

CITATION: Land Design Inc. v. Ontario Infrastructure and Lands Corp., 2026 ONSC 4690
DIVISIONAL COURT FILE NO.: 467/26 JR
DATE: 20260901

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

B E T W E E N :

REASONS FOR DECISION

improvements and other public sector initiatives: *Ontario Infrastructure and Lands Corporation Act*, SO 2011, c. 9, Sched. 32.

(3) Prior to the events at issue in this proceeding, LANDinc was selected to perform design work on the Project. In this capacity, it created a three-dimensional model of the proposed redevelopment (the “3D model”). LANDinc states at paras. 4 and 11 of its Factum that “[i]n the years prior to the RFP... [it] carried out substantial work on the Ontario Place Public Realm Project” including “lead[ing] the design of the public realm at Ontario Place.”

(4) On May 4, 2026, IO issued a Request for Proposals (“RFP”) to procure contract administration services for construction work for the Project.

(5) On May 5th, LANDinc entered the RFP process. Parties who submit proposals under the RFP, like LANDinc, are referred to as “respondents”.

(6) Section 3.6 of the RFP prohibits respondents from having contact with enumerated persons, including members of IO’s evaluation team and other related or government parties including the Premier or the Premier’s office and members of Provincial Parliament. It also prohibits lobbying to influence the outcome of the RFP process. Section 7.3(1) of the RFP confers discretion on IO to disqualify a respondent where it has attempted or had contact with a prohibited person.

(7) On May 11, a junior LANDinc employee met the Premier of Ontario at an event and told the Premier about the 3D model. Apparently, the Premier was interested in seeing the 3D model, and it was left to the junior LANDinc employee to contact staff in the Premier’s office to schedule a visit. The employee later emailed the Premier’s office confirming the Premier’s interest in seeing the 3D model and arranging a visit for May 26th.

(8) On May 26th, the Premier and Ontario’s Minister of Tourism visited LANDinc offices, viewed the 3D model, and had discussions with LANDinc personnel (the “Visit”).

(9) IO learned about the Visit on May 28th, and by letter dated May 29th raised concerns with LANDinc that the Visit was contrary to RFPs. 3.6(2) and could lead to LANDinc’s disqualification from the RFP process.

(10) LANDinc responded to IO’s letter by letter dated May 30, 2026.

(11) IO investigated its concerns about the Visit, and by letter dated June 11, 2026, advised that it had concluded that LANDinc had contravened s. 3.6(2) and was disqualified from the RFP process as a result (the “Decision”).

(12) LANDinc requested reconsideration of the Decision by letter dated June 15, 2026. By letter dated June 17, 2026, IO confirmed the Decision (the “Reconsideration Decision”).

(13) LANDinc then commenced this application for judicial review on June 24, 2026. Materials were exchanged and this application was scheduled to be heard by a panel on an expedited basis on July 24, 2026.

(14) IO asked for a decision from this court by August 7th (in light of the schedule for commencement of construction). By email on August 7th, the court advised that the application was dismissed, with these reasons to follow in due course.

Issues

(15) The following issues are raised on this application:

- (i) this court's jurisdiction to hear this application;
- (ii) the applicable standard(s) of review;
- (iii) whether IO breached a duty of fairness it owed to LANDinc;
- (iv) whether IO's conclusion that LANDinc contravened the RFP is reasonable;
- (v) whether the disqualification decision was reasonable;
- (vi) LANDinc's alternative contractual claims.

(16) The AG Ontario intervened as of right in this application pursuant to s. 9(4) of the *Judicial Review Procedure Act*, RSO 1990, c. J.1 ("JRPA") to make written submissions in respect to Issue 1 (jurisdiction). At the court's request, counsel for the AG Ontario made brief oral submissions on this issue at the start of the hearing.

Summary and Disposition

(17) I would conclude that this court has jurisdiction to review the impugned decisions. I would find that IO's decision that LANDinc breached the RFP is reasonable and that LANDinc was reasonably disqualified from the RFP process. I would find that there was no procedural unfairness in the process leading to disqualification and that IO did not breach a duty of fairness owed to LANDinc. I would find that the Divisional Court does not have jurisdiction over LANDinc's alternatively asserted contractual claims and that the apparent merits of those claims do not justify this court intervening pending a potential contractual claim in the Superior Court of Justice. Therefore, for the following reasons, I would dismiss the application.

1. Jurisdiction

(18) LANDinc argues that this court has jurisdiction over this application pursuant to ss. 2(1)1 and 6(1) of the JRPA. LANDinc concedes (correctly in my view) that the impugned decisions do not involve an exercise of a "statutory power of decision" within the meaning of s. 2(1)2 of the JRPA: *Grascan Construction Ltd. v. Metrolinx*, 2017 ONSC 6424, paras. 77 and 83 (Div. Ct.); *Midnorthern Appliances Industries Corp. v. The Ontario Housing Corp.* (1977), 17 O.R. (2d) 290 (Div. Ct.).

