



May 23, 2017

Re: Gilmor v. Nottawasaga Valley Conservation Authority

To: CA General Managers

The Court of Appeal for Ontario released its decision today on the Gilmor case. In its unanimous decision, the appeal was allowed and the court reinstated the Commissioner's decision. It was a very strong ruling which set aside the Divisional court decision in its entirety.

In its reasons for the decision, the court noted that the *Conservation Authorities Act* (and associated regulations) may be regarded as one of the Commissioner's several "home acts"; that the Commissioner's interpretation of O. Reg. 172/06 (the NVCA's individual regulation) is reasonable and that it accords with the plain meaning of the relevant sections.

The decision further delved into a discussion about the CA role in public safety. It states that "the suggestion that CAs (and the Commissioner) are usurping municipalities' decision-making authority concerning public safety must be rejected".

Finally, with regard to the relationship between S. 2 and S. 3 of the Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses the court ruling indicated that the "Divisional Court's interpretation – that s. 3 is a condition precedent to the operation of the prohibition in s. 2 – is counterintuitive given the structure of the regulation. Moreover, it appears to overlook O. Reg. 97/04, which specifically requires the NVCA regulation to prohibit development". Further, discretion under S. 3 of the regulation may be exercised on the basis of safety concerns and CO's submission that the Commissioner's decision was consistent with the approach overwhelmingly applied by that Tribunal in similar cases, as well as the approach shared by conservation authorities across the province supports this. In summary, "it was open to the Commissioner to take safety considerations into account in determining whether to exercise the discretion under S. 3 to permit development on the floodplain. The prohibition on development in s. 2 of the regulation – common to the regulations of conservation authorities across the province – reflects a strategy of directing development away from floodplains".