

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NICHOLS GRAVEL LIMITED

Plaintiff

- and -

**HER MAJESTY THE QUEEN, in the RIGHT OF THE
PROVINCE OF ONTARIO, its servants or agents including
ALEC DENYS and PAUL CUTMORE**

Defendants

AFFIDAVIT OF GARY NICHOLS

I, **Gary Nichols**, of the Town of Delhi, in Norfolk County, President of Nichols Gravel Ltd., **MAKE OATH AND SAY** as follow:

1. I am the President of Nichols Gravel Limited and as such have knowledge of the matters hereinafter referred to.
2. On or about the 1st day of April 1999 Nichols Gravel Limited applied for a licence to operate a quarry on lands known as part of lots 10 - 12, Concession 12, former Township of Walpole, now Haldimand County.
3. The licence was applied for pursuant to the provisions of The Aggregate Resources Act and regulations appended pursuant

thereto and because objections were received from nearby residents the application proceeded to an Ontario Municipal Board hearing as referred by the M.N.R.

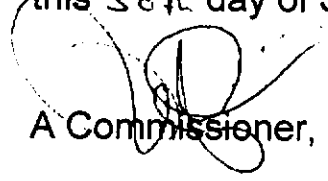
4. Following a lengthy hearing at which full submissions were made by all interested parties the Ontario Municipal Board granted the plaintiff the licence it sought in a preliminary ruling dated April 3, 2001 and in a final order on July 25, 2001. The Ministry of Natural Resources and the Ministry of the Environment chose not to participate in this hearing.
5. Now produced and shown to me and marked as Exhibit "A" and "B" to this my affidavit are true copies of each of the said rulings.
6. Despite numerous requests the Ministry of Natural Resources which has jurisdiction to grant the licence in question declined or refused to grant same until April 1, 2003. Now produced and shown to me and marked as Exhibit "C" is a true copy of the licence as issued by the Ministry of Natural Resources. This licence contains in addition twenty-three terms or conditions which the Ministry of Natural Resources has termed pre-operational conditions.
7. The Ontario Municipal Board order does not contain any such pre-operational conditions as unilaterally imposed by The Ministry of Natural Resources.

8. On the 7th day of April 2003 the Ministry of Natural Resources which granted the licence in the first place issued a suspension order and served same on the plaintiff on the 14th day of April 2003 at which time it also served on April 15th a Summons alleging various infraction alleged to have occurred in the year 2002.
9. Now produced and shown to me and marked as Exhibit "D" is a true copy of the Suspension Order.
10. Now produced and shown to me and marked as Exhibit "E" is a true copy of the Summons.
11. I make this affidavit for no improper purpose but solely in support of a declaration declaring that the defendant, The Queen, in the Right of The Province of Ontario is not in compliance with the Ontario Municipal Board Decision/Order 1194 issued April 3, 2001 and July 25, 2001, and the license as issued has no validity or effect and that there are no pre-operational conditions in same.
12. I retained Tom Smart of B.L.S. Planning to submit suggested conditions for approval of the application for a license to the Ontario Municipal Board. These conditions were not submitted as pre-operational or as conditions precedent to the granting of a license. Rather, they were suggested as ongoing matters to be dealt with as the quarry developed. Now produced as shown to me and marked as Exhibit "F", is a true copy of such conditions. The conditions of

approval as adjusted by the Board are identical to those as suggested
by Tom Smart.

SWORN BEFORE ME at)
Haldimand County in the)
Province of Ontario)
this 30th day of September 2003)

.....*Harry Nichol*.....


A Commissioner, etc.