

CITATION: Ontario Place Protectors v. His Majesty the Queen in Right of Ontario
COURT FILE NO.: CV-24-00719861-0000
DATE: 20240909

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
ONTARIO PLACE PROTECTORS)
)
) *Eric K. Gillespie, for the Applicant*
Applicant)
- and -)
)
HIS MAJESTY THE KING IN RIGHT OF)
ONTARIO and ATTORNEY GENERAL)
FOR ONTARIO) *S, Zachary Green and Hera Evans for the*
Respondents) Respondents
)
)
)
) **HEARD: July 19, 2024**

L. BROWNSTONE J.

[1] On July 26, 2024, I released my decision and reasons dismissing Ontario Place Protector’s application. The parties have been unable to agree on costs. This is my decision and reasons on costs.

[2] The respondents were entirely successful and seek costs in the amount of \$10,000, an amount that is heavily discounted from actual costs incurred. The applicant seeks to pay no costs on the basis that it is a public interest litigant.

[3] Awarding costs is a discretionary matter under s. 131 the *Courts of Justice Act*, RSO 1990, c. C. 34. In exercising my discretion, I may consider, among other things, the factors in rule 57 of the Rules of Civil Procedure.

[4] The applicant argues that it is a public interest litigant. It relies on *Citizens for Riverdale Hospital v. Bridgepoint Health Services*, which refers to Perell J. in *Incredible Electronics Inc. » Canada (Attorney General) (2006), 80 O.R. (3d) 723 (S.C.J.)*, who set out the following factors in determining if a litigant is a public interest litigant, at paragraph 71:

1. the proceeding involves issues the importance of which extends beyond the immediate interest of the parties involved;

2. the litigant has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if he or she has an interest, it clearly does not justify the proceeding economically;
3. the issues have not been previously determined by a court in a proceeding against the same defendant;
4. the litigant has not engaged in vexatious, frivolous or abusive conduct.

[5] The applicant also relies on the decision of the Divisional Court which did not order costs against Ontario Place For All Inc. in other litigation: *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [2024] O.J. No. 2597 at para. 26. I do not take that decision to mean that all litigation about Ontario Place is necessarily public interest litigation. Nor do I believe that case stands for the proposition that any litigation supported by Ontario Place For All Inc. is public interest litigation.

[6] I accept Ontario's argument that even if a litigant is a public interest litigant in a matter of public interest, it does not necessarily flow that no costs are to be awarded against it. Ontario argues that the public should not bear the costs for the applicant's ill-advised litigation.

[7] The manner in which this litigation was brought borders on being vexatious. However, I accept that the group of citizens had a good-faith belief in the public importance of the litigation. Without condoning the manner in which the litigation was brought, and without suggesting that a good-faith belief is generally sufficient to avoid a costs award, I exercise my discretion in this case not to award costs against the applicant.

[8] Each party shall bear its own costs.

L. Brownstone J.

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ONTARIO PLACE PROTECTORS

Applicant

– and –

HIS MAJESTY THE KING IN RIGHT OF ONTARIO
and ATTORNEY GENERAL FOR ONTARIO

Respondents

REASONS FOR JUDGMENT

L. Brownstone J.

Released:, 2024