

removed many items of personal property that were listed in the February 2020 order, including motor vehicles, boats, trailers, tools, and mechanical equipment.

- [4] The plaintiff alleges that he was the owner of the personal property that was removed by the Town. The plaintiff further alleges that the February 2020 order was invalid or unauthorized, that the Town did not have the authority to enter onto the property, that the personal property removed by the Town did not constitute refuse or debris, that the Town did not take reasonable care in enforcing the order, and that the Town failed to account to him for the items that were removed from the property. In the statement of claim, the plaintiff claims damages of \$200,000.
- [5] The Town submits that it had the authority to make the February 2020 order and enter onto the property pursuant to the provisions of the *BCA*, that the February 2020 order is final and binding pursuant to s.15.3(7) of the *BCA*, and that it lawfully enforced the order. The Town also submits that it is immune from liability pursuant to s.15.4(3) of the *BCA*.
- [6] The plaintiff also alleges that the Regional Municipality of Niagara Police Services Board (“the NRP”) breached a duty to the plaintiff by not intervening to prevent the theft of his personal property and by failing to enforce mandatory orders related to the COVID-19 pandemic. Those allegations are denied by the NRP.
- [7] In the alternative, if there is any liability on the Town or the NRP, the defendants submit that the plaintiff is unable to prove any damages.
- [8] The following issues arise:
1. Is the February 2020 order a valid and binding order?
 2. Did the Town have the authority to enter onto the property to enforce the February 2020 order?
 3. Did the Town breach any duty of care owed to the plaintiff when the Town enforced the order in February 2021?
 4. Did the Town breach any duty to account to the plaintiff for the personal property that was removed from the property?
 5. Did the NRP breach any duty of care owed to the plaintiff?
 6. If there is any liability on the Town or the NRP, did the conduct of either defendant cause the plaintiff to suffer any damages?

THE FACTS

- [9] The property is approximately three acres in size. A house and a large barn have been on the property since at least 1997. There is no dispute that by 2020 there were several other structures on the property, including two garages and a storage shed.

- [10] The plaintiff purchased the property in approximately 1997. The plaintiff transferred legal title to the property to Tammy in approximately 2002, but he continued to occupy the property thereafter. I do not accept the plaintiff's submission that he was the true owner of the property. The plaintiff testified that he only transferred title to his friend, Tammy, so that she could use the property as collateral for a loan. However, the plaintiff did not dispute the Parcel Register that shows that he transferred the property to Tammy in 2002 for \$90,000. Further, the plaintiff acknowledged that Tammy paid the mortgage on the property after she acquired title in 2002, and he further acknowledged that he paid "rent" to Tammy by doing labour and taking care of the property for her.
- [11] Accordingly, I find that at all material times Tammy was the legal owner of the property, and that the plaintiff was an occupier of the property and the primary resident of the property. Regarding personal property, I find that the plaintiff was the owner of all of the items of personal property that were listed in the February 2020 order, and all of the personal property that was removed by the Town.
- [12] I find that the plaintiff operated a business as a mechanic under the name of "Mobile Mechanic". His business included the restoration and repair of motor vehicles for customers. He testified that he had many motor vehicles, trailers, and boats on the property that he was repairing or restoring at any given time. He also had many old inoperable vehicles that were used for parts. Some of these vehicles, boats, and trailers were stored in the barn or a garage, but I find that most were left outside and exposed to the elements.
- [13] The plaintiff also owned tools and mechanical equipment that he used in his business and stored on the property. I find that some of the tools and equipment were stored inside a garage or shed on the property, but again some of the mechanical equipment, such as the tire changing machine, were left outside in the elements.
- [14] Officer John Bridgeman ("Bridgeman") is a by-law officer for the Town. After receiving a complaint about the state of the property, Bridgeman and another Town employee attended at the property on January 29, 2020. Bridgeman testified, and I accept, that there were many vehicles, boats, and trailers scattered about the property, most of which were inoperable, damaged, or in a state of disrepair. I also accept Bridgeman's evidence that there were tools and pieces of equipment that had been left outside exposed to the elements, and appeared to be unusable, rusted, or abandoned.
- [15] Bridgeman testified that, in his opinion, some of the structures on the property were dilapidated or were otherwise unsafe. He testified, and I accept, that there was a 2016 stop work order regarding work on one of the garages, that at least two structures did not have a complete roof, that some of the walls of the structures were unfinished, and that the interiors of the structures were exposed to the elements. Further, the roof of one of the structures had collapsed and was sitting on top of an old vehicle.
- [16] Pursuant to s.15.1(3) of the *BCA*, the Town had enacted a Property Standards By-law, known as By-law No. 186-08 ("the By-law"), that prescribed standards for maintaining