(19) IO does not contest this court's jurisdiction pursuant to *JRPA*, s. 2(1), without prejudice to arguing in future cases that public procurement decisions are not subject to judicial review.

(20) The AG Ontario submits that jurisdiction is a "threshold issue" and may not be presumed because it is uncontested by IO in this case.

(21) I agree with the AG Ontario on this point. The Divisional Court is a statutory court. It has no inherent jurisdiction, but rather, it has only the jurisdiction that has been created by statute. Jurisdiction is not conferred on this court by consent (or non-opposition) of the parties: *Tele-Zone Inc. v. Attorney General (Canada)*, 2008 ONCA 892, paras. 3, 4 and 92; *aff'd* 2010 SCC 63; *1819472 Ont. Corp. v. John Barrett General Contractors Ltd.*, 2024 ONCA 333, para. 21; *376965 Ont. Ltd. v. Regional Municipality of Durham Police Board*, 2025 ONSC 3084, para. 27 (Div. Ct.); *Berentschot v. Ontario*, 2025 ONSC 4857, para. 9 (Div. Ct.).

(22) Fundamentally, judicial review is "directed at public decision making." This court's jurisdiction to undertake judicial review pursuant to *JRPA*, s. 2(1) is engaged only where "there is an exercise of state authority" and "that exercise is of a sufficiently public character." See *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, paras. 13, 14 and 16.

(23) To determine whether a decision is of a "sufficiently public character" to be subject to judicial review, the court considers the factors described in *Air Canada v. Toronto Port Authority*, 2011 FCA 437:

- the character of the matter for which review is sought
- the nature of the decision maker and its responsibilities
- the extent to which the decision is founded in and shaped by law as opposed to private discretion
- the decision-making body's relationship to other statutory schemes and parts of government
- the extent to which a decision maker is an agent of government or is directed, controlled or significantly influenced by a public entity
- the suitability of public law remedies
- whether the decision belongs to an "exceptional" category of cases where the conduct has attained a serious public dimension

(24) The *Air Canada* factors "do not operate as a strict test or checklist." The factors apply contextually, in the circumstances of a particular case, to guide the court's determination whether the impugned decision(s) are of a sufficiently public character as to be subject to judicial review:

West Whitby, para. 40; *Khorsand v. Toronto Police Services Board*, 2024 ONCA 597, paras. 63-76.

(25) There are cases where the court has found that procurement decisions are not amenable to judicial review: 376965 *Ontario Limited v. Regional Municipality of Durham Police Service Board*, 2025 ONSC 3084 (Div Ct motions judge); *Astro Zodiac Enterprises Ltd. v. Board of Governors of Exhibition Place*, 2022 ONSC 1175 (Div. Ct.); *A-1 Credit Recovery v. Ministry of Finance*, 2023 ONSC 6667.

(26) In *Bot Construction*, this court found that it had jurisdiction over a decision not to disqualify a respondent (and to award that respondent the contract) and reversed the Ministry of Transportation's decision. The Court of Appeal reversed the Divisional Court on the basis that the impugned Ministry decision was reasonable: *Bot Construction Limited v. Ontario (Transportation)*, 2009 ONCA 879. In *Thales*, likewise, this court found that it had jurisdiction to judicially review a decision upholding tender conditions alleged to violate that Canada-Europe Free Trade Agreement and found (a) that the impugned conditions were unreasonable; and (b) that the dispute resolution process followed by Ontario violated the terms of the Free Trade Agreement. The Court of Appeal reversed both substantive conclusions of this court and did not decide the jurisdictional issue: *Thales DIS Canada Inc. v. Ontario (Transportation)*, 2023 ONCA 866. These two cases provide authority from the Divisional Court that judicial review may be available in public procurement cases, in particular circumstances, and that the Court of Appeal has neither approved nor disapproved these findings.

(27) Divisional Court precedent (cited above) establishes that public procurement decisions are not reviewable in this court as a general class: jurisdiction turns on a case-by-case analysis guided by an application of the *Air Canada* factors to the particular circumstances of the case.

(28) In my view, there are several aspects of this case that lead to the conclusion that the impugned decision has a sufficiently "public" dimension as to render the impugned decision amenable to judicial review.

