. Graham was taken to the Grand River Conservation Authority's response which indicated that "… the modified CVA numbers that we use are the ones provided by the MNR which reflect the lower assessment for the City of Hamilton that was estimated in 2003 as a result of a watershed geo-referencing study undertaken by NPCA."

Douglas Bruce Timms

[27] He has been a Regional Councillor with the Region of Niagara since 1991. He is appointed by the Region as a member of the NPCA and served on the board of the NPCA from 2004 for various terms but has been there continuously since 2011 (and is still a member). He has served off and on as Chair and Vice Chair of the board. As such he served on the budget committee. He did not recall being involved in any discussion dealing with the process pertaining to apportionment and the participating municipalities. His evidence covered the following points:

1. He became aware of the apportionment issue in 2015 through a discussion with the NPCA's new CAO, Mr. Carmen D'Angelo.
2. "provincial numbers" received by the authority seemed to indicate a drop in the City's apportionment percentage.

[7] A search by me of a map compiled by the Province and Conservation Ontario indicates (for accuracy's sake) that the City of Ottawa lies within the watersheds of three authorities - Rideau Conservation Authority CA, the Mississippi Valley CA and South Nation CA. http://conservationontario.ca/library?view=document&id=302:map-of-conservation-authorities&catid=65:corporate-documents.

3. He instructed Mr. D'Angelo to investigate and that led to a review of the act and the Regulation. He was also asked to determine if a deal or documentation involving the participating municipalities.
4. He was never advised at regional council level of any agreement among participating municipalities and the NPCA, nor was he aware of anything while serving on the board at the NPCA. In his words, "[w]e simply relied on, or assumed as a councillor that there was legislation to be followed and that the conservation authority was following that."
5. A regional councillor sitting on the authority's board could not bind the municipality.
6. In cross-examination Mr. Timms advised that as councillor, he was made aware of matters (such as municipal budget guidelines) through staff reports, committee meeting minutes, and presentations by boards and agencies and so on. Likewise with his membership on the board for the NPCA. When asked if staff brought specific legislation to council's attention, he said if it was "relevant", "but that's rare".
7. He had worked with Mr. Burt for his first term with the authority – 2004 – 2006. In terms of keeping himself informed, he relied on staff recommendations when dealing with legislation. He admitted that he did not spend much time in reading the **Act**. It was made available to them, but he thought he could rely on staff expertise. This approach applied to staff recommendations and reports. He admitted that he might not understand every aspect of a report, but he relied on the staff recommendation and their expertise. He did not think it to be his role to be an expert on recommendations. On the issue of wearing two "hats" (regional councillor and NPCA member), he understood the need to keep certain matters confidential. However, the authority was obligated to provide budget information to council. He responded to a number of questions regarding his dual roles and was clear that he had not experienced a conflict in carrying out both roles.
8. When asked about his understanding of the Regulation and levy apportionments, he responded by saying that he understood that the apportionment levies issued against Hamilton and others complies with the Regulation and that he relied on staff's interpretation.

9. When asked when he became aware of the Regulation, he stated that it was when the question of the levy portion and the population growth in Hamilton was raised. The levy did not match growth. The Regulation called for an agreement or use of a formula. They could not find a written agreement, a resolution, nor minutes of council. That was when he read the Regulation (September 2014). Up to that point, he had never read it. In all his years as a board member, he never pursued an understanding of how the levy was apportioned - not until the 2015 budget was being prepared in September of 2014.
10. When asked about his understanding of the phrase "the new apportionment formula" found in the 2004 NPCA preliminary budget report he replied that he "took it at face value". He did not ask staff about it either. Questions related to similar budget-related reports that contained the reference to a formula generated similar replies – he took things at face value and trusted the presenters of the information.

11. A report dealing with the 2011 operating budget made reference to the Regulation and a "four-year levy implementation plan". He could not recall what the plan was. He was also taken to a report entitled "General levy apportionment report No. 63-09", which dealt with the basis for implementing a four-year phased plan and asked a number of questions related to his understanding of the information in the document. He could not recall details beyond what was set out in the report. He assumed the information was correct and took it at face value. He voted "yes" to pass the proposed operating budget.
12. Questions were asked concerning the preliminary 2012 operating budget report for the NPCA (report no. 43-11) and the reference in the report to slight changes in the apportionment percentages for the participating municipalities. As he put it "I understood and relied on Mr. DiMario's presentation of the facts…." Mr. DiMario was CAO at the time.
13. He was asked about a 2015 draft operating and capital budget report presented to the board in January 2015. It drew the board's attention to the previous levy apportionment history including reference to an "agreement" between the City of Hamilton and neighbouring conservation authorities. The report stated that the NPCA had no evidence to indicate that either the Region of Niagara or Haldimand County had supported such an "agreement". Having said that, the report indicated that Regulation 670/00 offered two options – levy apportionments could be reached by agreement or through use of the formula set out in the regulation itself. The report went on to say that if no agreement was reached by February 18, 2015, the NPCA must use the formula. The report set out the apportionment levies based on the formula. As a result, the levy for Hamilton rose to 19.9201% - up from 4.1997 per cent set in 2014. Levies for Niagara and Haldimand went down. For example, the Region of Niagara levy in 2014 was 93.5639 per cent and through use of the formula it dropped to 78.1543 per cent.
14. Mr. Timms testified that this was the first time that the board had been alerted to an issue with the apportionment formula. When asked what it was they had been looking for in terms of an "agreement', he indicated a written document signed by all three municipalities; a resolution, a motion – something that explained and then asked for council's endorsement. The wording of the **Act** led him and others to believe that this was required. Mr. Timms testified that he had relied on Mr. D'Angelo's advice on this point.

15. Mr. Timms was questioned about his past acceptance of the contents of various budget reports and various figures therein (e.g. 2004 report) that referred to basing apportionments on the 2000 current value assessment. His replies indicated that he relied on the advice of the experts and that he accepted the contents at face value. Mr. Timms described the Region's angry reaction to the NPCA budget report and the adjusted levy apportionments.