and occupying property in the Town. The By-law, originally enacted in 2008, was in force at all relevant times.

- [17] Section 3.1 of the By-law reads, in part, “Every yard, including vacant lots shall be kept clean and free from: (i) refuse or derelict vehicles unless it is necessarily incidental to the normal operation of an industrial or commercial enterprise..., (ii) long grass, brush, undergrowth and weeds..., (iii) dilapidated, collapsed or partially constructed structures which are not currently under construction.”
- [18] The term “refuse” is defined in the By-law to include “(a) debris, junk, rubbish, or effluent..., and without limiting the foregoing, all garbage, discarded material or things, broken or dismantled things, and materials or things exposed to the elements; (b) wrecked, dismantled, partially dismantled, inoperative, discarded or abandoned machinery, trailers, boats, or vehicles and parts or accessories thereof”.
- [19] The term “debris” is defined to mean any material whatsoever capable of holding water and includes “tires, cars, boats, containers of any kind and garden fixtures.”
- [20] The term “derelict vehicle” is defined as “a used vehicle or the body or chassis of a used vehicle that (a) is not in an operating condition and is rusted, wrecked or partly wrecked or is dismantled or partly dismantled; and (b) is not insured and registered...and does not have a current, valid license [sic] plate attached to it; and (c) has been entirely or partially located outside of a building for more than 30 days.”
- [21] After he made his observations on January 29, 2020, Bridgeman issued the February 2020 order pursuant to s.15.2(2) of the *BCA*, on behalf of the Town. Regarding the structures on the property, the February 2020 order required the repair or demolition of the tall barn, a three-car garage, a two-car garage, and a lean-to shed.
- [22] Regarding the personal property on the property, the February 2020 order required the removal of all refuse and debris. Among other things, the order contained a list of specific items that Bridgeman identified as refuse, debris, or derelict vehicles that required removal. The list included 29 motor vehicles, a transport tractor-trailer, five boats, nine trailers, two forklift trucks, a bobcat, and an airplane. The order also required the removal of miscellaneous refuse and debris, including scrap metal, disused lumber, building materials, car parts, tires, and disused commercial equipment.
- [23] The February 2020 order was mailed to the owner of the property, Tammy. Because Bridgeman had spoken to the plaintiff and knew that the personal items belonged to the plaintiff, on February 7, 2020, Bridgeman posted a copy of the February 2020 order on the door of the plaintiff’s residence on the property. I find that the February 2020 order came to the attention of the plaintiff either through Tammy or through the copy of the order that Bridgeman posted on the door.
- [24] The plaintiff appealed the February 2020 order to the Property Standards Committee of the Town. The appeal was heard on March 5, 2020. Bridgeman attended the hearing and provided some testimony. The plaintiff addressed the committee, although he left the

hearing before it concluded and without giving any sworn evidence. It is apparent that the plaintiff informed the committee that he vehemently opposed the order and that he was upset about the order.

