

Court File No. 19-70935

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically Amended on the 13TH
day of JUNE, 2024
pursuant to Rule 26.02 (B).

BETWEEN:

JOHN COLIN BLACK

Annakah X Roache Digitally signed by
Annakah X Roache
Date: 2024.06.14
14:47:21 -04'00'
Plaintiff

-and-

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

Defendant

AMENDED STATEMENT OF CLAIM

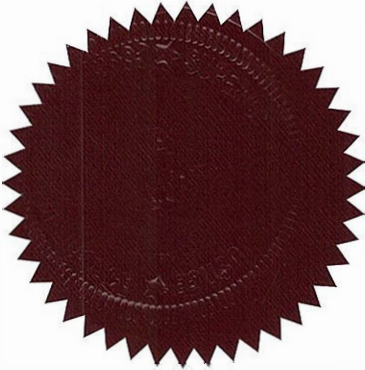
TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defense in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defense is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defense, you may serve and file a notice intent to defense in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defense.



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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: October 17, 2019

Issued by: _____



Local Registrar

Address: 45 Main Street East, Suite 110
Hamilton, ON L8N 2B7

TO: The Corporation of the Town of Niagara-on-the-Lake
1593 Four Mile Creek Road
PO Box 100
Virgil, ON L0S 1T0

The plaintiff claims the following:

1. a) A declaration that by-laws passed by The Corporation of the Town of Niagara-on-the-Lake respectively on September 16, 2019 and on September 23, 2019 to designate the plaintiff's property known as 27 Prideaux Street in the Town of Niagara-on-the-Lake as having cultural heritage value are null and void;
- b) An Order quashing the by-laws passed by The Corporation of the Town of Niagara-on-the-Lake respectively on September 16, 2019 and on September 23, 2019 to designate the plaintiff's property known as 27 Prideaux Street in the Town of Niagara-on-the-Lake as having cultural heritage value;
- c) An interim and interlocutory injunction against the defendant enjoining the defendant from taking any further proceedings to designate the plaintiff's property under the provisions of *the Ontario Heritage Act*, R.S.O. c.O.18;
- d) Damages for abuse of process, bad faith conduct and misuse of municipal power in the application of the provisions of the *Ontario Heritage Act*, R.S.O. c.O.18 in the amount of \$750,000.00;
- e) Punitive damages in the amount of \$500,000.00;
- f) Pre-judgment and post-judgment interest calculated in accordance with the Courts of Justice Act, R.S.O 1990, c.C.43;
- g) His costs of this proceeding on a substantial indemnity scale; and
- h) Such further and other relief and other interim orders as are deemed necessary by this Honourable Court.

INTRODUCTION

2. The Council of The Corporation of the Town of Niagara-on-the-Lake (the “Town”) has acted and continues to act in bad faith. The Council has improperly used and applied the provisions of the *Ontario Heritage Act*, R.S.O. c.O.18 (the “Act”) in an attempt to designate the plaintiff’s property as having cultural heritage value. The by-laws passed by the Town are a colourable attempt to control the design of the plaintiff’s intended re-development of his private property and to favour and support the objection of the plaintiff’s neighbour to the re-development of his property. Until the plaintiff moved to re-develop the property, the Town had not identified any clear or informed attributes of cultural value for the property. Now, confronted with an application for a demolition permit and a building permit, the Town has, after the fact, invented collateral cultural heritage attributes to improperly ground its motions to designate the plaintiff’s property. The Town is inappropriately attempting to address planning issues through the misuse of the *Act*.

3. The Town, a municipal corporation, has consistently and persistently failed to give any fair notice to the plaintiff, has secretly determined to designate the plaintiff’s property in order to thwart the plaintiff’s re-development plans and has failed to comply with the governing provisions of the *Heritage Act*. The Town has acted with untoward haste, without meaningful consultation with its own Municipal Heritage Committee and without any proper analysis, investigation or due diligence.

4. The Town, through its Council, has interfered with the protocol and practices of its own Municipal Heritage Committee, has brought motions forward at its meetings without notice and contrary to its own practices and protocol and has denied the plaintiff the opportunity to make meaningful representations and to address Council in respect to the Town's attempt to designate the plaintiff's property.