<u>Carmelo D'Angelo</u>

[28] Mr. D'Angelo was CAO at the NPCA from May, 2014 to November, 2016, when he took up the post of CAO at the Region of Niagara. Prior to his role as CAO at the NPCA, he was on the board having been appointed by the City of Hamilton in 2007. He testified that as a board member, the issue of levy apportionment and references to the legislation did not come to his

attention. Nor could he recall the regulation ever being explained to him. His evidence covered the following points:

1. Budget preparation starting in 2014 included the review of two charts received from the MNR which generated questions. One chart had a lower apportionment percentage for the City (3.7 percent). The other had a higher percentage (21.01 percent). The charts set out the apportionment data for all three participating municipalities. He believed that the 21 per cent was the correct percentage.
2. When he queried the ministry about the reason for the 3.7 percent he was told this represented a geographical percentage showing that 3.7 percent of the City was in the NPCA watershed.
3. Further enquiries on his part led to his receiving the copy (through his ministry contact) of an email sent by the Assistant CAO Grand River Conservation Authority to an official at the City of Hamilton in 2012 describing the history of the levy apportionment value he was now questioning. It referred to a "local agreement for levy apportionment".
4. In very simple terms, the conservation authorities whose watersheds were located in the new City of Hamilton basically agreed not to use the provincial formula because it was "inadequate" and "didn't provide an accurate allocation of the City's assessment to each of the four Conservation Authorities." For example, since 19 percent of the amalgamated City of Hamilton was in the GRCA watershed, then the formula would allocate 19 percent of the City entire assessment to the authority. The consensus amongst the authorities and Hamilton was that this was "unfair". In the email, the Assistant CAO states *"[w]e felt this was unfair to the City, so we asked the province enact a Regulation that would allow for local agreement between Conservation Authorities and participating municipalities to use more accurate percentage for allocating CVA. The request was granted by the province and Levy Regulation 670/2000 came into effect, allowing this."* An agreement was reached to allocate a lower percentage to the City. This was *"confirmed through Resolutions by all parties and then we wrote to the Minister of Natural Resources requesting his support in writing, which he gave us."*

5. He took this information to the Chairman (Mr. Timms) and from there tried to determine if there was a written agreement by asking his counterparts at Niagara and Haldimand. He explained to them that what he had before him did not comply with the regulation and did they have an agreement in their possession. They responded in the negative.
6. Mr. D'Angelo understood the Regulation to say that agreement was permitted but that it had to be amongst the participating municipalities and the NPCA. In Hamilton's case the agreement was between the City and the four conservation authorities whose watersheds it lay within.
7. In December of 2014, he informed the participating municipalities including the City of Hamilton of his concerns. He relayed his intention to use the formula set out in the Regulation unless the parties could reach an agreement to allocate levies through some other methodology. It was his belief also, that the other conservation authorities would

need to know the outcome as they could be affected by any agreement reached amongst the NPCA and its participating municipalities. [8]

8. No agreement was reached. He also obtained a legal opinion regarding on the issue of whether an agreement could be reached by way of a conservation authority member voting on behalf of his or her municipality. No one at the ministry was available to provide an opinion so it was sought privately. The opinion was that a member's vote could not bind a municipality.
9. The NPCA budget was presented to Hamilton in January 2015. He attempted to find a solution that would be acceptable to Hamilton.
10. In cross examination when asked about his understanding of what was presented in various staff reports dating back to the time of Mr. Burt, he said that he relied on staff expertise in terms of the information being relayed to him and that he had "no information that there's an actual regulation asking for an agreement." He relied on staff to present information, including such things as the **Act**, the Regulation and so on. Without that information he did not know how to ask the question. When he was confronted with a report that did mention the Regulation (2010 Operating Budget) he acknowledged that it was mentioned but said that it was not explained.
11. His approach to the word "agreement" in the Regulation was that it would be a written document or a council motion indicating agreement.
12. It was the responsibility of staff to provide "the appropriate information" that would allow him as a member to make an informed decision. He was not aware of any ministry chart indicating assessment information nor whether the information was being applied correctly. He admitted it would have been easy to obtain a copy of the Regulation from staff. He did not go beyond the acceptance of staff information. Now, as a CAO he would know there should have been more information included in the reports.

13. In re-examination he repeated the fact that as a member on the authority's board, it was never explained to him by staff that the Regulation required either agreement or use of the formula in determining levy apportionments. In his words "they never explained it". Now he realized that the information was "inaccurate" meaning that his research as CAO revealed that Niagara and Haldimand had never participated in the "agreement discussion".

Final Submissions of the Parties

City of Hamilton

[8] For example, Haldimand County has within its boundaries, the GRCA watershed.

[29] The City listed three main issues to be determined.

1. Whether the 2015 levy ought to have been based on apportionment ratios set out in a long-standing agreement between the City, the NPCA, the Region of Niagara and Haldimand.

2. In the alternative, whether the NPCA acted in excess of its jurisdiction in calculating the 2015 levy.

3. In the further alternative, whether the 2015 levy is not appropriate in the circumstances.

[30] The City is seeking an order to have the 2015 levy in the amount of $1,162,559.00 be rescinded; that the 2015 levy be calculated on the basis of the 2014 rate applied by the NPCA; that in the alternative, the 2015 levy be calculated on the basis of the 6.4 percent ratio being the actual proportion of the modified current value assessment of the City's NPCA watershed lands and not on the City's entire modified current value assessment; that the NPCA be ordered to repay overpayments made by the City plus interest and the costs of the proceeding. The City made the following arguments in support of its position on appeal:

1. The City claims that there is an agreement or that the parties agreed that a pre-amalgamation percentage would be used to calculate the levy for the City. Use of this percentage, because it was based on the assessment values of only those lands located within the watershed boundaries of the NPCA, avoided the inclusion of the City's urban core in the calculation.
2. The City had reached such an agreement with its four conservation authorities (including the NPCA) prior to amalgamation.

3. There is no need for a formal agreement amongst the NPCA and its participating municipalities because when the respective councils were approving the NPCA budget for payment, they knew what they were doing. Municipally-appointed board members were also sitting on council and would be aware of what was going on. They would have "actual knowledge" of the budget and levy information based on their board attendance and this knowledge carried over to their work on council. The respective councils would be agreeing to allow the City a discount in terms of the apportionment value used to calculate its levy. They would be "deemed" to have had effective notice of the levy apportionment information. The City reviewed the budget processes followed by the NPCA as well as the participating municipalities. There is no need for a formal agreement nor council resolutions. Niagara and Haldimand are bound by the actions of their respective councils in approving payment of the NPCA levy amounts. Approval and payment through their municipal processes constitutes agreement with the levy apportionment terms.

4. This process went on for ten years (2004-2014). (In 2004, the percentage had been lowered still further when a geo-referencing study produced further refinements in terms of assessment information for those lands located with the NPCA watershed.) The parties cannot claim that they did not agree to the discount.
5. Section 24 of the **Municipal Act**, S.O. 2001, c. 25 was cited as well as common law in support of its submission that councilors have a duty to keep themselves informed. This duty goes beyond that of the ordinary citizen in that it requires elected officials to engage in some degree of study and information gathering, and may require consultation with experts. They must "superintend and inform themselves about municipal works; inform themselves about the important details of municipal government, and disclose information that could affect the proper administration of public affairs."
6. In response to the opposing parties' claim that information provided to their councils (and the board itself) was lacking in clarity, the City argued that they were obligated to address any lack of clarity in terms of understanding the budget information presented to them. A party cannot rely on willful blindness or on ignorance of its own making. Hamilton also made submissions dealing with the word "agreement" as found in the Regulation.

[31] The City also made submissions directed at Mr. D'Angelo's testimony. Mr. D'Angelo's conclusion that there was no valid agreement was incorrect for three reasons.

