

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.

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:

1. On March 31, 2003 the Ministry of Natural Resources ("MNR") issued Class "A" Category 2 Licence, No. 103717, to Nichols Gravel Limited ("Nichols") to operate a quarry under the *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 conditions of the licence";

4. On April 7, 2004, a Notice of Intention to Revoke its licence was forwarded to Nichols because licence conditions and site plan infractions as outlined in the suspension notice had not been met; ? FALSE

5. On October 7, 2004, a Notice of Revocation for Licence No. 103717 was forwarded to Nichols for failing to comply with 10 conditions of its licence; ? AGAIN FALSE.

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 conditions of the licence. ? AGAIN FALSE.

8. Inspections of the quarry site from August 27, 2002 to October 2006 by MNR employees reveal that Nichols has continued to operate a quarry on the above noted property previous to being issued a licence and subsequent to the licence suspension, revocation, and the September 2006 decision by the OMB; ? AGAIN FALSE

9. Nichols is operating without a licence, in violation of the *Aggregate Resources Act*;

10. The continuation of the unlicensed quarry operation jeopardizes the environment, ground water and neighbouring properties if the Order is not granted; ? AGAIN FALSE

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

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Court File No.: 192/2006

SUPERIOR COURT OF JUSTICE

The Honourable) Dated the 7th day
 Justice Marshall) of November, 2006
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BETWEEN:

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

Plaintiff

- and -

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

Defendants

ORDER

THIS MOTION FOR INJUNCTIVE RELIEF, brought by Her Majesty the Queen in right of Ontario as represented by the Attorney General for the Province of Ontario, for an Order for an interlocutory injunction was heard on November 7, 2006, at Cayuga.

ON READING the motion record, factum of the moving party, and on hearing the submissions of counsel for the parties,

1. **THIS COURT ORDERS** that the interlocutory injunction is granted, 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

without a licence on the property located at Parts 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.

2. **THIS COURT ORDERS** that costs be payable in the cause.

Marshall

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