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Ejusdem generis: Why Latin Still Matters in Statutory Interpretation

As much as Canadian lawyers embrace “modern” principles of statutory interpretation, old habits die hard. A recent decision of the Ontario Court of Appeal, *Ontario Ombudsman v. Hamilton (City)*, 2018 ONCA 502, illustrates that the Latin maxims of yesteryear still have resonance and application when interpreting legislation. In particular, *Ontario Ombudsman* breathes life into the Roman principle, *ejusdem generis*, meaning “of the same kind or nature”.

What is a “Local Board” under the Municipal Act, 2001?

Ontario Ombudsman involved the issue of whether the Ombudsman of Ontario has jurisdiction under its governing statute to investigate if the City of Hamilton’s Election Compliance Audit Committee (the “Audit Committee”) and the Property Standards Committee (the “Standards Committee”) failed to comply with an “open meeting” requirement under the *Ontario Municipal Act, 2001*, S.O. 2001, c.25.

The appeal turned on whether the Audit and Standards Committees met the definition of “local board” under section 1(1) of the *Municipal Act*.

Section 239(1) of the *Municipal Act* requires that “all meetings” shall be open to the public”, subject to certain exceptions. Any person has the power to request an investigation into whether a “municipality or local board” has complied with this public meeting requirement pursuant to section 239.1(b).

Section 14.1 of the *Ombudsman Act*, R.S.O. 1990, c.O.6 operates in conjunction with section 239.1(b) of the *Municipal Act*. The effect is that the Ombudsman is empowered to investigate complaints regarding a failure to comply with the public meeting requirement set out in section 239 of the *Municipal Act*.

In particular, the Ombudsman can investigate and report any conclusions and the reasons for the conclusions to the municipality or local board with respect to an alleged violation of the open meeting principle. However, the Ombudsman’s jurisdiction to investigate applies only to municipalities or “local boards”.



Marco P. Falco

Partner, Litigation & Written
Advocacy

PHONE

416 777 5421

EMAIL

mfalco@torkinmanes.com

Marco is a partner in the Litigation Department at Torkin Manes. He provides written advocacy for a wide range of civil disputes, including commercial litigation and administrative law. He specializes in applications for judicial review and civil appeals.

A “local board” is defined under section 1(1) of the *Municipal Act* as:

‘Local board’ means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority. [emphasis added]

At issue was whether the Audit and Standards Committee met the definition of “local board” above, such that the Ombudsperson would have the power to investigate an alleged violation of the open meeting principle under the *Municipal Act*.

The Audit Committee was created to “enforce provincially enacted laws relating to municipal election campaign funding”. The Standards Committee is an “adjudicative body”, charged with deciding disputes between individuals and municipal officers who enforce property standard bylaws.

General Wording is Restricted To Things of the Same Type

The Court of Appeal ultimately decided that neither the Audit nor the Standards Committee met the definition of a local board under the *Municipal Act*.

In reaching this conclusion, the Court applied the statutory interpretation principle, *ejusdem generis*:

“Where a class of things is modified by general wording that expands the class, the general wording is usually restricted to things of the same type as the listed items”.

Applying this maxim, the Court rejected the Ombudsperson’s argument that both committees exercise power under legislation “with respect to the affairs or purposes of one or more municipalities”, thereby meeting the definition of local boards.

Looking at the specifically-named entities under the definition of “local board”, such as the public library board and the board of health, the Court concluded that all of the entities which constituted local boards under the statute “provide services which are integral to the day-to-day operation of the business of municipalities”.

Neither the Audit Committee nor the Standards Committee provide the same type of services as a library board or board of health.

The Court held:

Applying *ejusdem generis* to the definition of “local board”, we are satisfied that the general language at the end of the definition does not include entities which cannot be said to carry on the operations of the municipality. The functions of the Audit Committee and the Standards Committee do not fall within that descriptor. They are not local boards...

On this basis, the Court concluded that the Ombudsman lacked the jurisdiction to investigate the alleged violation by the Audit and Standard Committees of the open meeting requirement.

The Value of *Ejusdem Generis*

There is good reason *ejusdem generis* has survived thousands of years of jurisprudential thought.

The concept that general language in a statutory provision is limited to the specific examples that precede it brings consistency and certainty to the exercise of statutory interpretation.

It limits the application of legislation to circumstances and contexts “of the same kind or nature”.

In this way, *esjudem generis* ensures that a statutory provision is not bent out of its conceptual shape and remains true to the Legislature’s intent.