

Courts of Justice Act

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW



CHRISTINE REIO AND DANIEL REIO

Applicants

- AND -

REGISTRAR, FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002

Respondent

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location

330 University Avenue Toronto, ON M5G 1R7.

on a date to be fixed by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve

it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

June 16, 2026

Issued by
Registrar
330 University Avenue
Toronto, ON M5G 1R7.

TO **Registrar of the *Funeral, Burial, and Cremation Services Act, 2002***
Ministry of Public and Business Service Delivery and Procurement
Inspections, Investigations, and Licensing Branch
PO Box 450
Toronto, ON M7A 2J6

AND TO **ATTORNEY GENERAL OF ONTARIO**
(as required by subsection 9(4) of the Judicial Review Procedure Act)
Crown Law Office – Civil
720 Bay Street
8th Floor
Toronto, Ontario M7A 2S9

APPLICATION

1. The Applicants make application for:
 - a. An order allowing the application and quashing the May 19, 2026 decision of the Registrar of the *Funeral, Burial and Cremation Services Act, 2002*, SO 2002, c 33 (“**FBCSA**”);
 - b. A declaration that the costs of the investigation ordered of the human remains found at 11265 Harbourview Road in Wainfleet, ON would cause an undue financial burden on the Applicants pursuant to Subsection 96(4) of the *FBCSA*;
 - c. In the alternative to paragraph 1(b), an order allowing the application and remitting the Applicants’ application pursuant to Subsection 96(4) of the *FBCSA* to a different registrar under the Act;
 - d. Costs on an appropriate indemnity basis, plus HST; and
 - e. Such further and other relief as counsel may advise and this Honourable Court may deem just.
2. The grounds for the application are:

[A] The Parties

- a. Christine Reio and Daniel Reio (the “**Reios**”) are a married couple ordinarily residents of Ontario;
- b. The Respondent is the Registrar of the *Funeral, Burial and Cremation Services Act, 2002*, SO 2002, c 33 (“**FBCSA**”) (the “**Registrar**”). The Registrar is appointed by the Deputy Minister of Public and Business Service Delivery and Procurement pursuant to Section 3 of the *FBCSA*. The Registrar is empowered by Section 96 of the *FBCSA* to order the owner of land on which a burial site is discovered to cause an investigation to be made to determine the origin of the site. A “burial site” is

defined in the FBCSA as “land containing human remains that is not a cemetery”. The Registrar is empowered by Subsection 96(4) of the FBCSA to undertake said investigation if, in their opinion, it would impose an “undue financial burden on the land owner”;

- c. Following an investigation under Section 96 of the FBCSA, the Registrar shall declare whether the burial site is (a) an aboriginal peoples burial ground; (b) a burial ground; or (c) an irregular burial site. If the burial site is declared either (a) or (b), the property owner is required to enter into a Site Disposition Agreement with representatives of the persons whose remains are interred on the burial site. The Site Disposition Agreement shall address whether the remains shall remain in place or be disinterred and reinterred, and at whose expense – the property owner or the representatives of the persons whose remains are interred;

[B] The Reio Property

- d. In September 2020, the Reios purchased the property municipally known as 11265 Harbourview Road in Wainfleet, ON (the “**Reio Property**”). The Reio Property is a residential property located on the shores of Lake Erie. At the time of the Reios’ purchase of the Reio Property, it was improved with a one-storey single family dwelling with attached garage;
- e. The Reios applied to the Township of Wainfleet and the Niagara Peninsula Conservation Authority to obtain permits for planned home renovation works. The Reios were not warned of the substantial risk of concerns with archaeological issues or the fact that human remains had been discovered at neighbouring properties who had undergone development work which had triggered investigation obligations under the FBCSA;

[C] Discovery of Human Remains

- f. Once the necessary permits were obtained the Reios proceeded with the work which included demolition of the existing house and garage. In April 2024, during this

demolition process, the construction company retained by the Reios discovered human remains on the Reio Property. In compliance with the FBCSA, they immediately notified the police;