- (a) the Project itself is a large one in respect to which there is considerable public interest: the redevelopment of an important public landmark in a prominent location on Toronto's waterfront;
- (b) the RFP is in respect to a substantial services contract overseeing important aspects of substantial construction work on the Project;
- (c) the impugned decision involves both factual and legal determinations, and then an exercise of discretion based on those findings.
- (d) the legal determinations pertain to provisions in the RFP aimed at preventing a respondent from obtaining, or being seen to obtain, unfair advantage over other respondents through prohibited contact with the Premier of Ontario and a Minister of the Crown. In addition, these provisions seek to establish a process seen to be transparently independent of political

lobbying and interference, to limit or eliminate an appearance of impropriety in the awarding of public contracts.

- (e) the factual determinations include assessing the nature of contacts made with the Premier of Ontario, a Minister of the Crown, and members of the Premier's office which could give rise to concerns about the propriety of the conduct of everyone involved in the impugned events.
- (f) the issues raised on the application are justiciable through the application of administrative law principles, and public law remedies could be suitable, depending on this court's findings respecting the merits of the application.

(29) Taking these factors together, I am satisfied that there is a sufficiently public nature to the impugned decision to ground jurisdiction for judicial review. Some of these factors, on their own, would not be sufficient to ground jurisdiction: just because a project is of great public interest or the RFP is in respect to a proposed contract involving expenditure of a substantial amount of public money, may not, on their own, be sufficient to ground jurisdiction for judicial review. Many public tendering processes involve large projects and expensive contracts. Contrary to LANDinc's submission on this issue, Ontario jurisprudence does not establish that the size of a project and the cost of the anticipated contract are sufficient, by themselves or together, to grant jurisdiction. In *Bot Construction*, for example, the scale of the project and value of the contract made the issue of "the fairness and integrity of the process followed in the expenditure of significant public funds" of sufficiently public importance to ground jurisdiction for judicial review (at para. 24).¹ The size of the Project and the value of the intended contract were important, in light of the underlying issue on the application (integrity of the procurement process) but only arose to the level of being "sufficiently public" in nature because issues related to the integrity of the process were also involved.

(30) The grounds for disqualification in this case, and the involvement of senior members of the Executive, including the Premier and a Minister of the Crown, provide the basis for concluding that the court's assessment of whether the impugned decision is in accordance with the law and principles of procedural fairness has a "serious public dimension" grounding jurisdiction.

2. Standard of Review

¹ LANDinc also cites *Pomerlau Inc. v. New Brunswick*, 2021 NBQB 56 (NBQB) and *Aquatech v. Alberta (Minister of Environment and Parks)*, 2019 ABQB 62; affd. 2020 ABCA 153. In *Pomerlau*, the court took jurisdiction but did not explain why it concluded that judicial review was available. In *Aquatech*, the court did take jurisdiction because of the importance and scale of the project, however the Court of Appeal expressly declined to rule on the jurisdictional issue, since it had not been raised as an issue for appeal (para. 14). We do not find either authority persuasive on this issue.

(31) “The presumptive standard of review is reasonableness” *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 10.

(32) LANDinc argues that there is no standard of review for issues of fairness. This submission is partially correct. There is no standard of review for issues of procedural fairness: *Canadian Pacific Railway Co. v. Canada (AG)*, 2018 FCA 69, paras. 54-56; *Brooks v. Ontario Racing Commission*, 2017 ONCA 833, para. 5; *Vavilov*, para. 23; *Caledon Residences Inc. v. Ontario Land Tribunal*, 2025 ONSC 6546, para. 17 (Div. Ct.).

(33) However, LANDinc characterizes the substantive decision as a violation of a “duty of fairness” and on the basis of this argument submits that the standard of review of the substantive decision is correctness. I would not accept this argument, as explained below. LANDinc was afforded procedural fairness in the process leading to the impugned decisions. The decisions were “fair” in that they are reasonable on the facts, they disclose no error in principle, and disqualification was an available and reasonable remedy in all the circumstances. These conclusions, and the analyses leading to them, are not changed by arguments characterizing the decisions as substantively “unfair”.

3. The Decision and the Reconsideration Decision

(34) In the Decision, IO found as follows:

- a. The Visit contravened RFP s. 3.6(2);
- b. The Visit “constituted contact on matters related to the RFP Process with Members of Provincial Parliament as expressly prohibited by Section 3.6(2)(e) of the RFP.”
- c. An employee of LANDinc initiated formal correspondence with the office of the Member of Provincial Parliament that directly resulted in the Visit.
- d. One or more employees of LANDinc discussed the following matters related to the RFP Process with the present Members of Provincial Parliament:
 - i. the Ontario Place Public Realm project (which is the project in respect of which the Sponsors are procuring consultant services pursuant to the RFP); and
 - ii. the Submission Deadline under the RFP.
- e. Because of LANDinc’s contravention of RFP s. 3.6(2), “the Sponsors have disqualified LANDinc pursuant to s. 7.3(1)(b) of the RFP.”

