

OLT-21-001620 and OLT-21-001622

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant: ClubLink Corporation ULC
Subject: Application to amend the Zoning By-law - Refusal or neglect to make a decision.
Description: To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments.
Reference Number: D02-02-19-0123
Property Address: 7000 Campeau Drive
Municipality/UT: Ottawa/Ottawa
OLT Case No.: OLT-21-001620
Legacy Case No.: PL200195
OLT Lead Case No.: OLT-21-001620
Legacy Lead Case No.: PL200195
OLT Case Name: ClubLink Corporation ULC v. Ottawa (City)

PROCEEDING COMMENCED UNDER subsection 51(34) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant: ClubLink Corporation ULC
Subject: Proposed Plan of Subdivision - Failure of Approval Authority to make a decision
Description: To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments.
Reference Number: D07-16-19-0026
Property Address: 7000 Campeau Drive
Municipality/UT: Ottawa/Ottawa
OLT Case No.: OLT-21-001622
Legacy Case No.: PL200196
OLT Lead Case No.: OLT-21-001620

COST SUBMISSIONS OF KANATA GREENSPACE PROTECTION COALITION

X March, 2026

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COST SUBMISSIONS OF KANATA GREENSPACE PROTECTION COALITION ("KGCP")

OVERVIEW

1. Pursuant to the Decision and Order of the Ontario Land Tribunal dated January 27, 2026, issued by Vice-Chairs C. Hardy and T.F. Ng (the "**Decision**"), the Kanata Greenspace Protection Coalition ("**KGPC**") respectfully provides these submissions in response to ClubLink Corporation ULC's ("**ClubLink**") motion for costs.
2. The Decision followed a one-day hearing held on January 14, 2026, convened for the limited purpose of determining whether the prerequisites set out in the Tribunal's March 22, 2022 Interim Order had been satisfied such that a Final Order approving the Zoning By-law Amendment ("**ZBA**") and Draft Plan of Subdivision ("**DPS**") could issue.
3. The hearing proceeded on the basis of written materials and oral submissions only. No *viva voce* evidence was called, and no cross-examinations were conducted. KGPC did not file independent evidence or submissions and participated in a limited manner, adopting and supporting the position advanced by the City of Ottawa (the "**City**").
4. In its Decision, Ontario Land Tribunal (the "**Tribunal**") determined that the prerequisites set out in the Interim Order had been satisfied and issued the Final Order approving both the ZBA and DPS. ClubLink now seeks to recover substantial costs - over \$72,000 - against both the City and KGPC, alleging that their opposition to the issuance of the Final Order was improper.

5. KGPC respectfully submits that the motion for costs should be dismissed in its entirety as against it.
6. The Tribunal's Rules make clear that costs are not routinely awarded and may only be granted where a party has engaged in conduct that is unreasonable, frivolous, vexatious, or in bad faith. The record before the Tribunal does not support any such finding in respect of KGPC. Rather, KGPC's participation in the proceeding was limited, procedurally efficient, and consistent with the Tribunal's processes.
7. The conduct of KGPC does not approach the high threshold required under Rule 23.9 of the Tribunal's *Rules of Practice and Procedure*. This case does not involve delay, procedural abuse, non-compliance, or bad faith. Rather, it involves a disagreement - ultimately resolved by the Tribunal - regarding the relevance of certain planning considerations to the issuance of a Final Order. The Tribunal's Decision resolved that disagreement. It did not characterize the conduct of KGPC as improper, nor did it make any finding that would support an award of costs.
8. ClubLink's motion improperly attempts to transform an unsuccessful legal position into a basis for punitive costs. That approach is inconsistent with the Tribunal's Rules, its jurisprudence, and fundamental principles of fairness.
9. For the reasons that follow, the motion for costs as against KGPC should be dismissed in its entirety. In the alternative, no costs should be awarded against KGPC, or any costs awarded should be significantly reduced.

LEGAL FRAMEWORK: COSTS ARE EXCEPTIONAL

10. The Tribunal's authority to award costs arises under the *Ontario Land Tribunal Act*, 2021, S.O. 2021, c. 4, Sched. 6, as implemented through Rule 23 of the *Tribunal's Rules of Practice and Procedure*.
11. Rule 23.9 provides that costs may only be awarded where a party's conduct has been unreasonable, frivolous, vexatious, or in bad faith. The Rule also provides examples of such conduct, including failure to attend hearings, failure to comply

with procedural orders, causing delay, or engaging in improper conduct before the Tribunal. None of those circumstances are present in this case.

