CITATION: The Corporation of the City of Kawartha Lakes v. Grills, 2021 ONSC 2229
COURT FILE NO.: CV-20-065
DATE: 20210326

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
The Corporation of the City of Kawartha Lakes Applicants	Charles M.K. Loopstra, QC; and Paul E.F. Martin, for the Applicants
– and –	Alexander J.S. McLeod, for the Respondents
Richard John Grills, Scott Randolph Legos Jason Johnson Respondents	
	HEARD: December 15, 2020

WOODLEY J

REASONS FOR JUDGMENT

THIS APPLICATION for a permanent injunction restraining the Respondents from carrying on an illegal commercial fill operation on the Properties and for a closure Order pursuant to s. 447.1 of the *Municipal Act*, *2001,* permitting the Applicant to close all access to the Properties for a two-year period, and for a mandatory Order requiring the remediation of the Properties at the expense of the Respondents; and

THIS MOTION for Contempt relating to the continuation of the illegal commercial fill operation following the issuance of a temporary injunction by this Court, was heard by me on December 15, 2020, via Zoom conference.

UPON READING the Application Record dated June 24, 2020, the Applicant's Supplementary Application and Motion Record dated September 24, 2020, the Affidavit of Richard Grills sworn October 30, 2020, the Applicant's Second Supplementary Application

and Motion Record dated November 16, 2020, the Applicant's Third Supplementary Application and Motion Record dated December 9, 2020, the Applicant's Book of Authorities, the Respondent's Record and the Respondent's Factum, all filed, AND UPON hearing the submissions of Counsel for the Applicant and the Respondent, Richard John Grills, the Respondents Legos and Johnson, not appearing although served, I released my Judgment in the APPLICATION on December 16, 2020, with Reasons for Judgment to follow. These are my Reasons for Judgment relating to the APPLICATION and JUDGMENT released December 16, 2020 and relating to the MOTION FOR CONTEMPT and COSTS.

OVERVIEW

1. The Respondents, Richard Grills ("Grills"), Scott Legos ("Legos"), and Jason Johnson ("Johnson"), are the owners of certain environmentally sensitive land located in the Corporation of the City of Kawartha Lakes ("the City") adjacent to Lake Darymple.

2. In 2018, the City received numerous complaints that the Respondents were operating an illegal fill site on their land.

3. On November 20, 2018, following an investigation, the City issued an Order requiring the Respondents, pursuant to the City's Site Alteration By-Law, to either apply for a Large Fill Permit or to rehabilitate the land to its original condition.

4. The Respondents refused and/or neglected to obey the November 20, 2018 Order and continued to allow the dumping of fill of their land. The Respondents were then charged under the City's By-law for causing or permitting fill to be placed without a Site Alteration Permit and failing to comply with the November 20, 2018 Order.

5. The Respondents were also charged by the Township under a Township By-law for using or permitting the use of lands for a non-conforming use.

6. In or about April of 2020, the City received further complaints alleging that the Respondents' continued to allow dumping on the land despite the issuance of the Orders.

7. Following further investigation, the City discovered that the Respondents had continued and/or re-commenced dumping on their land, which the City considered to be an illegal fill site.

8. In response to the further information received, the City issued and delivered further Orders dated April 8, 2020, April 20, 2020, May 29, 2020, June 2, 2010, and June 3, 2020, which required the Respondents to "cease and desist" their fill operation, undertake soil testing of Parcels 537 and 538 as the source and quality of the fill, and comply with the By-Laws that applied to the land.

9. The Respondents did not comply with the issued Orders and instead by their legal counsel sent a letter to the City dated June 18, 2020, that requested the City cease "any stopping or questioning of vehicles either entering or exiting" the Properties pending disposition of the provincial offence charges.

10. Following receipt of the Respondents' June 8, 2020 letter, the City commenced the within application and on July 8, 2020, obtained an Order from the Superior Court of Justice from Justice Corkery issuing a temporary injunction that prohibited the Respondents from allowing fill to be dumped on their property.

11. On July 21, 2020, the City obtained a further Order from Justice Corkery requiring testing of the alleged commercial fill site.

12. Despite the Orders of the Superior Court of Justice dated July 8, 2020 and July 21, 2020, the commercial fill operation continued.

13. As the Respondents refused and/or neglected to comply with the July 8, 2020 and July 21, 2020 Orders, the City sought a permanent injunction to prohibit the Respondents from placing fill upon the land together with a closure Order. The City also sought a finding of contempt as against the Respondent Grills with appropriate penalties attached for Grills' failure to comply with the numerous issued Orders of the Court.

ISSUES

14. The issues on this Application and Motion for Contempt are:

    (i) What is the test for granting public authorities' injunctive relief to enforce by-laws?

    (ii) Should a permanent injunction be granted in this case?

    (iii) Should the City be granted a closure Order pursuant to s. 447.1 of the *Municipal Act, 2001?*

    (iv) Should a mandatory Order be granted pursuant to s. 101 of the *Courts of Justice Act* requiring the Respondents to remove the fill?

    (v) Should the Respondent Grills be held in contempt of the Order of Justice Corkery dated July 8, 2020?

    (vi) If Grills is found in contempt of the July 8, 2020 Order, what happens next?

    (vii) What is the appropriate costs award?

FACTS

15. Pursuant to the provisions of the *Municipal Act, 2001,* the City authorized and enacted Site Alteration By-laws that prohibit and regulate the removal of topsoil, the placing or dumping of fill, and the alteration of the grade of land in all areas of the City, except those areas which are subject to regulations made under Clause 28(1) of the *Conservation Authorities Act.*

16. In accordance with the provisions of the *Municipal Act, 2001,* the City is mandated to enforce the Site Alteration By-laws as well as Zoning By-law*,* to enable the City to regulate uses of lands within its jurisdiction.

17. In or about December of 2016, the Respondents, Grills, Legos, and Johnson as tenants in common purchased two adjoining parcels (parcels 537 and 538) constituting approximately 160 acres of treed, rural land adjacent to Lake Dalrymple, which is an environmentally sensitive body of water.

