

Divisional Court File No.
Local Planning Appeal Tribunal File No. PL 170832

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

IN THE MATTER OF a motion for leave to appeal under s. 37 of the *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sch. 1, as amended, from a decision of the Local Planning Appeal Tribunal, dated July 15, 2019.

AND IN THE MATTER OF an appeal to the Local Planning Appeal Tribunal from the City of Toronto's refusal or neglect to make a decision in response to an application to amend the Zoning Bylaw in relation to properties municipally known as 451 – 457 Richmond Street West in the City of Toronto (the "Development Site") under s. 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13 as amended.

BETWEEN:

CITY OF TORONTO

Moving Party

and

**457 RICHMOND STREET WEST LIMITED
and the GARMENT DISTRICT NEIGHBOURHOOD ASSOCIATION**

Respondents

NOTICE OF MOTION

THE MOVING PARTY, City of Toronto (the "**City**"), will make a motion to the Divisional Court on a date and time to be fixed by the Registrar at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard orally.

THIS MOTION IS FOR:

1. Leave to appeal to the Divisional Court from a decision of Member Rossi of the Local Planning Appeal Tribunal (the “**Tribunal**”), dated July 15, 2019, LPAT File No. PL 170832 (the “**Decision**”) for the properties located at 451-457 Richmond Street West (the “**Development Site**”).
2. Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Tribunal made four errors in law, as set out further below, by embarking on an inquiry, and substituting its own conclusion, that the property at 457 Richmond Street West is not a "significant built heritage resource," is not a "cultural heritage resource," ought not have been "listed" on the City's Heritage Register by Toronto City Council, and is not “contributing” to the King-Spadina Heritage Conservation District, all in absence of authority to make those determinations under and/or contrary to the *Planning Act*, R.S.O. 1990, c. P.13 (the “**Planning Act**”) and the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 (the “**Ontario Heritage Act**”).

Overview

2. The Development Site is included within the King - Spadina Heritage Conservation District under Part V of the *Ontario Heritage Act* (the “**District**”), which was adopted by Toronto City Council in October, 2017. The property at 457 Richmond Street West, forming part of the Development Site, is identified as “contributing” to the cultural heritage value, heritage attributes, and integrity of the District. The District remains under appeal, and the Developer Respondent is a party to that appeal. That appeal of the District under the *Ontario Heritage Act* is scheduled to be heard commencing on April 6, 2020.

3. In addition, the 457 Richmond Street West property was “listed” under s. 27(1.2) of the *Ontario Heritage Act*, on December 5, 2017.

4. By contrast, the matter before the Tribunal concerned an appeal of City Council’s refusal and/or neglect to make a decision on the request to amend the City of Toronto’s Zoning by-law under s. 34(11) of the *Planning Act* (the “**Planning Act Appeal**”) for the Development Site.

a. Tribunal's Decision is Contrary to s. 3(5)(a) of the *Planning Act*, as it is Inconsistent with the *Provincial Policy Statement, 2014*

5. The Tribunal erred in law by failing to reasonably interpret and apply s. 2.6.1, and by failing to reasonably interpret and apply the definition of "significant built heritage resources" in s. 2.6.1 and s. 6.0 the *Provincial Policy Statement, 2014* (approved by Order in Council 107/2014) issued under s. 3(1) of the *Planning Act* (the “**PPS, 2014**”), as required under s. 3(5)(a) of the *Planning Act*. Section 6.0 of the *PPS, 2014* states that a significant built heritage resource can be established once a property is identified and inventoried by an official source, such as a municipality’s heritage register.

6. Section 2.6.1 of the *PPS, 2014* requires that "significant built heritage resources" "shall be conserved." By virtue of the 457 Richmond Street West being "listed" under s. 27(1.2) of the *Ontario Heritage Act* in the City’s heritage register, the property at 457 Richmond Street West meets the definition of a "significant built heritage resource", therefore, it "shall be conserved" as part of the *Planning Act* Appeal for the Development Site.

