

NICHOLS GRAVEL LIMITED

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August 18, 1997
Delhi, On.

Reasons For Judgment August 23, 1996

**Between: Nichols Gravel Limited, Plaintiff and the Corporation of The Township of
Delhi, David Anderson and Frank Gelinas, Defendants.**

Released August 23, 1996 by Justice John Carvarzan.

"The Big Lie" Exposed August 18, 1997 by Gary Nichols

On May 4, 1994 Chief Administrative Officer for Delhi Township Frank Gelinas, quoting from an Aggregate Quotation Summary produced by Public Works Superintendent David Anderson, stated to the Press, "the Aggregate Source List (produced by M.T.O.) regarded Class Five aggregate from Nichols Delhi pit to be unacceptable and that, if the Township requires that particular grade of aggregate this year, it will deal with a supplier whose material is deemed acceptable."

As a statement of fact, this was completely without basis in fact. Class 5 stone chips are not shown on any Ministry of Transportation Aggregate Sources List in South Western Ontario. Reference: A.S.L. Contract 91-06, 1991.

This was also confirmed in a letter from M.T.O Senior Supervisor Winston Oostenbrug in reply to Freedom of Information request, dated letter January 6, 1995.

As a statement of fact, Mr. Gelinas' statement was completely false and there was no further discussion necessary. Pages 21 and 22 quote: Anderson testified that, according to O.P.S.S. the physical requirements (stone hardness) of Class 5 are the same as those of HL3C/A (Hot Laid No: 3 Course Aggregate) P.N.135.

This was confirmed by Mr. Katona, (the Defences expert with 30 years M.T.O. experience). Katona testified that if a product is not acceptable for HL3C/A it is not acceptable for Class 5. The 1991 A.S.L. shows that HL3C/A from the Plaintiff's pits 2 and 4 is unacceptable.

His Honour quote: "It was reasonable and accurate for Anderson to conclude that if HL3C/A is unacceptable, then Class 5 is similarly unacceptable." The Judge further states: "In my opinion, therefore, the plaintiff has failed to prove the falsity of the statements complained of both in the Summary of Quotations and in Gelinas' remarks,

based on the summary published in May 4, 1994 issue of the Delhi News Record." unquote.

No, your Honour, it was **not reasonable and accurate** for Anderson to come to this conclusion based on a **correlated assumption** between two entirely different products, used for two entirely different purposes for the following reasons:

1. In the first instance, the falsity of statement was proven when Mr. Anderson admitted Page 81 & 82 Cr. Examination that no where on the Aggregate Sources List is Class 5 Aggregate shown.
2. No where on any A.S.L. is there reference made to physical qualities of stone at Nichols pits 2 and 4, whereas on other sources listed there are comments made to stone quality for HL3C/A.
Reference: C 91-06 A.S.L. Page 8 #12. This statement **not** made for our HL3C/A
3. My letter of May 16, 1994 given in evidence confirmed from Don Monroe that M.T.O. had **no** record or information whatsoever on file regarding our Class 5 stone chips, as they had **not** performed testing on this product, so could not provide any information to Mr. Anderson, myself or anyone else. See letter May 16, 1994.
4. On every A.S.L. without exception, where it states: Chiefly a sand source, it shows HL3C/A as unacceptable. This relates to material too fine for the purpose, not enough crushed faces in the stone.
5. The Judge quoted Mr. Katona's statements on a number of occasions on information that we revealed should have been inadmissible but completely disregarded his evidence in Cr. Examination Page 1162, #10 & 15 where Mr. Katona stated the reason our aggregate was listed on the 1991 A.S.L. as (N) (not acceptable) was because it was chiefly a sand source, **not** enough stone, **not** because of stone quality. This confirmed exactly our evidence, and was contrary to Mr. Anderson's evidence that the A.S.L. only addressed physical properties of stone and not gradation and fineness. See Cr. Exam Page 82.
6. If Mr. Anderson had made further inquiries as indicated on the A.S.L., which he admitted he did **not**, Cr. Exam Page 84, he would have been able to definitely confirm the problem which was what Mr. Katona stated: On the nine test holes A.S.L. B13-140 test results showed material "**too fine**" **not enough stone**. No comment whatsoever on physical qualities.
7. The Judge states Page 22: "I find as a fact that if Anderson had used the information on more up to date A.S.L for 1992, 1993, and 1994 the conclusions regarding acceptability of the plaintiff's Class 5 from Pit #1 would not have changed."