18. In November of 2019, the Respondent Johnson solely purchased a third parcel (parcel 534) constituting approximately 202 acres of treed, rural land, adjacent to parcels 537, 538 and Lake Dalrymple.

19. Parcels 537, 537 and 534 (the "Properties") are all zoned for "Rural General" use that pursuant to the Site Alteration By-Laws does not permit acceptance of dumped fill from other locations or a commercial fill operation.

20. In or about 2017, the City received complaints from neighboring owners that illegal fill was being dumped at Parcel 537. The City investigated the complaint and issued an Order dated November 20, 2018, pursuant to the then-applicable Site Alteration By-Law.

21. The Order dated November 20, 2018, required the Respondents, pursuant to the Site Alteration By-Law, to either apply for a Large Fill Permit or to rehabilitate the land to its original condition.

22. The Respondents refused and/or neglected to obey the November 20, 2018 Order and were charged under the City's By-law for causing or permitting fill to be placed without a Site Alteration Permit and failing to comply with the November 20, 2018 Order.

23. The Respondents were also charged by the Township under a Township By-law for using or permitting the use of lands for a non-conforming use.

24. In or about April of 2020, the City received a further complaint alleging that illegal dumping continued to occur at the Respondents' property. On this occasion a local resident provided a statement with accompanying video footage that recorded on April 3, 2020, that 20 or more dump trucks were lined up along Ramara Road, being the entrance to parcels 537 and 538, waiting to offload fill onto parcels 537 and/or 538.

25. As a result of this complaint and the video footage that accompanied the complaint, the City discovered that the Respondents had either continued or re-commenced their illegal fill operation despite the November 20, 2018 Order and the subsequent provincial offences charges relating to the November 20, 2018 Order.

26. The City further investigated the complaints utilizing aerial drone photographs and video to assess the existence and extent of the commercial fill operation at the Properties.

27. As a result of this further investigation, the City obtained video and photographic evidence that clearly demonstrated that a significant, ongoing, commercial fill operation was continuing to operate at Parcels 537 and 538 in April of 2020.

28. Following review of the complaint, and the video and photographic evidence, the City delivered Orders to the Respondents dated April 8, April 20, May 29, June 2, and June 3, 2020, requiring the Respondents to "cease and desist" their fill operation and comply with the various City and Township By-laws. The above noted Orders also specifically required the Respondents to undertake soil testing of Parcels 537 and 538 as the source and quality of the fill remained undetermined at that time.

29. The Respondents retained counsel, Alexander McLeod ("McLeod"), who responded by letter dated June 18, 2020. By the letter McLeod advised the City that he was retained by Hill Valley Farms, a general partnership owned by all Respondents. McLeod advised that the Respondents were entitled to rely upon their "presumption of innocence" and requested the City cease "any stopping or questioning of vehicles either entering or exiting" the Properties pending disposition of the provincial offence charges.

30. On June 24, 2020, following receipt of the Respondent's June 18, 2020 letter, the City commenced the within Application in the Superior Court of Justice seeking an urgent Order for an interim and/or interlocutory injunction restraining the Respondents and all others from placing or dumping fill, removing topsoil or otherwise altering the grade of the Properties until the final disposition of the Application.

31. The Application Record contained the affidavit of Municipal Enforcement Officer (MEO) Stacey Collins sworn June 23, 2020, which details the history of the matter and includes

photographs and a video of the drone footage of the Properties evidencing what appears to be a commercial fill site.

32. Following issuance of the Application, McLeod filed a Notice of Appearance on behalf of the Respondent Grills. The other two Respondents (Legos and Johnson), did not file a Notice of Appearance, did not retain counsel, did not file any documents, and have not appeared at any of the court hearings.

33. On July 8, 2020, on consent of the City and the Respondent Grills, and unopposed by the Respondents Legos and Johnson, Justice Corkery of the Superior Court of Justice issued the following Order:

    a. The hearing of the application was adjourned 14 days to a date and time to be set by the trial coordinator by telephone or Zoom conference;

    b. On a without prejudice basis, an interim injunction issued restraining the Respondents and their employees, agents, invitees, and anyone else having knowledge of the terms of the Order from placing or dumping fill, removing topsoil or otherwise altering the grade of the Properties and by causing, permitting or performing any other form of site alteration on the properties until this application is heard; and

    c. Costs were reserved.

34. On July 21, 2020, Justice Corkery issued a further Order as follows:

    a. the City's Municipal Law Enforcement Officers and environmental consultant and its servants and agents shall be permitted to enter the properties between the hours of 7 am and 7 pm to:

        i. inspect the properties to determine the extent of the site alteration carried out on the properties without a permit and to determine the type of fill deposited and the quantities and qualities of the said fill;

ii. carry out random surface and subsurface environmental investigation at the Properties to assess whether contaminants of potential concern are present in the fill deposited at the properties exceeding the regulatory standards identified in the potential or actual adverse effects to the environment as defined by sections 1 and 14 of the *Environmental Protection Act;* and

iii. Conduct such further and other investigations as may be required to determine contraventions and compliance with the Site Alteration By-law and its predecessor By-law 2008-162, and the provisions of the *Environmental Protection Act* and its *Regulations*.

b. The costs incurred in connection with the Order were reserved to the hearing of the Application;

c. The results of the environmental inspections and testing were to be made available to the Respondents who shall deliver responding materials within 7 days of the date of receipt of the results of the environmental inspections and testing;

d. The hearing of the application was adjourned a further 14 days following expiry of the 7-day time period noted above; and

e. Paragraphs 2 and 4 of the July 8, 2020, Order (prohibition from dumping) remain in full force and effect.

