

CITATION: Global Waste Disposal v. City of London, 2025 ONSC 5503
COURT FILE NO.: CV-23-00001168-0000
DATE: 2025-09-29

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :)
Global Waste Disposal London Ltd.) Eric Gillespie and Yasmeen Peer
) for the Applicant/Responding Party
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 Applicant/Responding Party)
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 - and -)
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 City of London) Robert Danter for the
) Respondent/Moving Party
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 Respondent/Moving Party)
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) **HEARD:** September 2, 2025

2025 ONSC 5503 (CanLII)

REASONS FOR DECISION

Justice E. ten Cate

[1] The City of London brings a motion to dismiss an application brought by Global Waste Disposal London Ltd. to quash a by-law pursuant to s. 273(1) of the *Municipal Act, 2001*.¹ Alternatively, it seeks an order converting the application to an action.

[2] For reasons which follow, the City’s motion is denied, and I decline to convert the application to an action.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

Factual Background

[3] Global Waste Disposal London Ltd. owns a property known municipally as 2040 River Road in London, Ontario. In 2021, it commenced a site plan application to expand its existing operation, including the construction of a waste transfer facility. Global wishes to connect to a municipal storm sewer installed as part of a construction project on Scanlan Street; its proposed connection must traverse a 175-meter gap over environmentally sensitive land.

[4] On May 16, 2023, the City passed By-law No. S-6225-109 to extend Scanlan Street. The resulting construction project, completed by a neighbouring private landowner, included the extension of watermain and storm sewer systems under the street. The project was substantially completed in November of 2024, and is currently awaiting final approval.

[5] On June 14, 2023, Global issued the application seeking to quash the by-law on the grounds that it was unreasonable, arbitrary, and without the degree of fairness, openness and impartiality required of a municipal government. It also seeks a declaration that the City acted in bad faith in passing the by-law.

[6] The City does not disagree that if the by-law were quashed, the old one would be operative, and the parties would revert to the *status quo* in place before 2023.

[7] The City takes the position that because the Scanlan Street construction project is substantially complete, there are no practical rights to be determined, rendering the application moot. It seeks an order dismissing the application, or alternatively, an order converting it to an action, because it is necessary for the City to present expert testimony in a trial setting to determine complex issues.

[8] Global takes the position that because the by-law continues to affect its ability to expand its facility, there is a live controversy to be determined, and therefore the application is not moot. Prior to the passing of the by-law, the Scanlan Street construction project was approved under the Official Plan, Master Plan and Master Servicing Plan such that it ran across the land directly past their land. The City's decision to change the by-law means it will be costly and time-consuming to obtain the necessary approvals to connect to the storm sewer. Additionally, the issues in the application are not complex and that their determination does not require conversion to an action.

The Issues

[9] The parties agree there are two issues on this motion:

1. Whether the application is moot; and
2. Whether the application should be converted to an action.

Issue #1 – The application is not moot

[10] The parties agree the governing test for mootness was outlined by the Supreme Court of Canada in *Borowski v. Canada (AG)*:

- a. a determination of whether there remains a live controversy between the parties; and
- b. whether the Court should nonetheless exercise its discretion to hear the matter.²

[11] Mootness is a ground upon which an application under s. 273(1) of the *Municipal Act, 2001* may be dismissed.³ A case will be moot if there is no live controversy between the parties; the Court's purpose is to resolve real disputes between parties, and not to provide opinions in response to hypothetical or academic problems, or where the parties remain adversarial only in the sense that they take different positions on the legal issues raised before the courts.⁴

[12] Even where a matter has been deemed moot, the Court may still decide to hear it in certain exceptional circumstances. The onus is on the applicant to show why the matter should still be heard.⁵

[13] To determine whether to hear a matter that is moot, the Court will consider three factors:

- a. the presence of an adversarial context;
- b. the concern for judicial economy, ie. whether special circumstances exist that would justify the use of scarce judicial resources; and

² *Borowski v. Canada (AG)*, [1989] 1 S.C.R. 342 at para. 16.

