

**CITATION:** Brox Company Limited v. Konzelmann Vineyards Inc., 2026 ONSC 2405  
**COURT FILE NO.:** CV-24-00062358-0000  
**DATE:** 2026-04-23

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Brox Company Limited ) J.P. Maloney, counsel for the Applicant  
 )  
Applicant )  
 )  
- and - )  
 )  
Konzelmann Vineyards Inc. ) P. DeMelo, counsel for the Respondent  
 )  
Respondent )  
 )  
- and - )  
 )  
The Corporation of the Town of ) K. Shedden, counsel for the Respondent  
Niagara-on-the-Lake )  
 )  
Respondent )  
 )  
 )  
 )

**HEARD:** February 3, 2026

**THE HONOURABLE JUSTICE A.J. OHLER**

**REASONS FOR JUDGMENT**

- [1] The applicant, Brox Company Limited, applies for declaratory relief and permanent injunctions against Konzelmann Vineyards Inc. (“Konzelmann”) and The Corporation of the Town of Niagara-on-the-Lake (the “Town”).
- [2] In the notice of application, the applicant sought declarations that Konzelmann’s use of the property was in violation of the Town’s by-laws and site-specific plan and sought an injunction restraining Konzelmann’s use to that in conformity with same. The applicant

also sought an injunction compelling the Town to enforce its by-laws as against Konzelmann.

- [3] On the day the application was to be argued, Konzelmann consented to the declarations and permanent injunctions sought. The application proceeded as between the applicant and the Town.
- [4] The applicant seeks orders in the manner of mandamus, compelling the Town to enforce its zoning by-law. The applicant also seeks an order restraining the Town from encouraging and/or taking steps to facilitate Konzelmann's use of the land not in compliance with the by-law or site plan, under s. 440 of the *Municipal Act*, 2001, S.O. 2001, c. 25.
- [5] For the following reasons, the application is dismissed.

### ***Background***

- [6] The evidence on this application included affidavits from Edward Werner, President of Brox Company Limited, Kirsten McCauley ("McCauley"), Director of Community and Development Services for the Town, and Jim Reschke ("Reschke"), President of Konzelmann.
- [7] The applicant and Konzelmann operate wineries on adjacent lands in the Town. The north end of both properties run along the shore of Lake Ontario; Lakeshore Road runs along the south. The Konzelmann winery is situated close to the road. Deeper into the land, close to the lake, sits a residence and gazebo. These buildings are adjacent to and within a few hundred metres of a residence, agricultural buildings, and vineyard on the applicant's property.
- [8] Both lands are zoned for agricultural use, pursuant to the Town's Zoning By-Law 500A-74 (the "by-law"). Within areas zoned agricultural, the primary use of the land is farming. Farm wineries and larger-scaled estate wineries are permitted as a secondary use. Operation of a farm winery does not require a by-law amendment; operation as a larger-scaled estate winery requires a site-specific zoning amendment. Every estate winery has its own site-specific by-law, i.e. site plan agreement.
- [9] In 1987, Konzelmann obtained a site-specific zoning amendment to operate as an estate winery. In 1994, the Konzelmann by-law was approved, expanding the use of the land to include the retail sale of wine, an indoor hospitality room, and agricultural market. The site-specific by-law, or agreement was last updated in 2009; it does not permit Konzelmann to host outdoor hospitality events, like weddings, on the land.
- [10] Since approximately 2017, Konzelmann has hosted outdoor special events pursuant to the Town's 'special event permit' policy. In 2023, Konzelmann applied for and obtained one 'special event permit' to cover 21 separate outdoor events between May and October 2023.