35. On September 24, 2020, the City filed a Supplementary Application Record and a Contempt Motion Record with an Affidavit of MEO Collins dated September 16, 2020, that provided updated information:

a. The July 8, 2020 Order was provided to the Respondent Grills on July 30, 2020, and to the other Respondents on August 10, 2020;

b. Pursuant to the July 21, 2020 Order, the City caused to be conducted environmental inspections and testing the results of which were contained in an Environmental Report prepared by PRI Engineering Corp. dated September 9, 2020, regarding the quantity and quality of illegal fill imported to the properties and any adverse effects resulting therefrom. The Report was provided to the Respondent on September 10, 2020.

c. The Environmental Report dated September 9, 2020, concluded as follows:

i. Stockpiles of imported fill materials were observed on the site ranging from 3 m to 13.2 m totaling approximately 191,031 cubic meters;

ii. Based on random sampling the imported fill was contaminated in all 10 soil samples obtained;

iii. The samples from the site exceeded for various metals and inorganic parameters, as well for various BTEX, PHC AND PAH parameters, thereby failing the Table 1 Site Condition Standards prescribed by the Ministry of the Environment Conservation, and Parks (MOE), required to be met by the City's Site Alteration By-laws if a permit was obtained;

iv. Waste materials, including concrete, asphalt and brick debris were encountered throughout the site;

v. Results included the presence of volatile vapors, indicating the imported soils have been impacted by Volatile Organic Compounds;

vi. The estimated quantity of the imported fill amounted to 191,031 cubic meters which amounts to a commercial large fill operation and is equivalent to approximately 19,000 dual axle dump truck loads;

vii. The imported fill is contaminated and also includes waste and must be disposed of at an approved waste disposal facility with an Environmental Compliance Approval issued by the MOE;

viii. There are adverse effects from the importation of the contaminated fill as defined by the Environmental Protection Act; and

ix. There is potential for groundwater contamination as a result of the illegal contaminated fill.

36. On July 30, 2020, a local resident complained that the gates to the easterly entrance of Parcel 537 were opened and a tractor trailer was waiting to enter the property.

37. On August 5, 2020, this same resident witnessed the gates open as a tri-axle dump truck drove onto the property.

38. On August 1, 2020, a different resident provided an email and was interviewed that he witnessed a black tri-axle dump truck leaving the east gate of Parcel 537 loaded with soil and on August 4, 2020 he saw two red and black tractor trailers enter the site loaded and dumping material on the site. On August 10, 2020, his security camera filmed at least a dozen trucks arriving loaded and unloading materials on the property.

39. These hauling activities occurred after the City delivered repeated notices to Grills' lawyer (July 30, August 5, 6, 10, 2020) who on July 30, 2020 responded that his client advised that large trucks had attended and been turned away.

40. Following several further notices on August 7, 2020, Grills' lawyer responded that he had "informed his client of the importance of abiding by the Superior Court Order".

41. The City conducted its own independent inspection and attended at the site on August 6, 2020. Municipal Enforcement Officers ("MEO") Allard and Sloan witnessed dump truck activity coming and going from the fill site starting at 8 am and provided affidavits reporting ongoing fill activities at the site in contravention of the July 8, 2020 Order. MEO Sloan advised that shortly after arriving (9:15 am) he witnessed a blue dump truck

leave the westerly entrance to the fill site which he captured on video. The gates to the entrance remained open after the truck left. At 11:38 am Sloan observed a blue tri-axle dump truck entering the westerly entrance. The truck bore white lettering and was loaded with loose dirt. When Sloan observed the truck exit the site it was empty, and Sloan believes that the truck dropped its load somewhere on the property.

42. MOE Sloan also reported that at about 11:38 am he was approached by Grills to engage in "an aggressive argument" that Sloan recorded and appended to the Motion record. Grills threatened to arrest the City by-law officers (including Sloan) if they trespassed on his properties and warned that he would resort to physical means to detain them, if needed. Grills also advised that he would commence a $100 million lawsuit if the MEO officers continued investigating the commercial fill operation. Grills then began following Sloan and Allard and as they felt threatened Sloan called the OPP to report the incident.

43. While waiting for the police, Sloan observed a black dump truck enter the westerly gates at 1:58 pm. The truck was full when it entered and empty when it left at 2:31 pm. At 2:31 pm Sloan observed a blue dump truck enter the site with its tarp extended, which he stated suggested it was carrying a load of material. The truck left the property at 3:33 pm and was empty when it left. Sloan was followed everywhere by Grills such that Sloan contacted the OPP. MEO Collins met with Sloan and Allard and Collins noted that Grills was visible and appeared to observe the officers while backed onto the shoulder of the road.

44. Allard reported that multiple dump trucks were observed entering and exiting the fill site with corresponding loads that confirmed that fill had either been dumped at or removed from the properties**.**

45. MEO Allard swore that the Respondent Grills actively assisted dump trucks to transport fill onto and out of the fill site. Allard further reported that on August 6, 2020 after personally serving the operator of a dump truck with a copy of the July 8, 2020 Order, he followed the vehicle as it picked up fill from a ditching project in Orillia before returning to the properties bearing a full load. Allard stated that the dump truck entered the properties full but left empty.

46. Collins reported that as she attempted to follow a dump truck on the municipal road that she had observed via drone at the site that Grills pulled out directly across the road to "deliberately prevent my fully marked Municipal Law Enforcement City minivan from continuing to follow the dump truck". Grills then (in contravention of a no contact Order) approached Collins who rolled her window down and provided Grills with several warnings to stay back. This interaction was recorded by video and is supported by MEO Sloan's affidavit. Collins then drove around Grills vehicle and continued to follow the dump truck. Collins pulled into the west driveway of the fill site in an attempt to take a photo of the dump truck but it "had gone behind a tree line". When Collins attempted to turn her vehicle to leave, Grills' truck pulled in front which Collins claims was an attempt to block her exit. Allard arrived in the driveway behind Grills. Collins drove around Grills and his vehicle and exited. Collins stated that she believes that "Grills unacceptably placed both my personal safety and that of the general public in danger with his reckless driving and attempts to obstruct my duties as a Municipal Law Enforcement Officer". This sentiment was shared by MEO Allard.

47. Collins advised that on July 29, 2020 (soil testing) that she witnessed substantial waste materials within the top layer of soil at the fill site. Collins attached photographs from July 29, 2020, that illustrate numerous photos of scattered rebar, bricks, plastic and PVC piping within the soil at the site.

