

**CITATION:** Island Light Inc. v. Ontario (Transportation), 2026 ONSC 1402  
**COURT FILE NO.:** CV-26-00000059-0000 (Kingston)  
**DATE:** 20260309

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Island Light Inc., Applicant

**AND:**

His Majesty in Right of Ontario as represented by the  
Minister of Transportation, Respondent

**BEFORE:** Mew J.

**COUNSEL:** *John Adair*, for the Applicant

*Christopher P. Thompson*, for the Respondent

**HEARD:** 25 February 2026, at Kingston

**ENDORSEMENT**

[1] The applicant owns and operates a 161 year old hotel in the village of Marysville on Wolfe Island. The applicant purchased the land, buildings and assets of what had previously been known as the General Wolfe Inn in 2019. When they did so, they knew that a project to improve the ferry service between Kingston and Wolfe Island was already under way, and that there would continue to be a period of construction until 2022.

[2] Over the next eighteen months following acquisition of the hotel, the applicant invested \$450,000 in renovations to the hotel and upgrades to its dock and shoreline.

[3] The ferry project has been the subject of significant delays and equipment failures.

[4] In 2023, the applicant approached the Ministry of Transportation for Ontario (“MTO”) to express concerns about the financial impact that construction delays and equipment failures associated with the ferry project were having on the hotel’s business.

[5] After discussion and correspondence between the applicant and the MTO, an agreement was entered into between the parties to compensate the applicant for business loss caused by the construction delay (the “2023 Agreement”).

[6] The 2023 Agreement identified four specific time periods, namely:

(a) 1 April 2022 – 31 December 2022;

- (b) 1 January 2023 – 30 September 2023;
- (c) 1 October 2023 – 30 June 2024; and
- (d) 1 July 2024 – 30 June 2025.

[7] For each time period, the MTO would estimate the applicant's loss (based on estimates prepared by a consultant retained by the MTO) and then make payment in the sum of 80% of that estimate. The remaining 20% would be a holdback for potential future payment (there was a different approach for the last time period, ending 30 June 2025).

[8] The parties later agreed to amend certain time periods in the 2023 Agreement. For example, as reflected in an agreement dated 28 September 2024, "it was mutually agreed that the interim period would be amended from October 1, 2023 to June 30, 2024 to October 1, 2023 to March 31, 2024".

[9] Another agreement, made 11 November 2024, states that "[i]t is acknowledged the time line in the agreement has been amended in principle". A similar recital appeared in an agreement signed by representatives of the applicant "without prejudice" on 15 April 2025. That agreement pertained to payment of 80% of the estimated business losses for the period from 1 September 2024 to 28 February 2025. An agreement dated 16 October 2025, addressing the estimated business losses from 1 March 2025 to 31 May 2025, also recited that "[i]t is acknowledged the time line in the agreement has been amended in principle".

[10] Each of these agreements subsequent to the 2023 Agreement addressed an interim payment calculated in accordance with the formula of advancing of 80% of the estimated business losses for the applicable period.

[11] On 14 July 2025, MTO wrote to the applicant in apparent response to a letter which the applicant had sent to the Ministry asking for clarification on what would constitute the end of the disruption caused by the ferry project. The MTO's letter states:

For clarification, the agreement made August 31, 2023 indicated that the resumption of service to the Marysville dock with the Wolfe Islander IV would be the end of disruption for the claim. The Wolfe Islander IV resumed service to the Marysville dock on Tuesday, May 20, 2025, and therefore this date will serve as a key date in the claim.

[12] The letter states that the current interim claim period "will be" from 1 March 2025 to 31 May 2025 to assess any losses in relation to the MTO's delay in reopening the Marysville dock. The letter then continues:

As previously contemplated, the ministry will then provide you with an interim claim period being a 6-month recovery period commencing on June 1, 2025 through to November 30, 2025, to provide you with a period of time to adjust your business operations.

[13] After completion of the recovery period, the applicant's claim would move into the "final assessment phase":

To ensure a comprehensive and accurate final assessment of your business losses, the last phase of your claim should be submitted no earlier than one year after your recovery period concludes. This assessment will consider unaccounted-for losses from the previous interim claims as well as assess expenses that may not have been reflected in the earlier claims.