Not true your Honour! The 1990 A.S.L. C 90-95 comment HL3C/A "too fine for the purpose." 1991 A.S.L. (N) HL3C/A and Gran. A "not acceptable.", 1992 A.S.L. 92-05 Virgin C/A "requires investigation". This does not indicate "not acceptable". 1993 A.S.L. 93-06 HL4C/A comment "too sandy for crushing" This comment in fact clearly defines the problem beyond any doubt, since the material is considered too sandy for crushing, this relates to gradation and fineness and **not** to stone quality. Since the specification for HL4C/A is less stringent than for HL3C/A it is obvious that it would not be acceptable for HL3C/A as well. This confirms the wrong

conclusion by Anderson in his attempted correlation between HL3C/A and Class 5 at Pit #1. See A.S.L. 1990, 1991, 1992, 1993.

We question as to why Oostenburg of M.T.O. did not clarify this problem to Anderson as Mr. Katona did in court? Why did Oostenburg provide Anderson with only one A.S.L. and three documents in total related to our pits, and then not bother to explain the various designations on our pits as related to the A.S.L., when in fact this A.S.L. Policy was his suggestion in the first place? We believe the selection of the 1991 A.S.L. was all part of the carefully conspired Conspiracy, as this A.S.L. was the only one which did not definitely define the problem with HL3C/A.

- 8. On the 1994 Aggregate Quotation, Mr. Anderson stipulated that Class 5 must comply with Ontario Provincial Standards Specification 1001 and 304. This is a specific specification designated to this particular product. It would in fact be quite impossible to determine definitely if this particular product from any supplier would be acceptable without testing to this particular specification. Mr. Anderson confirmed under Cr. Examination Page 133 that at no time did the Township conduct any testing on any of our aggregate in 1994, 1995, or 1996. See 1994 Aggregate Quotation.

We also provided in evidence that the only testing to this specification conducted, by Ministry of Transportation on our Class 5 revealed Petrographic Number of 122.9 well within the limit of 135 for stone hardness physical quality. See M.T.O. Test.

No your Honour, contrary to your statement, the facts herein presented from 1 to 8 confirm beyond any reasonable doubt, that Mr. Anderson's conclusion regarding our Class 5 Aggregate was neither reasonable or accurate. His conclusion was a fraudulent misrepresentation, based upon assumptions totally without basis in fact.

This is not a guessing game, and we do not live in La La Fantasy Land. All of this evidence was provided in court, which confirms beyond any reasonable doubt that our Company was in fact libeled and slandered to the Press May 4, 1994 by senior staff of the Township of Delhi.

No positive evidence whatsoever was presented by the Defence which would confirm that our aggregate caused a problem, failed to meet specification, or was unacceptable. All together now, lets give our heads a shake!

Furthermore relative to the Township directive of October 22, 1993 which stated quote: "Subject: Township of Delhi Quality Assurance Standards.

Please be advised that effective immediately the Township of Delhi will be using only products and materials that are:

- 1.. Ministry of Transportation Approved.
- 2. On the Designated Sources List
- 3. On the Aggregate Sources List.

This policy is approved by the Council of the Township of Delhi." unquote.

Relative to Item #3 this policy directive is quite explicit. I challenge Judge Carvarzan, Mr. Cline and Mr. Haney to identify Class 5 Aggregate "On the Aggregate Sources List", Contract 91-06. End of Story. See Directive October 22, 1993. Item #

On Page 21 his Honour states quote: "Katonas opinion was that Gran. A. from Pit 3 is unacceptable based on both test results and field performance." unquote. His Honour should not have even quoted this statement, as the only information Katona had, came from M.T.O., which we had revealed manipulation of test results compared to the September 20, 1989 testing by M.T.O. and testing by Dominion Soils, Professor Hudec and Mr. Woda of Golder, previously with M.T.O..

As for performance testing Cr. Examination of Chris Rodgers of M.T.O. revealed Mr. Richard Puccini's letter of July 9, 1990 to be a fraudulent misrepresentation without basis in fact, as no performance testing was done. See Chris Rodger's Testimony.