48. Collins captured video of a dump truck arriving and entering the westerly gate and launched a drone flight with video that shows the tuck operating with the site alongside a bulldozer grading an area of the property. The dump truck left at 9:25 am. The August 6, 2020 video also confirmed new fill deposits that did not exist on July 29, 2020, when earlier footage was taken on the date of soil testing.

49. On August 12, 2020, Collins launched a further drone flight with video that identified further site alterations that continued to occur between August 6 and August 12, 2020. A power point presentation appended to the materials evidenced that the scale of work at the properties within this limited timeframe was dramatic.

50. MEO Travis Montgomery attended the fill site on August 5, 2020 and filed an affidavit sworn September 16, 2020 detailing his findings. Montgomery stated that he and another officer were on location to monitor activity at the fill site. At 12:20 pm they proceeded to the west gate where they noticed a dump truck at the rear of the property that was in operation. He assumed the truck was empty based on his visual inspection. Around that same time, an independent witness approached Montgomery and advised that he had obtained video footage of the dump truck entering the fill site earlier "loaded". The witness provided the video and an email confirming the information provided to Montgomery. At approximately 1:13 pm Montgomery saw the dump truck leaving the west gate as it followed a pickup truck operated by the Respondent Grills. The witness provided further information that on August 10, 2020 at 4:27 am he witnessed trucks dumping in the dump site on his way to work. Parsons said he passed 4 trucks exiting the property and there were still a couple in the site dumping.

51. Richard Grills served an Affidavit sworn October 30, 2020. By his affidavit, Grills submitted as follows:

a. The "stop work" Orders have been "done unconstitutionally" and prior to the Court's determination of conviction or acquittal (in the Provincial Offences Court);

b. The City has relied on environmental and conservation authority concerns in order to obtain their injunction. There is no Conservation Authority with jurisdiction over the subject property;

c. There is no environmental prejudice to allow Grills to continue with his "private road project until this matter is properly deal with in Provincial Offences Court";

d. The City of Kawartha has no authority in law, over (Grills) property or the project for which we are engaged;

e. The City of Kawartha enacted by-laws that are unlawful and harassing if enacted for the purpose to obstruct the Respondents in the lawful enjoyment of their property;

f. This is not a "fill" importation operation. There is no contamination of our "staging" area or the area surrounding the land;

g. There is no authority over road building on private property. Site alteration by-law and planning does not provide authority over private roads on private property;

h. The photographs show trucks delivering aggregate for road building project;

i. The City of Kawartha Lakes has not now, nor at any time been granted authority by the province to enact a by way of by-law for the method or manner in which a private road may be constructed on a private property; and

j. The daily financial losses as a result of the Respondent's companies' inability to work is approximately $10,000 per day. Grills claims that "these losses are severe".

52. On November 16, 2020, the City filed a Second Supplementary Application Record and Contempt Motion Record with a Second Supplementary Affidavit of MOE Collins sworn November 10, 2020, that provided a response to Grills' affidavit together with updated information as follows:

a. Grills' claim that the actions of the City and the by-laws relied upon are unconstitutional is without merit;

b. Grills references to bringing in fill for a private road is without merit. No development application was ever submitted for any development that requires a road network. Only approved development applications are exempt by the provisions of the Site Alteration By-law. All stockpiling of fill for any purpose

is prohibited by the Site Alteration By-law without a permit unless specifically exempted and there are no applicable exemptions in the present case. Finally, there are no exemptions in the site Alteration By-law for the dumping and placing of contaminated fill.

c. Grills attached a report by Toronto Inspection Ltd ("TIL") which states that no exceedances were found by applying Table 6 Site Condition Standards. This is irrelevant as the City's Site Alteration By-law requires compliance with Table 1 Site Condition Standards. Further, the TIL report is incorrect. As per the independent expert report obtained from PRI Engineering there are 26 exceedances of the Table 6 site conditions standards.

d. A further witness, who is a supervisor for Miller Group provided MEO Collins with a video taken on October 30, 2020, substantiating that two large dump trucks entered Grills' property each carrying a full load of fill as their respective tarps were closed. Collins attended the public roadway adjacent to the property on November 4, 2020 and deployed a drone and captured two videos of aerial footage while also capturing two photographs from the ground depicting a dump truck leaving Grills' property. Collins prepared a power point presentation that demarcates obvious changes over the intervening period of time between her drone flights (August 12, 2020 – November 4, 2020) and provided the videos and the power point to her affidavit. As is apparent from viewing the videos and power point presentation – considerable fill has been placed on the property during the period August 12, 2020 and November 4, 2020.

53. On December 9, 2020, the City served and filed the Applicant's Third Supplemental Application and Motion Record. The Record contained a Further Amended Notice of Return of Application and Motion for Contempt together with a Supplementary Affidavit of Stacey Collins sworn December 9, 2020, that contained the following additional information:

a. Ms. Collins received an email complaint from a local resident that the resident was cut off by a dump truck leaving the Respondents' fill site on the afternoon of November 26, 2020. The resident stated that the gates to the fill site were open and "it is not unusual to see 15 or more trucks lined up at 8 am or earlier waiting to enter the site". The resident complained of the public nuisance created by the site through obstruction of the live lane of traffic by multiple dump trucks as well as the creation of potholes and debris caused by the trucks that renders the stretch of roadway "hazardous".

b. On November 27, 2020, Collins received a further complaint of dumping and attended at the site and observed both the east and west gates open. Collins deployed a drone which substantiated two dump trucks at the properties. An unidentified adult male in a silver truck attended the east gate and locked the gate while remaining inside the property.

c. On December 3, 2020, Collins received a further complaint of illegal dumping and attended to investigate. The east and west gates to the fill site were open a and shortly after Colins arrived, a black Chevrolet truck attended the west gate and locked it. Collins heard machinery running within the site location. Collins stated that she saw the same black Chevrolet truck at Grills' residence with the same driver outside the vehicle speaking to Grills.