12. The Tribunal has repeatedly emphasized that costs are exceptional and are not to be used as a mechanism to punish parties for advancing positions within the scope of a proceeding.¹

13. The applicable test is objective and considers whether a “reasonable person, being apprised of the circumstances of the case, the conduct or course of conduct of a party in the proceeding and the extent of the party’s familiarity with the Tribunal’s procedure and jurisdiction, would find the conduct unfair to an extent that the party should be obligated to provide compensation to other parties who are negatively impacted.”²

14. This high threshold reflects the Tribunal’s role as an accessible forum for the resolution of land use planning disputes, where parties must be free to advance positions without fear of routine cost consequences.

KGPC’S CONDUCT DOES NOT MEET THE RULE 23.9 THRESHOLD

No Unreasonable or Improper Conduct

15. There is no evidence before the Tribunal that KGPC engaged in conduct that was unreasonable, frivolous, vexatious, or in bad faith.

16. KGPC complied with all procedural requirements, attended the hearing, and conducted itself respectfully and appropriately throughout. KGPC did not fail to meet any deadlines, did not breach any Tribunal direction, and did not engage in conduct that caused delay or prejudice.

17. KGPC’s participation was limited to adopting and supporting the City’s submissions. KGPC did not file independent materials, did not call evidence, and

¹ *Abbotts v Blue Mountains (Town)*, [2023 CanLII 56712 \(ON LT\)](#) at para 35; *R.W. Tomlinson Limited (Re)*, [2024 CanLII 38871 \(ON LT\)](#) at para 36-39

² *D. Crupi & Sons Limited v Toronto (City)*, 2020 CanLII 5751 (ON LPAT) at para 10 [D. Crupi].

did not expand the issues before the Tribunal. This mode of participation is expressly consistent with efficient Tribunal practice and cannot reasonably be characterized as improper.

18. The Tribunal's decision in *Abbotts v. Blue Mountains (Town)*³ confirms that costs will not be awarded in the absence of clear misconduct, even where a party's participation increases the length or complexity of a hearing. In *Abbotts*, the Tribunal rejected a significant costs claim and emphasized that costs are "rare and exceptional," requiring conduct that is clearly unreasonable, frivolous, vexatious, or in bad faith.⁴

19. The Tribunal in *Abbotts* found no basis for costs where the responding party had complied with all procedural requirements, participated fully in the hearing process, and advanced its position in good faith, notwithstanding that it was ultimately unsuccessful.⁵ The Tribunal further confirmed that participation through advancing issues, testing evidence, or requiring a responding party to address those issues does not, without more, constitute improper conduct warranting costs.⁶

20. This directly supports KGPC's position: there is no evidence of misconduct, KGPC complied with all procedural obligations, and its limited participation - confined to supporting the City - cannot reasonably be characterized as unreasonable or cost-generating.

21. Similarly, in *Casey v. Ottawa (City)*⁷, the Tribunal declined to award costs despite allegations that the appellant had not filed evidence and may not call witnesses. The Tribunal reaffirmed that the threshold for costs is not met simply because a party takes a limited or strategic approach to participation; rather, there must be clear evidence of unreasonable, frivolous, vexatious, or bad faith conduct.⁸

³ [2023 CanLII 56712 \(ON LT\)](#) ["*Abbotts*"].

⁴ *Abbotts v. Blue Mountains (Town)*, [2023 CanLII 56712 \(ON LT\)](#) at paras 29, 34-35.

⁵ *Abbotts v. Blue Mountains (Town)*, [2023 CanLII 56712 \(ON LT\)](#) at paras 45-46, 62-63.

⁶ *Abbotts v. Blue Mountains (Town)*, [2023 CanLII 56712 \(ON LT\)](#) at paras 50-51, 63.

⁷ [2022 CanLII 78163 \(ON LT\)](#) ["*Casey*"].

⁸ *Casey v. Ottawa (City)*, [2022 CanLII 78163 \(ON LT\)](#) at paras 46, 51-52.

22. The reasoning provided in *Casey* expressly held that a party's decision not to submit independent evidence, or to rely on a more limited mode of participation, does not constitute misconduct and does not justify a costs award.⁹ KGPC did not file independent materials or call evidence, and instead adopted and supported the City's submissions - an approach that is expressly recognized as permissible and appropriate within Tribunal practice, and one that cannot ground a finding of improper conduct.

