

BETWEEN:

CITY OF TORONTO

-and-

457 RICHMOND STREET WEST LTD.

Moving Party

Respondent

Jan. 3/00 - Agreement

D.L. Corbett F.

*Christopher Henderson
Daniel Elmady
Patricia Foran
Andrea Skinner
Stan Flores - LPAT*

*Toronto
Respondent
The City of Toronto
permitted demolition of a building on
a property listed by the City as
a heritage property (but which is not
registered under the Ontario Heritage Act.*

March 13/20 - Decision

*Action for leave to appeal by
the City from LPAT decision
permitting demolition of a building on
a property listed by the City as
a heritage property (but which is not
registered under the Ontario Heritage Act.
I see no error of law in the Board's
conclusion that bringing of the property
by the City did not limit the Board's
authority to decide the application before it. In
the end, the Board accepted the expediency
measures proposed by the applicant - the
point of the respondent at the outset of the
hearing below. The City had notice & understanding
of the issue decided below. I do not see an
error of law in the ratio of whether the Board*

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)
Proceeding commenced at TORONTO

MOTION RECORD

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Lawyers for the Moving Party, City of Toronto

had the authority to make the improved ~~value~~ ^{value} of the property had minimal heritage value, but not if the property had no heritage value.

I also do not accept that the Board navigated the process under the Ontario Heritage Act. Listing a property cannot be challenged effectively unless or until an owner seeks a declaration pursuant - something that could not be done in this case until after the Board's decision. If the result of this case is that the City will have to seek designation under the Heritage Act to obtain heritage protection prior to any process such as the one below, I see no conflict with the operation of the Heritage Act.

I do not accept that this was procedurally unfair to the City. The "Proposal" that was at issue before the Board was clearly to demolish the building & the proposed conservation measures involved decreasingly reducing. This aspect of the Proposal was ordered as a condition by the Board. In short, the Board decided the very issues before it, on the basis on which those issues were litigated before it.

Therefore, despite Mr. Henderson's excellent arguments on behalf of the City, the motion for leave to appeal is dismissed. I note that, in dismissing the motion, this court has not impaired the City's ability to apply for heritage designation under the Ontario Heritage Act, if it is so inclined.

Costs to the responding party fixed at \$5,000 inclusive.

Justice P.