d. On December 4, 2020, Collins receive a further complaint of illegal dumping and attended. The east and west gates were open on her arrival. One dump truck departed out of the west gate shortly thereafter. A drone flight confirmed multiple areas of new deposits. There were 3 personal vehicles parked at the fill site: red, grey, black. Drone footage revealed machinery grading newly deposited fill as well as 2 dump trucks entering through the east gate with what appeared to be full loads.

e. A local resident advised Collins that there were hundreds of truckloads of fill deposited at the site over the weekend of December 5 and 6, 2020.

f. Collins reattended the fill site on December 7, 2020 and found both the east and west gates open. Collins personally observed 44 dump trucks entering the east gate of the fill site. Some were single loads, but many were double loads with a pup trailer attached. Collins was advised by her colleague, MEO Hickey, that he observed a further 4 dump trucks enter the east gate before he departed at 4:20 pm.

g. Collins received a statement from a local resident dated December 8 2020, that advised that the fill site is "busier than we have seen in some time and that for the past three weeks, truck traffic and work on the site has been commencing in the middle of the night". The resident described that the truck traffic was in the frequency of every "1 second to 20 seconds" measured over a period of 5 minutes which was negatively impacting her family's enjoyment and safety of their property given the noisy and speeding dump trucks that leave "loose gravel all over the road".

h. Collins provided some information regarding the financial gains of operating an illegal fill-site. According to the information provided, to dispose of one single truck load of non-hazardous but contaminated soil mixed with construction debris would cost $2,400 to dispose of at the City's municipal landsite. Tipping fees at approved and regulated commercial landfill sites which receive non-hazardous but contaminated soils on a larger scale would charge at least $800 per load. Haulers are paid trucking fees plus disposal costs (tipping fees) for each load taken from a site with contaminated soils and/or construction debris. If a hauler can dispose of the materials at a site which charges less than an approved site, then the hauler realizes an extra profit on each load. Thus, if the hauler disposes his load at an unapproved site at a 25% or 50% discount, he earns an extra profit.

i. Collins noted, to put this information into perspective, the environment report by PRI noted that as at July 29, 2020, an estimated 191,030 cubic metres of contaminate soil and waste had been deposited on site, which is equivalent to 19, 100 single truck loads. Even if the Respondents were only paid $100 per

load that amounts to $1,900,000 in revenue. If the costs were a 50% discount or $400 per load that amounts to $7,640,000 in revenue.

j. Collins further estimated that since July 8, 2020 when Justice Corkery issued the restraining order, in excess of 1,000 truckloads of fill have been brought to the site conservatively estimated to yield in excess of $100,000 to $400,000 in revenue.

THE LAW AND ANALYSIS

Issue #1: The Test to Grant Injunctive Relief to Public Authorities to Enforce By-Laws

54. Pursuant to s. 440 of the *Municipal Act, 2001,* a Municipality may seek an injunction to prevent ongoing violation of its Orders or by-laws: See *The Corporation of South Frontenac and 360788 Ontario Ltd.,* 2018 ONSC 1344.

55. The requirements for granting a statutory injunction under s. 44 of the *Municipal Act, 2001,* differs from the test for granting an equitable injunction. Under s. 44, a municipality can readily obtain an injunction by establishing that a respondent has breached a by-law. Injunctions enforcing municipal by-laws are "readily granted" in all but "exceptional circumstances": See *Caledon (Town) v. Darzi Holdings,* 2019 ONSC 5255 ("*Caledon"),* at para. 8.

56. In *Armour (Township) v. Canadian Addiction Recovery Network,* 2017 ONSC 6623, Justice Koke, described the test for granting public authorities requested statutory injunctive relief as requiring the following:

(a) Evidence that there is a serious issue to be tried; and

(b) Evidence to establish a strong prima facie case that there is a breach of a by-law.

57. A municipality can establish a "serious issue to be tried" by simply demonstrating that a respondent has breached a by-law: See *Caledon (Town) v. Darzi Holdings,* 2019 ONSC 5255 *("Caledon").*

58. Public authorities are generally granted statutory injunctions in all but "exceptional circumstances". This has resulted in a very low threshold to be crossed before the injunction is granted that was described by the Court of Appeal in *Newcastle Recycling v. Clarington (Municipality),* 2005 CanLII 46384 *(OCA) ("Newcastle"),* at para. 32, as follows:

> The issue before the applications judge was whether Clarington was entitled to a permanent injunction to enforce a bylaw. It was not necessary for Clarington to lead compelling evidence that the injunction was warranted. Where a municipal authority seeks an injunction to enforce a bylaw which it establishes is being breached, the courts will refuse the application only in exceptional circumstances.

59. The rationale for the low threshold required to grant statutory injunctions for public authorities was canvassed by Justice Gilmore in *York (Region) v. DiBlasi,* 2014 ONSC 3259 *("York Region").* Justice Gilmore noted that where a municipality seeks a statutory injunction, the factors that would normally be considered in an application for an equitable injunction do not apply as the public authority is presumed to be acting in the best interest of the public and a breach of the by-law is considered to be irreparable harm to the public interest.

Issue #2: Should a Permanent Injunction Be Granted?

60. In the present case, the City clearly established through the evidence of MOE officers Collins, Sloan, Allard, and Montgomery (including photographic and video-recorded evidence) that fill has been dumped and/or placed on the Respondents' properties in contravention of the City's By-Law. The evidence further established that fill continued to be dumped and/or placed on the Properties following the issuance of the July 8, 2020, Order prohibiting the placing and dumping of fill on the Properties.

61. The standard of demonstrating a "serious issue to be tried" was met as the City established that its Orders and/or by-laws were violated such that an injunction should (and was) "readily granted" in this case. Further, through the Affidavit of Stacey Collins, the City verified that the Respondent Grills ignored multiple requests and Orders since 2017 to comply with the City's Site Alteration and Zoning By-Laws.

62. As per the Court in *Caledon,* both prongs of the test for injunctive relief were satisfied at the hearing of the Application on December 15, 2020. In other words, the Applicants established: 1. there is a serious issue to be tried; and 2. the evidence contained in the Affidavits of Collins and Sloan (including the video and photographic evidence) established a strong prima facie case that there was a breach of a by-law.