23. These principles are consistent with, and reinforced by, the Tribunal's broader jurisprudence on costs, which draws a clear distinction between parties who participate in good faith within the scope of a proceeding and those whose conduct rises to the level of procedural abuse or bad faith. While decisions such as *Abbotts* and *Casey* confirm that costs will not be awarded in the absence of clear misconduct - even where a party is ultimately unsuccessful or adopts a limited litigation role - other authorities relied upon by ClubLink illustrate the narrow and exceptional circumstances in which costs may be justified. It is within this context that ClubLink's reliance on various cases must be assessed.

24. ClubLink's reliance on authorities such as *Askander v. Richmond Hill (Town)*,¹⁰ *D. Crupi & Sons Limited v. Toronto (City)*¹¹, and *Corsica Developments Inc. v. Richmond Hill (Town)*¹², is misplaced, as those cases arise in fundamentally different circumstances involving clear findings of procedural abuse, persistent non-compliance with Tribunal directions, and bad faith conduct.

- a. In *Askander*, the Tribunal awarded costs in response to a sustained course of conduct in which a party repeatedly disregarded Tribunal rulings, attempted to introduce improper evidence, engaged in argumentative and

⁹ *Casey v. Ottawa (City)*, [2022 CanLII 78163 \(ON LT\)](#) at para 51.

¹⁰ [2022 CanLII 34916 \(ON LT\)](#) [“*Askander*”].

¹¹ [2020 CanLII 5751 \(ON LPAT\)](#) [“*Crupi*”].

¹² [2015 CanLII 59661 \(ON LPAT\)](#) [“*Corsica*”].

disruptive behaviour, and advanced numerous frivolous motions, all of which prolonged the hearing and wasted significant hearing time.¹³

b. Similarly, in *Crupi*, the Tribunal found that costs were warranted due to conduct during the hearing that included knowingly attempting to undermine expert evidence improperly, disregarding Tribunal directions, and engaging in unreasonable and vexatious cross-examination that wasted Tribunal time.¹⁴

c. In *Corsica*, the award of costs followed a finding that the party had effectively re-litigated issues already determined in prior proceedings, failed to adduce supporting evidence, and pursued a position beyond the bounds of reasonableness despite earlier determinations.¹⁵

25. None of those circumstances are present here. KGPC did not disregard Tribunal directions, did not introduce improper or new evidence, did not bring motions, and did not engage in conduct that prolonged the hearing or wasted Tribunal resources. Nor did KGPC attempt to re-litigate decided issues in the manner described in *Corsica*.

26. Rather, KGPC's participation was limited to supporting the City's submissions within the scope of the hearing, without filing independent materials or expanding the issues before the Tribunal. Unlike the parties in the authorities relied upon by ClubLink, there is no evidentiary foundation for any finding of unreasonable, frivolous, vexatious, or bad faith conduct. Accordingly, those cases are distinguishable and do not support an award of costs in the present circumstances.

Advancing an Unsuccessful Position is Not Grounds for Costs

¹³ *Askander v Richmond Hill (Town)*, [2022 CanLII 34916 \(ON LT\)](#) at paras 13–14, 21–25, 108.

¹⁴ *D. Crupi & Sons Limited v Toronto (City)*, [2020 CanLII 5751 \(ON LPAT\)](#) at paras 17-20.

¹⁵ *Corsica Developments Inc. v Richmond Hill (Town)*, [2015 CanLII 59661 \(ON LPAT\)](#) at paras 6, 11.

27. ClubLink's motion is premised on the assertion that the City and KGPC improperly opposed the issuance of the Final Order.

28. The Tribunal considered those submissions and determined that the issues raised - namely easements and overland flow - were not relevant to the determination of whether the prerequisites had been satisfied. However, the Tribunal did not find that raising those issues was improper.

29. The distinction between an argument that is unsuccessful and one that is unreasonable is fundamental. Parties are entitled to advance positions on matters that they consider relevant to the issues before the Tribunal, even if those positions are ultimately rejected. As discussed in *Burden, Duffy, et al., v Nairn and Hyman (Twp.)*¹⁶, a party may have genuine concerns and take steps to address them, and even if unsuccessful, such an outcome is not of significant relevance in consideration of costs:

10 [...] The Tribunal rarely orders costs, and, when it does, does so only in extraordinary circumstances where a party has exhibited conduct that is frivolous, vexatious, or unreasonable during the course of a proceeding or where the party has acted in bad faith during the course of the proceeding. In the present case, the Appellants had genuine concerns and took steps to have them addressed. Unfortunately for them, their appeals were found to lack any apparent land use planning grounds and it was found that they had no reasonable prospect of success. As a result, their appeals were dismissed. Although they were not successful in their appeals, based on the Tribunal's practice this is not of significant relevance in the consideration of costs.¹⁷

30. The issues raised by the City and supported by KGPC were grounded in planning and implementation considerations that had been part of the broader dispute between the parties. The Tribunal's conclusion that those issues were not prerequisites does not render their advancement frivolous or vexatious.

