

CITATION: The Jos. Rashotte Company Limited v. Quinte Conservation Authority,
2026 ONSC 4554

DIVISIONAL COURT FILE NO.: DC-25-3080-0000

DATE: 2026/08/06

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

THE JOS. RASHOTTE COMPANY LIMITED

Applicant

– and –

QUINTE CONSERVATION AUTHORITY

Respondent

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) Mark Pedersen, for the Applicant
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) Jennifer Savini and Daniel J. Querques, for
) the Respondent
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)

) **HEARD at Ottawa by Zoom:** April 21,
2026

COSTS ENDORSEMENT

LABROSSE J.

Background

[1] This matter concerns the costs arising from an application for judicial review brought by The Jos. Rashotte Company Limited (the "Applicant") challenging a decision of the Quinte Conservation Authority ("QCA").

[2] The underlying judicial review application was commenced following a decision of the QCA Board in its capacity as a statutory decision-maker under the *Conservation Authorities Act*. The Applicant alleged that the proceedings before the QCA were procedurally unfair and sought

judicial review of the decision. The allegations of breaches of procedural fairness related to the tribunal's refusal to allow the Applicant to cross-examine certain witnesses and the refusal to allow counsel for the Applicant to make submissions during the hearing.

[3] Subsequently, the parties resolved the judicial review proceeding. Pursuant to a court order, the original decision of the QCA was quashed, and the matter was directed to proceed to a rehearing before the QCA.

[4] The sole issue remaining before the court is whether the Applicant is entitled to recover its costs of the judicial review proceeding from the QCA.

[5] The Applicant seeks costs in the amount of \$6,087.08 inclusive of fees, disbursements and HST which is the amount incurred by QCA in the judicial review proceeding on a partial indemnity basis. The Applicant submits that it was the successful party because the relief ultimately granted by the court corresponded to the principal relief sought in the application, namely the quashing of the QCA decision and a rehearing.

[6] The Respondent submits that no costs should be awarded. It argues that it was acting as an administrative tribunal and that the well-established jurisprudence provides that tribunals generally neither pay nor receive costs in judicial review proceedings absent exceptional circumstances. According to the QCA, no such exceptional circumstances exist in this case.

[7] For the reasons set out herein, the request for costs is dismissed.

Applicant's Position

[8] The Applicant advances several arguments in support of its claim for costs.

[9] First, it submits that it obtained the relief sought. The court ultimately quashed the QCA's decision and ordered a rehearing. The Applicant argues that this outcome constitutes litigation success and engages the ordinary principle that costs follow the event.

[10] Second, the Applicant submits that while courts exercise restraint in awarding costs against administrative tribunals, they enjoy no blanket immunity from costs consequences. The Applicant argues that tribunals may properly be ordered to pay costs where they assume an adversarial role in judicial review proceedings or where procedural fairness concerns necessitate judicial intervention.

[11] Third, the Applicant argues that the QCA's proposal to simply reconvene a hearing without a court order was inadequate. The Applicant submits that uncertainty surrounding the doctrine of *functus officio* made judicial review necessary in order to secure an enforceable remedy. According to the Applicant, a court order quashing the original decision was required before a rehearing could validly proceed.

[12] Finally, the Applicant maintains that the amount claimed is reasonable and proportionate for a judicial review proceeding.

Respondent's Position

[13] The Respondent submits that the Applicant is not entitled to costs. The QCA argues that it was acting in its adjudicative capacity as an administrative tribunal throughout the proceedings. It relies upon the long-standing principle that tribunals generally neither seek nor pay costs in judicial review proceedings except in exceptional circumstances.

[14] The Respondent further argues that the matter was resolved without any adjudication of the merits of the judicial review application. Although the court ultimately issued an order quashing the decision and directing a rehearing, the result was achieved through agreement between the parties rather than through a determination of the substantive issues raised in the application.

[15] The Respondent submits that it never acted adversarially. It notes that it proposed a rehearing early in the process, engaged in settlement discussions and ultimately consented to the relief granted by the court.

[16] The Respondent also argues that the Applicant's reliance on *functus officio* is misplaced. According to the Respondent, jurisprudence recognizes exceptions permitting administrative tribunals to revisit prior decisions where procedural fairness concerns arise. Accordingly, the Respondent requests that no costs be awarded.

Analysis

[17] I have considered the principles governing costs under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Section 131(1) provides:

Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

[18] The Court of Appeal in *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.) confirmed that costs are fundamentally discretionary and that the objective is to fix an amount that is fair and reasonable in the circumstances rather than simply indemnifying a successful litigant for actual expenses incurred.

[19] The starting point in most civil proceedings is the determination of success and the application of the factors set out in Rule 57.01 of the *Rules of Civil Procedure*. However, judicial review proceedings involving administrative tribunals engage additional considerations that have developed through the jurisprudence. There is no dispute in this case that the QCA Board acts as an administrative tribunal in respect of appeals of development permit refusals and in that function is governed by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

[20] The basic principle relating to costs against an administrative tribunal is set out as follows:

It has been recognized ... that, contrary to the normal practice, costs do not necessarily follow the event where administrative or quasi-judicial tribunals are concerned. They may be awarded only in unusual or exceptional cases, and then only with caution...where the tribunal has acted in good faith and conscientiously throughout, albeit resulting in error, the reviewing tribunal will not ordinarily impose costs.

See: Donald J.M. Brown & John M. Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Thomson Reuters Canada, 2009), para. 5:47.

