

30/06

THIS MATTER TO BE  
HEARD BY JUSTICE  
MARSHAL CAYUGA  
COURT HOUSE CAYUGA  
ONT.  
10AM JUNE 15/2006

SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

BETWEEN:

NICHOLS GRAVEL LIMITED

Applicant

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
PROVINCE OF ONTARIO, DAVID RAMSAY, ALEC DENYS, PAUL  
CUTMORE, STUART THATCHER, GARY ZACHER, EMMILIA KUISMA,  
ERIC D'HONDT AND JOHN HAMILTON

Respondents

NOTICE OF APPLICATION 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.

Take notice that the APPLICATION for judicial review will be brought forward at 10o'clock in the forenoon, on a date to be set by the Registrar, at the Court House, 55 Munsee Street, Cayuga, Ontario.

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 not later than 2 p.m. on the day 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.

Date <sup>10</sup> February 8, 2006

Issued by Jodi Springer  
Registrar

Address  
of court

55 Munsee Street  
Cayuga, Ontario N0A 1E0

TO Ministry of the Attorney General  
Crown Law Office  
720 Bay Street  
8<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2K1  
Fax - 416-326-4181

AND TO David Ramsay,  
AND TO Alec Denys  
AND TO Paul Cutmore  
AND TO Stuart Thatcher  
AND TO Gary Zacher  
AND TO Emilia Kuisma,  
AND TO Eric D'Hondt  
AND TO John Hamilton

## APPLICATION

1. The applicant makes application for:
  - a) An Order for leave to be granted at the hearing of this Application permitting the Applicant to bring this application before a single Judge of the Superior Court of Justice on the basis of urgency; and in the alternative, permitting this application to be heard by a full panel of the Divisional Court.
  - b) For an Order by way of certiorari to review a decision of The Minister of Natural Resources for the Province of Ontario, David Ramsay and dated the 30<sup>th</sup> day of September 2004 purporting to revoke the licence of the Applicant issued under the authority of a decision of the Ontario Municipal Board and *The Aggregate Resources Act*.
  - c) For an Order of Mandamus requiring The Minister of Natural Resources for the Province of Ontario to issue a licence to the Applicant as ordered by the Ontario Municipal Board on the 25<sup>th</sup> day of July 2001 (order no. 1194 of The Ontario Municipal Board) and to deliver same to the Applicant.
  - d) For a Declaration that the twenty-three (23) pre-operating conditions presented to the Applicant with his licence, are not part of the licence as Ordered by the Ontario Municipal Board order on July 25, 2005 .
  - e) For a Declaration that the action of The Ministry of Natural Resources Officials, Alec Denys, Paul Cutmore, Stuart Thatcher, Gary Zacher, Emmilia Kuisma, and Norfolk County Officials Eric

D'Hondt and John Hamilton constitute an Abuse of Process and were done without express or implied authority and constitute illegal interference with the economic relations of the Applicants.

- f) For an Order referring the issue of damages to be assessed by way of an action and a Trial in a Court Action known as Nichols Gravel Limited v Province of Ontario being action number 2284/94
- g) For an Order quashing the Ministry of Natural Resources direction to compliance to twenty-three (23) Pre-Operating conditions imposed on Licence 103717 as hand delivered on April 1, 2003 together with the March 25, 2003 Licence as signed by the Minister and to delete these Pre-Operating conditions from enforcement to this licence as they were not so ordered in Ontario Municipal Board decision/order 1194.
- h) For an Order quashing the following Orders for Failure to Complete some or all twenty-three (23) pre-operating conditions:
  - i. Suspension Order dated April 14, 2003
  - ii. Revised Suspension order of October 1, 2003
  - iii. Notice of Intention to Revoke Licence for failure to complete all pre-operating conditions dated April 7, 2004.
  - iv. Order revoking the licence dated September 30, 2004.
  - v. An Order to require Ministry of Natural Resources to strike all correspondence related to these orders from the record of Licence 103717 and the file of Nichols Gravel Limited.

- i) For an Injunction requiring David Ramsay, Alec Denys, Paul Cutmore, Stuart Thatcher, Gary Zacher, Emmilia Kuisma, Eric D'Hondt And John Hamilton to cease and desist either verbally or in printed form communication to either the general public or to contractors dealing in Aggregate materials any information as to the status of business or otherwise of the Aggregate licence of the Applicants.
  - j) An Order for amendment to the Aggregate Act providing right of appeal to the Ontario Municipal Board or Divisional Court before suspension Orders or revoke of licence orders become effective on the basis of denial to the applicants of procedural guarantees as contained in *The Canadian Charter of Rights and Freedoms Sections 7 and 11(d)*.
  - k) For the costs of this Application against each respondent on a solicitor and his own client basis.
2. The grounds for the application are:
- a) *Judicial Review Procedure Act, S.6(2)*, R.S.O. 1990 c.J.1; S.6(2) re: grounds of urgency; S.1 and 2 re: Terms of Licence; S. 5 re: extension of time; S.9 re: Notice to Attorney General.
  - b) *Aggregate Resources Act, S.7(1), 57(1) and 57(4)* and the regulations pertinent thereto.
  - c) *Affidavit of Gary Nichols sworn the 6th day of February 2006*
3. The following documentary evidence will be used at the hearing of the application:

a) Affidavit of Gary Nichols, sworn the 6<sup>th</sup> day of February 2006 and exhibits appended thereto.

Dated February 6, 2006

**ARRELL PLACE LAW**  
**(Paul J. Osier)**  
**Barristers & Solicitors**  
**41 Caithness Street West**  
**Caledonia, Ontario**  
**N3W 2J2 (905) 765-5414**  
**Fax: (905) 765-5144**  
**Solicitor for the Applicant**