63. I reject the Respondent Grills' argument that the injunctive relief sought is premature as the Provincial Offences charges have not yet been determined. As noted by Justice Copeland in *King (Township) v. 2424155 Ontario Inc.,* 2018 ONSC 1415 *("King Township")* at paras. 27 - 28*,* public authorities do not need to exhaust all other available remedies before seeking an injunction:

> Having now heard full argument in relation to s. 440 of the *Municipal Act,* and reviewed cases in relation to injunctions granted under s. 440. I find that s. 440 shows a clear legislative intention that a restraining order (i.e., an injunction) is one of the remedies available to a municipality or a taxpayer to seek a remedy for contravention of a by-law. **There is no requirement to exhaust other remedies.** Indeed, the language in s. 440 "in addition to any other remedy and to any penalty imposed by the by-law" indicates a legislative intent that a restraining order is one of the tools available to municipalities (and taxpayers) to enforce compliance with municipal by-laws: *Springwater (Township) v. 829664 Ontario Ltd.,* 2008 CanLII 8261 at paragraph 8 (ONSC).
>
> Further, the Township has provided affidavit evidence addressing why other enforcement mechanisms are insufficient, particularly in relation to timeliness of enforcement. **Prosecutions for breach of the by-law may be instituted under the Provincial Offences Act, but these take time to make**

their way through court, and do not stop the ongoing dumping. [bold added]

64. A municipality is permitted to proceed with an application for injunctive relief pursuant to s. 440 of the *Municipal Act, 2001,* at the same time as a prosecution under the by-law: See *Ottawa (City) v. Barrymore's Inc.* (2002) 22 M.P.L.R. (3d) 43 (S.C.J.). The Respondent Grills' argument fails in this regard.

65. I further reject the Respondent Grills' argument that he was not operating a "fill" operation but instead was engaged in road building over private property. Firstly, there is no evidence that the Respondent Grills was engaged in "road building" except for the bald assertions contained in Grills' affidavit. Grills did not submit any evidence of "road building" in the form of site drawings, photographs, or otherwise. Secondly, the Applicants' evidence clearly established that the Respondents were importing fill and altering the site lines and grades of the property. The Respondents were required by the By-Law to obtain a permit for their operation. The Respondents neither applied for nor obtained a permit for any purpose, despite being advised many times that a permit was required and that they were in breach of the By-law.

66. In the present case, the evidence overwhelmingly established the grounds for granting a permanent injunction to prohibit any further site alteration or dumping of fill until and unless a site alteration permit has been issued pursuant to the relevant Site Alteration By-law.

67. It is for these reasons that I granted paragraph 1 of the Judgment dated December 16, 2020, for a permanent injunction restraining the Respondents and their employees, agents, invitees and anyone else having knowledge of the terms of the Judgment from placing or dumping fill and waste, removing topsoil or otherwise altering the grade of the Properties and by causing, permitting or performing any other form of site alteration on the Properties, except for the purpose of complying with valid and subsisting Judgments and Orders of the Court. I remain resolute in my reasons and my Judgment in this regard.

Issue #3: Should a Closure Order be Granted?

68. Section 447.1 of the *Municipal Act, 2001* provides that the City may be permitted to close all access to the Properties for vehicular traffic by placing concrete barriers across any entrances to the Properties and/or preventing access by such other means as the Applicant considers advisable, on certain terms.

69. In *Croplife Canada v. Toronto (City)* (2005), 75 O.R. (3d) 357 (C.A.), Justice Feldman held that a broad and purposive approach should be used to interpret the powers granted to municipalities under the *Municipal Act, 2001.*

70. Section 447.1 authorizes the court, on application of a municipality, to order that all or part of a premises be closed to any use for a period not exceeding two years, if, on the balance of probabilities, the court is satisfied that activities on or in the premises constitute a public nuisance which has a detrimental impact on the use and enjoyment of that property in the vicinity of the premises.

71. Section 447.1(1)(b) includes reference to "interference with the use of highways and other public areas", "an increase in garbage, noise or traffic", and "activities that have a significant impact on property values".

72. The Supreme Court of Canada in *Ryan v. Victoria (City),* [1999] 1 S.C.R. 201 (S.C.C.), at para. 52, defined a public nuisance as follows:

> A public nuisance has been defined as any activity which unreasonably interferes with the public's interest in questions of health, safety, morality, comfort or convenience.

73. In the present case, the uncontroverted and overwhelming evidence is that the Respondents' operated an illegal fill operation on the Properties that posed a serious health and safety risk to the public. Additionally, as a direct result of the Respondents' use of the land, those parts of the land that have been used for the illegal fill operation have become a contaminated waste dump that poses serious ongoing risks for

contamination to the land and water, and all plants, animals and humans associated therewith.

74. The requirements of s. 447.1 of the *Municipal Act, 2001* were met and it is appropriate that a Closure Order be granted. It is for these reasons that I granted paragraph 2 of the Judgment dated December 16, 2020. I remain resolute in my reasons and my Judgment in this regard.

Issue #4: Should a Mandatory Order be Granted to Remove the Fill?

75. Pursuant to s. 101 of the *Courts of Justice Act,* the court has the power to grant mandatory orders as part of the injunctive relief sought.

76. In the present case, the photographic and video-taped evidence starkly capture how markedly the Respondents' illegal dumping operation has devastated the land. The land clearly requires remediation – the only question is who should be responsible for the cost and completion of the remediation.

77. In the present case the injunction enjoined the Respondents (and all others with notice of the Judgment) from doing something that they seek to do. The requested mandatory order sought to compel the Respondents to do something that they did not wish to do, which is to remediate the land at their own cost.

