CITATION: Town of Halton Hills v. Mander, 2024 ONSC 2447
COURT FILE NO.: CV-23-1996-0000
DATE: 2024-04-25

SUPERIOR COURT OF JUSTICE – ONTARIO

491 Steeles Avenue East, Milton ON L9T 1Y6

RE: THE CORPORATION OF THE TOWN OF HALTON HILLS, GREG MACNAUGHTAN, CHIEF BUILDING OFFICIAL FOR THE TOWN OF HALTON HILLS, Applicants

AND:

Harjeet Mander, 2264236 ONTARIO INC., 2352628 ONTARIO INC., 2375970 ONTARIO INC., 11508725 CANADA INC., Respondents

BEFORE: Justice Kurz

COUNSEL: Konstantine Stavrakos, for the Applicants
Satish Mandalagiri, for the Respondents

HEARD: April 19, 2024, attendance

ENDORSEMENT

Introduction

[1] The Applicants (collectively "the Town") move for an interlocutory injunction against the Respondents, Harjeet Mander and four corporations, of which he is the controlling mind (collectively "Mander"). The Town seeks relief in regard to two properties which Mander controls, municipally described as 8029 Hornby Road, Esquesing, Ontario (the "Hornby Property"), and 13265 Steeles Avenue, Halton Hills, Ontario (the "Steeles Property"). The two properties are collectively described as the "Properties". Mander also controls two trucking companies, cited below, which operate out of the Properties. They too are the subject of this application and motion.

[2] The Town relies upon the jurisdiction granted by s. 440 of the *Municipal Act 2001*, S.O. 2001, c. 25 (the "*Municipal Act*") and s. 38 of the *Building Code Act,* S.O. 1992, c.

13 (the "*Building Code*") to obtain orders constraining contraventions of nine of the Town's by-laws and various provisions of the *Building Code.*

[3] In sum, the Town says that Mander purchased two adjoining parcels of land which were zoned residential and/or agricultural and without colour of right, converted them into one large truck parking lot. In doing so, Mander illegally converted the land using unidentified materials, including used construction waste, into a large truck transport terminal, with a parking lot and warehouse complex. The materials used on the ground of the Properties raise clouds of unidentified dust when any of the hundred or so transport trucks which park at the Properties happen to move in or out of it.

[4] Many of those trucks are refrigerator trucks which noisily run twenty-four hours per day, to the aural detriment of the Property's neighbours. Mander has also recently installed bright lights on top of poles, which shine into a number of neighbours' homes. The trucks themselves periodically block traffic on the two-lane Hornby Road as they enter and exit the Hornby Property. They even get stuck in ditches as they try to navigate the turn from the Hornby Property driveway to Hornby Avenue, blocking both lanes of traffic. All of this is documented, as set out below.

[5] As further set out below, the Town cites nine by-laws, twenty-one municipal orders and seven *Building Code* orders which Mander has violated since in or about 2021 regarding Mander's use and operation of the Properties. The Town has filed literally thousands of pages of evidence, including the affidavits of six neighbours of the Properties, a municipal law enforcement officer, a land use planner who acts as the Director of Development Review for the Town and a building inspector. It has filed numerous photos and even drone videos, which it says confirm its allegations.

[6] In response, Mander takes little issue with the facts asserted by the Town. Mander relies on the affidavits of two paralegals working for it. One of those paralegals acted for it in provincial offences proceedings. The other works at the Properties. Neither deponent has offered any evidence that substantially refutes the Town's contentions.

[7] One affiant, Douglas Allen, claims no knowledge of the goings on at the Property. Much of his affidavit consists of improper hearsay, purporting to speak for Mander despite the requirements of Rule 39.01(4) and argument rather than fact. The other affiant, William Tackaberry, claims limited knowledge and observations of the goings on at the Properties. While he says that he works at the Hornby Property, providing paralegal and security services, he claims to have limited knowledge of what goes on there and none of the Steeles Property.