BACKGROUND

5. John Colin Black, the plaintiff, resides in the State of Florida; he has dual Canadian/U.S. Citizenship. On June 20, 2019, he purchased a residential property in the Town which property is known municipally as 27 Prideaux Street (the "Property"). The purchase price for the Property was \$1.4 million. The dwelling on the Property requires significant repair and restoration. While the plaintiff and his wife have been members of the Governors Council of the Shaw Festival since 1999, the plaintiff is an outsider to the political community of Niagara-on-the-Lake. The plaintiff reasonably expected attendant rights of private property ownership and use of his property without unlawful interference.
6. The plaintiff's plans were to redevelop the Property with an intention to restore and maintain the heritage elements, including the front façade, of the dwelling on the Property. With this intention, the plaintiff retained Robert MacKenzie, a well-known and respected architect in the Town, to prepare appropriate plans for the re-development of the Property. The plaintiff also retained a well-known and respected

builder in the Town to provide him with guidance in respect to the re-development and construction process that would be required for the Property and who was retained to do the construction work.

7. The plaintiff's plans included the retention of the dwelling and in particular the saving and restoration of the main features and façade of the dwelling. The plaintiff intended to add appropriate and balanced additions to the rear of the structure and connect the structure to a new carriage house which would replace an older and dilapidated garage located near the front of the Property.
8. The Property was not designated under the provisions of Ontario's Heritage Act. The Property was listed by the Town in its inventory of heritage assets. However, no attributes of cultural value were assigned to the Property when it was listed and, to date, none have been identified. The Property is not located in a Heritage Conservation District under the provisions of the Act.
9. The plaintiff's immediate neighbor to the north at 31 Prideaux Street is Thomas Elltoft. Thomas Elltoft is a well-known co-owner of a real estate company that does significant business in the Town. Mr. Elltoft's company acted for the seller and the plaintiff on the purchase of the Property without any disclosure of any limitations on the use or redevelopment of the Property and without disclosure of any "heritage" issues. He is a well-known political supporter of members of Council and the current Mayor. His front yard fence was a well-known and highly visible location for candidate signs

during the last municipal election including a sign posted in support of Mayor Betty Disero.

10. Mr. Elltoft's home has a structure on the south side of his property which historically encroaches into the plaintiff's property including the encroachment of a ground floor bay window into the side yard of the plaintiff's property. Mr. Elltoft has made known to the plaintiff and to members of Council his objections to the plaintiff's redevelopment of the Property and alleges that the plaintiff's re-development will block views from his bay window.

THE PLAINTIFF DISCLOSES HIS PLANS

11. Because the Property is a listed property with the Town notwithstanding that there are no heritage attributes identified for the Property and because the plaintiff will need to conduct some limited and selective demolition on the Property, the plaintiff was required to obtain a demolition permit from the Town. Accordingly, the plaintiff, through his architect, began a process of consultation with appropriate individuals at the Town.

12. During the last week of June, 2019, the plaintiff's architect met with the Town's heritage planner, Denise Horne, and provided Ms. Horne with the intended redevelopment plans for the Property. On June 26, 2019, the plaintiff's architect sent an email to Ms. Horne which in part provided as follows:

Hi Denise,

I am following up after my phone message late last week. In regard to the above address and clarification on what is being proposed by the new owners, the existing house will undergo renovation. There will also be some localized demolition and so therefore I want to clarify just what exactly this would entail. Firstly, we are quite certain that none of the proposed demolition relates to identifiable parts of the building that date to the original saltbox front block or to parts in an early rear addition where this older addition has not in some way suffered severe damage from subsequent additions or alterations in the recent past.

Notwithstanding this, it is the desire of the new owners to replace the existing foundation, of which parts may date to the original building; but again, this new basement work is being done to preserve the whole of the building including the front block from water damage or continued settlement. The stone foundation has been made much deeper, was underpinned with old concrete and it is leaking and cracked.

13. In response, Ms. Horne advised the architect that if any demolition was proposed and regardless of whether there was cultural heritage value, a 60-day notification in writing to Council was required. Ms. Horne requested a letter directed to Council in respect to the reasons for the proposed demolition.

14. Ms. Horne also requested the opportunity to attend at the Property. Ms. Horne and the plaintiff's architect met at the Property on June 28, 2019 whereupon the plaintiff's architect further discussed and described the plaintiff's plans for re-developing the Property. The architect made clear to Ms. Horne that there was no intent to demolish any elements of the structure which may contain heritage attributes.

