

192/10

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE ATTORNEY GENERAL FOR THE PROVINCE OF ONTARIO**

Plaintiff/Moving Party

- and -

**NICHOLS GRAVEL LIMITED, GARY I. NICHOLS, MARGARET NICHOLS,
DWAYNE NICHOLS**

Defendants

NOTICE OF MOTION

THE Plaintiff, **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, will make a motion to a Judge on November 7, 2006, at 10:00 a.m., or as soon after that time as the motion can be heard, at 55 Munsee Street, Cayuga, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

6
2
THE MOTION IS FOR:

- (a) an Order for an interlocutory and permanent injunction restraining the Defendants, their members, agents, servants or representatives or their substitutes or anyone acting under their instructions, anyone aiding or assisting the Defendants or anyone having knowledge of this Order or any of them, from operating a quarry on the property located at Pt. Lots 10-12, Concession 12, Haldimand County, (Walpole Township), including producing, processing or shipping of material, until such time as the Minister of Natural Resources grants a licence;
- (b) its costs of this action; and
- (c) such further and other relief as to this Honourable Court deems just

* **THE GROUNDS FOR THE MOTION ARE:** FALSIFICATION OF FACT.

- 1. FALSE (On March 31, 2003) the Ministry of Natural Resources ("MNR") issued Class "A" Category 2 Licence, No. 103717, to Nichols Gravel Limited ("Nichols") TRUE: LICENCE HAND DELIVERED APRIL 1/2003. FALSE: ↓ (to operate a quarry) under the TRUE: THE MARCH 31/03 LETTER PREVENTED OPERATION OF THE QUARRY *Aggregate Resources Act* (the "Act") on Part of Lots 10, 11, 12, Concession 12, in the Former Township of Walpole, Haldimand County;
- 2. The licence was issued subject to 56 conditions set out in Schedules attached as "A" and "B" to the licence;
- 3. On April 14, 2003, Nichols was advised by Notice of Suspension that his licence was suspended for having contravened s.15 of the *Act*, which states, "Every licensee shall operate the licensee's pit or quarry in accordance with the Act, the regulations, the site plan and the ?PRE? (conditions of the licence");

4. On April 7, 2004, a Notice of Intention to Revoke its licence was forwarded to Nichols because ~~(FALSE?)~~ PRE OPERATING CONDITIONS OF MARCH 21/03 LETTER NOT LICENCE, not been met; ~~(TRUE?)~~ 23 PRE OPERATING CONDITIONS IMPOSED IN ADDITION TO OMB DECISION ORDER 1194 AND NOT FOUND ON LICENCE SIGNED BY THE MINISTER.

5. On October 7, 2004, a Notice of Revocation for Licence No. 103717 was forwarded to Nichols for failing to comply with ~~(FALSE?)~~ (10 conditions of its licence); ~~(TRUE?)~~ 10 PRE OPERATING CONDITIONS NOT FOUND IN CONDITIONS OF LICENCE.

6. On or about October 26, 2004, Nichols requested a hearing by the Ontario Municipal Board (OMB) to review the revocation of its licence.

7. From September 5 – 8, and September 12, 2006, a hearing was held before the OMB. A decision was released on September 27, 2006, confirming the Minister's revocation of the licence. The OMB held that there had been a multiple contravention of the site plan and the ~~(FALSE?)~~ (conditions of the licence.) ~~(TRUE?)~~ OMB CHAIRMAN M.C. DENHEZ DISREGARDED JUSTICE D. REILLY DECISION OF JUNE 15/2006.

8. Inspections of the quarry site from August 27, 2002 to October 2006 by MNR employees reveal that Nichols has ~~(FALSE?)~~ (continued to operate a quarry) on the above noted property previous ~~(TRUE?)~~ NO QUARRY OPERATION WHEN IN 2003 MNR INTIMIDATED CRUSHING CONTRACTOR WHO MOVED CRUSHER OUT. NO PRODUCT TO SELL! to being issued a licence and subsequent to the licence suspension, revocation, and the

September 2006 decision by the OMB;

~~(FALSE?)~~
9. (Nichols is operating without a licence) in violation of the Aggregate Resources Act; ~~(TRUE?)~~ NICHOLS OPERATING UNDER VALID LICENCE ILLEGALLY REVOKED THROUGH FORGERY AND FRAUDULENT ENFORCEMENT.

10. The continuation of the unlicensed quarry operation jeopardizes the environment, ground ~~(FALSE?)~~ water and neighbouring properties if the Order is not granted; ~~(TRUE?)~~ NO EVIDENCE PROVIDED IN 5 DAYS OF OMB HEARING TO SUPPORT THIS FALSE SPECULATION OF FACT.

11. Sections 7, 15 and 22 of the Aggregate Resources Act;

- 12. Section 101 of the *Courts of Justice Act*;
- 13. Rule 40.01 of the *Rules of Civil Procedure*; and
- 14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The pleadings herein;
- 2. The Affidavit of Emmilia Kuisma, sworn July 27, 2006 (Affidavit 1 of 4);
- 3. The Affidavit of Emmilia Kuisma, sworn July 27, 2006 (Affidavit 2 of 4);
- 4. The Affidavit of Emmilia Kuisma, sworn July 27, 2006 (Affidavit 3 of 4);
- 5. The Affidavit of Emmilia Kuisma, sworn July 27, 2006 (Affidavit 4 of 4);
- 6. The Affidavit of Gary Zacher, sworn July 27, 2006; and
- 7. Such further and other material as counsel may advise and this Honourable Court may permit.

October 16, 2006

Ministry of the Attorney General
 Crown Law Office - Civil
 8th Floor, 720 Bay Street
 Toronto, Ontario M5G 2K1

Dennis W. Brown, Q.C.
 LSUC # 104680
 T: 416-326-4156
Connie Vernon
 LSUC # 43385J
 T: 416-314-4392
 F: 416-326-4181
 Of Counsel for the Plaintiff

9

TO: ARRELL PLACE LAW LLP
Barristers & Solicitors
41 Caithness Street West
Caledonia, Ontario N3W 2J2

Mr. Paul J. Osier
T: 905-765-5414
F: 905-765-5144

Solicitors for the Defendants

2