[14] In January 2026, the MTO sent the applicant a draft agreement, the recitals of which include reference to the 14 July 2025 letter which, "informed you that the period from March 1, 2025 to May 31, 2025 will be the last interim claim period contemplated under the agreement" and continues:

**AND WHEREAS** the Minister agreed to provide you with a 6-month recovery claim. Commencing on June 1, 2025, through to November 30, 2025 (the "Recovery Period"), to provide you with a period of time to adjust your business operations.

**AND WHEREAS** the Recovery Period payment will conclude the interim claim payments made to Island Light Inc. by the Minister under the Agreement and move the claim into the Final Assessment Phase as further described in [the 14 July 2025 letter].

[15] The estimated business loss claim for the Recovery Period was determined by the MTO's business valuator to be \$270,391.00, of which the Minister would pay \$216,312.80.

[16] By its incorporation of the 14 July 2025 letter, the draft agreement provided by the Ministry required the applicant to confirm that the disruption caused by the ferry project had ended with the resumption of service to the Marysville dock by the Wolfe Islander IV on 20 May 2025. The agreement would also preclude the applicant from submitting any claim for recovery of the holdbacks or additional losses until at least one year after 30 November 2025.

[17] The applicant has refused to sign the draft agreement because it requires the applicant to acknowledge and confirm facts that are adverse to the applicant's legal position and, as the applicant would have it, untrue. The applicant also objects to the condition that no further loss claims for the holdback amount and any additional losses could be submitted for at least one year after 30 November 2025.

[18] The MTO, in turn, has declined to make the interim payment of \$216,312.80 until the agreement it has proposed is signed by the applicant.

[19] The applicant asserts that its financial position is precarious and, in particular, that the non-payment of the \$216,000.00 amount will very likely result in the failure of the applicant's business by 30 April 2026 at the latest.

[20] On 5 February 2026, the applicant's lawyer sent an email to, amongst others, the employee of MTO with whom discussions had been had concerning the issues between the applicant and the MTO, and the Crown Law Office (Civil). The email attached a draft notice of application and requested an urgent date for the hearing of the application. The email acknowledged that the applicant had not yet compiled a full application record, with supporting affidavits, but would do so by 10 February 2026. The email indicates that the issue "only became urgent with the MTO's refusal to make a \$216,000.00 payment in late-January 2026".

[21] The present application was commenced on 6 February 2026, with a hearing date of 25 February 2026. The application record was served on 10 February.

[22] It is not disputed that the applicant did not provide the Crown at least 60 days' notice prior to the commencement of the proceeding in accordance with the *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c. 7, Sched. 17.

[23] The relief claimed in the notice of application (as amended on 9 February 2026) includes, *inter alia*:

- (a) A declaration that the Amended August 2023 Agreement (as defined herein) requires the Respondents to immediately assess and pay, and an Order directing the Respondents to immediately assess and pay:
  - (i) 80% of the Applicant's Estimated Business Loss for the further period ending November 30, 2025 (which the Respondents have already assessed in the sum of \$216,312.80, but not paid);
  - (ii) up to the full 20% Holdback (as defined below) referable to business losses incurred in the period April 1, 2022 to November 30, 2025;
  - (iii) any unaccounted for losses or expenses from the prior periods (April 1, 2022 to November 30, 2025); and,
  - (iv) Any further business loss suffered by the Applicant as a result of the delay in re-opening the Marysville dock and the commencement of service of the Wolfe Islander IV.
- (b) In the alternative event that the Court finds that the August 2023 Agreement (as defined below) was not amended, a declaration that the August 2023 Agreement requires the Respondents to immediately assess and pay, and an Order directing the Respondents to do so:
  - (i) up to the full 20% Holdback (as defined below) referable to business losses incurred in the period April 1, 2022 to June 30, 2025;
  - (ii) the Applicant's actual business losses or expenses from the prior periods (April 1, 2022 to June 30, 2025); and,

(iii) Any further business loss suffered by the Applicant as a result of the delay in re-opening the Marysville dock and the commencement of service of the Wolfe Islander IV.

