

SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT  
COURTROOM 3 - OSGOODE HALL

REF#30

30

Thursday, August 16, 2007  
Commencing at 10:00AM

The Honourable Mr Justice Carnwath  
The Honourable Madam Justice Spies  
The Honourable Mr Justice Newbould

To be heard together:

# 1

1.

Divisional Court File No: 275/07

Judicial Review - MNR

Applicant(s):

Respondent(s):

Nichols Gravel Limited

Her Majesty the Queen in Right of the Province of Ontario, David Ramsay, Alec Denys, Paul Cutmore, Stuart Thatcher, Gary Zacher, Emmil Kuisma, Eric D'Hondt and John Hamilton

# 2

Divisional Court File No: 276/07

Appeal - OMB

Appellant(s):

Respondent(s):

Nichols Gravel Limited

Her Majesty the Queen in Right of the Province of Ontario, the Ministry of Natural Resources and the County of Haldimand

Represented by:

Represented by:

Paul J. Osier  
Arrell Place Law LLP

Dennis Brown  
Crown Law Office - Civil Law

Nicholas Adamson  
Legal Services Branch - MNR

Sara Premi  
Sullivan-Mahoney LLP

\* COURT AND CROWN SCREW JOB!

\* COURT HEARD AND DISMISSED  
FILE # 276/07 FIRST.

\* THAT MADE FILE 275/07 IRRELEVANT  
NICHOLS GRAVEL LIMITED HAD NO  
CHOICE BUT TO WITHDRAW APPLICATION 275/07  
FROM HEARING.

COURT FILE NO.: 276/07  
DATE: 20070816

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

CARNWATH, SPIES AND NEWBOULD JJ.

B E T W E E N:

NICHOLAS GRAVEL LIMITED

Appellant

- and -

HER MAJESTY THE QUEEN IN THE RIGHT  
OF THE PROVINCE OF ONTARIO, MINISTRY  
OF NATURAL RESOURCES AND THE  
COUNTY OF HALDIMAND

Respondent

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ORAL REASONS FOR JUDGMENT

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CARNWATH J.

Date of Reasons for Judgment: August 16, 2007

Date of Release: AUG 27 2007

COURT FILE NO.: 276/07  
DATE: 20070816

ONTARIO  
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

CARNWATH, SPIES AND NEWBOULD JJ.

BETWEEN:

NICHOLAS GRAVEL LIMITED

Appellant

- and -

HER MAJESTY THE QUEEN IN THE  
RIGHT OF THE PROVINCE OF ONTARIO,  
MINISTRY OF NATURAL RESOURCES  
AND THE COUNTY OF HALDIMAND

Respondent

)  
)  
) *Paul J. Osier*, for the Appellant  
)  
)

)  
)  
) *Dennis Brown and Connie Vernon*, for Her  
) Majesty The Queen in the Right of the  
) Province of Ontario  
)

) *Nicholas Adamson*, for Ministry of Natural  
) Resources  
)

) *Sara Premi*, for the County of Haldimand  
)  
)

) **HEARD at Toronto:** August 16, 2007

CARNWATH J.: (Orally)

[1] The appeal will be dismissed. It is, of course, the trite law that an appeal from the Municipal Board is founded on an error in law.

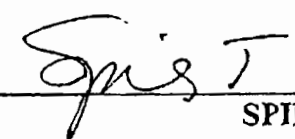
[2] The appellant submits the Board made an error in law in failing to understand the nuances of the argument that the revocation of the licence was based on prior allegedly unlawful actions by the Ministry which tainted the ultimate revocation. We reject the submission. We

find no error of law on this issue or indeed in any aspect of the Board's decision. Reference was made by counsel for the appellant to errors of fact which play no part on the appeal. Nevertheless the Board concluded the appellant was not in compliance with certain conditions in the licence.

[3] It was clear to the Board there were conditions in the licence which were not in compliance at the time of revocation, nor at the time of the hearing. These were findings of fact which the Board was entitled to make on the evidence and which we of course cannot disturb.

