

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



**ISSUE DATE:** June 08, 2020

**CASE NO.:** 20-015

**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 5841-BCVQ4K-1
Reference No.:	4509 Bartlett Road
Property Address/Description:	Lincoln
Municipality:	Regional Municipality of Niagara
Upper Tier:	20-015
ERT Case No.:	Bartlett v. Ontario (Environment, Conservation and Parks)
ERT Case Name:	

**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:**

**ADJUDICATOR(S):**

May 27, 2020 by videoconference  
Helen Jackson, Member

## PROCEDURAL ORDER

---

### 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 and issued its decision on April 9, 2020, amended April 27, 2020. At the outset of the call, the parties advised that they had reached an agreement whereby the Director’s Order would be amended, and the Appellants would withdraw their request for an interim stay and stay of the Director’s Order. The Tribunal heard submissions and directed the Director to amend Director’s Order No. 5841-BCVQ4K-1 (“Amended Order”).

[4] On May 27, 2020, the Tribunal held a pre-hearing conference via videoconference for the purposes of identifying parties, participants and presenters, and addressing procedural matters for the hearing in this matter.

[5] No persons attended the videoconference to request status; however, the Tribunal was advised on the day of the videoconference that a neighbor(s) may wish to request status. Should any request come forward, it will be dealt with in writing.

[6] The parties had previously advised the Tribunal that they wish to consider Tribunal lead mediation, and therefore the Tribunal's mediator held a pre-mediation consultation immediately following this pre-hearing conference. Mediation will proceed independently from the preparation for the hearing.

[7] The parties proposed a tentative timetable to account for the exchange of information in preparation for a hearing in October 2020. The Director indicated that he had yet to confirm availability of key witnesses but would do so in short order.

[8] The Tribunal directed the parties to coordinate with the case coordinator to confirm the availability of witnesses. Based on the availability of the parties and witnesses provided to the case coordinator, the Tribunal has set out dates to prepare for the hearing as outlined below.

### **Scheduling Matters**

[9] In preparation for the hearing, the parties are to exchange disclosure simultaneously on **August 12, 2020** in accordance with Rule 166 of the Tribunal's *Rules of Practice*. Disclosure does not need to be filed with the Tribunal.

[10] The Director is to serve and file witness statements and the documents he intends to rely upon at the hearing by **September 9, 2020**.

[11] The Appellants are to serve and file witness statements and documents they intend to rely upon at the hearing by **September 23, 2020**. If the Director has any reply witness statements and documents, these are to be served and filed by **September 30, 2020**.

[12] The Tribunal has set a two-week hearing scheduled to commence **October 19, 2020**. The length of hearing may be reduced as the issues are scoped in preparation for the hearing. The hearing will be held by videoconference. Protocols for the hearing will be provided in advance of the hearing.

**ORDER**

[13] The Tribunal directs that the proceeding be conducted in accordance with the following schedule, as may be varied by agreement of the parties, and confirmed by the Tribunal, or on the Tribunal's initiative:

August 12, 2020	The parties' exchange of disclosure
September 9, 2020	The Director serves and files witness statements and documents to be relied on at the hearing
September 23, 2020	The Appellants serve and file witness statements and documents to be relied on at the hearing
September 30, 2020	Reply witness statements and documents, if any, to be served and filed by the Director
October 19 to 30, 2020	Hearing of the appeals

*Procedural Directions Ordered  
Hearing Dates Set*

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

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  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248