1. It ignored past dealings of the NPCA board during the period 2004-2014. All of the dealings, including formal board minutes, resolutions and so on dealing with the budgets, the levy rate of 3.9 percent and so on show that those involved knew what they were doing. Even the documents sent by the MNR to the NPCA setting out the yearly assessment data (including the chart used for 2015 which was questioned by Mr. D'Angelo) all used the 3.9 percent, or the amended 3.7 percent rate.

2. "Mr. D'Angelo's conclusion ignores the fact that where the Legislature requires an agreement and council resolution confirming that agreement in order for something to be valid, it expressly states so." In support of this point, the City drew attention to and compared the wording in sections 14. (2.1) of the **Act** and 2. (1) of the Regulation. The latter reference does not contain the word "an" before "agreement" nor does it require a council resolution. The word "agreement" is not defined in the legislation. The City referenced the definition for the word in Black's Law Dictionary (Tenth Edition). There was, amongst other things, a mutual understanding between the parties as to their rights and duties regarding the levy apportionment and payments.

3. Mr. D'Angelo's conclusion misconstrues the levy process. The City referenced subsection 1 (1) of Ontario Regulation 139/96 – Municipal Levies made under the **Conservation Authorities Act**, a publication entitled "Joint Protocol Pertaining to Non-Matching (Discretionary) Municipal Funding of Watershed Programs" that relates to the power that a municipality has to direct how their appointed members vote, the 30-day notice period to review the proposed budget and the right to appeal to the Mining and Lands Commissioner as support for its submission that "the

formality of a signed agreement and council resolution are not necessary and would unduly complicate a process that happens every year."

[32] The City also took issue with the notice given to it advising of the 2015 levy amount. It contends that the earliest it could be said to be put on notice was as of the February 19, 2015 board meeting but more properly when it actually received the levy notice following the board meeting.

[33] The City claims that a "rolling" levy apportionment agreement was in place since 2004 and that it was reasonable for the City to assume that things would stay the same and that the NPCA would notify the City in a timely manner of a change. Six months' notice would have been reasonable given what the City would want to do – make inquiries, investigate, make submissions, negotiate and make changes to its own budget. Because notice that the agreement would be terminated was not given, the City has asked that the 2014 rate be applied and not the 2015 rate.

[34] The City also argued that the NPCA acted in excess of its jurisdiction. This argument essentially focused on the subsection 27(6) of the **Act** and subsection 3(1) of the **Regulation**. The City submitted that subsection 27(6) limits the assessment value to be used in subsection 3(1) to those lands within the watershed and does not allow the authority to draw on a municipality's entire assessment value. (The City's witness Mr. Burt acknowledged in cross-examination that the Regulation did indeed work this way). Such an interpretation would be unfair in law. The City supported its point by referring to the historical practice of assessing only those lands within the NPCA watershed prior to amalgamation. The Legislature did not intend that authorities would be able to calculate levies using an assessment base greater than the rateable property over which they had jurisdiction.

[35] With respect to the Regulation, it being subordinate legislation, the Legislature intended for it to be interpreted in such a way as to not be in conflict with the **Act**. Should the City be wrong on this point, then it posits that the Regulation is actually in conflict with the **Act** and ignoring that fact leads to an "absurd" result.

[36] In hard numbers, the NPCA's approach results in $14.8 billion (the City's entire assessment value) being used to calculate a levy apportionment rate of 19 percent. The City on the other hand claims to have demonstrated that only 6.4 percent of its entire assessment value (amounting to $4,478,054,911.00) is located within the NPCA watershed.

[37] The City relied on authorities that stand for the proposition that taxing laws are to be strictly construed. The NPCA cannot levy outside its jurisdiction; likewise it cannot assess as against lands outside its jurisdiction. Subsections 27(2), (3) and (6) of the **Act** contain the NPCA's only authority to levy for maintenance and administration costs and subsection 27(6) limits the authority to charging the levy on rateable property located within the NPCA's watershed.

[38] The City further contends that the 2015 levy is not appropriate in the circumstances. A dictionary definition for the word "appropriate" led in turn to the City's argument that even if I agreed that the NPCA's position on how to calculate the levy was correct, that the 2015 levy apportionment was not otherwise appropriate. The dictionary definition (using the phrases "suitability for a particular purpose" and "something that is fit and proper in the circumstances", were worked in to an argument that the City's actual calculations for lands located within the watershed should be accepted. They were not challenged and the City's figures represented the most accurate information available for calculating the actual assessment values. To use the old "ball-parking" method (as many authorities do) was wrong in law, given the intent of subsection 27(6) of the **Act**. In addition, authorities must act in good faith and in a reasonable manner.

[39] As for the NPCA's witnesses, the City argued that Mr. Timms' and Mr. D'Angelo's testimony should be given no weight. They did not practice due diligence either in reviewing and/or understanding the information they were called to vote on.

[40] The testimony of Messrs. Burt and Rinaldo (City witnesses) should be given "great weight" as should that of Mr. Zegarac. Cross-examination of Mr. Zegarac dealing with his interpretation of the legislation should be disregarded as he is not a lawyer and therefore not qualified to answer a strictly legal question.

[41] Finally, the City asked for interest on monies that would be re-paid by the NPCA. Subsection 27(13) provided the required power to do this. In addition, case law was provided in support of the request.

The Regional Municipality of Niagara

[42] The Region argued that there was no agreement amongst the participating municipalities and that as a result, the so-called "default" formula in the Regulation must be applied. The Regulation does not authorize geo-referencing "but rather requires that the total assessed value of all lands within a municipality all or part of which are within an authority's jurisdiction, be included in the calculation and then modified by the percentage of the area of the participating municipality within the authority's jurisdiction by its total area and multiplying that ratio by the modified current assessment for the participating municipality."

[43] The Region also submits that the NPCA has not acted in excess of its jurisdiction and that there is no basis on which to conclude that the levy is not appropriate in the circumstances.

[44] Reference was made to Section 27 of the **Act** as well as the Regulation. The Region noted that the NPCA is required to comply with the Regulation and pointed out that there was no dispute from the City's witness Mr. Burt regarding this point.

[45] The Region reviewed the evidence of Mr. D'Angelo and his testimony that he could not find any written document or council resolution or any authorizing document that would support the existence of an agreement. The Region drew attention to Mr. Burt's testimony that a staff level agreement existed between the City and its four conservation authorities (the NPCA, the GRCA, Halton and Hamilton). As for the word "agreement", the Region noted that the Regulation "does not require that there simply be a levy agreement but rather that there is "agreement amongst the participating municipalities."

[46] The Region took issue with Mr. Burt's testimony that there was no "formal agreement" but that agreement existed amongst the authority's board members as to the levy apportionment; that these members represent the interests of their municipality; that they make the decision regarding the levy. The authority then levies the municipalities, who in turn can register a concern of disagreement by appealing to the Commissioner as was done here. The Region cross-examined Mr. Burt extensively on the fact that no resolution was found; no signed agreement existed, and that "there's nothing in terms of an agreement other than an agreement by the board of the conservation authority agreeing with your recommendation." Mr. Burt's response was "Right. The board appointed by those municipalities." The Region argued that this was confirmation of a "staff agreement", and not what was required by the Regulation.

