

Endorsement of the Honourable D. L. Corbett – March 13, 2020 Decision

January 31, 2020 – Argument

Christopher Henderson) Toronto
Daniel Elmandany)

Patricia Foran) Respondent
Andrea Skinner)

Stan Floras) LPAT

Motion 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 (that which is not registered under the Ontario Heritage Act).

I see no error of law in the Board's conclusion, implied, that listing 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 conservancy proposed by the respondent - the position of the respondent at the outset of the hearing below. The City had notice and understanding of the issue decided below. I do not see an appealable issue on the issue of whether the Board had authority to make the impugned decision if the property had minimal heritage value, but not if the property had no heritage value.

I also do not accept that the Board usurped the process under the Ontario Heritage Act. Listing a property cannot be challenged effectively unless and until an owner seeks a demolition permit - something that cannot 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 the process such as the hearing 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 and the proposed conservancy measures involved documentary archiving. 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 restricted 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.