³ *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588, at para. 39.

⁴ *Stewart v. Ontario (Independent Police Review, Director)*, 2013 ONSC 7907 (Div. Ct.) at para 18, affirmed by a three-judge panel at 2014 ONSC 6150 (Div. Ct.), *Tamil Co-operative Homes Inc. v. Arulappah*, 49 O.R. (3d) 566 (C.A.) at para 13, and *Jane Doe v. Attorney General of Canada: The Foundation for Equal Families et al, Intervenors*, 75 O.R. (3d) 725 (C.A.), at para. 27.

⁵ *Tamil Co-operative Homes Inc. v. Arulappah*, *supra*, at para. 17; and *Stewart v. Ontario (Independent Police Review, Director)*, 2013 ONSC 7907 (Div. Ct.) at paras. 19 and 28.

- c. the need for the court to be sensitive to its role as the adjudicative branch in our political framework.⁶

[14] Primarily, the City submits that the Application has been rendered moot by the passage of time. The application was commenced in 2023. Although an injunction motion was threatened, it was never filed. It alleges the two-year delay in advancing the proceedings, coupled with the substantial completion of the Scanlan Street construction project means the application is now academic. Furthermore, Global has not particularized the grounds for the application, and has not requested any relief beyond the bare quashing of the by-law, and a declaration that the City has acted in bad faith. Finally, the request to hear a moot matter offends the principle of judicial economy, and no exceptional circumstances exist, such as public interest considerations, which would indicate that this matter should be heard if the matter is determined to be moot.

[15] I disagree. Although this application was commenced in 2023, resolution negotiations and the site plan application are ongoing. The City never refused the requested connection, and in fact ensured a “stub” was created in the sewer line under Scanlan Street, in anticipation of Global’s approval. Although the City argues that no injunction motion was brought in the last two years, in my view, it is mere speculation that such a motion to halt construction of the drainage works would have been successful, or that it would have shortened the litigation.

[16] The City relies upon *Fourth Generation Realty Corp. v. Ottawa (City)*⁷, in which the Court was asked to quash a by-law enacted by the City of Ottawa. Like this case, the applicant sought a declaration that the by-law was illegal and should be quashed, but did not seek damages. The City of Ottawa successfully argued that because no practical effect would flow from the quashing of the by-law, there was no live issue between the parties.

[17] Here, unlike the dispute in *Fourth Generation Realty Corp. v. Ottawa (City)*, which involved an obsolete by-law, there is a live controversy requiring judicial determination. In *Fourth Generation*, the applicant’s stated purpose for the relief they sought was to prevent the enactment of similar by-laws in the future.⁸ However, in this case, the quashing of the by-law would remove the City’s ability to rely on the new Scanlan Street design, forcing it to provide servicing to Global as *per* the plans in place prior to the passage of the by-law. Should this be the result after a full hearing on the merits of the application, the cost and time savings to Global would be substantial.

⁶ *Stewart v. Ontario (Independent Police Review, Director)*, 2013 ONSC 7907 (Div. Ct.), at para 30.

⁷ *Fourth Generation Realty Corp. v. Ottawa (City)*, [2004] O.J. No. 2894 (S.C.J.), affirmed [2005] O.J. No. 1982 (C.A.)

⁸ *Fourth Generation Realty Corp. v. Ottawa (City)*, [2004] O.J. No. 2894 (S.C.J.) at para. 25.

[18] Since I have determined that the adversarial context is present, I need not determine whether special circumstances exist that would justify the use of scarce judicial resources, nor evaluate the need for the court to be sensitive to its role as the adjudicative branch in our political framework. However, I pause to note there are broader public interest considerations involved in ensuring that municipal powers exercised under the *Municipal Act, 2001* are exercised lawfully and in good faith.

