SUPREME COURT OF NOVA SCOTIA
Citation: *Cape Breton Regional Municipality v. Smith*, 2019 NSSC 41

Date: 20190205
Docket: 478702
Registry: Sydney

Between:

Cape Breton Regional Municipality

Applicant

v.

Ronald Smith, R. Smith's Towing Ltd. and Carolyn MacNeil

Respondents

LIBRARY HEADING

Judge:	The Honourable Justice Frank C. Edwards
Heard:	January 22-23, 2019 in Sydney, Nova Scotia
Subject:	Injunction and Destruction Order. *Municipal Government Act*, sections 184 and 266(2) and (3) Application for an Order to destroy and remove garage from a residential property, to remove derelict vehicles; enjoin the Respondents from keeping more than one commercial vehicle on their property; enjoin the Respondents from storing derelict vehicles; to allow the Applicant to enter the Respondents' property to enforce the Order of the Court at the expense of the Respondents.
Facts:	The Respondents Smith and MacNeil are the co-owners of the Corporate Respondent, R. Smith's Towing Ltd. In 2012 the

Respondents erected a garage next to their residence. The Respondent Smith, on behalf of the Corporate Respondent and on his own behalf, undertook on several occasions not to conduct the towing business on his property nor to use the garage for commercial purposes. The Respondents have continuously done otherwise between 2012 and 2018.

Result: Application granted. Requested injunction and destruction and removal of the garage granted.

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Counsel:	Sean MacDonald, for the Applicant Stephen Jamael, for the Respondents

By the Court:

FACTS:

[1] The Respondents, Ronald Smith and Carolyn MacNeil, have been married since 2013 (but have lived together since 2003). They are co-owners of the corporate respondent, R. Smith's Towing Ltd. The company office is in the family home at 1341 George Street. The company owns four tow trucks. Though Ms. MacNeil undoubtedly has some input into the company's operation, it is clear that Mr. Smith is the directing mind of the company.

[2] In 2012 Mr. Smith was attempting to buy the former steel plant property in Sydney. His intention was to relocate the towing business there. In anticipation of the acquisition of the steel plant property, Mr. Smith purchased a commercial garage package for $10,000.00. That building would have been 30 by 100 feet. Unfortunately, the property deal fell through leaving Mr. Smith with nowhere to erect a commercial garage.

[3] It was at that point that Mr. Smith applied to CBRM for a building permit to put a garage on his property at 1341 George Street. Then Development Officer, Brian Spicer, (now retired) advised Mr. Smith the maximum size

garage he could erect on his residential property was 30 feet by 50 feet. Mr. Spicer wrote to Mr. Smith on December 12, 2012 advising Mr. Smith that:

> "Prior to completing the review of this file I want to have written assurances that this building will only be used for storage of your personal property directly associated with the normal functions of a single family dwelling."

[4] The next day, Mr. Smith signed an undertaking which states in part:

> "I have torn my garage down and disposed of all materials relating to said garage.
>
> I would like to build a new garage in its place **to use for my personal use and it will not be used for commercial use.** I **Ronnie Smith**, do hereby **swear** this to be true on this 13th day of December, 2012." (Emphasis added)

[5] The municipality issued a building permit for the garage on December 17, 2012. The permit specifies:

> Project Description: Garage (48ft. x 30 ft.) located to the rear of existing single detached dwelling **for personal residential accessory use only.** (Emphasis added)

[6] On August 13, 2013, following a site inspection, Mr. Spicer wrote to Mr. Smith. Mr. Spicer ordered the removal of certain trailer and truck boxes. He also reminded Mr. Smith that the parking of more than one vehicle related to the towing business was a violation. And he reminded Mr. Smith that the garage could not be used for the storage or repair of vehicles related to the towing business. Mr. Spicer also clarified that;

> "…the outdoor collection, accumulation, or storage of miscellaneous equipment, materials, motor vehicles, or parts thereof, shall not be considered an accessory use to residential development…"

[7] On October 25, 2013 Mr. Smith swore an undertaking with his then solicitor. It read:

> I, Ronald Smith, as proprietor of Smith's Towing, Sydney, N.S. and on my own behalf of myself as owner of 1341 George Street, in the Cape Breton Regional Municipal hereby confirm my intention to maintain compliance with the bylaws of the Cape Breton Regional Municipality and hereby indicate, in according (sic) therewith that I shall not, from the date of this undertaking, keep more than one commercial vehicle at my property located at 1341 George Street and also that I shall not conduct any commercially related mechanical work.
>
> I further acknowledge and confirm my understanding that non-compliance with the bylaws of the Municipality can result in not being awarded a municipal contract and can result in the loss of a current municipal contract.