[8] In short, Mander has provided no objective evidence which refutes the evidence relied upon by the Town. Nor does it deny the Town's assertions that it is in violation of numerous zoning and other by-laws, the *Building Act* and various orders. Rather, Mander argues that:

a. This application is an abuse of process because the Town originally brought provincial offence prosecutions against Mander and then stayed the prosecution;

b. The Town delayed in bringing this motion. Therefore the determination of the issues raised in this motion should await the full hearing of the Town's application;

c. The Town engaged in various *Charter* violations against it.

[9] As set out below, I reject the arguments raised by Mander. There is no air of reality to any of them. Rather, I find that the Town is entitled to injunctive relief on the facts of this motion. It has demonstrated a strong *prima facie* case on a balance of probabilities that Mander has engaged in the breaches which the Town claims, thus raising a serious issue. Further, there is no reason for the court to exercise its residual discretion to refuse to grant the injunction sought. Thus, I grant the injunctive relief set out below.

Background

[10] The Applicant Town is a municipal corporation comprising of a democratically elected counsel and mayor. The co-Applicant, Greg MacNaughtan, is employed as the Town's Chief Building Official, responsible for enforcing the provisions of the *Building Code* within the Town. He is an applicant because s. 38 of the *Building Code* requires a chief building inspector of a municipality to apply for the type of relief under that statute sought in this motion.

[11] There is no dispute that the properties come within the jurisdiction of the Town.

[12] The Respondent, Harjeet Singh Mander ("Harjeet") is the sole listed director and directing mind of the corporate Respondents, which are identified as follows:

a. 2352628 Ontario Inc. is an Ontario corporation registered with the business style of "Hub Truck Centre". It is the registered owner of the Hornby Property.

b. 2375970 Ontario Inc. is an Ontario corporation which is the registered owner of the Steeles Property. Its home office is listed at Harjeet's home address.

c. 2264236 Ontario Inc. is an Ontario corporation using the business style of "Ameri-Can Systems ". It operated out of the Properties.

d. 11508725 Canada Inc. is a Canadian corporation which operates under the business style "Mander Group of Companies". Its home office is listed at Harjeet's home address. It operates transport trucks from the Properties.

[13] 2352628 Ontario Inc. purchased the Hornby Property in August 2015 for $2.2 million. The Hornby Property is approximately seven acres in size. The Hornby Property contained a large house with a hay field to the rear. Following its purchase, it was initially leased out to tenants.

[14] 2375970 Ontario Inc. purchased the adjacent Steeles Property in October 2022 for $9 million. That property is a parcel of approximately fourteen acres. At the time of its purchase, there were no structures on the Steeles Property. Rather, it contained farmer's fields, as the farmhouse had burned down.

[15] Both Properties were zoned and used as residential/agricultural at the time of their purchase (with the exception of the burnt-down farmhouse on the Steeles Property).

[16] Mander retained a professional land use planner and utilized a real estate solicitor before purchasing each property. It can be reasonably assumed that Harjeet knew the exact zoning requirements for each of the Properties at the time of their purchase.

[17] On January 9, 2020, Harjeet and his planner met with the Town's development review staff for what is described as a "pre-consultation". At this meeting, they discussed Harjeet's proposed redevelopment of the Hornby Property into a warehouse. Harjeet and his planner were advised that would require both zoning and site plan approval as well as extensive studies before he could make the changes to the Hornby Property. Harjeet appears to have ignored that information.

[18] Despite the Town's advice, in the spring of 2021, Harjeet and 2352628 Ontario Inc. began to transform the Hornby Property into a truck-transport terminal and parking area. They did so by grading the property and engaging in what the Town describes as large scale dumping of fill of unknown origin, including used construction waste. No evidence has been presented as to the exact composition of that fill.

[19] When the Town's municipal law enforcement officer told him that his conduct was illegal and needed to stop, Harjeet simply replied "write me a ticket".

[20] The transformation of both of the Properties has continued and now includes the Steeles Property as well. Drone footage of the Properties in 2020, when both were still used for agriculture and November 15, 2023, by which time the properties had been radically transformed, is most telling. Mander has constructed two illegal buildings as warehouses without permits or zoning approval. It has also added an unauthorized

addition to the home on the Hornby Property and converted the home on the property to an office (although there is a claim, without objective evidence, that three persons reside there as well).

