

## **EXHIBIT B**

### **to the Application of Alex Rheault for Leave to Appeal to the Environmental Rights Tribunal**

**ERO Number 013-4986; Ministry Reference Number 6643-B9MM8A**

#### **History of Interactions with the Ministry of the Environment, Conservation and Parks**

The Minaki on the River ("MOTR") developers acquired the Minaki Lodge site in 2010. They elected to use the former Lodge sewage treatment plant to serve their proposed condominium development, and began work with the Ministry on permitting the plant for use. In June, 2012, the Ministry approved an assignment to MOTR of the plant treatment permits originally issued in 1986 and 1988 to Four Seasons. The permits were converted to environmental compliance approval format, but the terms did not change except that the Ministry added (i) a limitation to seasonal use of the site, (ii) a phosphorus treatment target, and (iii) an e coli treatment target. The limitations on use of the serviced site, tailored to Minaki Lodge, did not change.

The Ministry did not post the assignment of the permit on the Environmental Registry. The group of year-round residents of Minaki, already cooperating with The Minaki Conservancy (then known as the Minaki Cottagers Association) in raising concerns associated with the proposed development, learned of the assignment and retrieved a copy of the permit in the fall of 2012. We teamed up to engage the R.J. Burnside & Associates in Mississauga to assist us in evaluating the permit's terms.

We learned that with the assignment, the Ministry had in effect taken a page from its regulatory approach in 1988 and applied it in 2012. That straight conversion had created a series of serious problems:

- as was typical in 1988, the permit held mere targets for all regulated components of the effluent; there was no consequence for failure to meet them
- Burnside told us that the Ministry had moved ten years earlier to enforceable limits for effluent components

- a phosphorus target had been added, but the Ministry had not realized that the plant contained no phosphorus removal equipment
  - we knew from Ministry records obtained pursuant to a Freedom of Information Act request that the plant in operation would exceed the phosphorus target by four to six times
- since it handled the permitting of the plant as an assignment, the Ministry omitted a requirement for baseline water quality studies on the Winnipeg River, the direct receiver of all the effluent from the plant
  - Burnside told us that those baseline studies were required for new permits
- Burnside calculated that the sewage flow from the condominium development that would actually occur on the site would exceed the plant's capacity by a significant margin
  - this issue has been rendered moot by the residents' and the Conservancy's work under the Planning Act, as described below.

Since there had been no opportunity for public comment through a posting on the Environmental Registry, we had a written exchange with Ministry staff that was not productive. The Conservancy then wrote directly to the Minister, in September, 2013. A copy of that letter is attached.

In February, 2014, the Ministry posted to the Environmental Registry a proposed amendment to the permit, requiring the addition of phosphorus treatment equipment to the plant. This was good news, as one of the issues with the permit was to be resolved; we commented that the issues of enforceable limits and baseline studies remained. When the amended permit issued in August, we saw that the Ministry had in addition converted all mere targets to enforceable limits. A second issue was resolved. The Ministry had also changed the intended use of the serviced site to condominiums, at the level that Burnside had calculated would overrun the plant.

We did not seek leave to appeal from the August, 2014, decision, as all of the sewage treatment issues had by then been subsumed into advocacy with the Ministry of Municipal Affairs and Housing on its approval of MOTR's condominium proposal required under the Planning Act. Continuing work there

revealed that the assigned permit, even as amended in 2014, held these additional issues:

- the basic treatment in the plant is by a rotating biological contactor; additional treatment of effluent from that type of system to reduce contaminant level further was becoming more common
  - that additional treatment would be particularly important for the Minaki plant, where the effluent would discharge directly into the Winnipeg River
- given that the plant was in unorganized territory, the Ministry had not followed its own guidelines that require a responsibility agreement with some level of government and that require financial assurance pending the provision of that agreement
- special chlorine levels of treatment required by the Federal Fisheries Act were not achievable in the plant without installation of additional equipment

Municipal Affairs and Housing approved the condominium development and its servicing by the treatment plant under the Planning Act in 2016. The residents and the Conservancy appealed to the Ontario Municipal Board, which reversed the approval in 2017. MOTR appealed the Board decision, but the reversal was upheld in 2018.

MOTR announced later in 2018 that it would switch to a trailer park form of development. The issue of plant capacity no longer applied. In March of 2019, the Ministry posted a proposed amendment to the permit for trailer park use, and its decision on that amendment has given rise to this Application. That decision, however, did address the issue of chlorine treatment equipment, and did at least require some level of financial assurance.

As a result, of the many issues associated with the permit that we have tried to address with the Ministry since 2013, its last decision leaves wholly unresolved just the two that are covered by this Application -- update baseline studies and additional treatment of effluent.