78. The mandatory order granted by me in this case as it was necessary to remove the illegal fill and waste due to the following factors:

    a. The Respondents were prohibited from bringing fill to the Properties without a site alteration permit;

    b. The Respondents did not obtain a permit for the Properties;

    c. The City would not have issued a permit to allow contaminated fill to be placed on the Properties as contaminated fill and waste can only be disposed of at an

approved waste disposal facility with an Environmental Approval certificate issued by the MOECP;

d. The evidence established that the fill placed on the Respondents' Properties was contaminated;

e. The Properties in question are adjacent to Lake Darymple and are environmentally sensitive. Leaving the fill and waste in place poses unnecessary environmental risks;

f. Without a mandatory order, the Respondents would benefit from their own wrongdoing; and

g. Based on the Respondents' past behavior (as it relates to the Properties) it is highly unlikely that the Respondents would take any steps to rehabilitate the Properties unless ordered to do so.

79. The Respondents utilized the Properties for commercial gain without consideration for the laws of the land or the natural environment. The Respondents, having received all financial benefits for injuring the property, are required to rehabilitate the land. There is no other result that is just or fair. The Respondents wreaked havoc upon the land for profit and shall be required to rehabilitate and repair the loss.

80. It is for these reasons that I issued paragraphs 3 and 4 (inclusive) of the Judgment dated December 16, 2020. I remain resolute in my reasons and my Judgment.

Issue #5: Should Grills be Found in Contempt of the July 8, 2020 Order?

81. The Ontario Court of Appeal in *L. (S.) v. B. (N.)*, [2005] 196 O.A.C. 320 (C.A.), confirmed the three-part test for a finding of contempt of Court, as follows:

a. The Order that was breached must state clearly and unequivocally what should and should not be done;

b. The party who disobeys the order must do so deliberately and willfully; and

c. The evidence must show contempt beyond a reasonable doubt.

82. The Order of Justice Corkery dated July 8, 2020, was obtained on the consent of the Respondent Grills. The Order was provided to Grills by MEO Collins on July 30, 2020. There can be no dispute that Grills knew of the terms of the Order.

83. The terms of the Order are as follows: on a without prejudice basis, an interim injunction was issued restraining the Respondents and their employees, agents, invitees, and anyone else having knowledge of the terms of the Order from placing or dumping fill, removing topsoil or otherwise altering the grade of the Properties and by causing, permitting or performing any other form of site alternation on the Properties until this application is heard.

84. The terms of the Order are clear and unequivocal.

85. By her Affidavit sworn September 16, 2020, MEO Collins, provided evidence that following the July 8, 2020 Order, Collins and other MEO Officers witnessed trucks lined up outside the gates to the property, trucks attended inside the property fully loaded, and trucks exited the property empty. Further, through the use of drone aerial photography, the MEO Officers verified that following the July 8, 2020 Order, dump trucks continued to attend the property to dump fill and the site was altered significantly following July 8, 2020 as a result of the continued illegal fill operation on the Properties.

86. MEO Collins swore that the City sent notices to Grills' counsel advising that illegal dumping continued despite the terms of the July 8, 2020 Order. Although initially Grills' counsel advised that Grills stated that the trucks were being turned away "with full loads", after further notices and by August 7, 2020, Grills' counsel advised that he had provided Grills with "information about the importance" of "abiding by Superior Court Orders".

87. Notwithstanding this advice, the illegal dumping continued.

88. MEO Sloan provided sworn evidence that on August 6, 2020, he was approached by

Grills while viewing the trucks lining up and off-loading at the Properties. Grills engaged in an "aggressive argument" with Sloan and threatened a $100 Million lawsuit against the MOE officers if they continued to attend the property. Sloan's evidence is that Grills was present on the roadway leading to the Property while dump trucks lined up to enter the property.

89. Further evidence filed by the Applicants from MOE Officers Collins, Sloan and Allard clearly and unequivocally established that despite the terms of the July 8, 2020 Order, the Respondents continued to allow the Properties to be used as an illegal dump site.

90. Based on the affidavit evidence filed, I am confident that the Respondent Grills had direct and specific knowledge that trucks continued to dump fill and waste on the Properties following the July 8, 2020 Order.

91. In addition to the circumstantial evidence provided regarding Grills' knowledge, MOE Allard swore that on August 6, 2020 that he witnessed Grills "actively assist dump trucks to transport fill onto and out of the fill site". This evidence is uncontroverted and unchallenged.

92. Based on the evidence filed at the hearing of the application I find as follows:

    a. The July 8, 2020 Order stated clearly and unequivocally what should and should not be done;

    b. The Respondent Grills had direct and specific knowledge of the terms of the Order and notwithstanding this knowledge deliberately and willfully disobeyed the terms of the Order; and

    c. The evidence establishes Grills' contempt beyond a reasonable doubt.

93. For the reasons outlined above, I find beyond a reasonable doubt that the Respondent Grills is guilty of contempt of the Order of Justice Corkery dated July 8, 2020.

Issue #6: If Grills is Found in Contempt, What Happens Next?

94. When a party has been found guilty of contempt of court, before imposing a sentence for contempt, the court should give the Respondent the opportunity to purge the contempt: See– Michelle Fuerst, Mary Anne Sanderson & Stephen Firestone, *Ontario Courtroom Procedure*, 3rd ed. Ch. 21: Contempt, pp. 542 – 546.

95. The offender may be able to remedy the contempt by doing what was ordered done but not done, or by making amends.

96. After being provided with an opportunity to purge his contempt, the onus is on the offender to establish on the balance of probabilities that he has purged his contempt: See *Chiang (Trustee of) v. Chiang,* [2009] O.J. No. 41, 93 O.R. (3d) 483 (C.A.).

97. The Court's exercise of its contempt power should be restrained by the principle that only "the least possible power adequate to the end proposed should be used": See *R. v. K. (B.),* [1995] S.C.J. No. 96. Nevertheless, there must be a general recognition of the fact that court orders must be obeyed and failure to do so results in a failure of the rule of law: See *Cellupica v. Di Giulio,* [2011] O.J. No. 1196, 105 O.R. (3d) 687 (S.C.J.).

98. Following a finding of contempt, the hearing may be adjourned with a warning to the offender that if there is no compliance and/or no amends made as ordered by the Court by the time the matter is re-visited, sanctions (sentencing) for the contempt will be imposed following submissions.