Issue #2 – The Application should not be converted to an action

[19] Pursuant to Rule 38.10 of the *Rules of Civil Procedure*, the court may order that the application or any issue therein proceed to trial, and where such an order is made, the proceeding shall be henceforth treated as an action.⁹

[20] The Court should consider the following general principles in determining whether to convert an application to an action:

- a) an application should be used when there is no matter in dispute and when the issues to be determined do not go beyond the interpretation of a document;
- b) a good reason to convert an application into an action is when the judge will hear the matter cannot make a proper determination of the issues on the application record, including transcripts and affidavits;
- c) when issues of credibility are involved the matter should proceed by way of action;
- d) whether material facts are in dispute’
- e) the presence of complex issues that require expert evidence and/or weighing of evidence;
- f) whether there is a need for pleadings and discoveries; and
- g) the importance and impact of the application and of the relief sought.¹⁰

[21] The overarching principles in determining whether to convert an application to an action are justice and procedural fairness.¹¹

⁹ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

¹⁰ *Fountain Asset Corp. v. First Global Data Ltd.* 2017 ONSC 4780 at para. 15.

¹¹ *Fountain Asset Corp. v. First Global Data Ltd.*, *supra*, at para. 29.

[22] The City argues that a written application is insufficient, the issues are too complex, and that there are environmental contamination and municipal planning compliance issues which must be addressed by technical experts exposed to cross-examination. It also argues that there are material facts in dispute and issues of credibility to be determined. Paradoxically, it argues that although there is no longer an underlying dispute, the issues require a trial due to their complexity.

[23] Again, I disagree.

[24] In my view, the main issue framed in the application – whether the by-law should be quashed -- is straightforward, discrete and well-suited to determination under through the application process. This determination will turn on whether the impugned by-law was approved under the prior plans with a different road alignment.

[25] The main issue in the application is legal in nature: whether the by-law should be quashed. This involves a determination of whether the by-law conforms with the pre-existing plans and can be determined on a written record. The issue of bad faith is secondary and flows from the first; it has been responded to by the City and tested through cross-examination; the transcripts can be made available to the judge hearing the application.

[26] Section 273 of the *Municipal Act, 2001* requires these proceedings to be commenced by way of application. No case law was provided by the City wherein a quash application under s. 273(1) was converted to a trial; this Court has decided several such complex applications. For instance, Garson J. in *Suncor Energy Products v. Town of Plympton-Wyoming*¹² decided seven different issues on a such an application involving various municipal by-laws.

[27] Thus far, Global has retained two experts: a hydrologist and a civil engineer. The City responded with reports from its employees with professional qualifications, but retained no independent experts. While these experts may be important for other reasons, in my view, their evidence is irrelevant with respect to the issues in this application. Although the City did not argue that expert evidence is required to interpret official plans, the Court of Appeal has clearly indicated such evidence is inadmissible because such interpretation is the function of the courts, and not the experts.¹³

[28] Moreover, Rule 1.04 of the *Rules of Civil Procedure*¹⁴, the principle of proportionality, and judicial economy favour proceeding with the application, which is

¹² *Suncor Energy Products v. Town of Plympton-Wyoming*, 2014 ONSC 2934. See also *Fortin v. Sudbury (City)*, 2020 ONSC 5300.

¹³ *Niagara River Coalition v. Niagara-on-the-Lake (Town)*, [2010] O.J. No. 937 (C.A.) at paras. 40-45.

¹⁴ *Rules of Civil Procedure*, *supra*.

typically shorter than a full trial of an action, and for which dates are available within months as opposed to years.

Conclusion

[29] As a result, the City's motion is dismissed in its entirety and the application shall be heard on its merits on a date to be fixed through the Civil Trial Co-ordinator, Rebecca Nagy, at Rebecca.Nagy@ontario.ca. If the parties cannot agree on timetabling of next steps, including any request for particulars, they may request a Case Conference through Ms. Nagy with proposed draft timetables.

Costs

[30] Since the parties' costs submissions for this motion were very similar, I award partial indemnity costs in the amount of \$14,000 to Global plus disbursements of \$2,877.99 for a total of \$16,877.99.

Justice E. ten Cate

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