The Tribunal's Decision Does Not Support a Costs Award

¹⁶ [2023 CanLII 71668 \(ON LT\)](#).

¹⁷ *Burden, Duffy, et al., v Nairn and Hyman (Twp.)*, [2023 CanLII 71668 \(ON LT\)](#) at para 10.

31. The Tribunal's findings do not support the imposition of costs against KGPC.

32. The Tribunal determined that the prerequisites set out in the Interim Order had been satisfied. The Tribunal further found that easements and overland flow were not relevant to the issuance of the Final Order.

33. While the Tribunal noted at paragraph 29 of the Decision that the City and KGPC provided arguments raised at the original hearing, it did not characterize this as misconduct within the meaning of Rule 23.9.

34. Importantly, the Tribunal did not make any finding or suggestion that KGPC acted unreasonably, frivolously, vexatiously, or in bad faith. In the absence of such a finding, there is no basis upon which costs can be awarded.

KGPC'S CONDUCT DOES NOT CONSTITUTE "RELITIGATION"

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35. ClubLink asserts that the City and KGPC sought to re-litigate issues determined in the Tribunal's 2022 Decision. That characterization is not supported by the Tribunal's findings.

36. The Tribunal did not find that the City or KGPC were attempting to re-open or re-argue the merits of the planning approvals. Rather, the Tribunal determined that the issues raised - specifically easements and overland flow - were not relevant to the specific and narrow question before it: whether the prerequisites for the issuance of the Final Order had been satisfied.

37. This distinction is critical. The Tribunal's conclusion was not that the issues themselves were improper, but that they did not form part of the prerequisites required for the issuance of the Final Order.

38. In that context, raising issues concerning easements and overland flow cannot properly be characterized as an abuse of process or an attempt to re-litigate matters already decided.

39. KGPC did not bring a motion to re-open the 2022 Decision, did not seek a review of that Decision, and did not initiate any duplicative or parallel proceedings. Its participation was confined to supporting submissions made within the scope of the hearing directed by the Tribunal.
40. Importantly, the issues raised by the City and supported by KGPC relate to considerations that exist independently of the Tribunal's planning determination. The Tribunal's finding that the proposed development represents good planning, and that the statutory prerequisites for approval have been satisfied, does not extinguish or resolve pre-existing private law rights, including easements or other contractual arrangements affecting the lands.
41. The raising of those issues in the context of the Final Order was not an attempt to undermine or resist the Tribunal's planning determination. Rather, it reflected the reality that the implementation of a planning approval may engage legal constraints that fall outside the Tribunal's jurisdiction.
42. Recognizing the existence or potential impact of such constraints does not conflict with, or detract from, the Tribunal's conclusion that the development is appropriate from a planning perspective. Nor does it amount to a refusal to accept or abide by the Tribunal's Decision.
43. To the contrary, KGPC fully accepts the Tribunal's determination on the planning merits. However, acceptance of that determination does not require parties to abandon or "fold" on separate legal rights or obligations that may bear on the ability to implement the approved development.
44. The Tribunal itself did not purport to adjudicate or resolve such rights in its Decision, and the issues raised were directed to matters beyond the narrow scope of the Final Order determination.
45. In these circumstances, it would be inappropriate to characterize the conduct of KGPC as re-litigation or improper conduct. The submissions made were grounded in a legitimate distinction between the Tribunal's planning jurisdiction and other

legal considerations that may arise in the implementation of an approved development.

46. Accordingly, ClubLink's attempt to frame this conduct as an abuse of process is misplaced and does not provide a basis for a costs award.