- [25] The Property Standards Committee upheld the February 2020 order and made an order requiring compliance with the February 2020 order on or before April 5, 2020. Letters dated March 6, 2020, that set out the decision of the committee were mailed to the plaintiff and Tammy. Neither Tammy nor the plaintiff complied with the February 2020 order.
- [26] Consequently, on November 6, 2020, the Town delivered a Final Notice to the plaintiff informing him that he was required to comply with the February 2020 order by November 20, 2020, failing which the Town would carry out the necessary work at the expense of the plaintiff. I find that Bridgman again posted a copy of this Final Notice on the door of the plaintiff's residence. I do not accept the plaintiff's evidence that he did not receive a copy of the Final Notice, as the evidence shows that he contacted police on November 6, 2020, and complained that Bridgeman had been trespassing on his property. Again, neither Tammy nor the plaintiff complied with the February 2020 order.
- [27] On February 1, 2, and 3, 2021, Bridgeman attended the property with Town employees and contractors to enforce the order. The Town had retained V. Gibbons Contracting Ltd. ("Gibbons") to demolish the structures and remove all of the refuse and debris. Gibbons had arranged for Modern Landfill to provide dumpsters that were used to dispose of the refuse and debris. The Town had also retained Anytime Towing to tow the derelict vehicles to a scrapyard.
- [28] When Bridgeman arrived on the property on February 1, 2021, Bridgeman discussed the process with the plaintiff, at which time Bridgeman told the plaintiff that if he wished to keep some of the items that were listed in the order, Bridgeman would arrange to place those items in a designated area of the property for the plaintiff. I find that, in this way, several items that were listed in the February 2020 order were set aside for the plaintiff to keep.
- [29] The four structures on the property that were the subject of the February 2020 order were demolished and removed by the Town and its contractors. All of the miscellaneous refuse and debris, including old cans, car parts, scrap lumber, building material, scrap metal and abandoned furniture was placed in dumpsters and removed by Modern Landfill.
- [30] Many of the motor vehicles that were listed in the February 2020 order were towed by Anytime Towing to a scrapyard. Some of the boats, trailers, and mechanical equipment listed in the order were demolished on site, placed in a dumpster, and removed by Modern Landfill.
- [31] However, the Town did not remove all of the items of personal property listed in the February 2020 order. Pursuant to arrangements made by the plaintiff, some of the listed motor vehicles were towed from the property to unknown destinations by friends of the

plaintiff. In addition, the Town left several listed items on the property for the plaintiff, including a few motor vehicles, two boats, one airplane, and some tools and equipment.

- [32] Unfortunately, neither the plaintiff nor Bridgeman have a clear record as to what was removed and what was left on the property. While they were on the witness stand, they both simply produced photographs of certain items and gave evidence as to whether that particular item had been removed or left. Neither party attempted to give evidence as to what was done or not done with each item listed in the order.

THE VALIDITY OF THE FEBRUARY 2020 ORDER

- [33] Responsibility for determining property standards within a municipality rests entirely with the municipality. The Superior Court of Justice has no inherent jurisdiction to determine or adjudicate property standards within a municipality: see *Anderson v. Hamilton (City)* (2009), 315 D.L.R. (4th) 486 (ON SC), at para. 14. Accordingly, in determining the validity of a municipal order made pursuant to the *BCA* regarding property standards, this court is bound by the provisions of the legislation.
- [34] I note that the Superior Court of Justice is the appellate court for appeals from decisions of a Property Standards Committee, pursuant to s.15.3(4) of the *BCA*. However, in this case, the plaintiff chose not to appeal the decision of the Property Standards Committee. Thus, the present action is not an appeal from the committee, and it should not be treated as one.
- [35] The *BCA* authorizes a municipality to prescribe property standards and enforce compliance with those standards. Pursuant to s.15.1(3) of the *BCA*, a municipality is authorized to pass by-laws to prescribe standards for the maintenance and occupancy of property within a municipality and to require property that does not conform with the standards to be repaired, maintained, or cleared to conform with the standards. There is no question that the By-law in this case was lawfully enacted pursuant to the provisions of the *BCA*.
- [36] As indicated earlier, among other things, the By-law requires properties in the Town to be kept clean and free from debris, refuse, derelict vehicles, and dilapidated, collapsed, or partially constructed structures.
- [37] Section 15.2(1) of the *BCA* permits an officer of a municipality to enter upon any property at any reasonable time for the purpose of inspecting the property to determine whether the property conforms with the property standards prescribed in a by-law. I find that Bridgeman lawfully entered on the property on January 29, 2020, for this purpose.
- [38] Section 15.2(2) of the *BCA* permits an officer of the municipality who finds that a property does not conform with the standards prescribed in a by-law may make an order giving reasonable particulars of the repairs to be made or stating that the site is to be cleared of buildings, structures, debris or refuse, and indicating the time for compliance with the order.
- [39] I find that Bridgeman made observations on January 29, 2020, which led him to conclude that the property did not conform with the standards prescribed in the By-law. Bridgeman