[21] Arial drone footage shows the fresh grading and filling in of the Steeles Property. The Properties now have two distinct truck parking areas in which it is conceded that about a hundred trucks park each day and night. None of this has been approved by the Town.

[22] While Mander appears to deny, without evidence, that construction waste was used as part of its fill on the Properties, photos provided by the Town demonstrate the use of such materials. The Town's photos show broken building blocks, among other rubble, dumped onto the Hornby Property. While it is open to Mander to provide evidence of the exact composition of the fill it used, it has failed to do so. Rather, it attempts to place the onus on the Town to offer such evidence. Of course, it is Mander not the Town which ordered the fill and knows what it ordered. And it is Mander which has access to the Properties to determine the composition of its fill, if it does not already know.

[23] The Town's undisputed evidence is that it has been attempting to compel compliance with its by-laws, the *Building Code* and orders issued under both instruments over the past two years. It states that it has issued "verbal warnings, numerous directions, notices, orders as well as issuing 48 charges under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 ('*POA*')" against Mander. The Town later decided to stay those *POA* charges in favour of this proceeding.

[24] The Town has demonstrated through the affidavits of local residents and photographic evidence that the trucks have generated large amounts of dust, which are raised when the trucks are in use or when fill materials are dumped. This evidence is not seriously disputed and no evidence is offered to the contrary. Neighbours complain about the volume of dust raised by the trucks. The concern is highlighted by the unknown composition of the fill and its attendant dust. Mander has offered no evidence of having engaged in dust control measures.

[25] Neighbours of the Properties have complained to the Town about both construction and operational noise coming from trucks using the Properties. Complaints have referred to the dumping of materials as late as 12 midnight, trucks coming and going all night, as well as the noise generated 24 hours per day by refrigeration trailers parked on the Properties.

[26] In April 2023 the Town received resident complaints regarding bright floodlights that had been placed on poles newly installed in the Properties' rear parking area, which shine directly into their homes.

[27] Mander has now attempted to legalize its activities with an application to the Town, which is now at a very preliminary stage. The Town has issued no by-laws or orders which mitigate the conduct described in these reasons.

Mander's Alleged Infractions

[28] In all, the Town has asserted that Mander has violated the following of its by-laws:

a. Comprehensive Zoning By-law 2010-0050
b. Site Alteration By-law 2017-0040
c. Site Plan Control By-law 2013-0070
d. Alter Driveway By-law 2018-0028
e. Community Standards By-law 2008-0138
f. Noise By-law 2010-0030
g. Highway Encumbrance By-law 2019-008
h. Uniform Traffic By-law 2023-0094
i. Property Standards By-law 2008-0137

[29] The Town also asserts that Mander has violated the following orders that it has made due to Mander's violations of those by-laws:

	Date	By-Law	Property	Notice
1	March 30, 2021	Site Alteration	Hornby	Order to Discontinue Contravening Activity and to Correct Contravention
2	June 17, 2021	Site Alteration	Hornby	Order to Discontinue Contravening Activity and to Correct Contravention
3	June 29, 2021	Zoning	Hornby	Notice of Violation
4	July 13, 2021	Alter/Widen Driveway	Hornby	Notice of Violation
5	November 11, 2021	Noise	Hornby	Notice of Violation
6	November 19, 2021	Zoning	Hornby	Notice of Violation
7	January 4, 2022	Community Standards	Hornby	Community Standards Order (Lighting)
8	March 4, 2022	Highway Encumbrance	Hornby	Notice of Violation (Road Fouling/ obstruction)
9	June 13, 2022	Highway Encumbrance	Hornby	Notice of Violation (Road fouling / Obstruction)
10	June 14, 2022	Community Standards	Hornby	Community Standards Order (Lighting)
11	June 14, 2022	Noise	Hornby	Notice of Violation (Noise)

