CITATION: *Centurion Building Corporation v. The Shaw Festival*, 2026 ONSC 1808
COURT FILE NO.: DC-26-00063988-0000
DATE: 20260324

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Matheson, Schreck and Shore JJ.

BETWEEN:	
CENTURION BUILDING CORPORATION *Applicant*	*E.K. Gillespie,* for the applicant
– and –	*S. Premi,* for the respondent The Shaw Festival
THE SHAW FESTIVAL and CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE *Respondents*	*T. Hill and G. Belford,* for the respondent Corporation of the Town of Niagara-on-the-Lake
	HEARD: March 17, 2026

REASONS FOR JUDGMENT

SCHRECK J.:

[1] The Town of Niagara-on-the-Lake ("the Town") is located on the southwest shore of Lake Ontario and is part of the Regional Municipality of Niagara. It is home to the Shaw Festival ("Shaw"), a well-known not-for-profit theatre company whose productions attract many visitors to the Town, creating significant economic benefits for the region. Shaw owns several theatres within the Town, including the Royal George Theatre, which is over 100 years old and which is in a part of the Town that has been designated as a "heritage conservation district" pursuant to the *Ontario Heritage Act,* R.S.O. 1990, c. O.18 ("*OHA*").

[2] Shaw wishes to demolish the Royal George and replace it with a larger, more modern and accessible theatre. It accordingly made a series of planning applications to the Town, including one for a demolition permit. The Town Council received and reviewed a number of reports and, as required by the *OHA,* consulted its Heritage Committee. The views of local residents were

sought and obtained. The Town Council expressed various concerns, including some related to heritage preservation, resulting in several revisions to Shaw's proposal. Eventually, Shaw's planning applications were granted and a demolition permit was issued.

[3] Centurion Building Corporation ("Centurion") is a building company that operates in the Town and the surrounding region. Its principal, Nicholas Colaneri, is a resident of the Town. Mr. Colaneri, including through his company, is opposed to Shaw's plan to demolish and rebuild the Royal George, which he believes has historic value and should be preserved.

[4] Centurion applies for judicial review of the Town's decisions to grant Shaw's planning applications and approve the demolition. It submits that the Town's decisions were unreasonable, primarily because there was no basis to conclude that preserving the theatre was not a feasible option. The Town and Shaw oppose the application. They submit that Centurion has no direct interest in the matter and therefore has no standing to seek judicial review, and in the alternative submit that the decisions were reasonable.

[5] I would dismiss the application. In my view, Centurion does not have private or pubic interest standing to bring it. Furthermore, Centurion has failed to demonstrate that the Town's decisions were unreasonable.

[6] The following reasons explain these conclusions.

I. FACTS

A. The Parties

[7] The Shaw Festival, named after the Irish playwright George Bernard Shaw, was founded 64 years ago and has operated in the Town of Niagara-on-the-Lake since then. It has an annual budget of approximately $40,000,000, which it derives from a number of sources, including government funding and private donations. Shaw owns four theatres in the Town and each year puts on 12 to 14 theatrical productions from April to October, with up to eight performances per day, six days a week. About 100,000 people attend Shaw events each year and it is one of the largest generators of tourism in the area, creating hundreds of millions of dollars worth of economic benefit to the region.

[8] Centurion Building Corporation is an Ontario business engaged in land development, construction and real estate projects and was incorporated in 2014. It does not own land in the Town but has an address there and its sole officer, Nicholas Colaneri, is a resident. In his affidavit filed on this application, Mr. Colaneri states that he "has 15 years of experience in development and construction, including with respect to zoning, severances, minor variations and municipal planning."

B. The Royal George Theatre

[9] The Royal George Theatre is located at 79-83 Queen Street in the Town and is one of the theatres at which Shaw productions are performed. It was first built in 1914 as a temporary structure used to provide entertainment to military personnel during World War I and was acquired

by Shaw in 1980. The Royal George is located within an area designated as a "heritage conservation district" pursuant to Part V of the *OHA*, known as the Queen-Picton Heritage Conservation District. However, the Royal George building has not been designated as a "property of cultural heritage value or interest" pursuant to Part IV of the *OHA.*

[10] The structure housing the Royal George theatre began to become unstable in 2006 and since then, Shaw has spent over $14,000,000 to maintain it. Shaw concluded that maintaining the Royal George in its current state was no longer feasible and in 2017 began making plans to demolish and then rebuild it. Shaw had also acquired nearby land at 178-188 Victoria Street, which was required for the rebuilding project. It is estimated that the project will cost $90,000,000. In 2023, Shaw created a fundraising campaign and also secured funding from the provincial and federal governments.