prepared a long list of items on the property that he determined fell within the definitions of “refuse”, “debris”, or “derelict vehicle” as set out in the By-law. The specific list of the vehicles, boats, trailers, tools, and equipment that did not conform with the standards is clearly set out in the February 2020 order. Moreover, the February 2020 order clearly identified the four structures that Bridgeman believed were dilapidated, collapsed, or in need of repair. Therefore, I find that Bridgeman, on behalf of the Town, lawfully issued the February 2020 order.

- [40] Section 15.2(3) of the *BCA* requires that any order made under s.15.2(2) be served on the owner of the property and such other persons affected by it as the officer determines. I find that Bridgeman appropriately served a copy of the February 2020 order on both the owner of the property and the plaintiff.
- [41] In summary, I find that the Town had the authority to pass the By-law, that Bridgeman had the authority to inspect the property on behalf of the Town, that Bridgeman made observations of conditions that he determined did not conform with the By-law, that the February 2020 order was lawfully issued, and that the order was properly served on the plaintiff and the owner of the property.
- [42] The *BCA* permits the plaintiff in this case to appeal the February 2020 order to the Property Standards Committee, and the plaintiff did so. The appeal was heard by the committee on March 5, 2020, and the order was confirmed with a modification of the compliance date. The plaintiff had the right to appeal the decision of the committee to the Superior Court of Justice, but he chose not to do so.
- [43] Section 15.3(7) of the *BCA* states that where an order is confirmed or modified by the committee, or on an appeal by a judge, the order “shall be final and binding upon the owner and occupant who shall carry out the repair or demolition within the time and in the manner specified in the order.” Therefore, the net effect of the events in this case is that the February 2020 order is deemed to be final and binding, with a modification that required compliance on or before April 5, 2020.
- [44] The plaintiff submitted that some of the listed vehicles and trailers were operable, or were licenced and plated. The plaintiff also submitted that some of the items in the list were tools of his trade and/or equipment that he used in his business. Therefore, it is the plaintiff’s position that some of the vehicles, trailers and tools did not constitute refuse, debris, or derelict vehicles. The plaintiff submitted, therefore, that some of these items should not have been included in the February 2020 order.
- [45] However, I repeat that the February 2020 order is deemed to be final and binding. Further, as discussed in *Anderson*, in the absence of an appeal this court does not have the jurisdiction to permit the parties to re-litigate the particulars of a municipal property standards order. Therefore, this court is required to accept that the items listed in the February 2020 order fall within the definitions of refuse, debris, or derelict vehicles, and that the owner and the plaintiff were required, among other things, to remove the items listed in the order by the prescribed date.

- [46] For these reasons, I find that the February 2020 order is a valid order, that it is final, and that it is binding. The plaintiff is not now permitted to litigate the issue of whether some of the items listed in the February 2020 order should not have been the subject of the order.

THE TOWN'S AUTHORITY TO ENTER ONTO THE PROPERTY

- [47] The plaintiff submitted that, despite the February 2020 order, representatives of the Town trespassed on the property as they did not have the right to enter onto the property on February 1, 2021, to enforce the order.
- [48] I find that the order, as modified by the Property Standards Committee gave the plaintiff until April 5, 2020, to comply. Further, I find that the order and the subsequent correspondence from the Town informed the plaintiff that if he failed to comply with the order, the Town would carry out the required work at the expense of the owner and the plaintiff.
- [49] The plaintiff was not entitled to any further notice to comply with the February 2020 order. However, I find that the Final Notice dated November 6, 2020, gratuitously extended the time for the plaintiff to comply to November 20, 2020. Again, that notice informed the plaintiff that if he failed to comply with the order, the Town would carry out the necessary work at the plaintiff's expense.
- [50] Given that neither the owner nor the plaintiff complied with the February 2020 order, I find that the Town had the right to enter onto the property to enforce the order, pursuant to s.15.4(1) and (2) of the *BCA*. Thus, I reject the plaintiff's submission that representatives of the Town trespassed on the property on February 1, 2, and 3, 2021.