(35) In the Reconsideration Decision, IO found as follows:²

- a. The Visit contravened s. 3.6(2) of the RFP, as it involved contact with Members of Provincial Parliament on matters related to the RFP process, which is expressly prohibited under s. 3.6(2)(e);
- b. Although the Premier expressed initial interest in viewing the 3D model, LANDinc initiated formal correspondence with the Premier’s Office, which resulted in an exchange of communications over two weeks on which senior members of LANDinc were copied. The visit was not “impromptu” and was pursued and formally initiated by LANDinc;
- c. Senior LANDinc personnel, including personnel involved in the RFP process, participated in the visit;
- d. Topics discussed at the Visit “are plainly matters related to the RFP Process. It is difficult to take the view that the project for which the Services are being procured to administer is not a matter related to the RFP Process.” In addition, matters directly related to the RFP Process, including the “RFP black out period” were discussed.
- e. Both the Premier and the Minister were present at the visit, in violation of s. 3.6(2) of the RFP. Even if the topics discussed did not include matters related to the RFP Process, the contact with the Premier and the Minister independently engaged the right to disqualify LANDinc under RFP s.7.3(1)(b).
- f. The Sponsors have considered the full range of available responses and have concluded that disqualification is the appropriate exercise of discretion under s.7.3(1)(b). The procurement process must both be fair to all respondents and also be perceived as fair. Contact with the Premier and the Minister could be perceived to give LANDinc an unfair advantage over other respondents.
- g. “Further, LANDinc is an incumbent service provider. A failure to disqualify LANDinc in these circumstances could be viewed as preferential treatment, a perception exacerbated by the fact that the Visit did not arise as a matter of course under its existing contract but because a LANDinc employee leveraged prior work to secure the meeting with the Premier and the Minister.”

4. RFP Provisions

² The “Reconsideration Decision” includes a letter from IO and a letter from IO’s solicitors, both dated June 17, 2026.

(36) Section 3.6 of the RFP provides:

3.6 Prohibited Contacts

[1] Respondents, Team Members and their respective advisors, employees and representatives are **prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP process.**

[2] Without limiting the generality of RFP 3.6(1), neither Respondents, Team Members, nor any of their respective advisors, employees or representatives shall **contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:**

...

(d) **any employee or representative of,**

(i) Infrastructure Ontario, other than the Contact Person;

(ii) Ministry of Infrastructure or any other Ministry, agency or entity listed in the Data Sheet; or

(iii) **the Premier of Ontario's office** or the Ontario Cabinet office;

(e) **any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives;**

.... [emphasis added]

(37) Section 7.3(1) of the RFP provides:

Without limiting Infrastructure Ontario's general right to disqualify a Respondent or reject a Proposal, **Infrastructure Ontario shall have the following rights, at any time and in its discretion unless otherwise stated in this section** and, in each case, without incurring any liability for costs and damages incurred by the Respondent.

....

(b) **Prohibited Contact: to disqualify a Respondent or reject a Proposal where there is attempted contact with specified individuals in RFP Section 3.6(2) by the Respondent** or any of its representatives or Team Members;

(c) **Lobbying:** to prohibit a prospective Respondent from submitting a Proposal or to reject the Proposal submitted by the Respondent, in the event of any

lobbying or communication by a Respondent in contravention of RFP Sections 3.6 or 3.8(1);

Alternatively, Infrastructure Ontario may take any action pursuant to this RFP Section 3.7 or impose such conditions on a prospective Respondent's continued participation in the RFP Process and any subsequent procurement process as Infrastructure Ontario, in its discretion, may consider in the public interest or otherwise appropriate;

5. Reasonableness of the Contravention Finding

(38) LANDinc raises two primary arguments for its submission that the contravention conclusion is unreasonable:

- [1] the conclusion is inconsistent with LANDinc's legitimate expectations; and
- [2] IO failed to take minimum investigative steps.

(39) LANDinc also argues that IO based its Decision and Reconsideration Decision on an unreasonable finding that LANDinc "initiated" contact with the Premier and the Premier's Office.

[1] The Legitimate Expectations Argument

(40) In its factum and in oral argument, LANDinc placed considerable emphasis on an argument that the impugned Decision and Reconsideration Decision were inconsistent with LANDinc's "legitimate expectations" (for example, LANDinc Factum, paras. 5, 6, 7(a) and (c), 18-23, 33, 35, 59, 60(d), 61, 64-66, 79, 80).