[8] Despite the undertaking, the Applicant continued to receive complaints. Consequently, CBRM representatives made site inspections on February 12, 2014 and April 13 and April 14, 2015. On each occasion photographs were taken which clearly showed breaches of the undertaking by the Respondents.

[9] On June 4, 2015, Counsel for the Applicant wrote to Respondent's then counsel as follows:

> Further to your letter of May 20, 2015, I have had the opportunity to speak with my client and am able to provide you with the following proposal.
>
> If your client is willing to enter a guilty plea to the charges dated April 13 and 14, 2015, with a fine of $1000.00 per charge ($2,000.00 total), CBRM will withdraw the remaining charges. This would be contingent on your client consenting to a Compliance Order that he will not keep more than one commercial vehicle on the

property as per part 2, section 31 of the Land Use By-law, as well as an Order that he will not use the garage on his property for commercial purposes as per the undertaking and statement that he has signed to that effect.

It is also CBRM's understanding that in the past couple of weeks, your client has been parking a chip wagon on his property, along with one tow truck. I ask that you please make your client aware that these are both commercial vehicles and having both there is a violation of the By-law. (Emphasis added)

[10] On cross-examination, Mr. Smith maintained that he was not aware that his chip wagon was considered a commercial vehicle. The last paragraph of the above letter references the fact that the chip wagon is a commercial vehicle. Mr. Smith claimed to have never seen the letter.

[11] On June 24, 2015, Counsel for Mr. Smith signed a Consent Compliance Order which reads:

BEFORE THE HONOURABLE JUDGE ROSS, a Judge of the Provincial Court of Nova Scotia

WHEREAS RONALD SMITH stands convicted as of June 24, 2015, of breaches of part 2, section 31 of the *Cape Breton Regional Municipality Land Use By-law*, **thereby committing offences contrary to section 505(1) of the *Municipal Government Act.*** (Emphasis added)

AND WHEREAS a Compliance Order is sought, pursuant to section 505(4) of the *Municipal Government Act* in relation to these convictions:

IT IS HEREBY ORDERED that RONALD SMITH shall

1. Ensure that he shall not keep more than one commercial vehicle on his property, except where the vehicle(s) are for a use that is in compliance with the *Cape Breton Regional Municipality Land Use By-law*;

2. Ensure that where one commercial vehicle is kept on the property, that vehicle must contain a total of no more than two axles, one of which is the front axle,

unless the vehicle is for a use that is in compliance with the *Cape Breton Regional Municipality Land Use By-law*; and

3. Ronald Smith shall ensure that he is in compliance with this order and the associated provisions of the *Cape Breton Regional Municipality Land Use By-law* no later than July 1, 2015.

[12] When shown the Order during cross-examination, Mr. Smith responded that he did not "…remember seeing this to be honest with you." I note that the Compliance Order is also evidence of the commission of an offence under section 505(1) of the *Municipal Government Act*. This is important because an Application to this Court can only occur under 266(2) "In the event of an offence."

[13] Although the conviction involves only Mr. Smith personally, the events leading up to it clearly involved the corporate respondent. As previously noted, Mr. Smith is the directing mind of the corporate respondent. The breaches which led to the Compliance Order were in contravention of the undertaking Mr. Smith swore on October 25, 2015 "…as proprietor of Smith's Towing, Sydney, N.S. and on my own behalf as owner of 1341 George Street…". I am satisfied that the precondition in s. 266(2) "In the event of an offence…" has been fulfilled. The Applicant therefore has the right to bring the present Application under s. 266.

[14] After Mr. Smith's conviction in June, 2015, the Applicant continued to get complaints. It therefore retained the services of First Strike Security and Investigations Ltd. (First Strike). Roger Fitzgerald of First Strike attended at the Smith property for six consecutive days between June 11 and June 17, 2016. On the 14th & 15th Fitzgerald observed a chip wagon and a tow truck being stored on the property. On June 16, 2016 he observed a tow truck and a cube van being stored on the property. Fitzgerald took photographs which are exhibited with his affidavit.