THE TOWN'S ENFORCEMENT OF THE ORDER

- [51] The plaintiff alleges that the Town breached its duty to the plaintiff as the Town and its contractors wrongfully destroyed, damaged, or removed personal property that belonged to him when they enforced the order, thereby causing damage to the plaintiff. The plaintiff also alleges that the Town wrongfully demolished the entire tall barn as the original barn had been in place for many years and only the addition to the barn had an unfinished roof.
- [52] The Town submits that it is immune from liability pursuant to s.15.4(3) of the *BCA* that states, in part, that "a municipal corporation or person acting on its behalf is not liable to compensate the owner, occupant or any other person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under subsection (1)."
- [53] I find that s.15.4(3) does not provide absolute immunity to the Town. In my opinion, when representatives of the Town attend a property to enforce an order made under s.15.2(2), the words of s.15.4(3) imply that the Town owes a duty of care to the owner and the occupants of the property to reasonably exercise its powers. The Town representatives are not permitted to do whatever they want to do.

- [54] In addition, the Court of Appeal has confirmed that a duty of care is owed by a municipality where the enforcement of a by-law may have an impact on an activity that takes place on the property. In the case of *Rausch v. Pickering (City)*, 2013 ONCA 740, 369 D.L.R. (4th) 691, a decision with respect to an animal control by-law, the court stated at para. 72 that “a municipality considering whether to enforce a by-law that may restrict a farm operation is in a relationship that is close and direct such that a *prima facie* duty of care should be recognized.” In my view, the same principle applies to enforcement of a by-law that may restrict any business operated from the property, as in the present case.
- [55] Regarding the standard of care, s.15.4(3) refers to the “reasonable exercise” of the municipality’s powers. Further, in *Rausch*, at para. 87-88, the court wrote that by-law officers have an obligation to act reasonably and in good faith in any steps they take to enforce a by-law. I will add that the by-law officer must also act within the scope of the municipal order.
- [56] Therefore, I find that in the present case there was a duty on the Town, and its representatives, to act within the authority conferred by the February 2020 order, act in good faith, and exercise reasonable care in enforcing the order.
- [57] Regarding the structures on the property, I find that the plaintiff has no standing to bring an action against the Town. The structures are all fixtures on the real property. The property is owned by Tammy and Tammy is not a party to this action. The plaintiff has no legal interest in the structures that were on the property. Therefore, the plaintiff’s claim, if any, can only be considered with respect to the personal property.
- [58] Regarding the personal property listed in the February 2020 order, as I indicated earlier, neither the plaintiff nor Bridgeman provided an accurate list of what was removed from the property, or what was left on the property. However, despite the vague evidence, the plaintiff and Bridgeman seem to agree about the fate of many of the listed items.
- [59] Accordingly, with respect to the personal property, I make the following findings:
1. A great deal of debris including scrap metal, old cans, pieces of lumber, car parts, garbage, broken furniture, and inoperable machinery was put into dumpsters and taken to a landfill site.
 2. The Town removed numerous motor vehicles from the property that were damaged, partly dismantled, or in a state of disrepair. None of the vehicles that were removed from the property were operable; any motor vehicle that was removed by the Town was towed and disposed of as scrap metal.
 3. Some of the vehicles that were removed by the Town appeared to be licenced or plated, but there is no clear evidence regarding the validity or currency of the licences or insurance. Accordingly, I find that none of the vehicle licence permits were valid and current, and none of the vehicles were insured such that they could be lawfully operated on a roadway.

4. There is no evidence that the plaintiff had been repairing any of these vehicles for customers in the course of his business. Therefore, I find that none of the vehicles removed by the Town were necessarily incidental to the normal operation of a commercial enterprise.

5. On February 1, 2021, the plaintiff signed a note by which he requested that any vehicles removed by the Town be towed to a scrap metal business known as Atar Metals. Except as discussed below, I find that the Town complied with that request.