47. This is further supported by the Tribunal's decision in *Shanae Management Inc. v. Kitchener (City)*¹⁸, in which the Tribunal declined to award costs despite the fact that the appellant advanced arguments relating, in part, to matters ultimately found to fall outside the Tribunal's jurisdiction - specifically environmental contamination and remediation obligations. The Tribunal held that raising such concerns did not constitute unreasonable, frivolous, or bad faith conduct, particularly where those concerns were genuinely held and formed part of a broader set of issues advanced in the proceeding.¹⁹

48. Importantly, the Tribunal emphasized that costs are not warranted merely because a party advances arguments that are ultimately unsuccessful or beyond the Tribunal's jurisdiction, and that the focus remains on the conduct of the party, not the merits of the issue.²⁰

49. Consequently, the fact that easements or related legal constraints fall outside the narrow scope of the Tribunal's determination on the Final Order does not render their consideration improper. Rather, as in *Shanae*, such issues may legitimately be raised without constituting re-litigation or misconduct, particularly where they relate to real-world implementation constraints that exist independently of the Tribunal's planning determination.

KGPC'S LACK OF INVOLVEMENT IN SUBSEQUENT PROCEDURAL DELAYS

50. The parties initially attended before the Tribunal in November 2025 for a scheduled event that was intended to address the status of the matter and the process for

¹⁸ [2022 CanLII 122417 \(ON LT\)](#) [*"Shanae"*].

¹⁹ *Shanae Management Inc v Kitchener (City)*, [2022 CanLII 122417 \(ON LT\)](#) at paras 5 & 16-19.

²⁰ *Shanae Management Inc v Kitchener (City)*, [2022 CanLII 122417 \(ON LT\)](#) at paras 16, 18-21.

advancing the request for a Final Order. That attendance did not result in a determination of the Final Order, as the Tribunal indicated that a further hearing before the original panel would be required to address the substantive issue.

51. As a result, a subsequent hearing date was required and ultimately scheduled for January 14, 2026.

52. KGPC attended and participated in the November appearance as directed. The inability to proceed to a final determination at that time arose from the nature of the event and the Tribunal's procedural requirements, not from any conduct of KGPC.

53. KGPC did not request an adjournment, did not fail to attend, and did not take any steps that contributed to delay or necessitated rescheduling.

54. The subsequent scheduling of the January 2026 hearing, including any gap between hearing dates, was a function of Tribunal availability and the requirement that the matter be heard by the original panel.

55. Throughout this process, KGPC acted reasonably and in accordance with the Tribunal's directions, and did not engage in any conduct that prolonged the proceeding or increased its complexity.

56. In these circumstances, it cannot reasonably be said that KGPC's conduct caused delay, duplication of effort, or unnecessary expense.

THE COSTS CLAIM IS EXCESSIVE AND DISPROPORTIONATE

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No Costs Should Be Awarded Against KGPC

57. Should the Tribunal find that a general costs award is warranted, no costs should be awarded against KGPC.

58. KGPC's participation in the proceeding was limited and entirely supportive of the City's position. KGPC did not file independent written materials, did not call evidence, and did not make separate submissions.

59. KGPC did not call any witnesses, did not introduce new issues, and did not take any steps that expanded the scope or duration of the proceeding.

60. As such, KGPC's involvement did not contribute to any increase in the costs incurred by ClubLink.

61. In these circumstances, there is no basis to attribute any portion of the claimed costs to KGPC.

In the Alternative, the Costs Claimed Are Excessive and Disproportionate

62. In the further alternative, if the Tribunal determines that costs are warranted, the quantum sought by ClubLink is excessive and should be substantially reduced.

63. The proceeding was limited in scope and duration, consisting of a single, focused hearing addressing a narrow procedural issue. The hearing itself was brief and conducted by way of submissions only, without *viva voce* evidence or cross-examination. The overall time required to address the matter was modest and does not justify the magnitude of the costs claimed.

64. The substantial costs claimed instead reflect litigation choices made by ClubLink, including the preparation of extensive materials, rather than the nature of the proceeding itself.

65. Costs should be proportionate to both the issues in dispute and the conduct of the parties. The amounts claimed do not meet that standard and are unreasonably high in the circumstances.

ORDER REQUESTED

66. The threshold for a costs award under Rule 23.9 has not been met. KGPC's conduct was reasonable, limited, and consistent with the Tribunal's processes.

67. There is no evidentiary or legal basis to attribute any portion of ClubLink's claimed costs to KGPC.

68. The Kanata Greenspace Protection Coalition therefore respectfully requests that the Tribunal:

- a. Dismiss ClubLink's motion for costs as against KGPC;
- b. In the alternative, decline to award any costs against KGPC;
- c. In the further alternative, substantially reduce any costs awarded; and
- d. Grant such further and other relief as the Tribunal considers just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this X day of March, 2026

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