(41) It is not clear that the doctrine of "legitimate expectations" arises in this case: in law, these expectations are in respect to procedural representations regarding the decision-making process, not the substantive result of the process:

Where a government official makes representations within the scope of his or her authority to an individual about an administrative process that the government will follow, and the representations said to give rise to the legitimate expectations are clear, unambiguous and unqualified, the government may be held to its word, provided the representations are procedural in nature and do not conflict with the decision maker's statutory duty. [*Canada (AG) v. Mavi*, 2011 SCC 30, para. 68]

See also: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, para. 97; *Jono Developments Ltd. v. North End Community Health Assn.*, 2014 NSCA 92, para. 68. Neither the meeting with IO on May 6, 2026, nor the Visit, was part of the "administrative process" related to the RFP. In any event, assuming without finding that the doctrine of legitimate expectations could arise in this case, I would not give effect to this argument.

(42) LANDinc argues that the Visit was, in substance, no different than a meeting between IO and LANDinc personnel on May 6, 2026, at LANDinc's office. Based on this earlier meeting with IO personnel, which took place after commencement of the RFP Process, LANDinc reasonably understood that such a meeting was not prohibited by the provisions of the RFP.

(43) There are three problems with this argument.

(44) First, this argument was not made in LANDinc's initial submissions to IO, being the letter of June 1, 2026, or in the Reconsideration Request dated June 15, 2026. At the end of its initial submission, LANDinc did write as follows:

When the visit appeared to be real, LANDinc was excited to share its enthusiasm for the physical representation of the project model. This was in no way different from entertaining other Infrastructure Ontario staff from Landmark Projects, from viewing the model, with the full knowledge of Infrastructure Delivery staff after the RFP had been issued. Our understanding was that giving Project Delivery's leadership and involvement in the RFP process, they were the restricted team that needed to remain out of communication. It was a similar expression of interest from other IO staff earlier in May, that seemed to be harmless. (emphasis added)

The letter requesting reconsideration does not mention the May 6th meeting with IO personnel or raise a "legitimate expectations" argument.

(45) I appreciate that the process followed below was fast and relatively informal. LANDinc mentioned the May 6th meeting vaguely in its initial submissions, but not in a way that raised a "legitimate expectations" argument so much as an argument that the earlier meeting was "harmless" and the visit by the Premier and the Minister was "like" the prior meeting with IO – a sort of similar fact argument raised in support of LANDinc's main submission that, on the merits, the Visit did not violate the provisions of the RFP.

(46) IO did not address this argument in the Decision, and LANDinc did not raise the issue in its reconsideration request – which would be a reasonable basis upon which IO would say nothing about it in its Reconsideration Decision. However, as quoted above, at para. 35g., "the Visit did not arise as a matter of course under its existing contract but because a LANDinc employee leveraged prior work to secure the meeting with the Premier and the Minister." This phrase distinguishes between the May 6th meeting with IO personnel and the Visit and explains the finding that the Visit created an appearance of "unfair advantage". The Visit did not arise as a matter of course under an existing contract and could not be construed as merely incidental to a prior contract.

(47) In my view, IO was entitled to decide the matter before it on the basis on which it was argued by LANDinc. The brief and general reference to the prior meeting with IO personnel on May 6th did not need to be addressed at all by IO, and in particular did not need to be addressed in the Reconsideration Decision, because it was not raised the LANDinc's reconsideration request.

However, it was addressed, in general terms, and the general explanation provided by IO was in keeping with the way in which the issue was addressed by LANDinc in its initial submission.

(48) In terms of the overall argument advanced by LANDinc on this point, I see little merit to it. It may be that the earlier meeting with IO was also inconsistent with the terms of the RFP: that issue was not decided by IO, nor did it need to be decided. The argument on this point by LANDinc is, in effect, that the earlier meeting with IO personnel led LANDinc to believe that the Visit would not be a contravention of the RFP. This is not a tenable argument. The RFP expressly forbids “contact” with the Premier, the Premier’s Office or any Member of Provincial Parliament (which would include both the Premier and the Minister). The Visit was a direct violation of these provisions and would reasonably be viewed by other respondents as an unfair advantage for LANDinc in the RFP Process. The Visit was not a reasonable consequence of LANDinc’s “incumbency” but rather, viewed reasonably, was an additional advantage obtained by LANDinc by leveraging its incumbency to contact and meet with senior political actors. IO’s conclusion to this effect is reasonable.

(49) In its factum, LANDinc characterizes the “mere contact” argument as an “alternate position” advanced by IO for the first time in the Reconsideration Decision. It argues that this “new” justification for the disqualification decision is an “extreme and unworkable” interpretation that could lead to disqualification for chance encounters or an unsuccessful attempted contact. I would not accept this argument. A chance encounter or an unsuccessful attempt to contact might ground an exercise of discretion by IO, but that discretion would have to be exercised reasonably. The facts in this case go far beyond a “chance encounter” to a planned, organized visit by the Premier and the Minister to review work done by LANDinc under a prior contract, with private discussions involving the Premier, the Minister, and senior LANDinc personnel. There was far more than “mere contact” or “attempted contact” in this case.