15. Pursuant to Ms. Horne's request, on or about July 3, 2019 the plaintiff's architect issued a letter to Council of the Town and to the Town's clerk, Peter Todd, describing in significant detail the intended re-development and selective demolition for the Property.

16. The Town has an established Municipal Heritage Committee (the "Heritage Committee") and on July 9, 2019, the plaintiff's architect attended before the Heritage Committee to outline the proposal and the intention to effect a limited demolition on the property. The architect emphasized the intention to preserve the original structure. Various comments were made by members of the Committee and there were criticisms of and focus upon the preliminary design and views with little to no discussion on heritage values or attributes. The Committee moved and passed a resolution to support the proposed selective demolition on the Property. The Heritage Committee also determined to conduct a site visit prior to the next Council meeting.

17. On or about July 12, 2019, members of the Heritage Committee attended at the plaintiff's property and conducted a walk through of the Property. Attendees at the meeting included Councillor Clare Cameron.

18. On July 15, 2019, the plaintiff's architect submitted an extensive written submission to Council of the Town explaining the intended re-development for the Property and the proposed selective demolition for the Property.

19. At the July 15 Council meeting, Mayor Betty Disero moved a delegation request from Thomas Elltoft to a higher order in the agenda. When the matter was reached, the Mayor greeted Mr. Elltoft with “Hi Tom” and then Mr. Elltoft presented his concerns in respect to the plaintiff’s plans for his property. The plaintiff had an architectural consultant, Brian Marshall, attend the meeting and Mr. Marshall then addressed the Council and reviewed Mr. McKenzie’s correspondence. Mr. Marshall stressed the willingness of the Blacks to work with and cooperate with the Town in respect to their plans for the Property. During the ensuing Council discussion in respect to the presentations made and the report from the Heritage Committee, it was noted that the Property or structure was not designated under the Heritage Act. Council agreed that the Heritage Committee expressed a desire not to use a “heavy-handed approach” in respect to using the designation process under the Act.
20. As a result of the July 15, 2019 Council meeting, Council resolved that a meeting be convened whereby a sub-committee of the Heritage Committee would be formed to review and discuss the plaintiff’s proposed re-development plans and alternative design solutions. There was no basis in the Town’s practices and procedures for this intervention by Council. The Mayor urged that Thomas Elltoft should be on the sub-committee.
21. As part of her response to questions from Council, the Town’s Heritage Planner, Denise Horne, noted to Council that they would need to consult with the Heritage Committee first in respect to any process moving forward and the Heritage Committee

would then report back to Council. Other comments made at the meeting or questions posed by Council made clear that Council's concern and focus was on the design of the plaintiff's intended redevelopment for the Property, not on any heritage attributes.

22. A sub-committee meeting was convened for July 30, 2019. Thomas Elltoft, attended the meeting together with some of the members of the Heritage Committee and the heritage planner Denise Horne and the Director of Planning for the Town, Craig Larmour.

23. During the meeting, Mr. Elltoft made clear his objections to the development and alleged that the plaintiff's intended construction would block views from his bay window. Drew Chapman, a member of the Heritage Committee, who owns and operates a vacation rental business at 18 Prideaux Street, did not declare a conflict of interest. Mr. Chapman was a vocal opponent to the plaintiff's design.

24. The plaintiff's redevelopment of the Property did not require any applications under the Planning Act, R.S.O. 1990, c.P.13 (the "Planning Act"). The redevelopment plans satisfied all zoning requirements. Accordingly, there were no requirements or issues which stood in the way of the plaintiff obtaining both a selective demolition permit and, in due course, a building permit for his intended re-development of the Property.

25. On August 1, 2019, at a special Council meeting and without any notice to the plaintiff, Mayor Betty Disero requested that 27 Prideaux Street be added to the agenda.

Council approved the Mayor's request. The plaintiff says that the Mayor and Councillors by this time were engaging with staff or with Mr. Elltoft and were considering, without any notice to the plaintiff, how to thwart the plaintiff's re-development plans as the Mayor and members of Council did not agree with the plaintiff's design intentions or the potential limited restriction on views from Mr. Elltoft's bay window.