- [11] The outdoor events hosted by Konzelmann generally occur near the gazebo, close to the lake and immediately adjacent to the residence, agricultural buildings and vineyard on the applicant's land.
- [12] As set out in Werner's affidavit, these events have restricted the applicant's ability to carry out its normal farming activities, such as the application of pesticides, at the risk of disturbing the events. These events are also a nuisance; vehicles are sometimes parked outside designated parking areas and can interfere with the quiet enjoyment of the applicant's land, as they often involve the use of amplified music. Given the disruption caused by these events next door, a proposed sale of the applicant's property did not proceed.
- [13] The applicant maintains that the hosting of these events has introduced a commercial use in an area zoned agricultural, which interferes with the applicant's ability to conduct normal farming activities and constitutes a nuisance.
- [14] Werner met with the Town on several occasions in 2023 and 2024 to raise concerns with the use of the Konzelmann property.
- [15] The Town did not take any steps to enforce the general by-law or site-specific Konzelmann by-law.
- [16] In 2024, the applicant began this application seeking relief as against Konzelmann and the Town. With respect to Konzelmann, the applicant sought a declaration that Konzelmann's use of the land to host outdoor events was (i) contrary to the Town's zoning by-law, and (ii) inconsistent with the approved site-plan agreement between Konzelmann and the Town. The applicant sought a permanent injunction restraining Konzelmann from (i) any use of its land not permitted by the by-law; (ii) any use inconsistent with the approved site plan agreement; and (iii) any use inconsistent with any license that may be issued by the Alcohol and Gaming Commission of Ontario. With respect to the Town, the applicant sought a permanent injunction restraining the Town from permitting Konzelmann to use its lands in a manner not permitted by the by-law and site plan agreement.
- [17] McCauley , Director of Community and Development Services for the Town, provided an affidavit and was cross-examined.
- [18] According to McCauley, in the fall of 2023, the Town met with Konzelmann and advised that, based on the number of outdoor events occurring, Konzelmann needed to bring an application to amend its zoning by-law and site plan agreement. In 2024, Konzelmann was advised that the Town would no longer issue a single special event permit authorizing multiple outdoor special events, as it had done in the past.
- [19] In the spring of 2024, Konzelmann submitted one application for a special event permit to host 17 separate outdoor special events between June and October 2024. The application was not distributed to Town staff for review, and the permit was not issued.

- [20] The events proceeded in the absence of a special event permit. As of the date the Werner application was sworn, the applicant was aware of eight special outdoor events having taken place.
- [21] The Town's by-law enforcement falls within the fire services and by-law enforcement offices. McCauley was not aware of any direction given to by-law enforcement not to act on the applicant's complaints.
- [22] Reschke swore an affidavit and was cross-examined. He acknowledged that the Konzelmann site-specific agreement does not provide for outdoor special events. Instead, from 2017 through 2023, Konzelmann obtained one special event permit to host a series of outdoor events on its property.
- [23] Reschke recalled meeting with the Town in the fall of 2023 but did not remember anyone advising him that Konzelmann had to apply for re-zoning or a site-specific amendment to host outdoor events, or that the Town would no longer issue a single special event permit to allow for multiple outdoor special events. Reschke did not think that discussion occurred because Konzelmann applied for a special event permit for 2024. He confirmed that in 2024, Konzelmann applied for one special event permit to host approximately 17 outdoor events.
- [24] Reschke confirmed that the Town did not issue a special event permit, and that the events proceeded anyway. Reschke explained that the Town said, "*We can't issue a permit, but we're not going to stop you from doing events as well.*" He believed that the Town's legal counsel made that representation to him but was not sure. He was not sure if McCauley was present when that assurance was made. In essence, the Town said, "*We're not gonna stop you. We've allowed you to do these in the past.*"
- [25] During submissions on this hearing, the court learned that Konzelmann continued to host outdoor special events in 2025.

### **Issues**

- [26] On the day this application was to be argued, Konzelmann consented to a declaration that in 2024 and 2025 Konzelmann used its lands to host outdoor special events, in contravention of the Town's by-law and Konzelmann's site plan agreement. Konzelmann also consented to a permanent injunction restraining it from any use of its lands not permitted by the by-law and site plan agreement. A copy of the Order is attached as Schedule A. This order settles the issues between the applicant and Konzelmann. Future use of the Konzelmann lands in contravention of the by-law or site plan agreement would constitute a breach of a court order.
- [27] Argument proceeded with respect to the applicant's request for an injunction compelling the Town to enforce its by-law and/or restraining the Town from encouraging or facilitating Konzelmann's breach of the by-law or site plan agreement.

### *The Position of the Parties*

- [28] The applicant argues Konzelmann has operated in clear breach of both the by-law and site plan agreement. The Town has been aware of the breaches and refused to enforce its own by-laws. The applicant seeks an order by way of mandamus, compelling the Town to enforce its zoning by-law and/or the site plan agreement with Konzelmann. The applicant also seeks an order restraining the Town from encouraging and/or facilitating breach of its by-laws under s. 440 of the *Municipal Act*, S.O. 2001, c. 25.
- [29] The Town acknowledges that the by-law and site-specific agreement with respect to Konzelmann do not permit outdoor special events. However, the Town argues that it does not have a specific duty to enforce its by-law and, as such, an order for mandamus, prohibition, and/or a statutory injunction is not available to the applicant.