12	July 4, 2022	Highway Encumbrance	Hornby	Notice of Violation (Road fouling / Obstruction)
13	July 6, 2022	Property Standards	Hornby	Property Standards Order (garbage/ debris/littering)
14	November 25, 2022	Site Alteration	Hornby	Order to Discontinue Contravening Activity and to Correct Contravention
15	December 20, 2022	Zoning	Steeles	Notice of Violation
16	January 5, 2023	Site Alteration	Steeles	Order to Discontinue Contravening Activity and to Correct Contravention
17	February 16, 2023	Community Standards	Steeles	Community Standards Order (deposit of refuse and littering)
18	May 16, 2023	Community Standards	Hornby	Community Standards Order (Lighting)
19	May 16, 2023	Highway Encumbrance	Hornby	Notice of Violation (Road fouling / obstruction)
20	May 16, 2023	Highway Encumbrance	Steeles	Notice of Violation (fouling - highway obstruction/encumbrance)
21	June 15, 2023	Zoning	Steeles	Notice of Violation (zoning – commercial vehicle)

[30] The Town further asserts that Mander violated the seven following orders made under the *Building Code*:

	Date	*Building Code Act* section	Property	Notice
1.	July 5, 2021	Section 12(2)	Hornby	Order to Comply
2.	October 14, 2021	Section 12(2)	Hornby	Order to Comply
3.	October 18, 2021	Section 14(1)	Hornby	Stop Work Order
4.	November 8, 2021	Section 12(2)	Hornby	Order to Comply
5.	February 24, 2023	Section 12(2)	Hornby	Order to Comply
6.	March 2, 2023	Section 12(2)	Hornby	Stop Work Order
7.	June 20, 2023	Section 12(2)	Steeles	Order to Comply

[31] Mander has offered little to no evidence to the contrary in regard to any of these assertions.

Applicable Law

Jurisdiction

[32] The jurisdiction to enforce the Town's by-laws and orders by way of injunction is found in s. 440 of the *Municipal Act,* which provides as follows:

> **440.** If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board. [emphasis added]

[33] As Copeland J., as she then was, wrote in *King (Township) v. 2424155 Ontario Inc.*, 2018 ONSC 1415, at para. 28: "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."

[34] A similar grant of jurisdiction is found under s. 38(1) and (2) of the *Building Code*, regarding violations of that statute. It reads as follows:

> **38** (1) Where it appears to a chief building official that a person does not comply with this Act, the regulations or an order made under this Act, despite the imposition of any penalty in respect of the non-compliance and in addition to any other rights he or she may have, the chief building official may apply to the Superior Court of Justice for an order directing that person to comply with the provision.
>
> (2) Upon the application under subsection (1), the judge may make the order or such other order as the judge thinks fit.

[35] As set out above, one of the Applicants is the Town's Chief Building Inspector, who has jurisdiction to apply to this court for an order as set out above.

Test for Interlocutory Injunction

[36] In *Windsor (City) v. Persons Unknown*, 2022 ONSC 1168, at paras. 54-55 Morawetz C.J.S.C.J. set out the applicable test for the granting of a statutory injunction such as that sought by the Town. He wrote:

> **53** Accordingly, on an application for a statutory injunction, the applicant need only demonstrate that there is a serious issue to be tried and this must be demonstrated by establishing a strong *prima facie* case on a balance of probabilities.
>
> **54** Based on a review of the authorities cited by the City, the following general principles apply when an injunction is authorized by statute:
>
> (i) The applicant need only to establish a strong *prima facie* case, on a balance of probabilities, that there is a breach of the applicable statute. There is no obligation on the municipality to provide "compelling evidence" that an injunction is warranted.
>
> (ii) Proof of actual damages suffered or proof of harm to the public is not an element of the legal test.
>
> (iii) There is no need for other enforcement remedies to have been pursued.
>
> (iv) The factors considered by a court when considering equitable relief will have a more limited application. For example, hardship from the imposition and enforcement of an injunction will generally not outweigh the public interest in having the law obeyed.

(v) There is a strong public interest in ensuring that all citizens in our society obey the law. Therefore, there is a presumption that the courts will grant interlocutory injunctions to compel compliance with the law as opposed to denying the injunction so that a defendant may continue to break the law. Any court tolerance of a continuing breach of the law will be extremely rare.

