

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** April 9, 2020 **CASE NO.:** 20-015  
(revisions of April 27, 2020 have been incorporated herein)

**PROCEEDING COMMENCED UNDER** section 140(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and section 100(4) of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40

Appellant: David Bartlett (File No. 20-015)  
Appellant: James Bartlett (File No. 20-016)  
Appellant: N.M. Bartlett Inc. (File No. 20-017)  
Respondent: Director, Ministry of the Environment,  
Conservation and Parks  
Subject of appeal: Order to perform work in regards to stormwater  
management and soil and sediment remediation  
Reference No.: 5841-BCVQ4K-1  
Property Address/Description: 4509 Bartlett Road  
Municipality: Lincoln  
Upper Tier: Regional Municipality of Niagara  
ERT Case No.: 20-015  
ERT Case Name: Bartlett v. Ontario (Environment, Conservation  
and Parks)

**APPEARANCES:**

**Parties**

N.M. Bartlett Inc., James Bartlett  
and David Bartlett

Director, Ministry of the  
Environment, Conservation and  
Parks

**Counsel**

Albert M. Engel

Nicholas Adamson

**HEARD:** March 20, 2020 by teleconference  
**ADJUDICATOR:** Maureen Helt, Acting Associate Chair

## DECISION

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### BACKGROUND

[1] N.M. Bartlett Inc., James Bartlett and David Bartlett (“Appellants”) appealed Director’s Order No. 5841-BCVQ4K-1 (“Director’s Order”) to the Environmental Review Tribunal (“Tribunal”). The Director’s Order, issued by the Director, Ministry of the Environment, Conservation and Parks under s. 140(1) of the *Environmental Protection Act* (“EPA”) and s. 100(4) of the *Ontario Water Resources Act* (“OWRA”), requires the Appellants to conduct stormwater management and soil/sediment remediation.

[2] Pursuant to s. 143(2) of the EPA and s. 102(2) of the OWRA, the Appellants requested a stay of the operation of the contested portions of the Director’s Order pending the disposition of the appeals and an interim stay pending the disposition of the stay motion.

[3] The Tribunal heard the Appellants’ motion on March 20, 2020 by teleconference. At the outset of the call, the parties advised that they had reached an agreement with respect to certain amendments to parts of the Director’s Order, specifically the compliance dates in Items 1, 2 and 3 and specific elements of Items 1 and 4. The parties proposed that the remainder of the Director’s Order remain as is pending the disposition of the appeals. On this basis, the Appellants agreed to withdraw their request for an interim stay and stay of the Director’s Order.

[4] The agreed upon amendments to the Director’s Order are as follows:

a. The compliance dates for Items 1, 2 and 3 are to be amended as follows:

- Item 1: from the current March 13, 2020 to April 3, 2020;
- Item 2: from the current March 20, 2020 to April 10, 2020; and
- Item 3: from the current April 17, 2020 to May 5, 2020.

- b. The wording of Item 1a should be amended from the current “proven experience in stormwater management and has/have never been employed by the Orderees for stormwater management design at the Site” to “proven experience necessary to perform the work required by Item No. 3 of this Order and has/have never been employed by the Orderees for stormwater management design at the Site”.
- c. Item 4a should be amended from the current “Qualified Consultant(s) to conduct sampling after every rain event greater than 5mm/day based on precipitation levels measured from the Vineland Meteorological Station No. 31367 in accordance with the following:” to “Qualified Consultant(s) to conduct sampling after every rain event greater than 10 mm/day based on precipitation levels measured from the Vineland Meteorological Station No. 31367, up to a maximum of one sampling event per week, each week running from Monday to Sunday inclusive, and up to a maximum of four sampling events in each of the following time periods:
- March 1, 2020 to May 31, 2020;
  - June 1, 2020 to August 31, 2020;
  - September 1, 2020 to November 30, 2020; and
  - March 1, 2021 to May 31, 2021.