26. The plaintiff says that by this time the Town was motivated to interfere with the plaintiff's re-development plans for improper purposes and were acting contrary to the spirit and intention of the Act. The plaintiff further says that by this time, the Town was internally considering, without notice to the plaintiff, of a way or means to invoke the application of the Act, delay the redevelopment or invent a scheme to assign some type of heritage attributes to the plaintiff's property when none existed, or to date, have been identified.

27. On August 3, 2019, the plaintiff hosted an open-house at their property which was attended by various members of the public. The Mayor and Members of Council were invited as were members of the Heritage Committee and nearby neighbours. Only a small number of Councillors and members of the Heritage Committee attended. Neither neighbour at 31 or 21 Prideaux Street attended.

28. On August 13, 2019, there was another meeting of the Heritage Committee which the plaintiff attended and again presented through his architect his plans for re-

development. There were mixed comments from the Committee members, some fully supportive and some still critical of the design. The Chair noted that there was no vista from the neighbouring property as there exists a large hedge and vegetation between the plaintiff's Property and Mr. Elltoft's property.

29. On August 15, 2019, another special Council meeting was convened and again, the Mayor, without notice to the plaintiff, added the plaintiff's property to the agenda. Since the matter was not on the public agenda and since the Town requires registration in advance of a meeting to be a delegation or to make deputations to Council, the plaintiff had no opportunity or means to address the Mayor's last-minute addition of his property to the agenda.

30. As part of the information provided to Council, Council received an information report from the heritage planner, Denise Horne. In her report, Ms. Horne commented on a number of design issues for the plaintiff's re-development, including "the close proximity of the proposed new addition to the existing house and its bay window at 31 Prideaux Street." Attached to Ms. Horne's report, was a report prepared by an external heritage consultant, Marcus R. Letourneau dated August 7, 2019, which commented on the options for consideration by Town Council. In his report, Mr. Letourneau noted the following:

"Ultimately Council must ensure it acts in good faith and its primary objective is the conservation of cultural heritage resources rather than opposing a particular project. There have been several cases in this regard recently, and Council must be clear on why it is acting on whatever option it chooses."

31. At that meeting, Council passed a motion as follows:

WHEREAS there is concern regarding garages visually dominating the streetscape on residential streets, therefore be it resolved that Council believes that the properties 21, 27 & 31 Prideaux St contain cultural heritage value and that Council consults with the Municipal Heritage Committee concerning the cultural heritage value of the properties & the potential for designation under the Ontario Heritage Act and that further staff be directed to provide a report regarding options to regulate the location of garages in relation to the front face of residential dwellings.

Before the vote on the motion was called, Councillor Bisback asked whether the three affected property owners had been advised of the meeting. To this question, Mayor Betty Disero answered "yes". This was not true. The plaintiff had no notice of and no knowledge that his property was on the Agenda or that the Town was taking further steps to circumvent his plans for obtaining his demolition permit and moving forward with a building permit application.

32. On September 10, 2019, the Heritage Committee met and the plaintiff, with his heritage planner, attended the meeting together with his wife, contractor and architect. The plaintiff's property together with properties at 21 and 31 Prideaux Street were discussed by the Committee. Denise Horne noted to the Heritage Committee that there was no draft characteristics of heritage value for 27 Prideaux Street. The Chair of the Committee asked whether all three property owners had been notified to which Ms. Horne responded "not by staff". The Chair further noted that it was inappropriate to do a forced designation on a property when the owner has requested a renovation.

33. Council then convened on September 16, 2019. There was no item on the published public agenda in respect to 27 Prideaux Street. However, because the Mayor had previously added the plaintiff's property, without notice, to the agenda, the plaintiff, his wife and his representatives attended this Council meeting.

34. At the September 16 Council meeting Councillor Cameron brought forward a motion to add 27 Prideaux Street to the agenda and the motion was approved by Council. Late in the meeting, the Mayor then introduced 27 Prideaux Street for discussion and requested the Town's heritage planner to address Council and bring forward a draft motion to designate the plaintiff's property under the Act.

35. The legal representative for the plaintiff was in attendance and attempted to address Council. He was immediately ruled out of order by the Mayor on the basis that no delegation request had been made, notwithstanding that 27 Prideaux Street was not listed on the public agenda. The Mayor directed the Town's Clerk to shut off the speaker's microphone so as to prevent any further presentation by the plaintiff's legal counsel to Council. Council then proceeded to briefly discuss and then unanimously pass a motion to designate 27 Prideaux Street, together with 31 and 21 Prideaux Street, under the Act.