(c) In the alternative to the above declarations and/or directions, an order for the trial of an issue to determine the amount of the Applicant's damages for the Respondents' breach of the Amended August 2023 Agreement or August 2023 Agreement, as applicable, and ordering the Respondents to pay such damages for breach of contract...

[24] By notice of motion dated 23 February 2026, and made returnable on 25 February, the respondent seeks the following relief:

- (a) An order abridging time for the service of its motion;
- (b) An order striking and dismissing the application as a nullity for failing to comply with the notice provisions of the *Crown Liability and Proceedings Act*, 2019 at least 60 days prior to the issuance of the application;
- (c) In the alternative, an order converting the application into an action; and
- (d) In the further alternative, an order adjourning the application.

[25] This endorsement addresses the relief sought by the MTO in its motion.

### **Abridgment of Time for Service of the Motion**

[26] Rule 37.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, requires seven days' notice of a motion to be given, unless the court orders otherwise. The respondent's motion was brought on two days' notice and, hence the court is asked to exercise its general discretion, pursuant to Rule 3.02, to abridge the notice period required by the *Rules*.

[27] To comply with the *Rules*, the notice of motion would have to have been served by 18 February 2026. The notice of application was only served on 6 February, and the application record on 10 February 2026. The return date for the hearing of the application was unilaterally selected by the applicant's lawyer, without consultation.

[28] Although it is conceded by the applicant that the return date was unilaterally selected, based on the date offered by the court, the record indicates that as early as 5 February 2026, i.e., the day before the notice of application was issued, the applicant had copied the MTO and the Crown Law Office (Civil) reception with correspondence to the trial co-ordinator in Kingston, requesting an urgent date for the hearing of the application.

[29] Having received no acknowledgment of either service of the notice of application or the subsequent service of the full application record, the lawyer for the applicant obtained from a colleague at his firm the name and contact information of a lawyer working at the Crown Law Office (Civil) and sent an email to that lawyer on 11 February apologising for the cold call, but

explaining that he wanted to make sure that someone was aware of the impending hearing date, and that he was reaching out to see if there was anything that could be done to ensure that someone engaged with him as soon as possible.

[30] Still not having received any communication from someone having responsibility for the file, the applicant's lawyer sent further emails on 17 and 18 February 2026. Although not formally in evidence, counsel appearing for the respondent advised that he had been first assigned to the file on 19 February.

[31] In oral submissions, counsel for the respondent suggested that the unilateral selection of the hearing date and the short period of time which was provided to respond to a claim that is for hundreds of thousands of dollars (if not more) provided insufficient time to assemble responding evidence and complete cross-examinations. It would, he argues, have been self evident that the application could not proceed on the selected date.

[32] It was suggested that there could have been a discussion between counsel about the urgency and the scheduling of the hearing. While, in my view, there should have been such a discussion, it was difficult for the applicant's lawyer to have a discussion before he knew who he should be having a discussion with. That only happened very late in the day.

[33] On behalf of the applicant, it was suggested that I should not exercise my discretion to abridge the time for service of the respondent's notice of motion because the affidavit filed by the respondent in support of that motion does not address why it could not have been brought three working days sooner, as required by the *Rules*. My attention was directed to the view expressed by J.W. Quinn J. in *Thomas v. Thiessen*, 2009 CanLII 15454 (ON SC), at para. 47:

The discretion available under rule 3.02(1) to abridge a prescribed time under the rules cannot be exercised without evidence of why compliance with the prescribed time was impossible. It must never be assumed that abridging time periods is a routine exercise. An indulgence is being sought. The court cannot be expected to exercise its discretion in a vacuum.

[34] In the present case, context is important. The respondent's affidavit in support of the motion for, *inter alia*, abridgment of time, is bereft of an explanation for not being able to serve its motion material on time. The relatively short period of time that has elapsed since the commencement of this proceeding and the return date of the application is not in dispute. I agree with counsel for the MTO that it was likely that the application would not be able to proceed on the return date unilaterally selected by the applicant.

[35] That does not, however, excuse the radio silence on the part of the Crown Law Office. The applicant had clearly flagged this matter as urgent from its perspective. Yet there was no communication from a lawyer acting for the MTO for 9 days.