- g. The police determined that the human remains were quite old and that there was no need to investigate the matter from a criminal perspective;
- h. On April 5, 2024, the Reios received a call from Ian Hember, the Registrar of the FBCSA with regards to the discovery of the remains. Mr. Hember identified that he would be preparing an order that would be sent out to the Reios;
- i. In a letter dated April 8, 2024, Mr. Hember in his role as Registrar wrote to the Reios ordering them pursuant to Subsection 96(1) of the FBCSA to cause an archaeological investigation to be made to determine the origin of the burial site;

[D] The Reios Obtain Quotes for the Investigation

- j. The Reios had no sense of what this investigation would entail, how long it would take, or the cost of the investigation. When they spoke to Mr. Hember, he identified that the cost would likely be in the range of the low- to mid- tens of thousands of dollars;
- k. The Reios obtained a quote from an archaeological firm for costs related to the investigation. The quote showed fixed costs around \$20,000 and several additional costs that would be charged on an hourly basis, but with no estimate on how many hours of work the items would require. The quote identified that on projects of this type it is mandatory that Indigenous communities be involved in the assessment process. Mr. Hember also identified that involvement of Indigenous communities was mandatory;
- l. The Reios sought proposals from the Six Nations of the Grand River, the Haudenosaunee, and the Mississaugas of the Credit. They understood that they were required to do so despite the fact that the information they received was that

the remains likely belonged to the Six Nations of the Grand River. The proposals provided hourly rates per person for the supervision of the investigation. At the time, the Reios had no information on how long the investigation could take;

- m. In gathering necessary quotes and proposals for the investigation, the Reios learned that the investigation would take approximately 10 weeks and would cost approximately \$50,000 to \$60,000 per week. This estimated cost was well beyond what the Reios could afford and was prohibitive to continuing the development of the Reio Property;
- n. In October 2024, the Reios applied to the Registrar pursuant to Subsection 96(4) of the FBCSA seeking for the Registrar to undertake the investigation due to the undue financial burden of this investigation;

[E] Application Pursuant to Subsection 96(4) of the FBCSA

- o. In October 2024, the Reios submitted an application to the Registrar which contained (i) a completed application in the prescribed form provided by the Registrar; (ii) the quotes related to the costs of the investigation; (iii) an excel spreadsheet which listed the costs associated with the investigation; and (iv) an excel spreadsheet which provided a summary of the monthly utility expenses for the Reio Property. These documents detailed costs of the investigation of at least \$500,000 to \$600,000. Sometime in the next month, the Registrar of the FBCSA contacted the Reios to identify that the spreadsheet of utility costs was insufficient and they would need to provide statements from the utility providers;
- p. By the end of the month of November or early-December 2024, the Reios had submitted proof of utility payments for all properties that they owned. They also provided sensitive and personal financial information that included documentation of life insurance policies, home insurance policies, car insurance policies, vet insurance policies, construction specifications for the work to the Reio Property, bank statements, tax assessments, T4s, employment letters showing income,

invoices for monthly costs for the fence rental around the Reio Property which was required until the investigation could be undertaken, mortgage statements, and summaries of expenses for their daughter's tuition and other expenses;

- q. Around April 2025, having heard nothing further from the Registrar, the Reios provided the Registrar a document entitled "Personal Plea" in which they provided a personal narrative of the discovery of the human remains, the costs quoted for the investigation, and their financial circumstances and inability to afford these costs;
- r. In the spring of 2025, the Registrar contacted the Reios requesting that they provide their updated financial documents for 2024 and to provide clarification on documents previously provided. The Reios provided the requested documents;
- s. Around August 2025, having heard nothing further from the Registrar, the Reios provided the Registrar with an updated version of the "Claim of Undue Financial Burden" form that the Registrar had sent to them;
- t. In October 2025, the Reios wrote to the Registrar identifying that the financial burden of this investigation was so great that they were requesting that the Province of Ontario purchase the Reio Property from them. The only response the Reios received from the Registrar's office was an email stating simply "FYI and to file" which was shared with the email FBCSARegistrar@ontario.ca;
- u. In March 2026, the Registrar wrote to the Reios after discovering that the Reios had been speaking publicly about their circumstances with respect to the investigation ordered under the FBCSA– the first communication from the Registrar in months – requesting that the Reios produce further documents. The Reios replied on March 10, 2026 providing an explanation and the additional information that the Registrar had sought;