[15] David Paton (Paton) is a Development Officer employed by the Applicant. Paton visited the property on January 12, 2017. At that time Paton observed two company trucks, the chip wagon, three derelict vehicles, and a commercial trailer with a "Rollie's Wharf" commercial logo on it. Patron exhibited photos of what he observed with his affidavit. Paton also requested Smith's son Andrew to allow him to enter the garage. Andrew refused saying his father had told him not to let anyone in the garage.

[16] Paton then sent the Respondents a letter dated January 18, 2017 which referenced a previous letter dated June 24, 2016. The latter referenced the fact that the Applicant was still getting complaints. The full text of the January 18, 2017 letter reads:

Our office is responsible for the enforcement of the Cape Breton Regional Municipality's (CBRM) Land Use Bylaw. It has come to our attention that several violations of this bylaw continue to occur at the aforementioned property despite a prior prosecution and court order issued by the Provincial Court of Nova Scotia in 2015 and my letter dated June 24, 2016 which notified you the CBRM was in receipt of additional complaints.

The above referenced property is located in the Residential Urban C (RUC) Zone. A towing business is not permitted use in this zone. A condition of the permit issued in 2012 to construct a 48 x 30' garage on the property was that the garage was to be used for personal residential accessory use only. A letter was submitted as part of this application, signed by both Ronald Smith and a solicitor, stating intention to comply with the bylaws of the Cape Breton Regional Municipality and to not conduct any commercially related mechanical work in the garage.

Here is a brief description of the alleged violations and the relevant excerpts from the CBRM's Land Use Bylaw:

The operation of a towing business in the Residential Urban C (RUC) Zone (Part 18 Section 1)

The use of a residential accessory garage for commercially related work/work that does not comply with the definition for residential accessory use (Part 98)
Accessory use means a use subordinate and naturally, customarily and normally incidental to and exclusively devoted to a main use of land or buildings and located on the same lot parcel. An accessory use to a place of residence must be clearly seen as being supportive of:

- the maintenance of the residential property; or
- the types of personal or recreational pursuits of the occupants that are not obtrusive in a residential neighbourhood environment.

To clarify the interpretation of obtrusive for this definition, any activity or use of land that involves the outdoor collection, accumulation, or storage of miscellaneous equipment, materials, motor vehicles, or parts thereof shall not be considered an accessory use to residential development, unless it takes place in an innocuous location which does not adversely affect neighbouring properties visually as an unusual and unique land use. Any use of equipment, tools, and materials to regularly service vehicles, equipment, and materials owned by non-residents of the address shall also not be considered an accessory use to residential development.

Parking of more than one motor vehicle associated with a business development (Part 2 Section 31)
Unless the type of business is a permitted use within the zone, no motor vehicle associated with a business developments shall be kept in a zone except for one

vehicle with a total of no more than two axles, one of which is the front axle (e.g. this excludes the trailer from a semi-trailer truck colloquially known as an 18-wheeler), which is used by the owner or occupant of the lot parcel and does not include a refrigeration unit or other noise producing equipment.

Parking of derelict motor vehicles and other outdoor storage (Part 2 Section 28 and Section 32)
Outdoor storage of aggregate material, derelict motor vehicles, used bodies or parts of motor vehicles, or used bodies or parts of other vehicles, machinery or equipment, whether used in the operation of a business or not, shall be prohibited in all zones of this Bylaw, unless it is permitted in the text of a particular zone.

No derelict motor vehicles shall be parked or stored in any zone unless:

- the vehicle is stored inside a building; or
- the area where vehicles are kept is fully screened on all sides by an opaque fence, landscaping or berm.

I therefore must ask that you cease operation of the business at this location, provide proof of relocation to an appropriately zoned lot, and permanently remove any items described above as being in violation of the Land Use Bylaw, including motor vehicles associated with a business development (except for a maximum of one). To be clear, the Smith's Towing trucks, Smith's Chip Wagon and the Rollie's Restaurant and Lounge trailer that were present during my site visit on January 12, 2016 (sic - should be 2017) are all motor vehicles associated with a business development.

If violations continue to occur the CBRM will initiate further legal action. As per Section 266 of the Municipal Government Act, we have the authority to request the Supreme Court of Nova Scotia issue an order to cease operation of the business and to authorize the municipality to remove any offending structures at the owner's expense.