[47] When the City's witness Mr. Rinaldo was questioned as to the existence of an agreement, he relied on charts that depicted the percentages applied by Hamilton and its four conservation authorities. There was no mention made of Niagara and Haldimand in the charts. Niagara Region's counsel also noted that the City acknowledged at the time that such an agreement had to be endorsed by Council.

[48] In terms of what signifies "agreement" according to the Regulation, the Region argued that the only way to bind the municipalities was to have Council endorse an agreement by resolution and confirming by-law. Reference was made to Section 5 of the **Municipal Act** and case law to support this argument. [9] Being simply aware of the alleged agreement between 2000 and 2014 does not impute one and in any event, there was no evidence of any terms – only apportionment calculations based on an established percentage for a given year.

[49] The Region also dealt with the City's definition of the word "agreement" (Black's). The Region argued that there was no "mutual understanding or even an understanding of the rights and obligations under the legislation. Rather, what was presented to the Board of Directors of the NPCA was incorrect, missing and incomplete information and that what was then presented to Councils for Niagara and Haldimand was in fact an assumption that an agreement did in fact exist in the years between 2000-2014 when one did not."

[50] Under cross-examination Mr. Burt admitted that for the period 2000-2008 his board was never advised of the fact that his recommendation regarding the apportionment calculation was not in accord with the Regulation. The NPCA's witnesses Messrs. Timms and D'Angelo both

[9] Adams Pizzeria (Prescott) Ltd. v. Prescott (Town), 2017 ONSC 3034.

testified that they were never advised by staff of the implications of the Regulation or that the recommended apportionment was not in accord with that legislation.

[51] The Region also argued that the existence of an agreement cannot be "deemed" by the municipal approvals of the municipal budgets that included the NPCA's 2000-2014 budgets. The respective councils in 2000-2014 (not just the NPCA board) were working with incomplete and inaccurate information and could not be said to be in mutual agreement with anything other than approving budgets on a year by year basis. Even if the Commissioner was prepared to accept the City's argument that an agreement existed at one time, it is clear that in 2015, there was none.

[52] The Region also disputed the City's argument that reasonable notice of a change had not been given. The Commissioner does not have the jurisdiction to exercise what amounts to an equitable remedy – that is, reading a term into an alleged agreement. Equitable relief is restricted by the **Courts of Justice Act** to the Court of Appeal and the Superior Court of Justice. Nor does the relief requested by the City fall within subsection 27(13) of the **Act**.

[53] The City's interpretation of the Regulation with respect to the assessment area to be considered was also disputed by the Region. The value of the entire City of Hamilton must be taken into consideration in the calculation as this is what the Regulation required – indeed, all witnesses who testified on this point agreed that this was the correct approach. The City's request amounts to an attempt to circumvent the Regulation at the expense of the other participating municipalities.

[54] Furthermore, there is no conflict between subsection 27(6) of the **Act** and the Regulation. Neither the reading of the legislation nor the City's evidence supports such an interpretation. Subsection 27(6) refers to the manner in which a municipality may charge for the collection of the levy and not the manner in which the apportionment is to be calculated. The City's witness Mr. Zegarac agreed under cross-examination. In fact, according to Mr. Zegarac, the City collects the taxes for the levy across all properties within its borders. Part VII of the **Municipal Act** provides municipalities with the power to levy and collect taxes from owners inside its borders and section 326 allows for a "special services levy" that targets properties within a designated area. The City's submissions reflected an inconsistency and conflict in terms of the evidence it presented and the **Conservation Authorities Act** itself.

[55] The Region noted that Mr. Burt (under subpoena for the City) acknowledged that the procedure which had been followed was not permitted by the Regulation. Mr. Burt's response to being questioned on this point was that "we thought [it] was fair and equitable". He agreed that the Regulation would have to be changed to accommodate the procedure they had used. In his words, "[t]he Regulation doesn't reflect what we would like it to reflect." In addition, Mr. Zegarac (for the City) agreed that the calculation for the 2015 was accurate and that he had no issue with the manner in which the apportionment had been calculated.

[56] The Region also disputed the City's argument that using the entire assessment base in the calculations would create an absurd result. In response the Region said that all witnesses acknowledged that this is how the Regulation worked. Nor does the NPCA exercise assessment powers. It is not a taxing authority. It imposes a levy and charge for the work it carries out on behalf of its participating municipalities. These "charges" were not taxes. They worked to defray expenses and not to raise revenue. [10]

[57] In response to the City's request that the testimony of Messrs. Timms and D'Angelo be given no weight on the basis that they failed to notice references to the Regulation contained in budget reports starting in 2010, the Region argued that an examination of the reports shows that no explanation was ever given as to what the Regulation provided for and required in terms of the calculation of the apportionment. In any case, their testimony regarding the existence of an agreement was clear and unshaken under cross-examination.

[58] The Region of Niagara asked to have the appeal dismissed; to have the 2015 levy confirmed, and to be awarded costs.

The Niagara Peninsula Conservation Authority

[59] While the NPCA concurred with and did rely on the submissions of Niagara, it did make submissions of its own.

[60] Being a creature of statute, the NPCA is bound to follow the requirements of the Regulation, meaning that absence agreement amongst itself and its participating municipalities, it must apply the formula found in the Regulation.

[61] Unfortunately, for the years 2000-2014, the requirements were not properly considered. The apportionment for 2015 was correctly calculated and should be upheld.

[62] The NPCA did not act capriciously nor did it act in an arbitrary manner. The CAO, Mr. D'Angelo (appointed in May 2014), questioned the levy calculation data sent by the MNRF in September of 2014. He was told in November that the calculations "assumed the existence of an agreement among the member municipalities". He began to search out such an agreement. MNRF advised on December 2, 2014 that it had no record involving Haldimand or Niagara. Mr. D'Angelo could only locate evidence of an agreement between Hamilton and the four conservation authorities that cover its territory.

[63] Haldimand and Niagara did not want to continue with the old allocation formula. Mr. D'Angelo attempted to obtain some resolution to the problem but was unable to do so.

[64] The NPCA argued that there was no agreement in existence; that voting board members could not bind member (participating) municipalities into accepting an agreement; that if there was an enforceable agreement in past years, there was no evidence to support an extension into

[10] The Region relied on the decision in Ontario Home Builders Assn v. York Region Board of education 493, 15 M.P.L.R. (2d) 1 (Div Crt).

2015; that the notice of the change provided to Hamilton was carried out with "due dispatch", and that even if there was an alleged agreement, a notice term could not be added to it as this was beyond the Commissioner's jurisdiction.

[65] As for the City's interpreting the Regulation to limit the assessment data used in the calculation, its own witnesses interpreted the legislation in the manner proposed by the NPCA and this interpretation was reasonable and conformed to the legislation.

[66] As for the City's attack on the credibility of the NPCA witnesses (Timms and D'Angelo) for having missed references to the Regulation in documents put to them, it should be ignored. What was important was that the references "did not disclose to them … what the Regulation required."

