

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



**ISSUE DATE:** August 28, 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):**

In writing  
Helen Jackson, Member

## PROCEDURAL ORDER

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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. Subsequently, the parties reached an agreement whereby the Director’s Order would be amended, and the Appellants would withdraw their stay request. The Tribunal heard submissions and directed the Director to amend Director’s Order No. 5841-BCVQ4K-1 (“Amended Order”) by Procedural Order issued April 9, 2020, amended April 27, 2020.

[3] On May 27, 2020, the Tribunal held a pre-hearing conference via videoconference for the purposes of identifying parties, participants and presenters, scheduling a hearing, and addressing procedural matters for the hearing. No persons attended to request status. The Tribunal scheduled a two-week hearing commencing October 19, 2020. A Procedural Order was issued June 8, 2020 that set out dates for the parties to exchange information in preparation for the hearing.

### Adjournment Request

[4] Independently from the hearing process, the parties participated in Tribunal assisted mediation on August 19, 2020. Resulting from the mediation, the parties advised the Tribunal by email on August 20, 2020 that they would like to postpone the current hearing schedule in order to allow further time to resolve the remaining issues of

disagreement. The parties jointly requested that the Tribunal vacate the schedule set out in the Procedural Order of June 8, 2020. The parties indicated that should they be unable to come to an agreement within a month, they would then ask the Tribunal to set a new schedule for the hearing, including new dates for the exchange of productions, witness statements and for the hearing itself.

### **Analysis and Findings**

[5] In considering whether to grant the requested adjournment, the Tribunal looks to its *Rules of Practice and Procedure* (“Rules”) that relate to adjournments. Rule 104 sets out the requirements for a party(s) to provide to the Tribunal in order to support their request, and Rule 105 sets out the Tribunal’s considerations in determining whether or not to grant the request.

[6] In this circumstance, the Tribunal finds that it is appropriate to grant the request for adjournment of the scheduled hearing. The request is upon consent of all the parties and is for a short period of time to allow the parties to continue with the settlement negotiations that were initiated through Tribunal assisted mediation. There is no environmental harm that will arise by granting the adjournment.

[7] The Tribunal directs the parties to attend a further teleconference on October 20, 2020, to advise the Tribunal whether settlement has been reached and to set procedural directions for either a settlement hearing or a contested hearing.

### **ORDER**

[8] The Tribunal orders that:

1. The two-week hearing scheduled to commence October 19, 2020, is adjourned and the schedule for the exchange of information, as set out in the Procedural Order of June 8, 2020, is hereby vacated.

2. A teleconference is scheduled for October 20, 2020 for the parties to advise the Tribunal whether settlement has been reached; and to set procedural directions for either a settlement hearing or a contested hearing.

*Procedural Directions Ordered  
Hearing Adjourned*

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

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**Environmental Review Tribunal**

A constituent tribunal of Ontario Land Tribunals

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