The sampling shall be conducted in accordance with the following”.

The rest of the wording of Item 4 would remain unchanged.

[5] The Director submitted that the intent of the proposed amendments to Item 4a is to ensure that sufficient data is collected through samples taken in each of the spring, summer and fall seasons, but also to ensure that the Item 4a does not require an unnecessary number of samples to be taken. The Director is of the view that the proposed amendments to Item 4a are in the public interest.

[6] These amendments are being proposed given the ongoing pandemic and associated COVID-19 related issues as the most efficient and fair manner in moving this matter forward. The amendments are without prejudice to the Appellants' right to seek a stay or interim stay and their position at the appeal hearing.

## **ISSUE**

[7] Should the Tribunal exercise its discretion to amend the Director's Order under appeal?

## **RESULT**

[8] The Tribunal accepts the proposed amendments to the Director's Order as set out above in paragraph [4] as being consistent with the relevant rules and legislation, including Rule 110 as well as s. 143 of the *EPA* and s. 102 of the *OWRA*.

[9] The Director is directed to amend Director's Order No. 5841-BCVQ4K-1 in accordance with the terms set out in paragraph [4] above.

## **ANALYSIS**

[10] The parties submitted that the amendments to the Director's Order, as described above, should be accepted by the Tribunal as consistent with the purpose and provisions of the *EPA* and the *OWRA*, and in the public interest. While the parties have proposed these amendments as opposed to proceeding with a stay, the Tribunal must still consider the impact of these proposed amendments. That being said, it is understood by the Tribunal that the agreed upon amendments are being put forth by the parties to ensure timeliness and efficiency in an uncertain time involving COVID-19.

[11] No participants or presenters were added in this appeal.

[12] The following statutory requirements apply to the stay of orders under the *EPA* and *OWRA*:

*Environmental Protection Act*

143. (2) The Tribunal may, on the application of a party to a proceeding before it, stay the operation of a decision or order, other than,  
(a) an order to monitor, record and report; ...

143. (3) The Tribunal shall not stay the operation of a decision or order if doing so would result in,  
(a) danger to the health or safety of any person;  
(b) impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it; or  
(c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

*Ontario Water Resources Act*

102. (2) The Tribunal may, on the application of a party to a proceeding before it, stay the operation of a direction, order, report or decision, other than,  
(a) a direction, order or report to monitor, record and report; ...

102. (3) The Tribunal shall not stay the operation of a direction, order, report or decision if doing so would result in,  
(a) danger to the health or safety of any person;  
(b) impairment or serious risk of impairment of any waters or any use of waters; or  
(c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

[13] In this case, while it is agreed that Item 4(a) of the Director's Order constitutes an order to "monitor, record and report" and therefore falls within s. 143(2) of the *EPA* and s. 102(2) of the *OWRA*, the Appellants have committed to complying with this item and are not asking for this item to be stayed so there is no issue with granting this proposed amendment.

[14] The Tribunal finds that the other proposed amendments to the Director's Order are consistent with the purpose and provisions of the *EPA* and *OWRA* and in the public interest for the following reasons. The amended time limits for compliance are reasonable and are made on consent. The agreed upon amendments do not result in any risk of impairment to the natural environment, injury or damage or serious risk of

injury or damage to any property or to any plant or animal life, or any risk to the health or safety of any person. Further, all proposed amendments are on consent of the parties.

## **DECISION**

[15] The Tribunal accepts the proposed amendments and directs the Director to amend Director's Order No. 5841-BCVQ4K-1 as set out in paragraph [4] above. The Tribunal accepts the Appellants' without prejudice withdrawal of their motion for a stay and interim stay.

[16] A continuation of the pre-hearing conference will be scheduled to deal with procedural and other matters.

*Director Ordered to Amend Director's Order*

*"Maureen Helt"*

MAUREEN HELT  
ACTING ASSOCIATE CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Environmental Review Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario  
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