[67] The NPCA argued that the City's asking for the application of geo-referencing is a request that exceeds the Commissioner's jurisdiction. It was not adopted by the ministry, nor is it used by other authorities. Using it would set a dangerous precedent. The ministry provides the data used by authorities and it uses the modified assessment for the entirety of each participating municipality. Using the City's method would in effect require re-drafting of the Regulation.

[68] In addition to asking that the appeal be dismissed and that the 2015 levy apportioned by the NPCA be confirmed, the authority has asked for costs. Haldimand adopted and relied on the Region's response to the City's final submission.

The Law, Analysis and Reasons

The Conservation Authorities Act

[69] The **Conservation Authorities Act** was enacted in 1946 [11] and from its inception, it looked to "participating municipalities" to finance the work of authorities under the **Act**.

[70] Under the 1946 **Act**, a "*participating municipality*" according to statutory definition said that it *"[was] either wholly or partly within a watershed"*; that it *"may benefit by a scheme established therein"* and that it was *"declared by the Lieutenant-Governor in Council to be a participating municipality for the purposes of such scheme"*. The statute granted powers to authorities to carry out a scheme (a defined term). Municipalities benefitted from schemes and the **Act** required them to pay proportionately for benefits. An authority determined the proportionate amount to be paid by a municipality. Authorities were given the power to determine what moneys would be required for capital expenditures, as well as maintenance and administration costs. Participating municipalities were required to proportionately pay for all of these items. There was no wording in the 1946 **Act** that went beyond giving an authority the power to determine proportionate amounts to be paid.

[71] The current legislation (as of the date of the hearing) generally resembles the 1946 **Act**. Conservation authorities still come into existence through the aegis of a certain number of

[11] **Conservation Authorities Act**, 1946.

municipalities within a watershed. As well, participating municipalities within a particular watershed are still obligated to financially support the work of a conservation authority, including its maintenance and administration costs. Authority members are appointed by a municipal council. One can describe both versions as enabling pieces of legislation designed to facilitate the establishment of conservation authorities by a group of like-minded municipalities.

Maintenance and Administration Costs

[72] Prior to 1996 and the **Savings and Restructuring Act**, (frequently referred to as the Red Tape Bill), maintenance and administration costs were levied against municipalities with no opportunity for appeal. Maintenance costs (a defined term connected to "project", another defined term connected to the furtherance of an authority's objects), were apportioned according to the benefit derived by each municipality.

[73] The treatment of administration costs was slightly more complicated and involved referring to something called "equalized assessment" – a defined term as well. Reference can be made to the **Act** as it was in 1990 for exact wording. [12]

[74] These costs were levied against municipalities without them being given the opportunity to appeal. In 1996, with the **Savings and Restructuring Act**, all that changed to allow for the appeal of a levy to the Mining and Lands Commissioner. [13] This legislation also opened the door to the creation of a regulation that would set out the process for determining the levy payable for either administration or maintenance costs. In 1997, further amendments to Section 27 did away with the use of "equalized assessment" in the apportionment of administration costs. Both sets of costs would be determined "subject to" an impending regulation.

[75] Ontario Regulation 670/00 ("Regulation 670/00"), which came into effect on December 19, 2000, is at the heart of this matter and it contains two options for the determination of the levy payable to the authority for maintenance costs. The apportionment of costs is arrived at either by agreement or through use of a set formula. The apportionment of administration costs is calculated only through use of the formula. Prior to enactment of this regulation, an imposed formula was not in existence.

The Current Law

Conservation Authorities Act, R.S.O. 1990, C. 27, as amended

[76] The sections of the **Act** that are relevant to this matter are set out below. Regulation 670/00 follows.

[77] Section 27 which is entitled "Maintenance and administration costs" states as follows:

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[12] **Conservation Authorities Act**, R.S.O. 1990, C. c. 27, s. 27
[13] **Savings and Restructuring Act**, S.O. 1996, Sched. M, s. 47(4)

Maintenance and administration costs

27 (1) Repealed: 1997, c. 29, s. 54 (1).

Apportionment of maintenance costs

(2) Subject to the regulations made under subsection (16), after determining the approximate maintenance costs for the succeeding year, the authority shall apportion the costs to the participating municipalities according to the benefit derived or to be derived by each municipality, and the amount apportioned to each such municipality shall be levied against the municipality. R.S.O. 1990, c. C.27, s. 27 (2); 1996, c. 1, Sched. M, s. 47 (1).

Apportionment of administration costs

(3) Subject to the regulations made under subsection (16), after determining the approximate administration costs for the succeeding year, the authority shall apportion the costs to the participating municipalities and the amount apportioned to each such municipality shall be levied against the municipality. 1997, c. 29, s. 54 (2).

Minimum levy for administration costs

(4) Subject to the regulations made under subsection (16), an authority may establish a minimum sum that may be levied for administration costs by the authority against a participating municipality, and, where the amount apportioned to any municipality under subsection (3) is less than the minimum sum, the authority may levy the minimum sum against the municipality. R.S.O. 1990, c. C.27, s. 27 (4); 1996, c. 1, Sched. M, s. 47 (3).

Notice of apportionment

(5) The secretary-treasurer of the authority, forthwith after the amounts have been apportioned under subsections (2), (3) and (4), shall certify to the clerk of each participating municipality the total amount that has been levied under those subsections, and the amount shall be collected by the municipality in the same manner as municipal taxes for general purposes. R.S.O. 1990, c. C.27, s. 27 (5).

Levy where only part of municipality in area

(6) Where only a part of a participating municipality is situated in the area over which the authority has jurisdiction, the amount apportioned to that municipality may be charged only against the rateable property in that part of the municipality and shall be collected in the same manner as municipal taxes for general purposes. R.S.O. 1990, c. C.27, s. 27 (6).

Enforcement of payment

(7) An authority may enforce payment against any participating municipality of any portion of the maintenance costs or administration costs levied against the municipality as a debt due by the municipality to the authority. R.S.O. 1990, c. C.27, s. 27 (7).

Appeal

(8) A municipality against which a levy is made under this section may appeal the levy to the Mining and Lands Commissioner appointed under the Ministry of Natural Resources Act. 1996, c. 1, Sched. M, s. 47 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 27 (8) of the Act is amended by striking out "Mining and Lands Commissioner appointed" and substituting "Mining and Lands Tribunal continued". (See: 2017, c. 8, Sched. 17, s. 5 (1))

Time for appeal

(9) The appeal must be commenced within 30 days after the municipality receives notice of the levy from the authority. 1996, c. 1, Sched. M, s. 47 (4).

Parties

(10) The parties to the appeal are the municipality, the authority and any other person added as a party by the Commissioner. 1996, c. 1, Sched. M, s. 47 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 27 (10) of the Act is amended by striking out "Commissioner" and substituting "Tribunal". (See: 2017, c. 8, Sched. 17, s. 5 (2))

Compliance pending determination

(11) The municipality shall comply with the levy pending the determination of the appeal. 1996, c. 1, Sched. M, s. 47 (4).