6. The Town did not remove any motor vehicle, boat, trailer, or piece of equipment that was not specifically listed in the February 2020 order.

7. Some of the motor vehicles that were listed in the order were towed from the property by friends of the plaintiff. There is no clear evidence as to how many or which vehicles were removed in this way.

8. Some of the boats, trailers, and one airplane that were listed in the order were crushed on the property, put into dumpsters, and taken to a landfill site.

9. Some of the tools and mechanical equipment listed in the order that Bridgeman believed were broken, inoperable, or abandoned were put into dumpsters and taken to a landfill site.

10. Bridgeman used his discretion to permit the plaintiff to keep some of the items that were listed in the order. Listed items that were not removed by the Town included a blue airplane, a white short bus, the Ford Classic recreational vehicle, two boats, a red pickup truck, a yellow Jeep, a riding lawnmower, lawn cutting tractor attachments, and many assorted tools.

11. Items that were removed by the Town included a transport tractor-trailer, a five-car hauler, a yellow airplane, two forklift trucks, a bobcat, a U-Haul truck, a cube van, a Golden camping trailer, a broken work van with the name Mobile Mechanic on the side panel, three boats, a riding lawnmower, an engine hoist, a hydraulic lift, a tire machine and numerous inoperable or damaged cars and trucks.

[60] There is a dispute about the Ford Classic recreational vehicle. Bridgeman testified that he believes that it was not removed, but the plaintiff testified that it was removed by the Town. The photographs that were adduced at trial show this vehicle on the property. In my view, this dispute is irrelevant as the Ford Classic recreational vehicle is one of the items listed as refuse and debris in the February 2020 order. The Town was entitled to remove it. However, on a balance of probabilities, I find that it was not removed by the Town.

[61] As to the conduct of the Town in removing the items, I find that the Town employees and contractors, under Bridgeman's guidance, exercised reasonable care and good faith. In particular, Bridgeman used his discretion to not remove all of the vehicles, trailers, boats, and planes that were listed in the February 2020 order. In that respect, I accept that Bridgeman discussed the matter with the plaintiff on the first day of the enforcement and

made the plaintiff aware that if the plaintiff wished to keep specific items, the Town would set those items aside for him. The Town was not required to do so, as the Town had the authority to remove all of the items listed in the February 2020 order.

- [62] Further, I find that, prior to enforcing the order, the Town exercised reasonable care and good faith by extending the time for the plaintiff to comply with the order. Based on the decision of the Property Standards Committee, the Town could have enforced the order at any time after April 5, 2020. The Town however gratuitously extended the time for compliance to November 20, 2020, and then chose to wait until February 1, 2021, before taking action. I accept the evidence that the Town would have preferred that the plaintiff simply complied with the order.
- [63] Still further, I find that the plaintiff was agitated while the Town representatives were on the property. There was a minor verbal altercation between the plaintiff and a Town employee. I also accept the evidence that the plaintiff was erratically driving around the property while the Town was trying to enforce the order. Despite the plaintiff's conduct, I find that the Town and its employees acted responsibly by avoiding direct confrontations with the plaintiff.
- [64] I also take into account the fact that the Town asked the plaintiff where he would like the vehicles towed, and when he requested that they take the vehicles to Atar Metals, the Town complied with his request, except as discussed below.
- [65] For these reasons, I find that the Town acted in good faith, within the scope of the order, and with reasonable care. The Town did not breach its duty of care to the plaintiff when it enforced the February 2020 order.

THE TOWN'S ACCOUNTING TO THE PLAINTIFF

- [66] The plaintiff alleges that the Town breached its duty by failing to inform him of the location of the items that it removed from his property or provide him with an opportunity to get those items back.
- [67] In my opinion, the power to dispose of refuse and debris removed by a municipality is implicit in a municipal property standards by-law. In the case of *Saska v. Norfolk County*, 2015 ONSC 3498, Heeney, J. wrote at para. 28 that a municipality "has the power to dispose of debris as a common law bailee, and is subject only to the duty to act reasonably." I adopt that statement.
- [68] I find that many of the tools and equipment, as well as some of the boats and trailers, were crushed onsite at the property, placed in dumpsters, and taken to a landfill site by Modern Landfill. The Town was entitled to take those steps, and the plaintiff was aware that those items were deposited in a landfill.
- [69] I find that all of the vehicles that were removed by the Town were treated as scrap metal. Moreover, the plaintiff knew that the vehicles were being towed to Atar Metals, at his request, to be scrapped. He knew where to find those vehicles if he chose to do so.