C. The Application Process

(i) Shaw's Applications

[11] In order to complete the Royal George project, Shaw applied for an official plan amendment and a zoning by-law amendment pursuant to the *Planning Act*, R.S.O. 1990, c. P.13, following which it intended to seek a demolition permit for the theatre and structures on the Victoria Street property.

(ii) The Approval Process

[12] Section 2(*d*) of the *Planning Act* required the Town to have regard to "the conservation of features of significant architectural, cultural, historical, archeological interest." As well, because the Royal George and the Victoria Street buildings were in a heritage conservation district, the Town was required by s. 42 of the *OHA* to consult the Town's Heritage Committee before approving their demolition.

[13] The Town retained an architectural firm, ERA Architects, to prepare a Heritage Impact Assessment ("HIA"), which was presented to the Heritage Committee. Based on the HIA, the Heritage Committee recommended certain changes to Shaw's proposal, which the Town Council adopted on July 22, 2025. Shaw revised its proposed design in accordance with the recommendations, which led to a second HIA report by ERA Architects. After reviewing that report, the Heritage Committee recommended the demolition of the structures on Victoria Street. The Town Council adopted the recommendation on September 23, 2025, subject to certain conditions, one of which was the submission of a Conservation and Commemoration Plan.

[14] The Conservation and Commemoration Plan was endorsed by the Heritage Committee on November 5, 2025, resulting in a further report from ERA Architects setting out the implementation of additional conservation measures.

(iii) The Decisions

[15] Shaw's applications for official plan and zoning by-law amendments were considered by the Town Committee-of-the-Whole on November 11, 2025. The applications and related

documentation, including a Planning Recommendation Report prepared by Town staff, had been posted on the Town website so that members of the public could attend the Committee meeting and make representations. Three members of the public did so and opposed the applications, one of whom was Mr. Colaneri. The Committee-of-the-Whole directed Town staff to conduct further investigations with respect to a number of matters.

[16] Following further correspondence between the Town and Shaw, new draft planning instruments were prepared and submitted to the Council on November 25, 2025. The Council approved Shaw's official plan and zoning by-law amendment applications and issued a Notice of Decision the following day.

[17] On January 14, 2026, the Heritage Committee considered the proposal to demolish the Royal George Theatre. After reviewing a report prepared by Town staff, the Committee recommended approval of the demolition, subject to certain conditions. The recommendation was approved by the Town Council on January 27, 2026.

[18] On January 30, 2026, a demolition permit was issued with respect to the Victoria Street property. No permit has yet been issued for the Queen Street property.

D. The Applicant's Legal Challenges

(i) The Ontario Land Tribunal

[19] The applicant attempted to appeal the official plan and zoning by-law amendments to the Ontario Land Tribunal. On January 16, 2026, the Tribunal released a decision in which it concluded that the applicant did not have a right of appeal.[1]

(ii) Application for Judicial Review and Stay Motion

[20] Following the Tribunal's decision, the applicant applied for judicial review pursuant to s. 2 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 ("*JRPA*"). The relief sought in its Notice of Application, which was issued on February 6, 2026, was orders quashing the decision approving the official plan and by-law amendments and the issuance of the demolition permit, as well as a "Declaration that the Town acted unlawfully and unreasonably" in approving the amendments.[2]

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[1] Sections 17(24) and 34(19) of the *Planning Act* provide that appeals of official plan and by-law amendments can only be initiated by a "specified person" as defined in s. 1 of the Act. The applicant did not meet any of the definitions of a "specified person."