Matters to be considered at hearing

(12) The Commissioner shall hold a hearing on the appeal and shall consider,

(a) whether the levy complies with this section and the regulations made under subsection (16); and

(b) whether the levy is otherwise appropriate. 1996, c. 1, Sched. M, s. 47 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 27 (12) of the Act is amended by striking out "Commissioner" and substituting "Tribunal". (See: 2017, c. 8, Sched. 17, s. 5 (2))

Powers of Commissioner

(13) The Commissioner may, by order, confirm, rescind or vary the amount of the levy and may order the authority or the municipality to pay any amount owing as a result. 1996, c. 1, Sched. M, s. 47 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 27 (13) of the Act is amended by striking out "Commissioner" and substituting "Tribunal". (See: 2017, c. 8, Sched. 17, s. 5 (2))

No appeal

(14) No appeal lies from the decision of the Commissioner. 1996, c. 1, Sched. M, s. 47 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 27 (14) of the Act is amended by striking out "Commissioner" and substituting "Tribunal". (See: 2017, c. 8, Sched. 17, s. 5 (2))

When subss. (8-14) begin to apply

(15) Subsections (8) to (14) do not apply until the first regulation made under subsection (16) comes into force. 1996, c. 1, Sched. M, s. 47 (4).

Regulations re levies

(16) The Lieutenant Governor in Council may make regulations governing the nature and amount of the levies made by authorities under this section, including regulations that restrict or prohibit the making of levies described in the regulations. 1996, c. 1, Sched. M, s. 47 (4)

[78] In addition to the above sections, the **Act** contains a section dealing with the effects of amalgamation. Section 13 is entitled "Participating municipalities following annexation, etc." and states as follows:

13. 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.

[79] The **Act** does not contain a definition for the word "agreement" although the word is used in various sections including subsection 14(2.1) dealing with the appointment of members and where it is found in the phrase *"may be determined by an agreement that is confirmed by resolutions passed by the councils of all the participating municipalities."*

[80] The **Act** allows for an authority to enter into agreements for various things and includes agreements with councils and local boards. An authority can make regulations empowering officers to sign agreements (subsection 30 (1) (a)) and so on.

[81] The **Regulation** contains the word “agreement” in section 2 (see below).

Ontario Regulation 670/00

[82] The **Regulation** is entitled “Conservation Authority Levies”. It reads as follows:

This Regulation is made in English only.

1. *In this Regulation,*

“current value assessment” means the current value assessment of land, determined under the provisions of the Assessment Act, for a given year;

“property class” means a class of real property prescribed under the Assessment Act. O. Reg. 670/00, s. 1.

2. *(1) In determining the levy payable by a participating municipality to an authority for maintenance costs pursuant to subsection 27 (2) of the Act, the authority shall apportion such costs to the participating municipalities on the basis of the benefit derived or to be derived by each participating municipality determined,*

(a) by agreement among the authority and the participating municipalities; or

(b) by calculating the ratio that each participating municipality’s modified assessment bears to the total authority’s modified assessment. O. Reg. 670/00, s. 2 (1).

(2) In determining the levy payable by a participating municipality to an authority for administration costs pursuant to subsection 27 (3) of the Act, the authority shall apportion such costs to the participating municipalities on the basis of the ratio that each participating municipality’s modified assessment bears to the total authority’s modified assessment. O. Reg. 670/00, s. 2 (2).

3. *The following rules apply for the purposes of section 2:*

1. The modified current value assessment is calculated by adding the current value assessments of all lands within a municipality all or part of which are within an authority’s jurisdiction and by applying the following factors to the current value assessment of the land in the following property classes:

Property Class	*Factor*
Residential/Farm	*1*
Multi-Residential	*2.1*
Commercial	*2.1*

Industrial	*2.1*
Farmlands	*0.25*
Pipe Lines	*1.7*
Managed Forests	*0.25*
New Multi-Residential	*2.1*
Office Building	*2.1*
Shopping Centre	*2.1*
Parking Lots and Vacant Land	*2.1*
Large Industrial	*2.1*

2. A participating municipality's modified assessment is the assessment calculated by dividing the area of the participating municipality within the authority's jurisdiction by its total area and multiplying that ratio by the modified current value assessment for that participating municipality.

3. The total authority's modified assessment is calculated by adding the sum of all of the participating municipalities' modified assessments for that authority. O. Reg. 670/00, s. 3.

4. An authority may establish a minimum sum that may be levied against a participating municipality within the authority's jurisdiction. O. Reg. 670/00, s. 4.

[83] The **Act**, through the phrase found in section 27 ("subject to the regulations made under subsection (16)"), sets the stage for the application of Regulation 670/00. Where **maintenance costs** are concerned, apportionment can be "by agreement among the authority and the participating municipalities". Where no agreement is in place it is calculated using the formula set out in the regulation. This is set out in section 2 of the Regulation. The parties to such an agreement in this matter must be the City of Hamilton, the Region of Niagara, Haldimand County and the NPCA.

[84] The formula (sometimes referred to as the "default formula" meaning where no agreement existed, then by default the formula applies), requires that there be a calculation of the ratio that each participating municipality's modified assessment bears to the total authority's modified assessment. The Regulation has rules that apply to Section 2. One of these (#1) says that *"[t]he modified current value assessment is calculated by adding* ***the current value assessments of all lands within a municipality all or part of which are within an authority's jurisdiction*** *and by applying"* a set of factors set out in the Regulation. (Emphasis added)

[85] The emphasized phrase has led to disagreement in terms of its meaning and impact. A municipality's modified assessment is calculated by dividing the area of the municipality within the authority's jurisdiction by the municipality's total area – giving one a ratio that was then multiplied by the modified current value assessment for the municipality.

[86] The Region, Haldimand and the NPCA all argue that the entire assessment base of a municipality is used in the calculations set out in the formula. In terms of pre-regulation history, the City's witness, Mr. Burt, made reference to "equalized assessment" – which in effect was a calculation that took a municipality's entire assessment base into consideration prior to enactment of the Regulation. Those municipalities with areas containing higher assessment values (e.g., urban cores) ended up paying more for conservation authority services than those having lower assessment values within their boundaries (e.g., rural municipalities). (One of the results of amalgamation in 2001, was that the old City of Hamilton's urban core (which was not in the NPCA jurisdiction) became part of the new larger City of Hamilton. Because amalgamation joined the old City of Hamilton to municipalities already within the NPCA jurisdiction, then by application of rule #1 in the Regulation, the urban core was drawn into the calculation set out in the formula).

[87] In my view, the use of a municipality's entire assessment base in the calculation has not changed through the enactment of Regulation 670/00. Indeed, the notion of taking a municipality's entire assessment value as the starting point in the calculation appears to have been the rule for many years. Research on my part uncovered a decision of the Ontario Municipal Board dating back to 1997. The case of *London (City) v. Kettle Creek Conservation Authority*, [1997] O.M.B.D. No. 103, came about after the 1992 annexation by the City of London of the former Township of Westminster. Although it dates pre-Regulation 670/00, it is enough on point to invite consideration of its issues, one of which was described as "the application of the averaging method vs. the actual area assessment". The case centered on a challenge by the City of London of the formula used to generate the annual apportionment. As the Board noted, the City's position was that with use of the averaging method, "… the charges are deemed to constitute a financial burden to the City of London."

