

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



**ISSUE DATE:** May 14, 2020

**CASE NO.:**

19-035

**PROCEEDING COMMENCED UNDER** section 140(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19

Appellant:	Pamela Poulin (File No. 19-035)
Appellant:	Harold Westendorp (File No. 19-036)
Appellant:	2057183 Ontario Limited (File No. 19-037)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order to provide written confirmation that all liquid industrial and hazardous wastes have been removed from the Site by an Approved Waste Hauler, and to prepare and implement a Phase Two Environmental Site Assessment Action Plan and to submit a Final Report
Reference No.:	5200-BB2KYP-1
Property Address/Description:	7811 County Road 6
Municipality:	Elizabethtown-Kitley
Upper Tier:	United Counties of Leeds and Grenville
ERT Case No.:	19-035
ERT Case Name:	Poulin v. Ontario (Environment, Conservation and Parks)

**APPEARANCES:**

**Parties**

Pamela Poulin, Harold Westendorp,  
and 2057183 Ontario Limited

Director, Ministry of the  
Environment, Conservation and  
Parks

**Counsel**

D. Grenkie

J. Bradbury

**Presenters**

Brenda Fisk

Self-represented

**HEARD:**

May 6, 2020 by teleconference

**ADJUDICATOR:**

Maureen Helt, Acting Associate Chair

**PROCEDURAL ORDER**

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[1] Pamela Poulin, Harold Westendorp and 2057183 Ontario Limited, (“appellants”) filed appeals of Director’s Order No. 5200-BB2KYP-1 (“Director’s Order”) with the Environmental Review Tribunal (“Tribunal”). The Director’s Order was issued on May 9, 2019 under s. 157.3(5) of the *Environmental Protection Act* (“EPA”) for a site located at 7811 County Road 6, in Elizabethtown-Kitley (“Site”).

[2] The appeals have been the subject of various teleconferences held by the Tribunal in an attempt to narrow down, if not resolve, the issues in dispute and deal with any pre-hearing procedural matters. As a result, on consent, the delivery of the parties’ disclosure was scheduled for January 3, 2020 and the hearing was scheduled to start on March 25, 2020 for three consecutive days.

[3] The appellants requested an extension of time to file their disclosure from January 3, 2020 to a date after March 13, 2020. The appellants also requested that the hearing be adjourned from March 25, 2020 until a date after the conclusion of a Provincial Offences trial in which two of the appellants were charged with offences under the *EPA*. The appellants requested that the hearing dates be vacated and that a date for mediation be set instead.

[4] The Director opposed the request for an adjournment and asked that the appellants be ordered to provide full disclosure by February 19, 2020. The Tribunal agreed with the Director and by way of Order dated February 6, 2020, the Appellants were ordered to provide full disclosure by February 19, 2020.

[5] The appellants failed to comply with the Tribunal's Order and to date have yet to provide full disclosure. The in-person hearing scheduled for March 25, 26 and 27, 2020 was adjourned as a result of the Government of Ontario's declaration of a state of emergency effective March 16, 2020 due to the COVID-19 pandemic.

[6] This teleconference was scheduled to address the appellants' non-compliance with two previous Tribunal's Orders on disclosure, and to address procedural matters related to the hearing of this matter.

[7] Counsel for the appellants advised that, despite his efforts, he was unable to obtain copies of all of the exhibits from the concurrent Provincial Offences trial in light of the impact of COVID-19 which resulted in his inability to comply with the Tribunal's Orders. The Director submitted that many of the documents were already in the possession of the appellants and as such the closure of the Courts was not a valid reason for failing to comply with the Tribunal's Orders.

[8] The Tribunal expressed its concern regarding the appellants' non-compliance and advised counsel for the appellants that should full disclosure of all relevant documents not be provided to the Director and filed with the Tribunal by May 22, 2020, it is likely that no further opportunity to introduce evidence will be provided. In order for the Tribunal to carry out its adjudicative functions fairly and efficiently, parties are expected to comply with its Orders.

[9] On consent, the appellants advised that they will file with the Tribunal, and serve on the Director, all outstanding disclosure, witness statements and any other relevant documents on or before May 22, 2020.

[10] The parties also agreed to participate in Tribunal assisted mediation and consented to June 15, 2020 for the mediation to take place by teleconference or videoconference.

**ORDER**

[11] On consent, the Tribunal orders that:

- i. The appellants are to provide full disclosure to the Director and file same with the Tribunal, including transcripts, witness statements and all documents relevant to this proceeding that are in the appellants' possession, control or power, by May 22, 2020. Failure to do so may result in the appellants not being able to call those witnesses and/or not being able to rely on such documents at the hearing.
- ii. Tribunal assisted mediation will be held on **Monday, June 15, 2020** at **10:15 a.m.** by teleconference or videoconference, if available. The Case Coordinator will provide further details.

*Procedural Directions Ordered*

*"Maureen Helt"*

MAUREEN HELT  
ACTING ASSOCIATE CHAIR

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**Environmental Review Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario

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