[2] In their factums, the respondents took the position that the application in relation to the November 25, 2025 official plan and by-law amendments requires a motion to extend time as the Notice of Application was not filed within 30 days, as required by s. 5(1) of the *JRPA*. Counsel did not pursue this submission in oral argument, presumably because the application is not out of time in relation to the issuance of the demolition permit on January 30, 2026 and that decision is inextricably linked to the earlier decision and based on the same evidentiary record. Allowing

[21] At the same time, the applicant brought a motion to stay the operation and effect of the amendments and the demolition permit. The motion was heard on February 10, 2026 by Bordin J., who granted a stay on consent. A case management conference was held on February 27, 2026 before McNeil J., where it was agreed that an urgent request for a hearing before a full panel would be made. At that time, Shaw agreed not to undertake any demolition of any structures before March 23, 2026, and the agreement was later extended to March 25, 2026. The hearing was scheduled on an urgent basis and took place on March 17, 2026.[3]

II. ANALYSIS

A. Standing

(i) Overview

[22] To bring an application for judicial review, a party must have either private interest or public interest standing: *Kilian v. College of Physicians and Surgeons of Ontario,* 2022 ONSC 5931 (Div. Ct.), at para. 41; *Des Roches v. Wasauksing First Nation,* 2026 ONSC 6578 (Div. Ct.), 17 Admin. L.R. (6th) 142, at para. 11.

[23] The respondents challenge the applicant's standing to bring this application. The applicant takes the position that the issue is not properly before this court because the issue of standing was not raised earlier, and in the alternative submits that it has both private and public interest standing.

(ii) Is the Issue Properly Before the Court?

[24] The respondents first raised the issue of standing in their factums filed on the judicial review application and did not raise it during the failed appeal to the Ontario Land Tribunal or seek a decision about it during the stay motion before Bordin J. The applicant submits that standing is therefore a "non-issue" because Bordin J.'s granting of the stay motion on consent amounted to a finding that the applicant had standing. The applicant also relies on the doctrine of issue estoppel and submits that it placed detrimental reliance on the respondents' position.

[25] In my view, the issue of standing is properly before this court. Contrary to the applicant's submission, Bordin J. made no findings about standing as the issue was not raised or argued before him.

[26] The applicant's submission with respect to issue estoppel is presumably also based on the proceeding before Bordin J. However, for the doctrine to apply, "[i]t will not suffice if the question arose collaterally or incidentally in the earlier proceedings or is one which must be inferred by argument from the judgment," and the issue must have been "fundamental to the decision arrived

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the applicant to challenge all of the decisions causes no prejudice to the respondents. In these circumstances, I would grant an extension of time pursuant to s. 5(2) of the *JRPA* if necessary.

[3] Because of the short time frame in which the hearing was scheduled, no Record of Proceedings was filed. Counsel agreed that the record would consist of the material in their respective Application Records. The court is satisfied that the record is sufficient.

at" or "necessarily (even if not explicitly) determined in the earlier proceedings": *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248, at p. 255; *Danyluk v. Ainsworth Technologies*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 24. Even if the issue had been "necessarily determined" by Bordin J., his decision was not final, another requirement for the application of the doctrine: *Danyluk*, at para. 25.

[27] In any event, the application of the issue estoppel doctrine is discretionary: *Danyluk*, at paras. 62-67. Even if the prerequisites for it are met, I would not apply it in the circumstances of this case because of the short timeline in which the respondents were required to respond to the applicant's urgent stay motion.

[28] I am also not persuaded that the applicant placed detrimental reliance on the respondents' position. The respondents raised the issue of standing in their factums, which were filed almost a month prior to the hearing in this court. Counsel for the applicant has not identified any different course of conduct he would have followed had the issue been raised earlier, other than to suggest, in response to questions from the court, that he would have adduced additional evidence of the applicant's business activities in the Town. However, he was provided with an opportunity to supplement the record during the hearing and did not provide supplementary evidence that would assist in this regard. In these circumstances, the applicant cannot be said to have suffered any detriment: *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53, at para. 69.