[21] This text has also been cited by the Divisional Court in *Reynolds v. Ontario (Alcohol and Gaming Commission, Registrar)*, 2019 ONSC 7057 (Ont. Div. Ct.) at para. 4:

It is true that costs are not normally awarded to or against an administrative tribunal that does not participate in a defense of the merits of its decision. As stated in Donald J.M. Brown and The Honourable John M. Evans in *Judicial Review of Administrative Action in Canada*, “[g]enerally unless the agency is acting in a proper adversarial role, an administrative tribunal will neither be entitled to nor ordered to pay costs” (at para. 5:2560 (2019)).

[22] In *Faruk v. The Landlord and Tenant Board*, 2023 ONSC 2191, at paragraph 73, the Divisional Court acknowledged that the proceedings had been caused by a failure on the part of the administrative tribunal in question. However, the Court emphasized that, as a general rule, it does not award costs against an administrative tribunal because of errors it has made. It is inevitable that administrative tribunals will make mistakes, but a costs order is not necessarily an appropriate response to those errors.

[23] The courts have recognized that administrative tribunals occupy a distinctive role within the justice system. Their function is adjudicative rather than adversarial. Consequently, tribunals ordinarily neither recover nor pay costs when their decisions are challenged through judicial review proceedings. The issue before this court is therefore whether the circumstances of this proceeding justify such a departure.

[24] While the Applicant obtained a court order quashing the decision and directing a rehearing, it is relevant that the judicial review was never adjudicated on its merits.

[25] There was no hearing on the substantive issues. No evidentiary record was tested. No judicial determination was made regarding the validity of the Applicant's allegations of procedural unfairness, although on the face of the allegations, the result of conducting a new hearing does not seem unreasonable. Still, the court did not make findings regarding whether the tribunal breached principles of natural justice or procedural fairness. The order that ultimately issued resulted from the parties' agreement concerning the appropriate disposition of the matter.

[26] I accept the Applicant's submission that a court order was ultimately obtained and that the matter cannot be characterized as a purely private settlement. However, the absence of a

determination on the merits remains a factor when considering whether costs should be awarded against an administrative tribunal.

[27] The Applicant argues that the QCA effectively acknowledged a procedural fairness problem by proposing a rehearing. There is likely some merit to that argument but it is clear that parties frequently resolve litigation for various reasons. It may have been a close call that did not warrant adjudication. The fact that a tribunal is prepared to revisit a matter or consent to a rehearing does not constitute an admission that procedural fairness was breached. What remains is that the QCA has not sought to engage in a dispute of the judicial review proceeding and proposed the result sought by the Applicant at an early stage. This does not suggest that the QCA took on an adversarial position and it suggests that QCA engaged in a process to rapidly cure any alleged procedural unfairness and avoided protracted litigation.

[28] The Applicant also argues that concerns relating to *functus officio* made judicial intervention necessary. However, I was not presented with authority supporting the proposition that the rehearing proposed by the QCA would necessarily have been invalid absent an order of certiorari. At the same time, I am unable to conclude that the judicial review application was unnecessary. A judicial review application was made and required disposition or withdrawal. The Applicant sought an order of the court, and this certainly did not extensively protract the litigation. I am of the view that both parties acted reasonably in coming to the court on a Case Management Conference whereby a resolution was obtained on consent.

[29] Regardless, the Applicant's *functus officio* argument does not provide a basis for departing from the established costs principles applicable to administrative tribunals. The law remains focussed on the fact that costs are not awarded against an administrative tribunal except in certain circumstances. Examples cited are where the administrative tribunal cast itself in an adversarial position, breached the rules of procedural fairness, was the initiator of the litigation in question or where bias has necessitated a new hearing.

[30] Although the breach of procedural fairness may resonate in the context of this application where a party is refused a right to cross-examine or make fulsome argument, this has not been

presented to me on a complete record because the QCA has agreed to the ultimate relief sought of a new hearing.

[31] It is also important to recognize that administrative tribunal members come with various levels of legal and formative training. They are certainly not all lawyers, and their decisions are still held to a high standard. It is well recognized that they will make mistakes but that all mistakes do not lead to an obligation to pay costs when their decisions are quashed.

[32] I am not satisfied that the QCA adopted an adversarial role. The evidence before me demonstrates that the QCA proposed a rehearing early during the course of the judicial review proceeding and engaged in efforts to resolve the matter. Although the parties disagreed regarding the mechanism by which the matter should proceed, that disagreement does not transform the tribunal into an adversary.

[33] The QCA's position concerning prematurity and jurisdictional issues was a legal position available to it. As several authorities have recognized, the advancement of procedural or jurisdictional arguments does not, by itself, constitute adversarial conduct sufficient to justify a costs award against a tribunal: see *Weyerhaeuser Company Limited v. Ontario (Human Rights Commission)*, 2007 CanLII 65623 (ON SCDC) at para. 24.

[34] In the end, I am not satisfied that this is one of the cases where the interests of justice require a departure from the ordinary rule. The Applicant seeks costs because it ultimately obtained the relief it sought. However, the jurisprudence concerning administrative tribunals makes clear that the usual "costs follow the event" principle does not apply with the same force in judicial review proceedings involving adjudicative bodies. Even where tribunal decisions are set aside, courts have exercised restraint in awarding costs absent adversarial conduct or other exceptional circumstances.

[35] In addition, I consider my discretion under s. 131 of the *Courts of Justice Act* and considering the relevant factors under Rule 57.01 of the *Rules of Civil Procedure*. I conclude that this is an appropriate case for no order as to costs. The Respondent acted in its adjudicative capacity. The judicial review was resolved without a determination on the merits. The QCA did

not assume an adversarial role. No exceptional circumstances have been established that would justify departing from the general rule applicable to administrative tribunals.

[36] The Applicant's request for costs is denied.

JUSTICE MARC R. LABROSSE

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COUNSEL: Mark Pedersen, for the Applicant

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for the Respondent

COSTS ENDORSEMENT

Labrosse J.

Released: August 06, 2026