Decision Subject to Review

- v. On May 19, 2026, the Registrar of the FBCSA provided the Reios with a letter identifying that he had completed his review of their request under Subsection 96(4)

of the FBCSA advising that he had concluded that “the burial site investigation would not impose an “undue financial burden” on you, the landowners.”;

- w. The letter identified that the Registrar assesses claims of undue financial burden by applying financial measures similar to those used by financial institutions to evaluate a landowner’s ability to meet financial obligations. The Registrar made conclusions with regards to the Reios’ 2024 gross annual household income, the costs of the archaeological investigation, the Reios’ debt-to-income ratio, the Reios’ cashflow positivity ratio, lines of credit the Reios’ had been approved for, and calculations of the Registrar’s opinion on how long it would take the Reios’ to pay off the debt incurred to undertake this investigation. The Registrar did not identify which documents he was relying on nor acknowledge any of the Reios’ submissions that, contrary to his conclusion, the Reios’ could not afford to undertake this investigation;

Issues on Judicial Review

- x. The Applicants seek judicial review on the basis that the Registrar of the FBCSA’s decision was unreasonable because:
 - i. The Registrar applied a standard of “undue financial burden” that is unreasonable;
 - ii. The Registrar mischaracterized or inaccurately stated information provided that was material to the Registrar’s decision; and
 - iii. The reasons include material unsupported mathematical assumptions;
- y. The Applicants further seek judicial review on the basis that the Registrar of the FBCSA’s decision was procedurally unfair in light of the nineteen (19) month delay in rendering a decision, while the Reios incurred mounting costs to preserve the site, as required.

The Registrar's Decision is Unreasonable

[A] Threshold of "Undue Financial Burden"

- z. The Registrar's decision is unreasonable in light of the legal constraints that bear on the decision. The Registrar applied an unreasonably high threshold for what constitutes an "undue financial burden" within the meaning of Subsection 96(4) of the FBCSA. Applying such a high burden is not reasonable and not consistent with a proper interpretation of the FBCSA;
- aa. The Registrar equated "undue financial burden" with an analysis of whether it was likely that the Reios could borrow sufficient funds to cover the investigation. This standard is not supportable by the text, context, and purpose of the FBCSA. It also ignores pertinent factors for assessing whether the costs would cause an "undue financial burden", including the value of the property at issue and what costs it is fair for the Province to impose on private property owners for the public benefit;
- bb. The Registrar's discretion under Subsection 96(4) is not an untrammelled discretion. A threshold for establishing an "undue financial burden" that takes into account the purpose of an investigation of a burial site under the FBCSA and the context of the particular property owners, property, and other material factors must be applied;
- cc. Even assuming the Registrar's summary of the financial documents provided is accurate, which it is not, the Registrar identified financial conditions that reach the threshold of an "undue financial burden" based on a proper reading of Subsection 96(4) of the FBCSA. It is unreasonable to apply the discretion of Subsection 96(4) of the FBCSA in a way that forces an owner to put themselves in significant debt to undertake an investigation for the public benefit;

[B] Mischaracterizing or Misstating the Evidence

- dd. The Registrar concluded that the Reios' gross annual household income in 2024 was \$560,768. This ignores the additional information and context provided by the Reios. In their application form, the Reios explained why Daniel Reio's salary

appeared inflated in his T4 for 2023 and with respect to income in 2024 due to changes in his employment in late-2023. The Registrar did not address these submissions which would reflect the Reios as having a materially smaller gross annual household income;

- ee. The Registrar's reasons do not demonstrate an internally coherent and rational chain of analysis and are not supported on the record before them. They lack reference to documents provided by the Reios, making it difficult to ascertain how the Registrar reached the mathematical calculations that were reached and whether the Registrar ignored material documents in the record;
- ff. The Registrar failed to take into account the costs of the investigation as compared to the value of the Reio Property. It was unreasonable for the Registrar to not address this argument, which the Reios raised in their plea to the Province to purchase the Reio Property from them;