[17] On January 18, 2017, Paton met with Smith and MacNeil regarding what he had observed on January 12, 2017. Paton says that Smith and MacNeil advised him that Smith's son continued to do repairs on friends' vehicles within the garage. Paton sent the Respondent an email dated January 18, 2017 to follow-up their meeting. That email reads;

> I'm writing to follow up on our meeting today regarding your towing business at 1341 George St. As you are aware, this lot is zoned Residential Urban C (RUC) – a towing business is NOT permitted in this zone. As such, you will have to relocate your business and cease using the garage for any use that is not considered a 'residential accessory use'.
>
> I have attached a copy of the letter I gave you today regarding the violations. I have also attached a map of the Sydney area showing where a towing business would be permitted. I encourage you to contact me if you are considering a particular property so that I can verify the zoning and ensure there are no other issues or regulations. For example, in some zones parking areas have to be screened from the view of adjacent properties with a fence and/or landscaping and paved, etc.
>
> If you are unable or unwilling to relocate the business to a suitable location (or address any of the other violations described in the attached letter), I will be obliged to refer the file to the CBRM's Legal Department for prosecution. But of course the preferred solution is to have you relocate the business; to that end please do not hesitate to contact me regarding any potential property you are considering.
>
> If you have any questions please let me know.

[18] Paton did not get a reply to his email and continued to get complaints about the activities occurring on the property.

[19] On May 24, 2017, Paton received authorization to proceed to apply to the Court pursuant to Section 266 of the *Municipal Government Act* (MGA). The authorization is signed by the Applicant's Chief Administrative Officer.

[20] Paton visited the property again on April 11, 2018 at which time he photographed a tow truck (identified as such by MacNeil in cross-examination) and the "Rollie's Wharf" commercial trailer on the Respondent's property.

[21] This Application was filed on July 26, 2018 and amended on September 11, 2018. Counsel explained that it took so long to bring the Application because of confusion relating to his changing firms. This is not a prosecution under section 505 of the MGA. An offence under s. 505 makes the offender "liable, upon summary conviction, to a penalty of not less than $100.00 and not more than $10,000.00…" A summary conviction charge must be instituted no more than six months after the time of the alleged offence. [See *Summary Proceedings Act*, s. 7 which adopts *Criminal Code* s. 786(2)]. There is no such time restriction on an application (like this one) pursuant to sections 183 and 266 of the MGA.

[22] Ronald Smith and Carolyn MacNeil were both cross-examined on their affidavits. I do not believe either of them. In his affidavit, Smith's main line of defence is that he has leased another storage facility. By his own evidence that storage facility is of no use to them since they lost the police contract in October, 2018. They no longer impound or store vehicles but simply tow them from point A to point B as requested by the towed vehicle's owner. Furthermore, the other storage facility could not be used for vehicle repairs or the storage of towing vehicles. (See Paton's Nov. 29, 2018 affidavit Ex A).

[23] Their affidavits make no reference to the impugned vehicles being on someone else's property. Yet when shown the incriminating photographs (which they would have seen long before the hearing), both Smith and MacNeil insisted the vehicles were on a neighbor's property. Without offering any supporting evidence, they insisted that neighbors (whom they could not name) had given them permission to park the commercial vehicles depicted in the photographs. Exhibit 5 is a certified copy of the CBRM Land Use Bylaw map dated July 26, 2018. I am satisfied that the commercial vehicles shown in the photos were all within the boundaries of the Respondents' property depicted in Exhibit 5. If there was any encroachment over the boundary lines it was slight and inconsequential.

[24] Smith quoted retired development officer Brian Spicer as giving the okay to such an arrangement. Aside from such evidence being hearsay, the Respondents apparently made no attempt to have Mr. Spicer file an affidavit. And there are no affidavits from the anonymous but allegedly very accommodating neighbors.

[25] Smith and MacNeil were obviously making up their defence as they went along. I have no doubt but that the impugned vehicles were on the Respondents' property at the times referenced in the Applicant's evidence.

[26] I am also satisfied beyond any doubt that the Respondent does commercial work inside the garage. The evidence satisfies me that Smith always intended to use the garage for his towing business. He had no hesitation in signing undertakings or make promises he had no intention of honoring.

[27] I have no hesitation in drawing a negative inference from the fact that Andrew denied entry into the garage to Paton and his colleague on January 12, 2017. I do not believe Andrew when he says he did not have a key. That is not what he told Paton on January 12. On that occasion he told Paton that his father had instructed him not to let anyone in the garage. I have no doubt that Andrew has access to the garage whenever he wishes. I do not believe Andrew when he testified that Paton and his associate were strangers. They were there in a marked municipal vehicle.

