

## BACKGROUND

### **Ontario Superior Court Justice Robert Smith’s decision in response to the province’s Motion to Dismiss the Judicial Review Application related to the site of the proposed Kemptville Prison**

2 May 2023 (Kemptville, Ontario) – In a 28 April 2023 decision, Justice Robert Smith – an Ontario Superior Court judge – ruled that the Application for Judicial Review seeking to stop the construction of a provincial prison on farmland in Kemptville should be heard by a full panel of the Divisional Court and that the applicants *will* have their day in court. Justice Smith ruled that lawyers for the Province of Ontario were unsuccessful in their motion to dismiss the case and that “The Applicants have identified several arguable grounds for relief as the Respondents (Province of Ontario) failed to follow several provisions of its Provincial Policy Statement when deciding to build a correctional facility in the town of Kemptville”.

In August 2020, the Ford government announced the Eastern Region Strategy, which includes a series of provincial prison infrastructure projects, including a 235-bed facility in Kemptville. It made this prison announcement without prior consultation with local residents or the municipality. After encountering information blockades erected by the province despite promises of transparency on the project and having exhausted various other avenues to try to stop the proposed prison from being built on farmland located on the grounds of the former Kemptville Agricultural College, Victor Lachance (Coalition Against the Proposed Prison) and Kirk Albert (Jail Opposition Group) filed a judicial review application in August 2022 seeking a prohibition order to stop the construction of the Eastern Ontario Correctional Complex (EOCC).

In the reasons for the decision, Justice Smith disagreed that the province would suffer substantial prejudice and hardship if the Application for Judicial Review is permitted to proceed. In so doing, he noted that the costs to date for the project, some of which are arguably transferable, would not create financial hardship and that any additional costs incurred by moving to a full panel Judicial Review would be minor.

Additionally and despite efforts by provincial lawyers to argue that Mr. Lachance and Mr. Albert took too long to file their application, Justice Smith stated that the matter has been ongoing since 2018 and it was in fact the Ministry of the Solicitor General that “only made a one-page press release with very limited reasons for their decision” in 2020 and their “decision to locate the correctional facility in the town of Kemptville were never provided at any one time”. These observations point out that it would have been premature at best for the Kemptville residents to apply for Judicial Review within a 30-day period, given the province’s lack of disclosure of substantive detail.

Further, and importantly, Justice Smith included comments regarding the legal matter at hand, stating that “While the proposed correctional facility complies with the local municipal bylaw, it does not conform with the Official Plan”. He went on further to state that: “section 3(5) of the *Planning Act* states that all Minister’s decisions must be consistent with any Provincial Policy Statement adopted by the Minister of Municipal Affairs and Housing. Section 6(2) of the *Planning Act* states that the Minister must consult with the local municipality “before carrying out or authorizing any undertaking”. Here, the Town Council was unaware that a correctional facility was going to be built in their town before the press release was published. As a result, there was no consulting as required by the Respondent’s Provincial Policy Statement”.

At this stage, the province could appeal the decision. However, the province has cited the importance of accelerating this matter, so moving directly to the Judicial Review would certainly be the most expeditious path. Should the province decide not to appeal, the hearing will proceed before three Justices of the Divisional Court and will focus on the three grounds cited in the Application for Judicial Review under the *Planning Act*. The proceeding will enable further discussion on timeliness of the application but most importantly will permit the panel review of the legality of the province’s decision to build a prison on prime agricultural land in Kemptville.

**TO ACCESS THE JUDGE’S DECISION AND OTHER DOCUMENTS  
ASSOCIATED WITH THE JUDICIAL REVIEW VISIT:**  
[www.coalitionagainstproposedprison.ca/judicial-review](http://www.coalitionagainstproposedprison.ca/judicial-review)

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