(iii) Private Interest Standing

(a) The Test

[29] The concept of private interest standing was explained in *Imperial Oil Ltd. v. Haseeb*, 2023 ONCA 364, 483 D.L.R. (4th) 228, at paras. 92-93:

> The test applied by the courts for private interest standing requires that the applicant or plaintiff have a personal and direct interest in the issue raised in the proceeding. The interest must not be too indirect, remote, or speculative. Various formulations of this requirement are used in the jurisprudence, including that the person is "specifically affected by the issue", has a "personal legal interest", or has a "personal and direct interest" in the outcome of the proceeding. This type of standing is often referred to as "direct interest" or "private" standing to distinguish it from public interest standing (the latter having different requirements): *Canada (Minister of Finance) v. Finlay*, [1986] 2 S.C.R. 607, at pp. 617-18; *Bedford v. Canada*, 2010 ONSC 4264, 102 O.R. (3d) 321, at paras. 44-47, aff'd on this point, 2012 ONCA 186, 109 O.R. (3d) 1, at para. 50, rev'd in part on other grounds, 2013 SCC 72, [2013] 3 S.C.R. 1101; *Carroll v. Toronto-Dominion Bank*, 2021 ONCA 38, 153 O.R. (3d) 385, at para. 33; Thomas A. Cromwell, *Locus Standi: A Commentary on the Law of Standing in Canada* (Toronto: Carswell, 1986), at p. 5.

> The ultimate concern behind rules for private standing (as distinct from public interest standing) is that the party bringing the proceeding have a real legal interest in the proceeding that they are seeking to vindicate, rather than just a "sense of grievance": *Carroll*, at para. 33; *Landau v. Ontario (Attorney General)*, 2013 ONSC 6152, at paras. 16 and 21; Cromwell, at pp. 9-10.

Ultimately, a party must demonstrate prejudice or interference with a personal or private legal interest that is causally related to the decision under review: *2701836 Ontario Inc. v. Haldimand (County)*, 2026 ONSC 805 (Div. Ct.), at para. 13; *Ye v. Toronto District School Board*, 2023 ONSC 2918 (Div. Ct.), at para. 21; *Des Roches*, at para. 13.

[30] The applicant asserts private interest standing based on the fact that it pays municipal taxes to the Town, which it ties to its submission that the Town wrongly failed to require "cash-in-lieu of parking" from Shaw which, according to the applicant, would have amounted to approximately $7,500,000 in revenue for the Town. The applicant also relies on the fact that it operates a building business throughout the Niagara Region, including within the Town, that deals with heritage properties.

(b) The Applicant's Payment of Taxes

[31] In my view, the applicant has failed to show how any of its private legal interests are affected by the Town decisions at issue in this case. The fact that the applicant pays taxes and that the decisions have financial ramifications for the Town is not the type of direct interest upon which private interest standing is based. As noted in *Landau v. Ontario (Attorney General)*, 2013 ONSC 6152 (Div. Ct.), 293 C.R.R. (2d) 257, at para. 16, "[b]eing a citizen, resident, taxpayer, does not give someone private interest standing to challenge government action…."

(c) Parking Policy

[32] The applicant also relies on the Town's permission to Shaw to not provide on-site parking or cash-in-lieu of parking to establish private interest standing. This is based on the fact that the Town apparently failed to grant the same permission to a business in another application known as the "Irish Harp application." The applicant submits that "the inconsistent and unequal application of parking policy" affects its interests as a builder subject to the Town's policies.

[33] There is no merit to this submission. The "Irish Harp application" decision is not before this court and there is no evidence as to why it was denied and no basis to infer from its denial the existence of an "inconsistent and unequal application of parking policy." There may be good reasons why the Town treated Shaw differently than "Irish Harp." More importantly, this court's role is limited to reviewing specific decisions by the Town, not the Town's general decision-making practices. If and when the applicant is affected by a decision resulting from the Town's "application of parking policy," it can seek judicial review of that decision.

(iv) Public Interest Standing

(a) The Test

[34] To obtain public interest standing, the applicant must show that (1) the application for judicial review raises serious justiciable issues; (2) the applicant has a real stake or genuine interest in the issues raised; and (3) the application is a reasonable and effective means of bringing the issues before the courts: *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524, at para. 37; *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, 470 D.L.R. (4th) 289, at para. 28.