[C] Mathematical Assumptions

- gg. The Registrar concluded that if the Reios were to take out a line of credit to cover the costs of the investigation that they would be able to pay it off in six (6) years. This calculation requires many assumptions including that the Reios could make a downpayment of \$287,338.91, that they would be approved for a loan, and presumes a specific but unstated rate of interest. Even if the Reios had taken all of their money out of their Tax-Free Savings Accounts ("TFSA"s) this would be insufficient to satisfy a \$287,338.91 down payment. It is unclear where the Registrar took this number from. The Registrar's conclusion that the loan could be paid off in six years would depend on the Reios being able to advance such a large down payment and on the interest rate, which the Registrar did not specify;
- hh. The Registrar identified that he applied a threshold for "undue financial burden" akin to what a financial institution would undertake. Financial institutions undertake these analyses relying upon persons with the necessary education to undertake these analyses. It is unclear whether properly qualified persons

undertook the analyses relied upon in the May 19, 2026 Decision on behalf of the Registrar. Further, there is an absence of a rational chain of analysis that would be required of a reasonable decision;

The Registrar Breached Procedural Fairness Due to the Unreasonable Delay

- ii. The Registrar owed the Reios a duty of procedural fairness in the manner in which their application under Subsection 96(4) was addressed. His delay in rendering a decision on this Application over the course of nineteen (19) months breached this duty of procedural fairness. This delay was not warranted and caused significant prejudice to the Reios and to the integrity of the investigation itself;
- jj. The Reios had provided all information that the Registrar required by November 2024. While the Registrar continued to request further documents and the Reios continued to make submissions in light of these delays, the Registrar had sufficient information in November 2024 or at least by April 2025 to make a decision;
- kk. Since April 2024, the Reios have been subject to an order of the Registrar to cause an investigation of the remains on their property. They have not been able to comply with this order because they do not have the financial means to do so. As a result, for more than two years they have had to leave the Reio Property in a frozen and undisturbed state;
- ll. Since April 2024, the Reios have incurred monthly charges for a fence around the human remains that were discovered. Over the past twenty-six (26) months, these costs have become considerable. Further the quotes for the investigation that were obtained in October 2024 are now out of date and the Reios would need to obtain updated quotes;
- mm. The public benefit in investigating this burial site and returning these remains to their community has been delayed. This goes against the purposes of the FBCSA and the interests of treating the human remains discovered with dignity;

- nn. The delay in providing a determination of the Reios' application was procedurally unfair in light of the nature of the decision, circumstances, and principles of fairness owed to the Reios and to the public;
- oo. Rules 57 and 68 *Rules of Civil Procedure*, RRO 1990, Reg 194;
- pp. *Judicial Review Procedure Act*, RSO 1990. C J.1;
- qq. *Funeral, Burial and Cremation Services Act, 2002*, SO 2002, c 33;
- rr. O. Reg 30/11: General under the *Funeral, Burial and Cremation Services Act, 2002*, SO 2002, c 33;
- ss. Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- tt. A copy of the Registrar's Decision Letter, dated May 19, 2026;
- uu. A copy of the record before the Registrar of the FBCSA with respect to this Application;
- vv. An affidavit of Christine Reio and/or Daniel Reio, to be sworn, and the exhibits attached thereto; and
- ww. Such further and other documents as counsel may advise and this Honourable Court may permit.

June 16, 2026

RAYMAN HARRIS LLP
202-250 The Esplanade
Toronto, ON M5A 1J2

Shane Rayman | Leah Cummings
LSO No. 44649V | 78980W
Tel no. (416) 597-5406 | (437) 222-9004
Email: shane@raymanharris.com
leah@raymanharris.com

Lawyers for the Applicants, Christine and
Daniel Reio

COURT FILE NO:

CHRISTINE REIO AND DANIEL REIO - AND - REGISTRAR, FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002

Applicants

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

**NOTICE OF APPLICATION FOR
JUDICIAL REVIEW**

Rayman Harris LLP
250 The Esplanade, Suite 202
Toronto, Ontario M5A 1J2

Shane Rayman | Leah Cummings
T 416-597-5406|437-222-9004
F 437 222 9001
E shane@raymanharris.com
leah@raymanharris.com

Lawyers for the Applicants