

11. **Do not wait until the Council has made a decision** to approve or refuse the application. If you know the applicant will be appealing, if Council refuses, then start preparing for an OMB hearing sooner rather than later. Assemble your information.
12. You may not be able to afford an expert to do a study but *you may be able to afford to have an expert review the other expert's study* (if you can lay your hands on it) and to advise you if there are problems with its facts or assumptions.
13. **Remember if experts were the end all and be all, then there would be no need for a hearing.**
14. You may be able to make points, and in unusual circumstances you may win or at least win key changes in the proposal; but you must decide what your best case is. Long hearings cost more money. Pick your key points, provide proof in support of your position, and do not work on the assumption that the more issues you raise, the better your odds are. By concentrating on the key issues and dropping ones you cannot win, you will shorten the hearing and reduce your costs and the risk of having costs awarded against you.
15. **You are better to concentrate on the key weak points in the applicant's case which you on your own or your consultants have identified, and build your case around those.**
16. **Preparation, preparation and more preparation** must be your modus operandi. You need to prepare tables, photo boards and charts to illustrate your position. Have several copies for the OMB and the other parties (or their lawyers/agents). [You need to keep your rough data (e.g. Traffic counts, etc.) in case you are asked to produce it.] Practice what you want to intend to say. Keep it crisp and on the point you want to make. Preferably the tasks should be split among several speakers, who each can touch on a key point or key aspect of each key point while adopting the points of other speakers and confirming their own reasons for objecting. The greater effort in preparation you make, the more the OMB is likely to listen, although there is no guarantee.

LIST OF CASES

Re City of Mississauga Official Plan Amendment 174 and Zoning By-laws 695-90 and 696-90 (No. 1) (1991) 27 O. M. B. R. 110 – anecdotal accounts of traffic delays was countered by expert evidence to show that the developments would not be the cause of the problems – and on other matters the residents did not seek documents or witnesses to support their case. [note in Re City of Mississauga OPA 174 and Zoning By-laws 695-90 and 696-90 (No. 2) (1991) 27 O. M. B. R. 113 refused costs but gave warning that the Board might do so under similar circumstances in the future.]

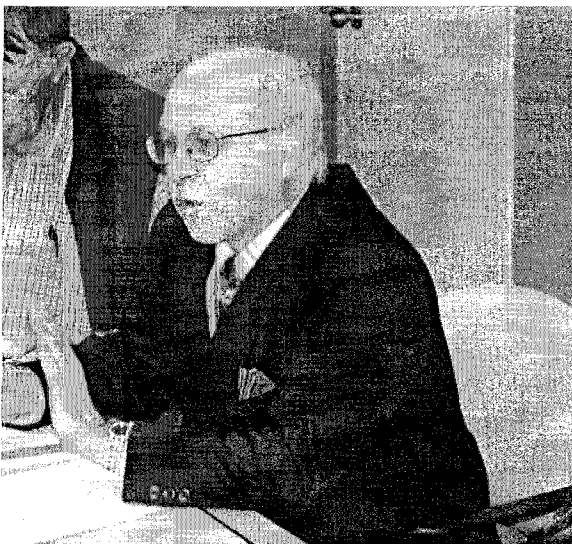
Re Sorokolit et al. and Regional Municipality of Peel et al. (1977) 16 O. R. (2d) 607 (Divisional Court) – dealt with section 63 (then 62) of OMB Act and a zoning application. Board had approved the application subject to the payment of special lot levies. The court held the OMB did not have the power to impose such levies and sent the matter back to the OMB to reconsider it. Section 63 states that the OMB can consider financial implications of any approval. [Note: When the matter went back to the Board it refused the application on the basis it would not force the costs related to the development on the general tax base. The applicants then went back to the courts and lost.]

Tabassum et al. V. City of Toronto (2006) 55 O. M. B. R. 50 (O. M. B.) – held that one cannot be both an expert witness and an advocate. The two roles are not compatible. The responsibility of an expert is to give independent and impartial evidence. The level of independence and impartiality goes to weight.

Re 251555 Projects Ltd. and Morrison (1979) 5 O. R. (2d) 763 (Divisional Court) – confirmed there were four tests for minor variances and also held the fact that the planning staff of the local municipality has approved it is not decisive since then there would be no need for the Committee of Adjustment or the OMB.

Re McNamara Corporation Ltd. et al. and Colekin Investments Ltd. (1977) 15 O. R. (2d) 718 – found minor is not a mathematical calculation – found that proposed variance was equal to or superior to the by-law requirement

Vincent v. Degasperis (2005) 51 O. M. B. R. 1 (Div. Ct.) – reconfirmed the four tests and outlined how each test should be viewed.



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