55 The Court does maintain a residual discretion as to whether to grant the injunction even if there is a clear breach of the statute. However, the Court's residual discretion is limited. Where a municipal authority seeks an injunction to enforce a by-law that it establishes is being breached, any discretion the court may have to permit unlawful conduct is narrow and arises only in circumstances that are truly exceptional.

56 The onus to raise the exceptional circumstances lies with the respondent, and those circumstances are limited. These "exceptional circumstances" could include: the offending party has ceased the activity; the injunction is moot and would serve no purpose; the offending party has provided clear and unequivocal evidence that the unlawful conduct will cease; there is a right that pre-existed the enactment that was breached; there is uncertainty that the offending party is flouting the law or where the conduct is not what the enactment was intended to prevent.

[Citations omitted]

[37] This test operates as an exception to the traditional three-part test for the granting of an interlocutory injunction set out in *RJR--MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385, which requires the moving party to establish the following:

1) a serious question to be tried;
2) it will suffer irreparable harm if the injunction is not granted; and
3) the balance of convenience favours the granting of an injunction.

[38] In the recent case of *Geil Style Enterprises Inc. v. North Dumfries (Township)*, 2022 ONSC 1636, Broad J. reviewed a number of authorities which together demonstrate that a municipal authority enforcing its by-laws or the *Building Code* need not demonstrate

that it has met the tests of irreparable harm or balance of convenience. Rather those tests are presumed to have been met. As Broad J. wrote:

> **30** There is ample authority for the principle that a municipality seeking to enforce a bylaw is not required to demonstrate irreparable harm or satisfy the court that the balance of convenience is in its favour.
>
> **31** In the case of *Metropolitan Toronto (Municipality) v N.B. Theatrical*, [1984] O.J. No. 3062 (H.C.J.) Craig, J. stated as follows at para. 24:
>
> > A municipality whose duty is to enforce its by-laws need not show that it will suffer irreparable harm in the same way that must be established by a private plaintiff. Where by-laws of a municipality are being flagrantly violated a Court ought to assist the municipality by granting interlocutory relief.
>
> **32** After citing the foregoing passage from *N.B. Theatrical* E. MacDonald, J. offered the following observations at para. 11 of *Markham (Town) v Eastown Plaza Ltd.,* [1992] O.J. No. 1716 (Ont. Gen Div.):
>
> > On the basis of these authorities, I am satisfied that the municipality, by virtue of its obligations to its citizens, is in a different position from an ordinary litigant, and this special status gives rise to special considerations which prevail in situations such as this one. The irreparable harm if this injunction is not granted is to the municipality, who has obligations to its citizens to enforce and maintain by-laws designed for what may be referred to as the quiet enjoyment of its citizens. The municipality, to put it most simplistically, has a duty to protect its residents by the passing and implementation of by-laws. The citizens have a right to quiet enjoyment and in addition, and perhaps most importantly, from a policy perspective, its citizens have a right to anticipate that the by-laws of the town will be adhered to. For these reasons, I am of the view that the balance of convenience favours the municipality in these circumstances.
>
> **33** The foregoing passages from *N.B. Theatrical* and *Eastown Plaza Ltd.* and the reasoning that they exemplify were adopted by Greer, J. in the case of *Innisfil (Town) v. Innisfil Land Holdings Inc.*, [2003] O.J. No 2163 (S.C.J.) at paras. 23-24.

> **34** More recently, in the case of *Springwater (Township) v. 829664 Ontario Ltd.,* [2008] O.J. No. 810 McIsaac, J. noted at para. 7 that a municipality moving for injunctive relief to restrain non-compliance with a bylaw is not required to establish the existence of irreparable harm as a precondition, citing *Eastown Plaza Ltd.* as well as *Thompson-Nicola (Regional District) v. Galbraith,* [1998] B.C.J. No. 1436 (B.C.S.C.) where Smith, J. stated at para. 2 :
>
> > The test for the granting of an interim injunction pursuant to the Municipal Act is different than the test at common law. Municipalities are not subject to equitable rules with respect to the enforcement of their by-laws; the balance of convenience and apprehended damage are irrelevant when a Court is asked to restrain the clear breach of a by-law even if the granting of an injunction in effect grants the whole relief sought: *Kamloops (City) v. Baines* (1996), 32 M.P.L.R. (2d) 264 (B.C.S.C.) at 265. Where the Court finds a flagrant contravention of the by-law, it will find irreparable harm by implication in the mockery that is made of its by-laws by the open breaching of them: *Cowichan Valley (Regional District) v. Schon Timber Ltd.* (December 21, 1994), Doc. Duncan S4209 (B.C.S.C.) [reported (1994), 25 M.P.L.R. (2d) 249 (B.C.S.C.)].