[88] As in the matter before me, counsel for the City of London tried to argue that subsection 27(6) of the **Act** meant that taking into account the entire assessment area was contrary to the **Act**. Taking into account the actual area within the Kettle Creek jurisdiction would have produced a much lower value. A Ministry official testified that the averaging method had been Ministry policy for 20-30 years. It was standard practice. As the Board noted, "*[t]he Ministry prefers to use the averaging method because the adoption of the actual assessment would mean an examination and calculation of millions of actual assessments that would be costly, time consuming and would have financial impact and result in substantial changes throughout the Province*." [14] The Board further noted that according to the official, "*[t]he averaging system…results in establishing levies and fees that are reasonable and represent a fair allocation of expenses."*

[89] The Board found that *"[t]he averaging method used by the Province constitutes a fair and reasonable way of apportionment as it takes into account the municipality's resources through the assessment process and does not discriminate into apportionments by specific areas of the City."* And, *"… the increase in the apportionment results in greater benefits provided by the*

[14] The averaging method was prescribed year by year at the time through a regulation made under the Municipal Act – the Board finding that the wording of section 366.192) of the **Municipal Act**, regulations passed under that Act took precedence over the Conservation Authorities Act and its subsection 27(6).

Conservation Authority to the residents of London not to mention of the potential benefits that may be gained from lands transferred as the results of the annexation." [15]

[90] With respect then to the question as to whether an entire assessment base is used in the calculation set out in regulation 670/00, I find that it is to be used.

[91] With respect to subsection 27(6) of the **Conservation Authorities Act** the City of Hamilton claims (as the City of London did prior to 2000) that it should be interpreted to mean that only those lands within the watershed boundary are to be included in the apportionment calculation.

[92] The City submits that the Regulation should be interpreted to comply with this and if it is not, then the Regulation is in conflict with the **Act** and should be ignored.

[93] I cannot agree with the City that subsection 27(6) works in the way suggested. I do accept the argument made by the Region (and admitted by one of the City witnesses), that subsection 27(6) should be read as allowing a municipality having part of its lands located within the boundary of an authority to charge the apportionment amount against those lands only. Authorities do not have the power to charge against rateable properties to defray their expenses. Under the act, they must look to their municipalities for this. This is the only sensible interpretation of this section. It is directed at a municipality allowing it to collect monies to defray the costs of special services such as conservation authority levies.

[94] Another sticking point for the parties was the word "agreement" in the Regulation and the fact that it is not preceded by the word "an". The City took this to mean that a written agreement was not required, and that a binding agreement by the parties could be signified by the parties' actions in approving budgets.

[95] I do not accept the City's arguments in this regard. I place no importance on the fact that the word "an" does not precede the word "agreement". The **Conservation Authorities Act** contains a number of references to agreement-making powers and sometimes the word is preceded by "an" (subsection 14(2.1)) and sometimes not (section 22). In my view, this is grammatical and drafting style at work. I do agree with the Region's argument that municipalities are required to comply with the **Municipal Act** when it comes to entering into agreements. The region referred me to Section 5 of that **Act** as well as case law. [16] That section states:

(1) The powers of a municipality shall be exercised by its council. 2001, c. 25, s. 5 (1).

Council a continuing body

(2) Anything begun by one council may be continued and completed by a succeeding council. 2001, c. 25, s. 5 (2).

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[15] The decision pre-dates Regulation 670/00. The appeal by the City was brought under subsection 25(2) of the **Conservation Authorities Act**, (R.S.O. 1990, c. C. 27). This was an issue in itself but is not relevant to this matter. The **Municipal Act** and its regulations played a role in the case as well. Again, the case provides historical information and shines a light on the reason for using a municipality's entire assessment area in the calculation of apportionment values and the like.

[16] Adams Pizzeria (Prescott) Ltd. v. Prescott (Town), 2017 ONSC 3034.

Powers exercised by by-law

(3) A municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise. 2001, c. 25, s. 5 (3); 2006, c. 32, Sched. A, s. 5.

Scope

(4) Subsections (1) to (3) apply to all municipal powers, whether conferred by this Act or otherwise. 2001, c. 25, s. 5 (4).

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[96] For the sake of historical accuracy, the **Municipal Act** in 2000/2001 (R.S.O. 1990, c. M. 45) dealt with the exercise of municipal powers in Section 9. That Act was repealed in 2003.

Council to exercise corporate powers

9.The powers of a municipal corporation shall be exercised by its council. R.S.O. 1990, c. M.45, s. 9.

[97] In my view the legislators would have expected that any agreement entered into by a municipality for the purposes of Section 2 of Regulation 670/00 would be properly authorized by council acting in accordance with the **Municipal Act**. The **Conservation Authorities Act** for example (and in simple terms), in Section 22 ("enter into agreement") states that an authority and municipality can join forces and agree to carry out construction work. It leaves it to the parties to ensure that they enter into agreement in accordance with the legislation that empowers their actions. A municipality must work with council approval and an authority with board approval.

[98] The City argued that council member votes on budget items could bind council if those members were also members on an authority's board. In my view this argument has no merit. I agree with the Region that council approval of authority budgets is simply that. Council members are simply approving payment of an authority's "bill" just as they do with their other agencies. Board members who also sit on council wear two hats – one for authority work and one for council work. The work is separate and apart and no osmosis occurs. In addition, this argument fails to recognize the requirements of the **Municipal Act** described above.

[99] Having already found above that any agreement in the **Act** and Regulation must be duly approved by council, then I would also agree with the respondents that one should be able to refer to an actual document signifying council's having been apprised of the rights and obligations associated with such an agreement. I would have expected officials for affected councils and board officials to present a report (either combined of separately) to affected councils setting out the wording of the Regulation; explaining the reasons why the City of Hamilton was asking for a particular apportionment rate; the basis for that rate; explaining how a discounted rate would affect the rates imposed on the other municipalities in the authority's jurisdiction (as one or both of them might have to make up any shortfall), and asking for approval to proceed. Budget items dealing with the authority's budget would then be approved on the basis of such an agreement. If circumstances changed (as they did for the 2004 authority budget), then either a new agreement or an amendment of the old one would occur – again, with council approval.

[100] The **Act** also requires that the Mining and lands Commissioner consider whether the levy complies with Section 27 and the regulations made thereunder – in this case, Regulation 670/00. Compliance, in my view, means meeting the requirements of Regulation 670/00 as any apportionment of costs is subject to the regulation. The authority must determine if an agreement is in place which sets out the apportionment rate. If not, then, the authority must apply the regulation's formula – which makes use of a municipality's entire assessment value in the calculation.