[4] I endorse Volume I of the Appeal Book and Compendium as follows: "The appeal is dismissed for oral reasons given by Carnwath J. Submissions as to costs, if they cannot be agreed upon, to be submitted by September 1, 2007, limited to three pages."

  
CARNWATH J.

  
SPIES J.

  
NEWBOULD J.

Date of Reasons for Judgment: August 16, 2007

Date of Release: AUG 27 2007

COURT FILE NO.: 275/07

DATE: 20071019

**SUPERIOR COURT OF JUSTICE - ONTARIO  
DIVISIONAL COURT****RE: NICHOLS GRAVEL LIMITED**

Applicant

- and -

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

Respondents

**BEFORE: CARNWATH, SPIES & NEWBOULD JJ.****COUNSEL: Paul J. Osier, for the Applicant***Dennis Brown & Connie Vernon, for the Respondent, Her Majesty the Queen in  
the Right of the Province of Ontario,***COSTS ENDORSEMENT****CARNWATH J.:**

[1] The above application for judicial review was heard on August 16, 2007, immediately following the dismissal of an appeal brought by Nichols Gravel Limited in Divisional Court File No. 276/07.

[2] The dismissal of the appeal rendered the application for judicial review moot and Nichols Gravel Limited withdrew its application for judicial review.

[3] Her Majesty the Queen seeks costs on a substantial indemnity basis of \$10,000, plus \$4,000 for disbursements.

[4] This was the second judicial review application brought by Nichols Gravel Limited contesting the legitimacy of the conditions imposed on its quarry license by the Ontario Municipal Board ("OMB") in September of 2000.

[5] The applicant's failure to satisfy the conditions led the Minister to suspend its license in April, 2003 and to issue a Notice of Revocation in October, 2004. The Applicant subsequently appealed this decision to the OMB and initiated the first judicial review. The judicial review decision of Justice Reilly in June, 2006 affirmed the legitimacy of the conditions. The appeal before the OMB in September, 2006 arrived at a similar conclusion, and upheld the Minister's decision to revoke the quarry license. ?

[6] The applicant continued to operate its quarry without a license and in defiance of the above-mentioned decisions. On October 17, 2006, the Minister filed a motion for an interlocutory injunction restraining the applicant from operating a quarry. On November 7, 2006, Justice Marshall affirmed the legitimacy of the conditions and granted injunctory relief. ?

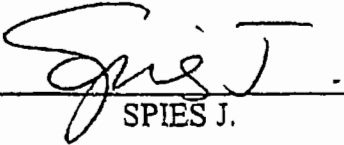
[7] In November, 2006, the applicant commenced an appeal of the OMB's September, 2006 decision to the Divisional Court. Again, the appeal contested the legitimacy of the conditions imposed by the OMB. On August 16, 2007, immediately before the second judicial review was to be heard, the Court rejected the applicant's appeal. ? FALSE

[8] We agree with the Crown submission that the second judicial review was unnecessary for a variety of reasons. The application was commenced before Nichols Gravel Limited had exhausted its statutory right of appeal of the Minister's order. The applicant continued with the second judicial review application even though the central issue, the legitimacy of the conditions imposed by the Minister, had been determined by Reilly J. in the first judicial review, by Marshall J. on the injunction and by the OMB on the appeal taken to it. The applicant was aware or should have been aware that it was re-litigating issues and that it was unnecessary to continue with the second judicial review whilst the statutory appeal processes remained open in File No. 276/07. The conduct of the applicant must attract a costs award of substantial indemnity. ? PRE CONDITION

[9] We reject Nichols Gravel's submission that "the fact that preparation had to be done for both a Judicial Review Application and an Appeal in Divisional Court was caused by Divisional Court itself refusing to make a decision as to which to proceed with". It was Nichols Gravel that made the decision to proceed with the two routes in tandem. We agree that the Crown's costs should be awarded on a substantial indemnity scale and fix them at \$10,000 for fees and \$4,000 for disbursements, inclusive of G.S.T., payable thirty days. ?

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CARNWATH J.

  
SPIES J.

  
NEWBOULD J.

DATE: 20071019