In respect to this information revealed in court, this does not confirm that it was reasonable for Anderson to express his concerns about that material.

Page 25 "Reasons" Quote: "The A.S.L. was not presented to council as a guarantee of quality but rather as a "useful tool" to assist staff in determining whether products are acceptable and appropriate for the municipalities purposes." unquote. Reference to the resolution passed by Public Works and forwarded to Council for approval quote: "and the requirement that suppliers be either on the Designated Sources List or the Aggregate Sources List if there is any question as to quality." unquote. Certainly the intent is quite clear that this was meant without question as a control of quality acceptance. How is it possible to misconstrue this as anything else?

Page 26 His Honour after extracting selected excerpts from various problems which we encountered since 1964 and applying his own special twist, succeeded in portraying myself as the bad guy who created all of these problems for these municipalities over the years. His Honour should reference my Cr. Examination by Mr. Haney Pages 268 to 289 and he would recall that what he was in fact describing was the 35 years of Hell which I have endured at the hands of these various government beauracrats. See Transcript P.268-289.

Page 27 Quote: "He was aware of instances where material which met O.P.S.S. requirements failed, nevertheless to perform as expected in the field." unquote. Where? In 38 years in the aggregate business, I have never known this to occur. "Another Fairy Tale" by Anderson. See Ajax F.O.I. Response Re: Causes of Road Failure. May 22, 1997.

Page 29 His Honour states quote: "I agree with the defendants that Anderson entertained a reasonable belief that the Plaintiff's products were the cause, in whole or in part for failure in the 1992 projects."

"It is not for the Township, as the purchaser of the product , to prove that quality problems exist with a particular product before discontinuing the use of that product." unquote.

I disagree with his Honour's concept that a reasonable belief or suspicion by Anderson is legitimate grounds for discontinuing the use of our aggregate. Who is this Anderson, a supreme dictator that he and the municipality are exempt from the law? Where is the protection for the contractor from discriminatory or arbitrary action.

No Public Corporation or employee of such, has the authority to blacklist a particular product, without having determined definitely beyond any reasonable doubt that the product is substandard and is responsible as the cause of a problem. The Township had an obligation of due care under the law, which they completely disregarded when they blacklisted our products without testing, and factual evidence in support of this action.

This statement by His Honour is comparable to the irresponsible actions of the Township. This message indicates that employees of the Public Corporation can malign anyone's products at their own discretion, and they are not required to be accountable under the law.

This test strip was another Fairy Tale without basis in fact.

This was not a comparison to another product or method of road construction at all, as some of our gravel was used in the base, and covered over with limestone aggregate. If this was to be a performance comparison, none of our gravel should have been used. It should have been all limestone, as suggested by Mr. Anderson himself.

Page 31: I disagree with His Honour's concept that this Township's Purchasing Policy is merely an administrative directive by Council between employer and employee. This policy is a by-law resolution(?) passed by resolution of Council and is legally enforceable under the law on both contractor and Township employees, relative to any contravention of Policy

Page 31 & 32: His Honour related to a question and answer scenario regarding Breach of the Competitions Act and states quote: "That is the high water mark of the evidence in support of the serious allegations of Breach of the Competitions Act and of conspiracy. I reject those allegations as unfounded and entirely without substance." unquote.

No, your Honour, this was not the high water mark of evidence presented, the high water mark, was what you so conveniently left out, and that was the direction to staff by Council(?) that staff have no further commercial business dealings with Nichols Gravel Limited. See Item # Direction.

There are no provision that I am aware of in the Municipal Act which grants authority to any Public Corporation to Discriminate against any business or individual. This therefore is an illegal action which prevented the only business tax paying aggregate producer in the Township from competing for Township work. This definitely restricted competition and showed malice with intent to injure our Company. It is not possible to Justify this action or interpret this any other way.

Page 33: It is a fact that the Township has spent more on aggregate testing after adoption of their A.S.L. purchasing policy than before. As a further footnote, this A.S.L. policy is now obsolete and unenforceable, as the Ministry of Transportation Ontario no longer produces Aggregate Sources List for Southern Ontario.