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[101] Finally, the Commissioner must also consider whether the levy is appropriate – meaning is the levy suitable or proper in the circumstances. In this case, the circumstances are that amalgamation took place in 2001 adding the assessment value of the old City of Hamilton and its urban core to the formula in the Regulation. The City says this is wrong as it does not make use of what the City calls the "best information". The City says the best information should be used (i.e., an updated City "GIS mapping exercise that calculated the properties located in the watershed based on available 2014 MPAC data information in a manner similar to the geo-referencing of properties exercise done in the 2002 Pilot Study." The Region pointed out that this approach was the subject of a request to the MNR in 2000 and that it was rejected. To employ the City's approach would be tantamount to re-writing the Regulation. The NPCA made the same argument as the Region. I agree with the Region's argument that the City's approach amounts to re-writing the Regulation.

Consideration of the Evidence and the Parties' Positions With Respect to the Issues

1. *With respect to the 2015 levy payable by the City of Hamilton for **maintenance** costs, is there agreement regarding apportionment values among the NPCA and the participating municipalities as required in Subsection 2 (1) (a) of Ontario Regulation 670/00*? *Specifically, did the City, the Region, Haldimand and the NPCA through their councils and board respectively agree to apportionment values for 2015 that effectively removed the City's urban core from the calculation – thereby granting the City a discount in terms of apportionment values?*

[102] The answer to the general and specific questions is "no". There never has been an agreement (authorized at the appropriate level) amongst the NPCA, the City, the Region and Haldimand County to grant the City the fiscal reprieve it wanted in 2000; there is no "rolling" agreement as a result, and there is no agreement specifically dealing with the 2015 levy.

[103] Looking at the evidence, there are no council resolutions or any form of municipal authorization to consider. There is nothing to rely on to show that the NPCA and its three participating municipalities formed a common bond dealing with apportionment values. The City referred to two charts through its witness Mr. Zegarac. The charts contain apportionment figures provided by the MNR to the City. One chart refers to a percentage that would apply – had there been an agreement. The second chart reflects a percentage calculated through use of the Regulation's formula. They are simply charts depicting a particular set of data. They do not constitute an agreement pursuant to the Regulation.

[104] In addition, the budget approval process at the municipal level for Niagara and Haldimand was just that. It signified nothing more than each municipality's approval to pay a "bill" submitted by the conservation authority. I am of the view that collective minds at the authority level did not recognize the need for an agreement properly authorized or endorsed by all three participating municipalities. As surprising as it was to hear that the witnesses did not read the **Act** and the Regulation (or pay much attention to either) at least until recently, that seems to have been what happened. I took from his responses to cross-examination questions that Mr. Burt relied on his belief that staff's approach was "fair and equitable" and that they had the support of the ministry. It must have felt like it was the right thing to do at the time. The result was that, as Mr. Burt admitted, there was only agreement at staff level – another reason why there is nothing to show at council level. There does not seem to have been an attempt made at any time to review what was taking place to confirm that it met the requirements of the legislation.

2. *Given that there is no agreement among the NPCA and the participating municipalities regarding the apportionment of maintenance costs, does the 2015 levy comply with Section 27 of the* ***Conservation Authorities Act*** *and Regulation 670/00?*

[105] In my view, the levy for 2015 does comply with the **Act** and Regulation 670/00. The NPCA as well as the Region and Haldimand searched for an agreement on apportionment values and found none. The formula must be applied unless the NPCA and its participating municipalities can agree on using an alternative formula. I cannot agree with and find no support for the City's interpretation of the wording in rule #1 of Section 3 that the lands located outside the NPCA's jurisdiction are to be excluded from the calculation. The whole basis of Section 3 is to set up a step-by-step calculation that starts with the entire municipal assessment value. There is no room in the wording of the regulation to formulate another mathematical calculation. Counsel for the Region pointed out that even Mr. Burt (for the City) acknowledged that the wording has been interpreted as using a municipality's entire assessment value as a starting point.

[106] The City has the power under subsection 27(6) to narrow the charge to only those ratepayers located within the authority's boundaries or jurisdiction. As the City witness Mr. Zegarac admitted in cross-examination the City chooses to spread the cost and not narrow it down. Mr. Zegarac also agreed with the Region's counsel that the manner in which the apportionment had been calculated was accurate and that he had no issue with it – or the interpretation of section 2(b). The City's alternative calculation (using lands within the NPCA's jurisdiction) does not comply with the Regulation.

[107] I find that the levy payable for maintenance costs does comply with the **Act** and Regulation 670/00.

3. With respect to the 2015 levy payable by the City of Hamilton for ***administration*** *costs, has it been calculated in accordance with subsection 2 (2) of Ontario Regulation 670/00*?

[108] The rules set out in Section 3 of the Regulation apply to the determination of the levy payable for administration costs. In light of what I have set out above dealing with the interpretation of rule #1 in subsection 3 of the regulation, the answer to this question is that the levy has been calculated in accordance with subsection 2(2) of the regulation.

4. Is the levy for 2015 "otherwise appropriate"?

[109] The word "appropriate" means suitable or proper in the circumstances. There is no argument with respect to the meaning. The City though has tried to persuade me to accept that the levy is not appropriate in the circumstances unless the formula used to determine it uses more refined information dealing with only those lands located within the NPCA jurisdiction. As I set out above, this is wrong in that it would require that I ignore the Regulation and instead apply different criteria. The Regulation speaks for itself. I have no authority to exempt the City from its requirements and certainly no authority to grant the City the ability to use what would amount to its own formula. Again, the Regulation's formula can only be avoided through the aegis of the appropriate agreement.

Costs

[110] I indicated to the parties that I would consider the issue of costs at the end of the hearing.

[111] I have come to the conclusion that no costs are warranted in this case. As Part VI of the **Mining Act** (with its sections on costs) has not been referenced in the **Conservation Authorities Act**, I am confined to considering the issue of costs pursuant to Section 17.1 of the **Statutory Powers Procedure Act**. That Section reads in part:

17.1 (1) Subject to subsection (2), a tribunal may, in the circumstances set out in rules made under subsection (4), order a party to pay all or part of another party's costs in a proceeding. 2006, c. 19, Sched. B, s. 21 (2).

Exception

(2) A tribunal shall not make an order to pay costs under this section unless,

(a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and

(b) the tribunal has made rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

[112] In my view, the conduct of the City of Hamilton in this matter has not been unreasonable, frivolous or vexatious. Nor has it acted in bad faith.

[113] The problems associated with this matter began some time ago. Prior to the enactment of the Regulation in December 2000, the City had the support of its four conservation authorities (including the NPCA) in having its apportionment rate maintained at a certain level. This approach to the City's situation did not change and in fact was used as a template for apportionment calculations that were pertinent to the NPCA and its participating municipalities. Time passed and the fact that an agreement regarding apportionment rates was needed pursuant to the Regulation was never questioned by anyone until sometime in 2014. I am not prepared to criticize the City for objecting as it did to the increased levy amount. This was a reasonable reaction. There was nothing frivolous or vexatious in the City's attempt to restore what it honestly believed to be a valid state of affairs.