Analysis

[39] As set out above, Mander has not offered any substantive evidence which contradicts the Town's assertions regarding its violations of its by-laws, orders and the *Building Code*. Rather, it has raised the following arguments in favour of the court exercising its discretion to refuse to grant the injunctive relief sought by the Town: a) abuse of process, b) delay, and c) *Charter* violations. I will deal with each argument in turn.

Abuse of Process

[40] The alleged abuse of process arises from the fact that the Town originally brought a *POA* prosecution against Mander upon fundamentally the same grounds as it raised in

this case. Mander quotes the following comment of Perell J. in *Howlett v Northern Trust Company*, 2023 ONSC 4531:

> **70** Depending on the circumstances of the particular case, a multiplicity of proceedings based on the same factual nexus may constitute a procedural abuse of process and thus there may be a concurrence of grounds to dismiss an action pursuant to rule 21.03(1)(c) and rule 21.03(1)(d).

[41] There are a number of problems with the application of that doctrine to the facts of this case. First, the *POA* prosecution was stayed without a substantive determination before this application was commenced. Thus, there is no present multiplicity of proceedings.

[42] Second and in any event, s. 440 of the *Municipal Act* affords a complete answer to this argument. Under that provision, the right to apply to the court to restrain any contravention of a municipal bylaw operates "in addition to any other remedy and to any penalty imposed by the by-law". As Copeland J. found in *King (Township) v. 2424155 Ontario Inc.*, this provision "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)." That right is not affected by any prosecution

Delay

[43] Mander complains that the Town engaged in unreasonable delay in bringing this motion. It points out that the Town's objections date back to events beginning in 2021. It further points to the converse of this argument: the Town's full application is due to be heard in only four months from now. In light of the delay, there is no reason to rush into a judgment that may create a new status quo.

[44] Mander quotes the dicta of Pennell J. in *Hardee Farms International Ltd. v. Cam & Crank Grinding Ltd. et al.,* [1973] 2 O.R. 170 (O.H.C.J.), at p. 5 (QL) that "for guidance in the future, it might not be altogether useless to restate an old rule: nothing is more likely to tip the beam of the scales of equity than delay."

[45] Mander also refers to *Levert Personnel Resources Inc. v. LeClair et. Al.,* [2007] O.J. No. 5013 (S.C.J.). There, Kane J. dissolved an injunctive term previously granted against the defendant, prohibiting his solicitation of his former employer's clients. Kane J. acted when the employer sat on its rights for over two years without prosecuting the case on a timely basis and the applicable non-competition clause had run out.

[46] There are three responses to Mander's delay argument. First, what Pennell J. was pointing to in *Hardee Farms* was that delay may be a relevant when a breach is not clear. As he put it, just a few sentences before the quote cited above, "a plain and uncontested breach of an express prohibition delay is not of moment."

[47] Second, the Town has not delayed in dealing with Mander's various breaches. As the Town put it in its factum:

> For over 2 years, the Town has been attempting to compel compliance, by issuing verbal warnings, numerous directions, notices, orders as well as issuing 48 charges under the [*POA*].

[48] Furthermore, the breaches are ongoing and continuing to expand. The evidence shows that about one hundred trucks are continuing to park at the Properties, causing a continuous nuisance to area residents and the Town as a whole. Grading and the importation of fill to the Properties continues apace. Just this month, Mander installed bright flood lights on poles which shine directly into the homes of adjacent residences. On the day of the motion, counsel for Mander frankly conceded that tractor trailers continued to be parked at the Properties.