[28] During submissions, I asked Respondents' Counsel whether the Respondent would agree to a right of entry order to the garage in favor of the Applicant. Counsel replied in the negative as his client felt that such an order would be an invasion of privacy. I was not surprised. A right of entry would end any possibility of any commercial activity inside the garage. The garage is of no use to the Respondent unless he can use it for commercial purposes.

[29] I do not believe Mr. Smith when he says at paragraph 8 of his affidavit:

> "I use my personal garage for storing personal items; and do not store commercial vehicles nor perform work inside the garage."

[30] The garage (though necessarily reduced in length from the original 100 feet) is obviously designed for commercial use. Its walls are 14 feet high and it has high garage doors able to accommodate large commercial vehicles. Mr. Smith says he initially intended to store his personal RV in the garage. The RV has since been sold. Mr. Smith obviously always intended to use the garage for his towing business and undoubtedly will continue to do so. I have no doubt but that service and repairs of commercial vehicles (including the Respondent's tow trucks) occurs inside the garage.

[31] Mr. Smith has demonstrated repeatedly that he cannot be trusted to comply with the Applicant's bylaws. His solemn promises to do so are meaningless. Telling the truth or honoring his promises are not priorities for Mr. Smith. The only realistic solution to the problem is to order the destruction of the garage.

[32] It is unfortunate that it took so long to initiate these proceedings. As mentioned, the authorization to apply to this Court was signed on May 24, 2017 but the Application was not filed until July 26, 2018. The Respondents claim to have been surprised because they claim that they believed the matter had been solved at the January 18, 2017 meeting.

[33] That claim is, like most of the rest of their evidence, untrue. Mr. Paton specifically advised the Respondents in his follow-up email of January 18, 2017:

> "If you are unable or unwilling to relocate the business to a suitable location (or address any of the other violations described in the attached letter), I will be obliged to refer the file to the CBRM's Legal Department for prosecution."

[34] The Respondents were thereby put on notice that this Application was coming. Their response was to ignore the warning. The photo Mr. Paton took on April 11, 2018 demonstrates that the Respondents were still in violation just months before this Application was filed.

[35] The Respondents have displayed a flagrant disregard for the rules since the garage was built. I have no doubt but that they clearly understood what was expected of them but chose to continue doing business as usual. The Respondents deserve no leniency. They have been given every opportunity to bring their business into compliance with the bylaws. They have deliberately chosen not to do so.

CONCLUSION:

[36] This is an Application made pursuant to s. 184 and s. 266 of the *Municipal Government Act*. The relevant portions of s. 184 and s. 266(2) and (3) read as follows:

> **184** Where
>
> (b) land is being used in contravention of a by-law of the municipality;
>
> the municipality may apply to a judge of the Supreme Court of Nova Scotia for an injunction or other order and the judge may make any order that the justice of the case requires. 1998, c. 18, s. 184.
>
> **266 (2)** In the event of an offence
>
> (a) where authorized by the council or by the chief administrative officer, the clerk or development officer, in the name of the municipality;
>
> may apply to the Supreme Court of Nova Scotia for any or all of the remedies provided pursuant to this Section.
>
> **(3)** The Supreme Court may hear and determine the matter at any time and, in addition to any other remedy or relief, may make an order
>
> (a) restraining the continuance or repetition of an offence in respect of the same property;
>
> (b) directing the removal or destruction of any structure or part of a structure that contravenes any order, regulation, municipal planning strategy, land-use by-law, development agreement, site plan or statement in force in accordance with this Part and authorizing the municipality or the Director, where an order is not complied with, to enter upon the land and premises with necessary workers and equipment and to remove and destroy the structure, or part of it, at the expense of the owner;
>
> (c) as to the recovery of the expense of removal and destruction and for the enforcement of this Part, order, regulation, land-use by-law or development agreement and for costs as is deemed proper,
>
> and an order may be interlocutory, interim or final.