(50) I would not give effect to this argument, both because it was reasonably rejected by IO in the Reconsideration Decision on a basis responsive to the manner in which the argument was raised with IO by LANDinc, and because, on the merits, the earlier meeting with IO personnel did not provide a reasonable basis for LANDinc to conclude it was acceptable for it to meet with the Premier and the Minister at its offices in respect to the Ontario Place Project.

[2] The Minimum Investigative Steps Argument

(51) LANDinc argues that IO failed to conduct an adequate investigation, and in particular, did not obtain sufficient information from the Premier’s Office or from other government actors who may have been involved (including the Minister).

(52) I would not give effect to this argument. It is plain from the Decision and the Reconsideration Decision that both were based on an understanding of the facts as provided by LANDinc and as disclosed in email correspondence. Only one factual finding appears to be contested: whether LANDinc “initiated” contact with the Premier and the Premier’s Office. In the final analysis, little turns on a finding as to who “initiated” the first contact.

(53) In the “Decision”, IO found that LANDinc “initiated” contact with the Premier. In the Reconsideration Decision, after considering LANDinc’s further submissions, IO found:

While LANDinc asserts that the Premier expressed initial interest in viewing [the 3D model], it was a LANDinc employee... who initiated the formal correspondence with the Office of the Premier that resulted in the Visit.... While LANDinc characterizes the Visit as having been largely impromptu, in fact it was arranged over approximately two weeks.... That sustained coordination, initiated and advanced by LANDinc, is not consistent with the characterization of the Visit as impromptu.

(54) IO also found in the Reconsideration Decision that:

In any event, the Sponsors’ right to disqualify a Respondent under Section 7.3(1)(b) arises upon contact, or attempted contact, with a Prohibited Contact, and is not by its terms confined to contact on matters related to the RFP Process, the RFP Documents, or a Proposal. Accordingly, even if the topics discussed at the Visit were found not to be matters related to the RFP Process, which the Sponsors do not accept, the contact with the Premier and the Minister would independently engage the Sponsors’ right to disqualify LANDinc under Section 7.3(1)(b).

(55) In my view, IO’s characterizations of events on this point were reasonable, and in the end, it did not matter “who started it”. The chain of events began when a junior LANDinc employee attended an event where the Premier was present. The employee initiated a conversation with the Premier. The employee mentioned that he was with LANDinc and spoke of his work on the 3D model, which, naturally, interested the Premier. In my view, these facts – uncontested by LANDinc – are a sufficient basis for a finding that LANDinc “initiated” contact with the Premier.

(56) This initiation of contact – had it gone no further – would not likely have warranted sanction: a very junior employee has an inappropriate conversation with the Premier, and nothing comes from it. As IO states in its Factum (at para. 86): “IO agrees that mere attempted contact, or a chance encounter, with a prohibited contact would not *without more* engage the power to disqualify under Section 7.3(1)(b) of the RFP (emphasis in original).” This is another way of saying that impugned conduct should be assessed contextually, in all the circumstances, to determine what response is appropriate to protect the integrity and fairness of the RFP process for all respondents.

(57) The initial contact apparently piqued the Premier’s interest: he learned there was a 3D model of a large public project of interest to him. The Visit did not take place for another two weeks, after the junior employee followed up with staff in the Premier’s Office, on notice to senior personnel with LANDinc. As stated in the Reconsideration Decision, IO found, reasonably in my view, that:

[t]he obligation to comply with the provisions of the RFP rests with the Respondent, not with the Prohibited Contacts.

(58) On LANDinc's account of the facts, the Premier expressed interest in the 3D model and wanted to see it. There are no facts provided by LANDinc that would ground an argument that it was relieved of its responsibility to ensure compliance with the RFP by anything done or said by the Premier, the Minister or their offices.

(59) Stepping back from these events, it is easy to see how they developed to the point where the junior employee returned to LANDinc and reported that the Premier was excited and wanted to see the 3D model. The failure here was, in my view, in the compliance function at LANDinc – the failure of those with management responsibility to identify the problematic nature of a visit from the Premier and a Minister to LANDinc in the midst of the RFP Process. There was a two-week period in which the proverbial “penny” could have, and should have, “dropped”. It didn't.

(60) No further investigation was required from IO to reach the conclusion that it did.

