

**ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT – OTTAWA)**

B E T W E E N:

Douglas Cardinal, Romola V. Trebilcock, Dan Gagne, Larry McDermott, Richard Jackman
Appellants (Moving Party)

and

Windmill Green Fund LPV and City of Ottawa

Respondents (Responding Parties)

NOTICE OF MOTION

THE APPELLANTS, Douglas Cardinal et al will make a motion to the Divisional Court full panel at 161 Elgin Street, Ottawa, Ontario, on a date to be fixed by the Registrar.

THE MOTION IS FOR:

To set aside or vary the decision of Justice Hackland dated May 26th, 2016.

The Grounds of the Motion are as follows:

1. Section 21(5) of the Courts of Justice Act;
2. The Learned Judge applied the wrong test as to whether leave should be granted;

3. The Learned Judge disregarded Section 35(1) indigenous rights, in applying the wrong test for the hearing of a constitutional question;
4. The Learned Judge failed to afford a right to be heard;
5. The Learned Judge failed to apply the rule of law in denying a right to a hearing on Section 35(1) rights;
6. The Learned Judge failed to apply the right test on consultation and accommodation;
7. The Learned Judge failed to apply the right test as to respect for Human Rights as expressed in the Provincial Policy Statement, Section 4;
8. The Learned Judge failed to apply the principles of the United Nations Declaration on the Rights of Indigenous Peoples in the context of municipal planning issues.
9. The questions of law are of sufficient general and public importance to merit the attention of the full panel of the Divisional Court.

The following documentary evidence will be used at the hearing of the motion:

The Motion Record and Factum mandated by Rule 61.16 of the Rules of Civil Procedure.

The Relief Sought:

1. In the event of a dispute as to the interpretation of Rule 61.16(6) of the Rules of Civil Procedure, an extension of time pursuant to Rules 3.02(1)(2) and (3) of the Rules of Civil Procedure.
2. Set aside or vary the decision of Justice Hackland dated May 26, 2016;
3. Costs of this motion;
4. Such other relief as counsel may advise.

Dated June 10th, 2016

ELDERS WITHOUT BORDERS
237 Argyle Ave.
Ottawa ON
K2P 1B8

Per: Michael Swinwood
Tel: (613) 563-7474
Fax: (613) 563-9179
Email: spiritualelders@hotmail.com
Law Society No: 14578R

TO: CITY OF OTTAWA
c/o Caza Saikaley
350-220 Laurier Ave. West
Ottawa Ontario
K1P 5Z9
Email: rcaza@plaideurs.ca

AND
TO: WINDMILL DEVELOPMENT INC.
c/o BELL BAKER LLP
116 Lisgar Street, Suite 700
Ottawa, ON
K2P 0C2
Attention: Paul Webber
Email: PWebber@bellbaker.com

CERTIFICATE

I, Michael Swinwood, counsel for the Appellants, estimate that I will require 2 hours to submit oral argument in this matter.

Court File No: DC-16-2215

DOUGLAS CARDINAL et al

-and-

WINDMILL DEVELOPMENT AND CITY OF OTTAWA

Appellants (Moving Party)

Respondents (Responding Parties)

ONTARIO SUPERIOR COURT OF
JUSTICE (DIVISIONAL COURT)

NOTICE OF MOTION

ELDERS WITHOUT BORDERS

237 Argyle Avenue

Ottawa, ON

K2P 1B8

Michael Swinwood

(LSUC No. 14578R)

613-563-7474 (tel)

613-563-9179 (fax)

Solicitor for the Appellants