36. The plaintiff says that Council had already pre-determined to designate 27 Prideaux Street in advance of the Council meeting without any intention of hearing from the plaintiff or providing any opportunity to make representations. It was clear that the

Mayor had already met with staff or directed staff to prepare a motion to designate and the motion was presented as a finished draft. At that meeting, Councillor Cameron wrongfully stated that the plaintiff had refused to cooperate or compromise in respect to his design. The plaintiff says that no fair or appropriate opportunity was ever provided to the plaintiff to discuss with either the Heritage Committee or Council, in the absence of Mr. Elltoft, design alternatives or compromises for re-development of the Property.

37. The motion passed by Council was to designate all of the properties at 21, 27 and 31 Prideaux Street under the provisions of the Act. The plaintiff says that Council's attempt to designate three properties was intended to shield and mask Council's intention to prohibit the re-development of the plaintiff's Property. The discussion by Council made clear that the concern was with the design of the plaintiff's building plans and not with any heritage attributes of the Property.

38. Council did not complete all of the matters on its agenda at the September 16, 2019 meeting and re-convened on September 23, 2019 as a continuation of the meeting. However, at the September 23 meeting, the plaintiff's property was again brought back on to the agenda, without any notice to the plaintiff, whereby Council drafted further motions to separately designate each of 21, 27 and 31 Prideaux Street under the provisions of the Act. Council did not repeal its by-law or resolution passed at its September 16, 2019 meeting to designate all three properties. The plaintiff says that Council was attempting to isolate the plaintiff's property for designation and again

advantage its position knowing that the owners of 21 and 31 Prideaux, including Mr. Elltoft, would not oppose the designation. The plaintiff says that Council continued to internally discuss the plaintiff's property with its staff and third parties not yet known to the plaintiff in order to scheme and plan to defeat the plaintiff's re-development intentions.

39. On or about October 3, 2019, the Town issued a Notice of Intention to Designate the Property under the provisions of the Act and published the Notice in the Niagara Advance newspaper. The Niagara Advance has limited and poor circulation in the Town and Council is aware, through attendances at Council meetings, that various and other newspaper outlets have broader and greater readership in the Town. The plaintiff further says that the Town without any proper analysis, investigation, due diligence or input from its Heritage Committee invented various heritage attributes for the plaintiff's property including a new description of the Property together with 31 and 21 Prideaux Street as representing "a nested cultural heritage landscape".

THE TOWN HAS FAILED TO FOLLOW ITS OWN PROCEDURES AND PROTOCOL
AND HAS FAILED TO ADHERE TO THE PROVISIONS OF THE HERITAGE ACT

40. The plaintiff says that in several instances, and as described above, the Town failed to follow its own practices and protocol to ensure that items for discussion at its meetings appeared on the public agenda. The plaintiff says that Council, through the Mayor Betty Disero, and with the support and input of others, including non-elected

representatives, planned and schemed to bring forward a process under the Heritage Act in order to defeat the re-development plans of the plaintiff.

FAILURE TO COMPLY WITH THE PROVISIONS OF THE HERITAGE ACT

41. The plaintiff says that the Town has wholly failed to comply with the provisions of the Act and that the By-laws passed by the Town to designate the Property are null and void. The plaintiff says that the Town's non-compliance with the Act includes, but is not limited to the following:

- a) the Property did not meet the prescribed criteria for designation as required under subsection 29(1);
- b) Council of the Town did not consult with its Municipal Heritage Committee or properly consult for the purposes of moving to designate before giving notice of intention to designate contrary to subsection 29(2) of the Act;
- c) the Town has never provided proper notice of intention to designate under subsection 29(3) of the Act;
- d) the Notice issued by the Town is not properly issued and does not properly comply with subsection 29(4) of the Act;
- e) the Notice which was published in the newspaper does not comply with the requirements of subsection 29(4.1) of the Act and was not published in a newspaper of general circulation; and

f) the Town did not adhere to its own practices, procedures and protocol for bringing forward a motion to designate the Property.

FAILURE TO ISSUE A BUILDING PERMIT

42. On or about September 17, 2019, the plaintiff, through his contractors and architect, submitted a fully completed building permit application to the Town. Notwithstanding the obligation of the Chief Building Official of the Town to issue a building permit, the Town and its Chief Building Official have refused to issue such permit.