7. The Tribunal’s Decision is required to be consistent with the *PPS, 2014*, pursuant to s. 3(5)(a) of the *Planning Act*. Authorizing an application for the Development Site that necessitates

the demolition of a "significant cultural heritage resource" on the 457 Richmond Street West property, when the *PPS, 2014* directs that it "shall be conserved," is an unreasonable error of law that warrants the attention of the Divisional Court.

b. Tribunal's Decision is Contrary to s. 3(5)(b) of the *Planning Act*, as it is Does Not Conform to *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019*

8. The Tribunal erred in law by failing to reasonably interpret and apply s. 4.2.7.1 and by failing to reasonably interpret and apply the definition of "cultural heritage resources" in s. 4.2.7.1 and s. 7 of *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019* (approved by Order in Council 641/2019), under s. 7 of the *Places to Grow Act*, S.O. 2005, c. 13 (the "***Growth Plan, 2019***"), as required under s. 3(5)(b) of the *Planning Act*. Section 7 of the *Growth Plan, 2019* states that a cultural heritage resource can be established once it is identified and inventoried by an official source, such as a municipality's heritage register.

9. Section 4.2.7 of the *Growth Plan, 2019* requires that "cultural heritage resources" "will be conserved ... particularly in strategic growth areas," which the Development Site is located. By virtue of the property at 457 Richmond Street West being "listed" under s. 27(1.2) of the *Ontario Heritage Act* in the City's heritage register, it meets the definition of a "cultural heritage resource", therefore, it "will be conserved."

10. The Tribunal also erred by accepting the submissions advanced by the Developer Respondent, which added the word "significant" to s. 4.2.7.1, which does not exist in that section of the *Growth Plan, 2019*.

11. The Tribunal's Decision is required to conform to, and not conflict with, the *Growth Plan, 2019*, as required under s. 3(5)(b) of the *Planning Act*. Authorizing an application for the Development Site that necessitates the demolition of a "cultural heritage resource" on 457 Richmond Street West, when the *Growth Plan, 2019* directs that the property at 457 Richmond Street West "will be conserved" is an unreasonable error of law that warrants the attention of the Divisional Court.

c. Tribunal's Decision is Contrary to s. 24 of the *Planning Act*, as it is Does Not Confirm With the City's Official Plan Under s. 16 of the *Planning Act*

12. The Tribunal erred in law by failing to reasonably interpret and apply s. 3.1.5(4) and s. 3.1.5(26) of the City's *Official Plan*, which states that "properties on the Heritage Register will be conserved and maintained consistent with the *Standards and Guidelines for the Conservation of Historic Places in Canada*," and construction on a "property on the Heritage Register will be designed to conserve the cultural heritage values, attributes and character of that property".

13. The Tribunal's Decision, as an appeal of City Council's refusal and/or neglect to make a decision on the request to amend the City of Toronto's Zoning by-law under s. 34(11) of the *Planning Act*, is required to conform to an Official Plan under s. 16 of the *Planning Act*.

14. Demolition of a heritage resource is not conservation in accordance with the *Standards and Guidelines for the Conservation of Historic Places in Canada* and/or the City's *Official Plan*.

15. Authorizing an application for the Development Site that necessitates the demolition of "a property listed on the Heritage Register" on 457 Richmond Street West when the City's *Official*

Plan directs that it "will be conserved and maintained" under s. 3.1.5 is an unreasonable error of law that warrants the attention of the Divisional Court.

d. Tribunal Acted Without Authority to Determine that the Property at 457 Richmond Street West is Not “Contributing” to the District.

16. The Tribunal's Decision was unreasonable and incorrect when it determined that the property at 457 Richmond Street West is not “contributing” to the District on the *Planning Act* Appeal.

17. The determination of whether or not a property is “contributing” to the District is a decision that can only be made under the *Ontario Heritage Act* appeal of the District, which is scheduled to commence on April 6, 2020, and was not before this Tribunal.