Alleged *Charter* Breaches

[49] Mander asserts that the Town has breached its collective *Charter* rights by entering into the Properties without consent. It continues, arguing that the Town then "illegally recruited the complainants and other neighbours to observe, record the activities on the subject properties and gather evidence against Mr. Mander without any legal colour of right and the [sic] recruited civilians probably engaged in criminal harassment."

[50] There is no air of reality to this argument. I say this for the following reasons:

a. This is a civil proceeding rather than a quasi-criminal prosecution;

b. Mander fails to say whose rights have been violated;

c. Inasmuch as they are not residential premises, the Town's by-law enforcement officer and building inspector are entitled to inspect the Properties, without a warrant under s. 15.2 of the *Building Code* and s. 435 of the *Municipal Act*. That being said, there is no evidence that the Town's employees improperly accessed the Property.

d. Further affidavits of two neighbours who provided affidavits in support of the Town make it clear that far from being "recruited", they complained to the Town about the manner in which Mander's activities have disrupted their lives. To that effect they have supplied their own evidence, including photographs corroborating the Town's claims.

Should Court Exercise its Discretion to Refuse the Town's Request?

[51] As set out above, there may be exceptional circumstances where a court may exercise its discretion to refuse to grant an injunction to a municipal authority seeking to enforce its by-laws, orders or the provisions of the *Building Code*. However, no factors have been brought to the court's attention which would support the exercise of its discretion to refuse injunctive relief here.

[52] The Town has met its burden of proof in this motion. The conduct of Mander in the use and operation of the Properties violate numerous by-laws, orders, and provisions of the *Building Code*. Mander has always been aware of the applicable restrictions on the use of the Properties but has, in the words of the Town, "brazenly" ignored them. I would say that Mander has adopted the maxim that it is "better to request forgiveness than permission" except that he has requested neither. As set out above, Harjeet's only

response to the Town's attempts to get him to comply with the rules that apply to all of Mander's neighbours has been "give me a ticket".

[53] Any delay in imposing the relief sought by the Town would only further penalize the law-abiding residents of the Town whose homes are proximate to the Properties. Further, as the Divisional Court stated in *Attorney-General for Ontario v. Grabarchuk et al.* (1976), 11 O.R. (2d) 607 (Ont. Div. Ct.), at p. 7 [QL]: "one who knowingly and deliberately flouts the plain law can hardly argue that it is not just that he be stopped."

[54] Further, the same court adopted this most apposite comment by Lord Pearce of the British House of Lords in *Attorney-General v. Harris*, [1961] 1 Q.B. 74 at p. 95 as follows:

> ... a breach with impunity by one citizen leads to a breach by other citizens, or to a general feeling that the law is unjustly partial to those who have the persistence to flout it.

[55] It is true that a full hearing of this application will take place in about four months. But the decision in that application can take further weeks or months to be released. After years of breaches, those persons whom the Town serves should not have to wait any further for enforcement of the rules that bind all of them, and for an order that will end the breaches that have so significantly and adversely affected their daily lives.

Conclusion

[56] For the reasons set out above, I grant the Town's motion.

[57] Order to go as follows:

(1) The Respondents shall cease bringing in any fill or granular material onto the Hornby and Steeles Properties or undertaking any further site alteration, grading or levelling activities on the properties without a Site Alteration permit issued by the Town.

(2) The Respondents shall remove all transport trucks, construction trucks and equipment, trailers and any other commercial motor vehicles from the Hornby and Steeles Properties within 14 days of the issuance of this order. Half of the trucks

present on the Property on the day of this order shall be removed within seven days and the remaining trucks shall be removed within a further seven days;

(3) The Respondents are prohibited from using the former residence on the Hornby Property for offices, commercial uses or any non-residential uses;

(4) The Respondents are prohibited from occupying the addition to the former residence on the Hornby Property;

(5) The Respondents are prohibited from occupying the steel warehouse on the Hornby Property and the fabric covered warehouse on the Steeles property;

(6) This order shall remain in force until the final determination of the Application in this matter; and

(7) The Respondents shall pay the Applicants their costs of this motion, fixed at $15,000, within 90 days.

Date: April 25, 2024