[35] These criteria are not "boxes that must be ticked" but interrelated factors which must be considered cumulatively in order to balance the preservation of scarce judicial resources with the court's role in assessing the legality of government action: *Ontario Place Protectors v. Ontario*, 2025 ONCA 183, 175 O.R. (3d) 561, at para. 23; *Downtown Eastside*, at paras. 22-36. I am prepared to assume that the application raises serious justiciable issues, so I will focus on the other two criteria.

(b) Real Stake or Genuine Interest

[36] Establishing a genuine interest is a low bar and will be met if a party has a real stake in the proceedings or is engaged with the issues they raise: *Downtown Eastside*, at para. 43; *Ontario Place*, at para. 25. That said, mere concern about an issue is not enough.

[37] In most cases where public interest standing is granted, the party seeking it has a history of engagement with the issue or represents a number of people who are affected by it: *Downtown Eastside*, at para. 58; *Ontario Place*, at para. 25; *Philosopher's Wool Environmental Preserve v. Bruce (County)*, 2025 ONSC 3117, 60 M.P.L.R. (6th) 110, at para. 48. In this case, Mr. Colaneri has a history of engagement with the issues and made representations to the Town Council on more than one occasion. However, the applicant in this case is Centurion, not Mr. Colaneri, and neither Mr. Colaneri nor Centurion is joined by anyone else from the community.

[38] Centurion is a corporation. What stake it has in the proceedings or how it is engaged with the issues they raise is entirely unclear. Centurion has not established that it is currently building or intends to build anything in the area of the Royal George project.[4] More importantly, Centurion does not represent the interests of anyone other than Mr. Colaneri.

(c) Reasonable and Effective Means of Bringing the Issue Before the Court

[39] The "reasonable and effective means" factor involves a number of considerations, including the party's capacity and expertise, whether the case is of public interest, whether there are alternative means by which the issue can be determined, and the potential impact of the proceedings on others: *Council of Canadians With Disabilities*, at para. 55.

[40] In his affidavit, Mr. Colaneri asserts that he has "over 15 years of direct experience in development, construction, zoning, severances, minor variances, site plan control, and municipal

[4] During the hearing, counsel for the applicant was invited to supplement the record with specific information about the location and dates of projects it had engaged in within the Town. He declined to do so.

planning processes," but provides no further detail. While he expresses various opinions on the planning process engaged in by the Town, there is no basis in the record to conclude that he has any particular expertise in this area.

[41] There is an obvious alternative means by which the issues in this case could be brought before the court, which is an application for judicial review by a party with a real and direct interest in it. The fact that the applicant does not have a right of appeal under the *Planning Act* does not foreclose judicial review: *Yatar v. TD Insurance Meloche Monnex,* 2024 SCC 8, 489 D.L.R. (4th) 191, at paras. 60-65. However, the court must be cautious not to undermine legislative attempts to streamline the planning approval process by granting public interest standing too readily: *Ho v. Ottawa (City),* 2025 ONSC 5428 (Div. Ct.), 63 M.P.L.R. (6th) 21, at para. 30.

(v) Conclusion

[42] For all these reasons, I am not satisfied that the applicant has private interest standing and I would not exercise my discretion to grant public interest standing to bring this application. However, in the event that I am wrong, I will consider the merits of the application.

B. Judicial Review of the Decisions

(i) Overview – The Standard of Review

[43] The parties agree that the decisions in this case are to be reviewed on a reasonableness standard. The nature of such a review was explained in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 99-100:

> A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir* [*v. New Brunswick,* 2008 SCC 9, [2008] 1 S.C.R. 190], at paras. 47 and 74; *Catalyst* [*Paper Corp. v. North Cowichan (District),* 2012 SCC 2, [2012] 1 S.C.R. 5], at para. 13.
>
> The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws

> relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[44] As in most cases involving this kind of municipal planning decisions, no reasons were given by the decision-maker. The reviewing court's approach in such cases was described in *Vavilov*, at para. 137:

> Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote: see, *e.g.*, *Catalyst*; *Green* [*v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360]; [*Law Society of British Columbia v.*] *Trinity Western University* [2018 SCC 32, [2018] 2 S.C.R. 293]. However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker* [*v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817], at para. 44. For example, as McLachlin C.J. noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw . . . clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli* [*v. Duplessis*, [1959] S.C.R. 121].