(61) IO did investigate what happened internally at the government. LANDinc argues that IO should have done more, including follow-up with internal conflict review efforts, and speaking with the Premier and the Minister about what happened during the Visit. In my view it was not necessary for IO to take these steps. It was not part of IO's responsibility to determine if things could have been handled better, internally, at the government. IO had a sufficient basis for concluding, as it did, that LANDinc breached the RFP, and that it bore responsibility for that non-compliance – conclusions that are both reasonable and, in my view, inevitable on LANDinc's version of the facts. Whether the improper Visit might have been prevented by more effective conflict processes within the government would not change the result. I would not give effect to this argument.

6. IO's Duty of Fairness

(62) LANDinc argues that IO owed a duty of fairness to LANDinc as a respondent in a public procurement process. It argues that IO breached this duty in its finding that LANDinc contravened the RFP and in deciding to disqualify LANDinc as a result.

(63) I would not accept these arguments. It is true that IO has a duty to administer the RFP process fairly. This is a duty owed, not just to LANDinc, but to all respondents.

(64) One component of this duty of fairness is even-handed enforcement of the rules governing the RFP process. When IO learned of the Visit, it gave notice to IO and investigated whether the RFP rules had been contravened, and if they had, it considered what should be done about that. The decision to investigate was, itself, a decision in furtherance of IO's obligation to enforce the RFP rules so that no one respondent would gain, or be seen to gain, an unfair advantage over other respondents.

(65) The process followed by IO to investigate and decide these questions was procedurally fair to LANDinc. LANDinc was given notice and an opportunity to present information and submissions. After the decision was rendered, LANDinc sought reconsideration and provided further information and submissions, which IO considered in rendering its Reconsideration

Decision. IO's Decision and Reconsideration Decision were reasonable on the facts and consistent with legal principles.

(66) LANDinc argues that IO engaged in "unexplained differential application of its own rules" by treating the May 6th meeting with IO personnel differently from the Visit. LANDinc argues that this "differential application" of rules raises a question of procedural fairness (reviewable in this court on a standard of correctness). I have already explained why I would not accept LANDinc's argument based on "legitimate expectations" in substance. I would not characterize it as an issue of procedural fairness either.

(67) The issue raised by the Visit was not procedural; it was substantive: did LANDinc contravene the RFP in connection with the Visit, and if it did, what should IO do about that. To decide this question, IO made factual findings about "what happened", identified the principles to be applied (in this case, principles found in the RFP), and then applied the principles to the facts it had found. But even if the meeting of May 6th could be found to have created some sort of precedent bearing on assessment of the Visit, for the reasons provided above I would conclude that IO reasonably found it was not comparable to the Visit.

7. The Disqualification Decision

(68) LANDinc argues that the disqualification decision was arbitrary and procedurally unfair. I would not accept these submissions.

(69) The disqualification decision is authorized expressly by the terms of the RFP. It was applied in circumstances where other respondents could reasonably conclude that LANDinc leveraged its position as an incumbent contractor to gain an advantage over other respondents by meeting with the Premier and the Minister. It was prompted by an employee of LANDinc initiating a conversation with the Premier during which they mentioned LANDinc's incumbent work in a manner that could be seen as calculated to prompt interest in the Premier (as it did). The appearance of advantage an incumbent contractor may enjoy is unavoidable and inherent in a project in which contracts are let on a staged basis; exacerbating this apparent advantage, as was done here, justifies the firm response of disqualification.

(70) Maintaining the integrity of the procurement process requires enforcing prohibitions against contact with elected officials during an active RFP process: *Inzola Group Ltd. v. Brampton (City)*, 2021 ONCA 143, paras. 26-28: "elected... officials should remain outside the competitive process and should not be involved in... meeting with bidders and making their own evaluation" (referencing the trial judge's summary of recommendations in *City of Toronto, Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry*, The Honourable Denise E. Bellamy (2005)).

(71) As noted above, IO owed a duty of fairness to all respondents. Disqualification of LANDinc was consistent with IO's duty to safeguard the fairness and appearance of fairness of the RFP process for all respondents: *Neopost Canada Ltd. v. Canada Revenue Agency*, 2016

CanLII 153255 (CA CITT), para. 23; *Visiontec (2008) Ltd.*, 2021 CanLII 67689 (CA CITT); *Calion Ltd. v. Canada (Dept. of Public Works)*, 2006 CanLII 54212 (CA CITT), para. 63.

(72) Finally, I see no procedural unfairness in the disqualification decision. IO put LANDinc on notice on May 29th that disqualification was a possible consequence, and LANDinc had an opportunity to address this issue in its original submissions and in its reconsideration submissions.

