

FOR IMMEDIATE RELEASE

Kemptville residents considering appeal of court decision to dismiss judicial review on a prison slated for construction on prime agricultural land

February 16, 2024 (Ottawa) – Two Kemptville residents, Kirk Albert and Victor Lachance, are considering an appeal of the decision issued Wednesday by the Ontario Divisional Court to dismiss their judicial review application filed in August 2022. The public interest litigants launched the judicial review to stop the Ford government from building a 235-bed prison on provincially protected prime agricultural land in Kemptville that was announced without prior public consultation on August 27, 2020. In their claim, the applicants asserted the province’s Kemptville prison plan violated several provisions of the *Planning Act*. The three-judge panel ruled that, although the substance of the judicial review application had considerable merit, the two applicants waited too long to file their application. The decision came less than a week after the judges heard arguments from both sides concerning the timeliness of the application on February 8, 2024 and were also supposed to hear the judicial review itself that day, but did not as the allotted time was cut short due to court technical difficulties. The surprise decision also came despite the judges acknowledging the need to reserve their decision and scheduling to have the main hearing on February 16, 2024 for a fulsome review of the facts, which now will no longer be heard in court.

The applicants’ lawyer, Stéphane Émard-Chabot of Sicotte Guilbault, reacted to the decision by noting: “The record clearly demonstrates not only that the province didn’t consult with the municipality before it decided to build a prison on farmland, as required by the *Planning Act*, but that, in response to whatever political imperatives were at play, the Ford government paid no attention to its other legal obligations. The record also shows the decision to authorize the construction didn’t have regard for the local planning policies of the Municipality of North Grenville concerning agricultural land or the province’s own rules regarding the preservation of agricultural resources”. He added: “Since the judges agreed that we have a strong *prima facie* case, it’s a shame the judicial review will not even be heard”.

Victor Lachance, one of the public interest litigants, states: “Initiating a judicial review is a constitutionally protected right to ensure the public accountability of decision-makers. It’s a cornerstone of our democracy. I’m shocked by the court’s decision and its ramifications. For one, it tells governments that they can announce decisions, then stall and stonewall requests for records outlining how they arrived at their decisions, and then claim it’s too late for their decisions to be reviewed”. He also notes: “This ruling also tells those wishing to challenge government decisions that you have to file expensive and court-time consuming judicial reviews, when the dockets are already full, before you can even know if a government may have broken the law when they’ve made a given decision. Are these the messages the court wishes to send? On this basis alone the panel’s decision to dismiss the case should be challenged”.

Kirk Albert, the other public interest litigant in the case, states: “After three and a half years of evasive manoeuvres by the province where they bypassed every opportunity to simply establish that they met their legislated requirements under the *Planning Act* to resolve the resident’s concerns, most of their time and effort during the judicial review process was focused on avoiding having to ever respond to our claims in open court. One needs to ask why that is”. He concludes: “When not one, but two, divisional court decisions state that the merit of our application is sound, yet a provincially imposed 30-day time limit to apply for a judicial review of government decisions prevents the substantive legal argument from ever being heard, one has to ask if logic and justice has prevailed. We will be reviewing options with our counsel in the days ahead as we consider appealing the court’s decision”.

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