[45] The applicant submits that the decision in this case was unreasonable in three respects:

(1) The Town's Lord Mayor, who participated in the decision, allegedly had a conflict of interest because he was also a member of Shaw's Board of Governor's.

(2) There was insufficient evidence supporting the decision not to preserve the Royal George Theatre and the other buildings, contrary to a "conservation first analysis" and the requirements of the *OHA.*

(3) The decision to relieve Shaw of the requirement to provide onsite parking or cash-in-lieu of parking was based on an allegedly erroneous conclusion that there was legal non-conforming use.

I will consider each in turn.

(ii) Alleged Conflict of Interest

[46] The Town's Lord Mayor, who participated in the decision under review, is an *ex officio* member of Shaw's Board of Governor's, which is described in the evidence as being "a fundraising and ambassadorial group" that is distinct from the Board of Directors, which is the organization's governing body. The applicant submits that because of this, the Lord Mayor had an "indirect pecuniary interest" as defined in s. 2 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 ("*MCIA*") and his participation in the decision was therefore contrary to s. 5(1)(*b*) of the *MCIA*, which prohibits a member of a municipal council from voting on a question in which he has a direct or indirect pecuniary interest.[5]

[47] The applicant does not allege that the Lord Mayor acted in bad faith or that the alleged conflict gives rise to a reasonable apprehension of bias in relation to the decisions that are the subject of this application for judicial review. Nor is it suggested that the alleged conflict is a basis for setting aside the decisions at issue.[6] Rather, the applicant submits that the conflict highlights the fact that the Town Council did not follow the correct process and points out that it remains open to the applicant to bring an application under the *MCIA*.

[48] As the alleged conflict of interest is not advanced as a basis on which to set aside the decisions before this court, I decline to make any findings with respect to whether a conflict existed. Whether the applicant can or intends to bring an application pursuant to the *MCIA* is of no relevance to this application.

(iii) Lack of Evidence and a "Conservation First Analysis"

(a) Evidence Relied on by the Town

[49] The applicant submits that the Town's decision to demolish rather than preserve the Royal George Theatre and other buildings was unreasonable because it did not reflect a "conservation first analysis." In particular, the applicant points out that the evidence Shaw relied on and which the Town adopted to justify replacing, rather than preserving, the existing structures consisted of only conclusory assertions in various documents. For example, a Cultural Heritage Impact Assessment commissioned by Shaw stated:

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[5] It should be noted that s. 4(*k*) of the *MCIA* provides that s. 5 does not apply to a pecuniary interest "by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member."

[6] A court hearing an application brought pursuant to the *MCIA* does not have the authority to set aside the decision in which the member participated, although s. 12 empowers the council to do so: *Sims v. Sault Ste. Marie (City)* (1997), 34 O.R. (3d) 232 (Gen. Div.). According to s. 13 of the *MCIA*, any proceeding which "seeks a remedy described in subsection 9(1) shall only be brought under this Act." The remedies described in subsection 9(1) are all sanctions against the member.

> Retaining the existing Royal George Theatre and the associated properties . . . without redevelopment was considered. Under this scenario, the buildings would remain largely as-is, with only minor repairs undertaken to address pressing safety or maintenance issues.
>
> - This option does not resolve the significant functional limitations of the current Royal George Theatre, including accessibility barriers, insufficient support spaces, obsolete technical systems, and lack of rehearsal facilities.
>
> - Retaining the building in its current condition is not a viable option, as it cannot be brought into compliance with modern building code and accessibility standards without substantial intervention.
>
> - Deferred maintenance would likely lead to escalating costs and further deterioration.
>
> Given these limitations, the "do nothing" option was not considered viable.

Similarly, a report of a structural assessment of the theatre which was considered by the Town Council stated:

> In our opinion, based on the information available and the level of study completed, incorporating the existing structures into a new larger, modern theatre structure would be impractical and cost prohibitive.
>
> . . . .
>
> Likewise, renovations to the existing Royal George to modernize to meet current industry theatre practices and to achieve the desired functionality would also require significant structural interventions. In our opinion, the structural interventions would also be impractical and cost prohibitive.