[36] As a practical matter, one of the issues raised on the motion is that of jurisdiction. If the Crown's position on the application of the *Crown Liability and Proceedings Act* is correct, the court does not have jurisdiction to entertain the action at all. That jurisdictional bar, if it operates,

would be present whether I hear from the respondent or not. It is for that reason that, with some reluctance, I will grant the indulgence that has been sought.

**Application of the Crown Liability and Proceedings Act**

[37] Section 18(1) of the *Crown Liability and Proceedings Act* provides:

No proceeding that includes a claim for damages may be brought against the Crown unless, at least 60 days before the commencement of the proceeding, the claimant serves on the Crown, in accordance with section 15, notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose.

[38] No ability is provided under the *Crown Liability and Proceedings Act* for the Crown to waive compliance with the notice period: *Noddle v. The Ontario Ministry of Health*, 2019 ONSC 7337, at para. 32. Nor does the court have the power to dispense with compliance: *Corrigan v. Ontario*, 2023 ONCA 39, at para. 3.

[39] The applicant concedes that, to the extent the relief it seeks are claims for damages, section 18(1) applies. However, the applicant argues that its claim for declaratory relief is not “a claim for damages” and, relying on section 18(6), argues that that portion of its application should be allowed to continue.

[40] Section 18(6) of the *Crown Liability and Proceedings Act* provides:

For greater certainty, failure to give notice of a claim as required by this section renders a proceeding brought without such notice a nullity in respect of the claim, from the time the proceeding is brought.

[41] In *Dranska v. Singh*, 2025 ONSC 3163, Koehnen J., at para. 30, held that section 18(6) does not “nullify the proceeding” but only the “claim” in respect of which notice is required.

[42] The Crown accepts that if the declaratory relief sought could properly be uncoupled from the applicant’s claim for damages, that relief would survive the non-compliance with section 18(1) notwithstanding.

[43] That said, section 18(1) does not give parties suing the government a licence to dress a claim for damages up as one for a declaration coupled with an order to pay, without 60 days’ notice having been provided to the Crown, and then argue that the declaratory part of the relief sought should be allowed to proceed, notwithstanding the lack of notice. If parties suing the government were allowed to proceed in such a manner, section 18(1) would become effectively redundant.

[44] The Crown’s submission is that the claim made by the applicant is one for damages for breach of contract. Nothing more, nothing less.

[45] The applicant's position is that the 2023 Agreement has been amended several times. The applicant rejects what it sees as an attempt by the respondent to force it to change its contractual entitlement by accepting conditions that were never bargained for, and agreeing to facts that it regards as untrue. It asks the court to determine what the contractual arrangements between the parties are. The financial consequences, once that has been done, might not even be contentious.

[46] The respondent, on the other hand, rejects the argument that the 2023 Agreement has been extended, or that a further agreement between the parties has been entered into. It argues that no declaratory relief is necessary. The court will determine what the obligations of the parties are under the 2023 Agreement and award any financial relief that flows from that agreement.

[47] The court is entitled, when examining a pleading, to look beyond the labels used by the author of the pleading to determine the true nature of the relief sought.

[48] While there is no doubt that part of what the applicant seeks is financial relief, a significant element of the claim advanced in the notice of application asks the court to determine what the contractual arrangements between the parties consist of. A determination of what the provisions of the contract and the resulting rights and remedies available to the parties are can, in my view, be logically separated from the actual consequential relief (if any) that the parties might be entitled to.

[49] I would therefore strike out the portions of the notice of application that can properly be interpreted as claims for damages against the Crown, but allow the declaratory relief to determine the terms of the contractual arrangements between the parties and their respective entitlement to rights and remedies under those arrangements to continue.

### **Application or Action?**

[50] Because I have decided that part of the application survives the challenge under section 18(1) of the *Crown Liability and Proceedings Act*, I turn to whether the proceeding should continue as an application, or be converted to an action.

[51] Rule 14.05(3) sets out that a proceeding may be brought by application where the *Rules* specifically authorise the commencement of a proceeding by application, or where the relief claimed is, *inter alia*, the determination of rights that depend on the interpretation of a contract.