- [70] Therefore, I find that the plaintiff was aware of the destinations of most of the items that were removed by the Town. The only exceptions are the transport tractor-trailer and a customized forklift. Those items were apparently discovered by the plaintiff in Gibbons' yard. There is no real explanation as to why these items were taken to Gibbons' yard as opposed to Atar Metals or Modern Landfill. In any event, both of these items were classified as refuse and debris. The Town was entitled to dispose of them as they saw fit.
- [71] I further find that a citizen does not have a right to an accounting for the whereabouts of items that are removed as refuse and debris in the enforcement of a municipal property standards order. More specifically, I find that there is no duty on a municipality to take an inventory of each item removed as refuse and debris and account for the value of each item. As discussed in the *Saska* decision at para. 30, to require such a duty of a municipality would be ludicrous.
- [72] In summary, I find that the Town did not breach any duty to the plaintiff to account for the whereabouts of the items removed.

THE LIABILITY OF THE NIAGARA REGIONAL POLICE

- [73] The plaintiff submits that the NRP failed to stop the Town from trespassing on his property and/or stealing his property. There is no merit to either of these submissions.
- [74] Police officers were at the property pursuant to a contract with the Town for the purpose of keeping the peace while the Town enforced the February 2020 order. The police officers did, in fact, keep the peace. Furthermore, as discussed earlier, the Town and its representatives were entitled to enter onto the property and remove the items listed in the February 2020 order.
- [75] The plaintiff also submits that the NRP breached a duty by failing to charge the Town representatives with breaching the mandatory COVID-19 order that was in effect at the time. In my view, this submission is entirely irrelevant to the issues before this court.
- [76] In summary, I find that there is no liability on the NRP.

THE PLAINTIFF'S DAMAGES

- [77] There is no need to determine the plaintiff's damages given my finding that there is no liability on either of the defendants. However, if I am incorrect on the liability issue, I find that the plaintiff has not proved that either of the defendants has caused him to suffer any damages.
- [78] The primary thrust of the plaintiff's submission on damages relates to the loss of his personal property. The only proposed evidence of the value of the items that were removed are the advertisements downloaded from the Internet that the plaintiff tendered at trial. I marked the advertisements as lettered exhibits and reserved my decision as to whether they were admissible as evidence. I hereby provide my decision on that issue.

- [79] The advertisements that were tendered were pictures of items that unknown persons were attempting to sell for a certain price. These advertisements, by their nature, are hearsay evidence, and therefore are presumptively inadmissible.
- [80] The general rule regarding the presumptive inadmissibility of hearsay evidence arises from the fact that the person who is providing the evidence is not before the court, and therefore that person cannot be cross-examined by the litigants or assessed by the court. Thus, it is difficult to determine the accuracy, precision, and reliability of the proposed evidence. I accept that there are some exceptions to this general rule, but those exceptions all have specific conditions, including requirements for some indicia of reliability.
- [81] In the present case, the unreliability of the proposed evidence is obvious as the identity of the sellers and the sites from which the advertisements were downloaded is unknown with respect to most of the lettered exhibits. Moreover, there is no reliable evidence that the nature and condition of the items in the advertisements is similar to the nature and condition of the items that the plaintiff submits were removed from the property. Thus, the advertisements, on their face, have little to no value.
- [82] The principled exception to the hearsay rule requires a litigant who tenders hearsay evidence to show both the necessity and the reliability of the proposed evidence. In this case, the lettered exhibits are remarkably unreliable for the reasons I have discussed. Further, it is not necessary to accept these exhibits as evidence of the value of the items removed from the property as the plaintiff could have retained the services of a valuator to provide an opinion of value.
- [83] Furthermore, I find that this proposed evidence has little relevance to the plaintiff's damages claim. That is, even if I were to accept that the advertisements were legitimate offers to sell made by law abiding sellers through legitimate websites, it must be noted that the advertisements contain suggested sale prices, not valuations. At best, the advertisements might provide some information as to replacement costs. That information is not at all helpful as a plaintiff who is entitled to damages for lost property is not entitled to replacement costs; rather that plaintiff is entitled to recover the value of the property lost to him: see S. M. Waddams, *The Law of Damages*, looseleaf edition (Toronto: Thomson Reuters Canada, 2025) at §.1.4.
- [84] Therefore, my ruling on this evidentiary issue is that the advertisements that were tendered by the plaintiff are not admissible for the purpose of proving the value of the items that were removed from the property. However, the plaintiff testified that the lettered exhibits constituted his list of items that he says were removed from the property. Therefore, I will admit these advertisements into evidence only for the purpose of assisting me in understanding the plaintiff's position as to what was removed from the property, not for the value of the items.
- [85] Regarding the quantum of damages, the onus is on the plaintiff in this case to prove his damages. As Morden J. wrote in *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd.*