[50] The applicant submits that it was not open to the Town to conclude that preserving the structures was not a viable option based only on bald assertions that preserving the theatre would be "cost prohibitive" and that the Town could only reasonably come to that conclusion if it knew exactly what those costs were. The applicant suggests that if, for example, it turned out that the cost of preserving the Royal George was only $250,000, the decision to demolish rather than preserve it would be demonstrably unreasonable.

[51] There is nothing in the record to suggest that the Town Council did not consider all of the relevant factors or fail to comply with the *OHA.* The Council consulted the Heritage Committee more than once, reviewed the HIA submitted by Shaw and retained ERA Architects to prepare a

heritage report on behalf of the Town. Changes and revisions to Shaw's plans were made over the course of several months. Many of them were for the purpose of preserving the heritage value of the property, such as the use of a "ghost façade."

[52] Conservation was not the only social value that Council had to consider. For example, there is evidence in the record that the current Royal George Theatre did not conform to the requirements of the *Ontarians With Disabilities Act, 2001*, S.O. 2001, c.32. The proposed new theatre will be fitted with elevators, accessible washrooms and other measures to ensure accessibility.

[53] The fact that no dollar amount was put on the cost of preserving the theatre does not render the decision unreasonable. There was an extensive record before the Town. The opinion that preserving it would be "cost prohibitive" must be considered in light of all of the evidence, including the fact that Shaw had spent over $14,000,000 maintaining the structure and that the cost of rebuilding was estimated to be $90,000,000.

(b) The "Conservation First" Analysis

[54] The applicant submits that the "conservation first analysis" on which its argument is based is mandated by the *OHA*. In support of this contention, the applicant relies on the following portion of *St. Peter's Evangelical Lutheran Church (Ottawa) v. Ottawa (City)*, [1982] 2 S.C.R. 616, at p. 625:

> In the Ontario Court of Appeal, as well as in the High Court, the purpose of the Act, that is the preservation and protection of Ontario's heritage, was recognized and the statute was characterized as remedial. MacKinnon A.C.J.O. said:
>
> > We are of the view that the matter really comes to a narrow compass on the particular and peculiar facts of this case. It should be said at the opening that the object and purpose of *The Ontario Heritage Act* is clear. It is to preserve and conserve for the citizens of this country *inter alia*, properties of historical and architectural importance. The Act is a remedial one and should be given a fair and liberal interpretation to achieve those public purposes which I have recited.

Based on this, the applicant submits that the *OHA* imposes a duty on municipalities to conserve heritage properties whenever feasible. I do not agree.

[55] *St. Peter's Evangelical Lutheran Church* was a case about the deemed consent provisions in the *OHA* that applied when a municipality failed to make a decision on an application for a demolition permit within a specified timeframe. There is nothing in the decision or the *OHA* itself that supports the applicant's position that the preservation of properties in a heritage area is some sort of superordinate objective. The *OHA* protects Ontario's heritage by ensuring that it is

considered when certain decisions are made that may impact it. The Act gives municipalities powers to interfere with private property rights in order to protect heritage and provides a procedure to govern those powers, but it does not require municipalities to exercise their powers in a particular way, nor does it completely disregard the rights of property owners: *St. Peter's Evangelical Lutheran Church,* at pp. 623-624; *Clublink Corporation ULC v. Oakville (Town),* 2019 ONCA 826, 148 O.R. (3d) 513, at paras. 46-48.

[56] In cases such as this, s. 42(1) of the *OHA* gives the municipality the power to decide whether or not to issue a demolition permit to the landowner, and s. 42(4.1) requires the municipality to consult its heritage committee (if it has one) before making the decision. Section 42(2.2) leaves it to the municipality to decide what information it requires to make the decision. Beyond that, the Act does not direct how municipalities are to make decisions, what factors to consider or what information to rely on. Ultimately, whether or not to approve demolition is a policy decision: *My Rosedale Neighbourhood v. Dale Inc.*, 2019 ONSC 6631 (Div. Ct.), 94 M.P.L.R. (5th) 151, at paras.16-29.