[52] In *Przysuski v. City Optical Holdings Inc.*, 2013 ONSC 5709, Firestone J. articulated the general principles to be considered when determining whether to convert an application into an action:

- (a) An application should be used where there is no manner in dispute and where the issues to be determined do not go beyond the interpretation of the document;
- (b) A good reason to convert an application into an action is when the judge who will hear the matter cannot make a proper determination of the issues on the application record;

- (c) When issues of credibility are involved, the matter should proceed by way of action;
- (d) Whether there are material facts 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 discovery; and
- (g) The importance and impact of the application and of the relief sought.

[53] The respondent submits that there are material facts in dispute, that a determination of the issues involves factual matrix evidence, that there are or may be credibility issues, that there will be expert damages evidence, and that pleadings and discoveries will be required.

[54] The respondent makes reference to *Jackson v. Solar Income Fund Inc.*, 2016 ONCA 908, where an issue was whether a promissory note had been modified by subsequent agreement. The Court of Appeal observed, at para. 6:

What is at issue is not the interpretation of the promissory note, but the determination of whether the promissory note was modified by a subsequent agreement such that, despite its clear wording, it is not enforceable on demand. This requires an understanding of the broader factual matrix, which includes the other agreements that may or may not conflict with the promissory note. This cannot be determined simply by reading the promissory note in isolation from the larger transaction of which it appears to be a part, or of understanding what the various agreements together were expected to achieve.

[55] A review of the application record in this case suggests that there will be other documents that are offered as part of the factual matrix, as well as, perhaps, oral amendments or suggested amendments to the parties' arrangements. It seems likely that there will be evidentiary conflicts.

[56] Accordingly, I am persuaded that it would be appropriate to convert the application into an action.

### **Adjournment Request**

[57] The respondent argues that the application (even if it had not been converted into an action), could not be dealt with on its merits because there has been insufficient time to put in a responding record or conduct cross-examinations.

[58] Given that I have now directed the conversion of the application to an action, it will be necessary to consider whether the current notice of application can stand in lieu of a statement of claim, or whether a different pleading is required. Following that, Ontario will have the opportunity to deliver a statement of defence.

[59] For these reasons alone, an adjournment is appropriate.

[60] The applicant suggested that if I was inclined to order an adjournment, I should make it a term that the respondent pay to the applicant, on a without prejudice basis, the sum of \$216,312.80 (namely the amount that the MTO said it would pay for the business loss period ending 30 November 2025).

[61] I was not able to find any guidance in the jurisprudence about whether I could order what would, effectively, be an anticipatory judgment (albeit, as the applicant would have it, on a without prejudice basis). The closest I could find was an observation in *Ecuimates v. Rix*, (1993) 27 C.P.C. (3d) 301 (Ont. Ct. Gen. Div.), at para. 15, where Kozak J. speculated that, pursuant to section 120 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, which deals with advance payments, a court might be able to order an advance payment as a term of a request for adjournment *where liability is not in issue*, but that a court-ordered advance payment where liability is in issue would be beyond the purview of section 120 of the *Courts of Justice Act*.

[62] I doubt whether I have the authority to order the payment of an amount that is effectively in dispute as a term of the adjournment. Even if I had such authority, I would decline to exercise it in the circumstances.

### **Next Steps**

[63] Island Light Inc. has advised the court that it intends to commence an action for damages on or immediately following 6 April 2026. The applicant will no doubt want to consider whether to forge ahead with the current proceeding or wait until April. If it is the former, a case conference with me prior to 6 April can be requested through the trial coordinator at Kingston to discuss whether a statement of claim should be delivered and any other directions that may be required. Regardless, unless ordered otherwise in the meantime, there will be a case conference (or, if requested by both parties, a judicial settlement conference) on 14 April 2026.

[64] In the meantime, I would encourage the parties to explore the possibilities of resolving, or at least streamlining, their dispute. Both Ontario and Island Light Inc. have made significant investments to support the ongoing business operations of the hotel.

[65] If the parties are unable to agree on the issue of costs to date, I may be spoken to.

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Mew J.

**Date:** 9 March 2026