[37] I have already noted that the Applicant has fulfilled the precondition to its access to relief under section 266(2). There has been an offence (June 24, 2015 – Gillis affidavit Ex H). As also noted, the violations continued after June 24, 2015 up to and including April 11, 2018. The sections of the Land Use Bylaw the Respondents have repeatedly ignored are the following:

> **Section 31 Parking of Motor Vehicles Owned by Business Development**
>
> **a. Parking of Motor Vehicles Owned by Business Development**
>
> i. Unless the type of business is permitted use within the zone, no motor vehicle associated with a business development shall be kept in zone except for one vehicle with a total of no more than two axles, one of which is the front axle (e.g. this excludes the trailer from a semi-trailer truck colloquially known as an 18-wheeler), which is used by the owner or occupant of the lot parcel and does not include a refrigeration unit or other noise producing equipment.
>
> **Section 32 Parking of Derelict Motor Vehicles**
>
> Unless there is specific section in the text of a zone regulating this, no derelict motor vehicle shall be parked or stored in any zone unless:
>
> - the vehicle is stored inside a building; or
> - the area where vehicles are kept is fully screened on all sides by an opaque fence, landscaping or berm.
>
> **Business Vehicle Defined**
>
> **Business Vehicle** means any vehicle which is licensed as a commercial carrier as determined by the Registrar of Motor Vehicles or any vehicle designed, maintained, or used primarily for the transportation of property and persons associated with a business, and includes but is not limited to a truck, a bus, delivery van or wagon, tractor, truck tractor and/or trailer, heavy equipment, construction equipment, but does not include a private passenger vehicle.
>
> **Derelict Motor Vehicle Defined**
>
> **Derelict motor vehicle** means a motor vehicle that is not on display on the business property of a licenced car dealership without:
>
> - a valid Province of Nova Scotia Vehicle Permit; and
> - a valid safety inspection sticker.

> **Residential Accessory Use:** the Respondents have used the garage for commercial purposes and not for **"residential accessory use"** as that term is defined in Part 98 of the Bylaw. (That definition is quoted in full in the January 18, 2017 letter to the Respondents. See Paragraph 16, page 8 above).

[38] I am satisfied the compliance problems will persist unless the strongest possible measures are taken against the Respondents. The removal of the garage from the property will not itself completely resolve the problem. A restraining order and/or an injunction will also be required to prevent the Respondents from storing more than one commercial vehicle, and derelict vehicles, on the property. [See CPR 75.02(1)(b)]. Further violations would render the Respondents liable to a Contempt of Court application. The consequences of a contempt finding cannot be shrugged off like a fine.

[39] The removal of the garage should discourage most of the offending activity. With no garage, the Respondents will be forced to find another location to service and repair their vehicles. (I reject Mr. Smith's evidence that he has already done so.) It will also end the service and repair of other vehicles (e.g. those belonging to Andrew's "friends") which I am satisfied also occurs in the garage.

[40] Accordingly, I am prepared to order the removal or destruction of the Respondents' garage located at 1341 George Street, Sydney (CBRM), at the

expense of the Corporate Respondent and Ronald Smith personally, jointly and severally. The Applicant may enter the property with necessary workers and equipment to remove and destroy the garage. I am prepared to authorize the police or sheriff to assist the Applicant in the enforcement of the Order of this Court. The Respondents shall have 30 days from the date of this Court's Order to remove any belongings or equipment from the garage.

[41] The Respondents will have 60 days from the date of the Applicant's invoice for the removal and destruction costs to pay the invoiced amount in full (unless the Applicant, in its sole discretion, chooses to extend the time for payment). The Corporate Respondent and Ronald Smith personally shall be jointly and severally liable for any such payment.

[42] The cost of destruction or removal shall include the cost of any police, sheriff or security personnel the Applicant, in its sole discretion, deems

necessary to ensure the safety of the personnel and equipment required to do the destruction or removal of the garage.

[43] As the successful litigant, the Applicant is entitled to its costs under Tariff C. The Application consumed 1 ½ days of court time which would merit

an award of $3000.00. However, the amount of time involved in preparing for and conducting the Application renders the Tariff amount inadequate.

[44] The Applicant had to prepare four substantial affidavits with exhibits. Extensive cross-examination of the Respondents' affiants was required, particularly the Respondent Ronald Smith.

[45] The Application was determinative of a matter of considerable importance to both parties. The Respondents (though they deny it) stood to lose a vital part of their business. The Applicant stood to lose the resolution of a chronic problem with which it had to deal since 2012.

[46] In view of the foregoing, I would therefore double the Tariff amount to $6000.00 plus reasonable disbursements. The Corporate Respondent and Ronald Smith personally shall be jointly and severally liable for the costs.

Order accordingly,

Edwards, J.