(iv) Exemption From Parking Requirements

(a) The Applicant's Submission

[57] The existing theatre does not provide on-site parking. Nor will the new theatre. The applicant submits that the lack of parking that would otherwise be required by the applicable Town by-law was justified as a legal non-conforming use, but in the applicant's opinion, this does not survive the demolition and rebuilding of the theatre. As a result, the applicant submits that the lack of parking after the rebuild could not be justified as a legal non-conforming use and is therefore contrary to the applicable by-law. This, the applicant submits, renders the Town's decision to approve the demolition and rebuild unreasonable.

(b) Legal Non-Conforming Use

[58] To the extent that parking may be relevant to the Shaw application, information and analysis about parking was put before the Council as part of the extensive materials that were put forward in support of the application. The Town Council was provided with an opinion from Town staff with respect to parking in a Recommendation Report prepared for the Committee-of-the-Whole meeting on November 11, 2025. It explained that the Town's Zoning By-Law provides that where an existing building or structure had insufficient parking at the time the By-Law was passed, it can be provided with a "credit" for the number of parking spaces that would have been required, the quantum of which was calculated based on the use of the building. The existing theatre had a "credit" of 104 parking spaces. The parking requirement for the rebuilt theatre was calculated to be 105 spaces. Because there was a deficiency of only one space, it was the staff's opinion that it was open to Council to approve Shaw's application without requiring any parking spaces.

[59] In addition, as the applicant acknowledges, a legal non-conforming use can survive changes in the intensity of use, but not if the intensification is "of such a degree as to create a difference in kind": *Saint-Romuald (City) v. Olivier*, 2001 SCC 57, [2001] 2 S.C.R. 898, at paras.

23-25. The respondents submit that what has occurred in this case is simply a change in intensity which does not affect the legal non-conforming use. As well, the applicant has cited no authority in support of its assertion that a legal non-conforming use does not survive demolition and there appears to be caselaw suggesting otherwise: *Ottawa (City) v. TDL Group Corp.* (2009), 67 M.P.L.R. (4th) 40 (Ont. Div. Ct.), at para. 36; *Elbasiouni v. Brampton (City) Chief Building Official*, 2013 ONSC 5261, 13 M.P.L.R. (5th) 263, at para. 44-46.

[60] Based on the record before this court, the applicant has not demonstrated that the Town's decision to continue to exempt Shaw from the parking requirements was unreasonable.

(v) Conclusion

[61] The impugned decisions were made following months of consultation, the preparation and review of numerous expert reports, and discussion leading to changes addressing a variety of concerns, including those related to the *OHA*. The voluminous material relied on by the Town is in the record before this court, as are video recordings of Council meetings. It is obvious that the Town concluded that Shaw's proposal sufficiently addressed heritage concerns, was beneficial to the Town as a whole, and a better option than attempting to preserve the theatre in its current state. The decisions are transparent, intelligible and justified and while they are not what the applicant hoped for, they are within the range of acceptable outcomes: *Vavilov*, at paras. 86. In short, they are reasonable.

III. DISPOSITION

[62] The application is dismissed.

[63] The parties have not agreed on costs but have provided brief submissions. While the applicant seeks costs of the stay motion, it was ultimately resolved on consent and I am not prepared to speculate as to what the outcome would have been. As for the application itself, it is an issue of great importance to Shaw and the Town, which have expended significant time, effort and finances on the Royal George project. While the issue of standing was first raised in the respondents' factums, this is understandable given the urgency with which the matter was scheduled. In all the circumstances, the respondent Shaw is entitled to costs in the amount of $30,000.00 and the respondent Town is entitled to $25,000.00, all inclusive of disbursements and HST.

_____
Schreck J.

I agree. _____
Matheson J.

I agree. _____
Shore J.

Released: March 24, 2026

CITATION: *Centurion Building Corporation v. The Shaw Festival*, 2026 ONSC 1808
COURT FILE NO.: DC-26-00063988-0000
DATE: 20260324

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Matheson, Schreck and Shore JJ.

BETWEEN:

CENTURION BUILDING CORPORATION

Applicant

– and –

THE SHAW FESTIVAL and CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

Respondents

REASONS FOR JUDGMENT

Released: March 24, 2026