43. When inquiries were made on behalf of the plaintiff in respect to the non-issuance of the building permit, the plaintiff's agents were provided with vague responses. The plaintiff's agents were also advised that as the Property was being designated and therefore no building permit would be issued.

44. The plaintiff submits that the response of the Building Department of the Town was not correct, that the conditions of Section 30 of the Act had not yet derived and that there was no basis or authority for the Chief Building Official of the Town to deny the plaintiff his building permit.

45. The plaintiff further says that the conduct of the Town's Building Department and their responses to the plaintiff's agent only served to demonstrate that staff of the Town

were being directed internally or by Council to continue to prevent the plaintiff from moving forward with his intended redevelopment of the Property.

ABUSE OF PROCESS AND BAD FAITH

46. The plaintiff says that the Town has acted in bad faith, has abused the process under the Act and passed by-laws to designate the plaintiff's property under the Act for collateral purposes. The plaintiff says that the bad faith conduct and abuse of process by the Town includes but is not limited to the following:

- a) Council engaged in a process under the guise of the Act to control the design of the plaintiff's development plans for Property;
- b) Council gave undue regard towards and favoured the objections of the neighbour at 31 Prideaux Street in order to prevent the plaintiff from redeveloping the Property;
- c) Council failed to properly consult with and conduct appropriate investigation and due diligence through its Heritage Committee;
- d) Council created a sub-committee to consider the plaintiff's redevelopment plans, included the neighbour at 31 Prideaux Street and gave the neighbour unfair advantage in elevating the design criticisms of the plaintiff's redevelopment plans;
- e) Council persistently brought the Property forward to Council meetings without any fair notice, or notice at all to the plaintiff;

- f) Council wholly failed to consider the heritage attributes for the Property and failed to consider the fact that none had ever been identified;
- g) Without any proper investigation or analysis, Council ascribed heritage attributes for the Property, after the fact, in an improper attempt to justify its actions to move to designate the Property;
- h) The Town, as part of a continued plan to thwart the plaintiff's efforts to redevelop the Property, advised the plaintiff's agents that a building permit would not be issued at the time when there was no justification under the provisions of the Building Code Act to prevent the issuance of a building permit;
- i) Council has interfered with the plaintiff's normal use and enjoyment of his Property and has conflated its rights and entitlements under the *Planning Act* with its rights and entitlements under the Act. In these circumstances, the plaintiff was not required to seek any relief or make application under the provisions of the *Planning Act*, and
- j) Council has improperly used the Act to delay the plaintiff's building plans in order to organize a campaign of zoning amendments to ultimately defeat the plaintiff's plans.

THE PLAINTIFF'S DAMAGES

47. The plaintiff paid \$1.4 Million Dollars for the Property. The plaintiff has expended considerable sums of money to retain architects, contractors and a heritage planner in order to facilitate the redevelopment of the Property. The conduct of the Town and its Council has frozen the redevelopment of the Property and resulted in a significant

diminution of value in the Property. The plaintiff estimates that the damages he has suffered as a result of the Town's improper and unlawful conduct are at least \$750,000.00. The plaintiff will provide further and full particulars of his damages prior to the trial in this proceeding.

48. The plaintiff says that the conduct of the Town has been reckless and that the Town has shown wanton and complete disregard of the plaintiff's private property rights. The Town has used the Act improperly and has targeted designation of the Property and masked its intentions by moving to designate neighbouring properties all with a view to defeating the plaintiff's plans to redevelop the Property. The Town does not like the plaintiff's design plans. The Town has improperly supported the neighbour's objection to the plaintiff's design plans. Accordingly, the plaintiff says that he is entitled to an award of significant punitive damages against the Town.

49. The plaintiff repeats and relies upon the provisions of the Ontario Heritage Act, R.S.O. 1990, c.O. 18.

50. The plaintiff submits that this action be tried in the City of Hamilton, Ontario.

October 17, 2019

**DUXBURY LAW
PROFESSIONAL CORPORATION**
Barristers and Solicitors
500 – 1 King Street West
Hamilton, ON L8P 1A4

Brian Duxbury (LSUC #23341M)

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Lawyers for the Plaintiff

and

THE TOWN OF NIAGARA-ON-THE-LAKE

Plaintiff

Defendant

Court file no.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Hamilton

AMENDED
STATEMENT OF CLAIM

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