18. The Tribunal’s Decision that determined that the property at 457 Richmond Street West is not “contributing” to the District, absent the matter being properly before the Tribunal on an appeal under the *Ontario Heritage Act*, is an unreasonable error of law that warrants the attention of the Divisional Court.

Developer Failed to Exercise Rights to Demolish the “Listed Property” at 457 Richmond Street West, Statutory Scheme Bypassed, and City Prejudiced

19. Only the *Planning Act* Appeal was before the Tribunal. The appeal of the District under the *Ontario Heritage Act* is scheduled to commence on April 6, 2020.

20. The question before the Tribunal under the *Planning Act* Appeal was to evaluate the application in light of the direction contained in the *PPS, 2014, Growth Plan, 2019*, and the *City's*

Official Plan, all of which mandate conservation of cultural heritage resources (howsoever defined in each).

21. Instead of the Tribunal considering the *Planning Act* Appeal, including whether the cultural heritage resource at 457 Richmond Street West would be conserved, the Tribunal embarked upon the wrong inquiry on a question that was not before it; that is, whether or not 457 Richmond Street West had cultural heritage value or interest. A determination of cultural heritage value or interest is made under the *Ontario Heritage Act*, through a listing and/or designation of a property by City Council, the determination of cultural heritage value or interest is not made under the *Planning Act* Appeal where a property is otherwise listed or designated.

22. The Developer Respondent had rights available to it under s. 27(3) of the *Ontario Heritage Act* to seek the demolition of the “listed” heritage property at 457 Richmond Street West. That would have required City Council to make a decision within sixty days on the notice of intention to demolish. A notice under s. 27(3) of the *Ontario Heritage Act* to the City seeking to demolish the listed heritage property, if unacceptable to the City, would have then permitted the City to state its Notice of Intention to Designate the Property under s. 29 of the *Ontario Heritage Act*. A Notice of Intention to Designate from the City would have afforded the owner the right to object to the designation of the property under s. 29(5) of the *Ontario Heritage Act*, and have the matter of the cultural heritage value or interest of the property at 457 Richmond Street West be heard by the appropriate body, the Conservation Review Board, under s. 29(8) of the *Ontario Heritage Act*.

23. No such notice of intention to demolish was made under s. 27(3) of the *Ontario Heritage Act* and served on the City.

24. By the Tribunal assuming to itself the authority to decide whether or not the property at 457 Richmond Street West is a "Significant Built Heritage Resource," whether it is "Cultural Heritage Resource," whether 457 Richmond Street ought to have been listed, or whether it is "contributing" to the District, in absence of that matter of its cultural heritage value or interest being properly before it, the Tribunal has allowed the statutory scheme to be bypassed. In doing so, it acted contrary to the purposes of the *Ontario Heritage Act* which provide for the conservation, protection and preservation of the heritage of Ontario. As such, the errors of law contained within the Decision are of sufficient public importance so as to warrant the attention of the Divisional Court.

25. The *Planning Act*, R.S.O. 1990, c.P.13.

26. The *Ontario Heritage Act*, R.S.O. 1990, c. O.18.

27. The *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28.

28. The *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sch. 1.

29. *Provincial Policy Statement, 2014*, issued under s. 3(1) of the *Planning Act*, R.S.O. 1990, c.P.13.

30. *A Place to Grow: The Growth Plan for the Greater Golden Horseshoe*, 2019, issued under s. 7 of the *Places to Grow Act*, S.O. 2005, c. 13.

31. The City of Toronto *Official Plan*, in force and effect, under s. 16 of the *Planning Act*, R.S.O. 1990, c.P.13.

32. O. Reg. 101/18: *Transitional Matters* under the *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sch 1.

33. Rule 61.03 of the *Rules of Civil Procedure*.

34. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The materials and exhibits before the Tribunal.
2. The Decision.

July 30, 2019

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CITY OF TORONTO

-and-

457 RICHMOND STREET WEST LTD.

Moving Party

Respondents

(Short Title of Proceeding)

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

NOTICE OF MOTION

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