8. Breach of Contract Arguments

(73) This court does not have jurisdiction over claims of breach of contract in an application for judicial review; such claims lie within the jurisdiction of the Superior Court of Justice: *Hamid v. Canadian Centre for Professional Legal Education*, 2024 ONSC 7204, para. 16. As noted above in respect to jurisdiction, this court is a statutory court and cannot take jurisdiction over a claim where none has been conferred on this court by the Legislature.

(74) The Divisional Court is an intermediate review and appellate court made up of judges drawn from the Superior Court. Each member of this panel could take jurisdiction over a contract claim in discharging our roles as Justices of the Superior Court. But we may not do that while sitting as a panel of the Divisional Court.

(75) LANDinc cites *Wang v. Banton*, 2025 ONSC 4565 (Div. Ct.) as authority for the proposition that this court can reconstitute itself as a court exercising the jurisdiction of the Superior Court, rather than the Divisional Court, in an appropriate case. This case does not assist LANDinc. In *Wang*, Shore J., sitting as a single appeal judge of the Divisional Court, reconstituted herself to sit as a single judge of the Superior Court, to hear an appeal from an Associate Justice after she concluded that the impugned order was interlocutory rather than final. In both roles, Shore J. was sitting as an appellate judge. The record, the law, and the legal process, were identical for the appeal, and Shore J.'s exercise of discretion saved time and resources for the parties and the administration of justice and also reflected a concern that the jurisdictional issue had not been identified and addressed during triage and case management in the Divisional Court (ordinarily, such an error in jurisdiction should be identified and remedied early in the appeal process). Such an exercise of discretion is not authority for the Divisional Court to take jurisdiction over a matter properly addressed in the trial court.

(76) All of this said, circumstances can arise where a matter brought before this court should be before the trial court and where the delay for the parties to seek recourse below could work an injustice. In such a case, it would be open to this court to grant interim relief, on reasonable terms, pending the matter being reconstituted and placed before the trial court.

(77) I would decline to intervene in this matter in such a fashion. First, I would assess the merits of a contractual claim as weak. The RFP documents expressly negate the creation of contractual relations; the RFP process is aimed at identifying a party with which IO will enter a contract: *Chippewas of Mnjikaning First Nation v. Chiefs of Ontario*, 2010 ONCA 47, paras. 177-191; *Tercon Contractors Inc. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, para. 17; *The Catalyst Group Inc. v. Dundee Kilmer Developments LP*, 2020 ONCA 272; *Canada*

Forgings Inc. v. Atimic Energy of Canada Ltd., 2024 ONCA 677; RFP, s. 10.1. I see no merit to LANDinc's argument that the contractual nature of the Non-Disclosure Agreement (executed in connection with the RFP) rendered the RFP itself contractual in nature: such a result would disable public authorities from establishing non-contractual RFP processes that include binding non-disclosure agreements, a proposition for which LANDinc offers no legal authority.

(78) Finally, in light of my conclusions about the reasonableness, fairness and legality of the impugned decisions, I see little prospect of LANDinc establishing a breach of contract in any event.

(79) I would have thought that this alternative argument would have had force only if this court had concluded that it lacked jurisdiction to judicially review the impugned decisions. In that context, affording LANDinc an opportunity to be heard on the merits of its claims would have been more compelling, and I would have been more inclined to direct an expedited process for those claims to be adjudicated in the Superior Court. LANDinc has had its substantive claims adjudicated by this court, and those claims appear be weaker reframed as claims in contract law than they do as claims in a judicial review.

9. Summary of Conclusions

(80) I conclude that this court has jurisdiction over this application. I would find that the impugned decisions are reasonable on the facts, consistent with applicable legal principle, and disclose no error in principle in the exercise of discretion. I would find that the process below was procedurally fair, and I would find no breach in IO's duty of fairness.

(81) I am obliged to all counsel for their excellent written and oral submissions, which were delivered on such an expedited basis.

10. Order

(82) I would dismiss the application. As agreed by the parties, costs are fixed at \$50,000, inclusive, payable by LANDinc to IO within thirty days. There shall be no costs for or against the AG Ontario.

“D.L. Corbett J.”

I agree: “Shore J.”

I agree: “O’Brien J.”

Released: September 1, 2026

CITATION: Land Design Inc. v. Ontario Infrastructure and Lands Corp., 2026 ONSC 4690
DIVISIONAL COURT FILE NO.: 467/26 JR
DATE: 20260901

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

D.L. CORBETT, SHORE and O'BRIEN JJ.

BETWEEN:

Land Design Inc.

Applicant

– and –

Ontario Infrastructure and Lands Corp.

Respondent

– and –

Attorney General of Ontario

Intervenor

REASONS FOR DECISION

D.L. Corbett J.

Released: September 1, 2026