Page 34, his Honour quote: "I accept the evidence of David Anderson, that there was indeed sufficient lead time to permit the Plaintiff to adjust its processing equipment to enable it to produce Class 1 stone chips for the 1994 contracts." Unquote. Most amazing! Nothing in Mr. Anderson's Curriculum Vitae indicates that he ever worked at an aggregate operation, and after 1 1/2 years as Road Superintendent, against my 35 years in the business, Mr. Anderson has greater knowledge of our processing machinery and the operation of our business than I do.

His Honour quote: "I find that Anderson's conduct at the Church St. site in 1995 was not motivated by any animus toward the Plaintiff. He was insisting on compliance by the Contractor, Elgin Construction, with the terms of its contract with the Township not to change suppliers without Township approval." unquote. This testimony has been confirmed to be false. See Cr. Examination 789 #20 and Haldimand-Norfolk Regional Police Report. Police Report states:

Page 35 Re: Direction relative to the Competitions Act. The direction by Council to staff confirms the conspiracy to injure, by Anderson and Gelinas.

Page 38 & 39 His Honour quote: "The Township employees owe a duty to Council to follow directives." unquote. This is true, but there is a greater duty and obligation, and that is to act in the best Public Interest, for both Council and its employees work for and are employed by the Public Corporation.

Re: Price lists received by Township confirmed false testimony. See F.O.I. response Item #

Page 39 His Honour quote: "It can be safely inferred, and so I find as a fact, that the Township Council was aware of this practice and endorsed it. This is confirmed by

the fact that no disciplinary action has been taken against Anderson, Gelinias or any other Township employee." unquote.

If in fact Council was even aware of the procedures used by staff to purchase, they had no authority to endorse anything but the Purchasing Policy adopted by resolution, unless another resolution was adopted changing the Policy to the methods used by staff for purchases. There was no evidence presented to confirm that this was done. To endorse anything other than Policy passed by resolution would be an illegal act by Council relative to the Municipal Act.

Because no disciplinary action was taken by Council, this does not confirm either that they endorsed staffs actions or that they were even aware of staffs' action, as there was no evidence given to confirm otherwise. This quote by His Honour is purely speculative.

Page 35, Negligence: It may be undisputed that Anderson was not aware of the existence of the 1980 Purchasing Policy from the time he was hired in the fall of 1990 until the Fall of 1993, (but only because there was no way to prove that he was aware of it) common sense and logic should tell you, that the first thing Anderson should have done upon taking up a new position would be to make himself familiar with all laws and by-laws of the municipality he was employed by, where his duties required that he make large purchases in trucks, machinery and aggregate. To not to have done this, is indisputably negligence.

Amazingly His Honour found no negligence on the part of either Anderson or Gelinias. Please consider these facts

1. After having adopted the A.S.L. Quality Assurance Policy, the Township accepted an obligation to keep apprized of the very latest A.S.L. information which they did not. Their quote to the Press regarding our aggregate was taken from information on a 1991 A.S.L. when at that time upgraded information was available on a march 1994 A.S.L. which they stated they were not aware of. ?
2. Both Anderson and Gelinias stated they were not aware of the 1980 Purchasing Policy until late 1993. ?
3. Anderson disregarded the Consultants Report for Granular materials and compaction, and when a problem developed blamed the gravel. ?
4. Admitted by Anderson that he failed to follow recommended construction methods related to compaction on all projects complained of failed. ?
5. Anderson failed to test inferior Hydro Salvage Pit Run prior to using it in the base of Road 6 and the East Quarter Line project 1992. ?
6. Anderson failed to conduct proper Geo Technical evaluations on the failed projects to determine definitely the problem, the result was conclusion by speculation, confirmed by the Defence's expert Mr. Katona. ? See pages 1125 & 1126 Cr. Examination.

Relative to the evidence given over a period of 8 ½ days in court, these Reasons for Judgment are the most prejudiced obscene perversion of truth and fact that I have ever encountered.

I respectfully request a full Judicial inquiry in order to determine what motivated his Honour Justice John Carvarzan as to how and why he arrived at this decision.

Thank you

Gary Nichols
Gary I. Nichols

P.S. We have confirmed numerous false statements given in evidence at the trial by both Mr. Anderson and Mr. Gelinas. See examples.