(1978), 20 O.R. (2d) 401 at para.77, “The basic principle is that the onus is on the plaintiff to prove its damages on a reasonable preponderance of credible evidence.”

- [86] Given my ruling that the advertisements tendered by the plaintiff are not admissible as evidence of the value of the items removed, I find that the plaintiff has not provided any evidence of the value of the personal property that he alleges was wrongfully taken from him. In addition, the plaintiff has not provided any information that could be used as a foundation for a valuation, such as the purchase price, age, condition, or working condition of most of the items that the Town removed from the property.
- [87] Regarding general damages, the plaintiff made general comments about his physical and/or mental health throughout the trial. However, he provided no medical evidence of any physical or mental health problem that was caused by these defendants. I note that the plaintiff testified that at one point he threatened to commit suicide, but that evidence was vague and unsubstantiated. The plaintiff also provided no evidence of lost income that would support an economic loss claim.
- [88] I adopt the following statement from the British Columbia Court of Appeal in the case of *Vancouver Canucks Limited Partnership v. Canon Canada Inc.*, 2015 BCCA 144, 76 B.C.L.R. (5th) 80 at para. 146, “A party claiming a loss bears the onus of proving that a loss has occurred and the value of that loss. Where there is evidence available to prove its loss, it is incumbent on the plaintiff to lead it. If it fails to do so, leaving no basis for assessment, the court may...decline to make an award of damages.”
- [89] In the present case, I find that the plaintiff has not proved on a reasonable preponderance of credible evidence that he has suffered any damages caused by the removal of his personal property, that he has suffered any economic loss, or that he is entitled to general damages. For all these reasons, even if the plaintiff could prove liability on the part of either of the defendants, I would decline to make an award of damages.

CONCLUSION

- [90] In conclusion, I find that the Town had the authority to make the February 2020 order, that the Town had the authority to enter onto the property to enforce the order, that the February 2020 order is final and binding, that neither the Town nor the NRP breached any duty owed to the plaintiff, and that even if there was any liability on the Town or the NRP, the plaintiff is unable to prove any damages. Therefore, the plaintiff’s action is hereby dismissed.
- [91] If either party wishes to make submissions as to costs, I direct that the party seeking relief shall serve and file written submissions, no longer than five pages within 20 days of the release of this decision, with responding submissions to be delivered within 10 days thereafter. If no submissions are received within this time frame, the parties will be deemed to have settled all of the costs issues as between themselves. A copy of any such submissions, once filed with the court, shall also be emailed to the Judicial Assistants at: St.Catharines.SCJJA@ontario.ca.

Justice J. R. Henderson

Released: February 25, 2026

CITATION: Desmarais v. Fort Erie (Town), 2026 ONSC 1126
COURT FILE NO.: CV-21-00060272-0000
DATE: 2026-02-25

2026 ONSC 1126 (CanLII)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Raymond Desmarais

Plaintiff

– and –

The Corporation of the Town of Fort Erie, The Regional
Municipality of Niagara Police Services Board

Defendants

REASONS FOR JUDGMENT

J. R. Henderson J.

Released: February 25, 2026