99. Before imposing a sentence for contempt, the court should give the Respondent the opportunity to purge the contempt.

100. The offender may be able to remedy the contempt by doing what was ordered done but not done, or by making amends.

101. In the present case, the Applicants have requested that I impose a substantial fine upon Grills. At this time, however, the imposition of a fine by the Court would be premature. Instead, the Respondent Grills shall be provided with an opportunity to make purge his

contempt by making amends – to make right the wrong that he has perpetrated upon the Properties.

102. Pursuant to paragraphs 3 and 4 of my Judgment dated December 16, 2020, the Respondents were required by a mandatory Order, at their own expense, jointly and severally, to perform the following:

a. Remove all fill and waste placed or stockpiled on the Properties contrary to the Applicant's Site Alteration By-law 2019-105 ("Site Alteration By-law") and restore the Properties in a manner suitable for the uses permitted by the former Township of Carden's Zoning By-law 79-2 ("Zoning By-Law), which remediation shall be completed within 14 month of December 16, 2020; and

b. Dispose of the fill and waste to an approved waste disposal facility with an Environmental Compliance Approval issued by the Ministry of the Environment, Conservation and Parks, to the satisfaction of a professional engineer, acting reasonably, to be appointed by the Applicant at the expense of the Respondents, jointly and severally; and

c. All costs and expenses incurred by the Applicant for enforcement of the Judgment dated December 16, 2020 and Orders issued pursuant to the Site Alteration By-law, including the Order dated June 2, 2020, which required environmental testing and the Inspection Order of Justice Corkery dated July 21, 2020, and all further costs and expenses incurred and to be incurred by the Applicant in the engagement of environmental consultants, soil sampling and testing, and such other reasonable costs as may be incurred to monitor and enforce the provisions of the orders of this court, are recoverable against the Properties pursuant to the provisions of s. 446 of the *Municipal Act, 2001.*

103. It is in this manner that the Respondent Grills is required to purge his contempt and to make amends for his actions. Grills is required to comply with the Judgment rendered on December 16, 2020, and in order to purge his contempt and make amends - Grills is required to ensure that paragraphs 3 and 4 of the Judgment are satisfied within the time

period provided (by December 18, 2022).

104. In the event Grills does not purge his contempt by making amends as required by paragraphs 3 and 4 of the December 16, 2020 Judgment, the Applicants shall return to the Court for sentencing submissions.

Issue #7: Costs: What is the Appropriate Costs Award?

105. The Applicant was the successful party and is entitled to receive their costs of the initial attendances, the application and the motion for contempt.

106. As ordered by paragraph 7 of the Judgment dated December 16, 2020, the Respondents are to pay to the Applicant the costs of the Application including the costs of the hearings resulting in the Orders of Justice Corkery dated July 8, 2020 and July 21, 2020, in an amount as agreed, or failing agreement as determined by me.

107. As no agreement was reached, I shall determine the costs payable.

108. The Applicants filed Bills of Costs at the hearing of the Application and made costs submissions. Shortly thereafter, and pursuant to paragraph 7 of the December 16, 2020 Judgment, the Respondent Grills filed his Bill of Costs and Written Costs submissions.

109. I have reviewed the Bills of Costs submitted by each of the Applicant and the Defendant. The time spent by the Applicant with respect to this matter was substantial but reflective of the importance and complexity of the issues in dispute. The application and motion were of great importance to the Applicant and its residents. The time spent and hours docketed were proportional to the issues in dispute.

110. Counsel for the Applicants were prepared, competent, and highly skilled litigators. The hourly rate as charged by the lawyers for the Applicants was extremely reasonable given the experience of counsel and the complexity and breadth of the material filed. All in all, the Applicant was extremely well represented by careful and competent counsel who acted with great professionalism keeping the best interests of the Applicant and the issues at the forefront. Having reviewed the Bills of Costs I make no adjustments to the accounts

as proposed as they are reasonable, proportional and well documented.

111. Having reviewed the Bills of Costs and Written Costs submissions of the parties, I note that there were no offers to settle that would affect costs. I find that the Applicants were the successful parties with respect to the Application (July 8, 2020, July 21, 2020, and December 15, 2020) and the Motion for Contempt. As there were no binding offers to settle that would displace the usual rules, I find that the Applicants are entitled to their costs on a substantial indemnity basis, for each step in the proceeding, totaling $97,623.56, inclusive, payable as follows:

    a. Costs relating to the July 8, 2020 and July 21, 2020 application, payable by the Respondents, JOINTLY and SEVERALLY, within 30 days of today's date, fixed at $31,167.37, inclusive; and

    b. Costs relating to the Supplemental Application Records and Contempt Motion, including the hearing on December 15, 2020, payable by the Respondent GRILLS, to the Applicants, within 30 days of today's date, fixed at $66,456.19, inclusive.

112. The Respondent Grills' costs submissions were prefaced on the basis that Grills would be successful with respect to the contempt motion. Grills was found in contempt of the Order of Justice Corkery and as noted above is required to pay the costs relating to the attendance on December 15, 2020, as a direct result of the Respondent Grills' behavior following July 8, 2020.

113. As noted above, the application and the motion have been fully and finally determined in accordance with the Judgment dated December 16, 2020, and the Reasons for Decision contained herein. The Respondent Grills has been ordered to purge his contempt and to make amends for his actions pursuant to the mandatory order contained at paragraphs 3 and 4 of the December 16, 2020 Judgment. In the event that Grills does not purge his contempt by complying with the provisions of paragraphs 3 and 4 of the Judgment dated December 16, 2020, within the time period provided (December 16, 2022), the parties

shall seek a return of the motion for contempt to make sentencing submissions regarding the finding of contempt.

114. Subject only to any future sentencing submissions and order that may be made regarding the finding of contempt by the Respondent Grills, the Application be and is hereby determined in accordance with the Judgment dated December 16, 2020, and these accompanying Reasons for Decision.

Justice S. J. Woodley