

The Corporation of the Township of Innisfil
Appellant;

and

The Corporation of the Township of Vespra, the Corporation of the Township of Oro, the Corporation of the County of Simcoe, and the Corporation of the City of Barrie

Respondents;

and

South Simcoe Estates, Seven Acorns Investments Ltd., Heritage Glen North and Heritage Glen West, and Paramount Development Corporation (*Respondents added by Order of the Divisional Court*).

1980: June 10; 1981: May 28.

Present: Laskin C.J. and Martland, Ritchie, Dickson, Beetz, Estey and Lamer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Courts — Independent tribunal — Municipal annexation hearing — Letter indicating government policy filed — Cross-examination on letter denied and evidence and argument on issue limited — Whether or not Board erred in denying opportunity to cross-examine government representative — Whether or not Board erred in limiting scope of evidence and argument on issue — Whether or not Board denied natural justice by allegedly relying on previous annexation hearing — The Municipal Act, R.S.O. 1970, c. 284, s. 14 — The Ontario Municipal Board Act, R.S.O. 1970, c. 323, ss. 94, 95(3) — The Statutory Powers Procedure Act, 1971 (Ont.), c. 47, ss. 3, 10, 15, 16, 23 — The Judicature Act, R.S.O. 1970, c. 228, s. 17 — The Ministry of Treasury, Economics and Intergovernmental Affairs Act, 1972, 1972 (Ont.), c. 3, s. 4.

These proceedings began with an application by the City of Barrie to annex parts of the Townships of Innisfil, Oro and Vespra. At a hearing of the Ontario Municipal Board, the projected population of Barrie in 2011 assumed importance. While evidence was being led by Innisfil on the issue, the Minister forwarded a letter, through a departmental representative, to the Board advising it of the population allocations in a planning

La municipalité du canton d'Innisfil
Appelante;

branch to give binding policy directions to an administrative tribunal and to make such directions immune from cross-examination. Even though the role assigned the Board in the legislation as drafted could entail some conflict between the administrative result and certain government policies, the remedy did not lie in the Board and Court denying the citizen his statutory right to oppose annexation.

The Court did not err in failing to hold that the Board's reliance on the evidence from a previous annexation hearing was a denial of natural justice. The Board did not base its decision relating to the "vacancy factor" upon the recollection of a past decision but rather on the bases of general principles which it had accepted in previous cases and on the evidence which had been presented to it. Its previous experience in Barrie was not used as a compelling precedent but only as an example.

Conway v. Rimmer, [1968] A.C. 910; *Broome v. Broome*, [1955] P. 190; *Cooper v. Wandsworth Board of Works* (1863), 14 C.B. (n.s.) 180; *The Board of Education v. Rice*, [1911] A.C. 179; *Wilson v. Esquimalt and Nanaimo Railway Company*, [1922] A.C. 202; *B. Johnson & Co. (Builders), Ltd. v. Minister of Health*, [1947] 2 All E.R. 395; *Ridge v. Baldwin*, [1964] A.C. 40; *Re H.K.*, [1967] 2 Q.B. 617; *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311; *R. v. Gaming Board for Great Britain, Ex parte Benaim and Khaida*, [1970] 2 Q.B. 417; *Wiseman v. Borneman*, [1971] A.C. 297, referred to.

APPEAL from a decision of the Court of Appeal for Ontario¹, allowing an appeal from a judgment of the Divisional Court certifying its opinion to the Ontario Municipal Board that that Board had denied natural justice and thereby acted beyond its jurisdiction. Appeal allowed.

John Sopinka, Q.C., and *Robert Rueter*, for the appellant.

J. S. Stewart, Q.C., for the respondent Paramount Development Corporation.

Blenus Wright, Q.C., and *Elizabeth Goldberg*, for the intervener the Attorney General of Ontario.

The judgment of the Court was delivered by

ESTEY J.—These proceedings began with an application by the respondent, the Corporation of the City of Barrie (“Barrie”), to annex parts of the appellant Corporation of the Township of Innisfil (“Innisfil”) and the respondent Corporations of the Townships of Oro and Vespra pursuant to *The Municipal Act*, R.S.O. 1970, c. 284, s. 14. The respondent Corporation of the County of Simcoe (“the County”) opposed this application along with the Townships already mentioned. The other respondents are landowners and developers in the area affected by the application and were joined as respondents in the Divisional Court on the hearing of the appeal from The Ontario Municipal Board (“the Board”).

The Attorney General of Ontario intervened in both the Court of Appeal and this Court. While some twenty-two parties were represented by over thirty counsel before the Board, in this Court the protagonists were reduced to five, being Innisfil, Barrie, the Attorney General of Ontario, South Simcoe Estates and Paramount Development Corporation. The latter two respondents, by notices to vary, sought in effect to cross-appeal from the decision of the Court of Appeal.

The fulcrum of the debate on the annexation application turned out to be the forecast of the population in the region in question in the year 20

leading of evidence or by cross-examination. This second Divisional Court judgment is reported at (1978), 7 O.M.B.R. 233.

The Court of Appeal granted leave to appeal to Barrie and by a majority reversed the Divisional Court on both issues (at (1978), 95 D.L.R. (3d) 298). Blair J.A. dissented with respect to the Board's refusal to permit cross-examination on the government policy statements regarding population estimates. The whole Court agreed, though, that the Board had committed an error of law, albeit within its jurisdiction, by refusing to hear evidence on the issue of a forecast population before giving the Minister's letter preponderant weight.

Lacourcière J.A., writing for the majority, concluded that on the first portion of the first question put on the appeal from the Board, the refusal to permit cross-examination on the Minister's letter, and specifically on the government policy in the forecast population for the Barrie area, was not an error of law and "did not amount to a denial of a full hearing under s. 14 . . ." This refers to the statutory directive to the Board in annexation proceedings found in s. 14 of *The Municipal Act*, *supra*, the principal ground for this conclusion, at p. 311, was that:

[T]he Board's ultimate decision has an administrative—almost a legislative—component, wherein the Board has to weigh the merits of the application, after considering all the relevant facts proven in the light of the objections presented and bearing in mind not only the local area but the general public interest, that of the population of the entire Province. That aspect of the decision is administrative in nature and is guided by the Board's broad view of the policy which it must implement.

Any difficulty as to secret or confidential government information being prejudiced by the cross-examination of the departmental representative could be disposed of by the Board within the ordinary principles of the law of evidence.

The second portion of the first issue concerned the refusal of the Board to permit the opponents of the annexation plan to call evidence concerning the statements of government policy contained in the letter. In concluding that such a rejection by the Board was an error, Lacourcière J.A. stated at p. 313:

The evidence tendered by counsel for the objectors in the present case was directed to proving that there were conflicting Government policies to be considered and that, in any event, implementation of the population policy was not possible. While counsel for the objectors would face a formidable task in proving that implementation of the population policy was impossible, having regard to the Government's stated intention to induce growth, I do not think that he should have been denied an opportunity to attempt it.

In doing so, the Court of Appeal (on this issue unanimously) followed the majority of the Divisional Court, although it noted at p. 306 that on a statutory appeal under s. 95(3) of *The Ontario Municipal Board Act*, R.S.O. 1970, c. 323, the Divisional Court could only "certify its opinion", and not purport to declare the Board's proceedings a nullity.

On the second issue, which arises from the submission that the Board in its order determined the amount of land to be annexed to Barrie without having any evidence before it on the question, the Court of Appeal unanimously reached the same conclusion [at p. 314] as did the dissent by Craig J. in the Division