### *Analysis*

- [30] Mandamus is an extraordinary and discretionary remedy. Mandamus can issue to compel a municipality to act, but only where there exists a legal duty compelling the activity in the first place: *Hanzelka v. Oshawa (City)*, 2011 ONSC 4435, at para. 28, relying on *Freitag v. Penetanguishene (Town)* (2005), 202 O.A.C. 227, (Div. Ct.), [2005] O.J. No. 4019 (Div. Ct.). In *Freitag*, the applicant sought a mandatory order requiring the municipality to enforce two by-laws to improve sightlines at 11 intersections. On an application for judicial review the Divisional Court held that mandamus was not available where the by-law does not impose a duty of enforcement: *Freitag*, at paras. 8-12.
- [31] The zoning by-law does not impose an enforcement duty on the Town. An order in the manner of mandamus or prohibition is not available.
- [32] That does not leave a taxpayer without a remedy for a breach of a by-law.
- [33] A taxpayer who seeks compliance with a municipal by-law may seek a statutory injunction under s. 440 of the *Municipal Act*. Section 440 provides:
- If any by-law of a municipality or by-law of a local board of a municipality under this act or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board.
- [34] In other words, the activities constituting the contravention may be restrained by the court, regardless of enforcement (or lack thereof) by the municipality. In *Township of King v. 2424155 Ontario Inc.*, 2018 ONSC 1415, at para. 28 (“*King*”), the court determined that section 440:
- [S]hows a clear legislative intention that a restraining order (i.e., an injunction) is one of the remedies available to a municipality or a taxpayer to seek a remedy for contravention of a by-law. There is no requirement to exhaust other remedies. Indeed, the language in s. 440 “in addition to any other remedy and to any penalty imposed by the by-law” indicates a

legislative intent that a restraining order is one of the tools available to municipalities (and taxpayers) to enforce compliance with municipal by-laws: *Springwater (Township) v. 829664 Ontario Ltd.*, 2008 CanLII 8261 at paragraph 8 (ONSC).

- [35] As an example, the court in *JJ's Hospitality v. Kal Tire*, 2020 ONSC 6198 granted the taxpayer's application to restrain another taxpayer in breach of a municipal by-law under s. 440.
- [36] A taxpayer is not required to demonstrate that the municipality acted unreasonably or in bad faith in declining to enforce its by-law before it may obtain injunctive relief: *Syrowik v. Wheeler*, 2021 ONCA 819, at para. 9.
- [37] The applicant has not identified a case in which a taxpayer obtained an order under s. 440 of the Act to restrain a municipality.
- [38] The Town argues that the investigation and enforcement of by-laws is a matter of broad discretion.
- [39] There is a strong public interest in the enforcement of by-laws created in the public interest: *City of Toronto v. Polai*, [1970] 1 O.R. 483 (C.A.), ("*Polai*"). This is clear from a review of the cases in which statutory injunctions under s. 440 have been granted to a municipality seeking to restrain private individuals: see *Polai*; *King*; *The Corporation of the Township of Schreiber v. Figliomeni et al.*, 2018 ONSC 3657 ("*Schreiber*"); *Regional Municipality of York v. DiBlasi*, 2014 ONSC 3259 ("*York*").
- [40] Based on this strong public interest, courts have been prepared to presume that government is acting in the public's interest in seeking to enforce compliance with by-laws created to serve a public purpose: see *King*, at paras. 52, 53; *Schreiber* at paras. 32, 34. Similarly, in *York*, at para. 62, the court held that irreparable harm and the balance of convenience need not be considered under s. 440, as "the public authority is presumed to be acting in the best interest of the public and a breach of the law is considered to be irreparable harm to the public interest."
- [41] There is no question that a municipality has broad discretion in the enforcement of its by-laws, but that discretion is not unfettered: a municipality must act reasonably and in good faith: *Foley v. Shames*, 2008 ONCA 588, 297 D.L.R. (4th) 287, at para. 29. Evidence of arbitrariness or bad faith in the enforcement of by-laws may well result in a municipality being denied relief under s. 440: see *Polai*.
- [42] The Town did not contest the evidence of Reschke that Konzelmann was advised that the Town would not enforce the by-law or site-specific agreement. For the Town, that representation is itself a discretionary decision with respect to the enforcement of its by-laws.
- [43] On the record before the court, I cannot find that the Town's representation it would not enforce its by-law was the cause of the contravening conduct now conceded by

Konzelmann and the Town. The applicant did not allege that the Town acted arbitrarily or in bad faith. There is no evidence before the court that the Town has been selective in its enforcement of its by-laws or site plan agreements, only evidence that the Town has not taken any enforcement steps with respect to Konzelmann.

- [44] The applicant is not without a remedy; there is now an order of this court requiring Konzelmann to comply with the by-laws and site-specific agreement. The contravening conduct has been effectively restrained.

*Conclusion*

- [45] The application as against the Town is dismissed.
- [46] The parties are strongly encouraged to settle the matter of costs. If the parties cannot, the respondent Town may file costs submissions of no more than three pages, double spaced, in 12-point font, with a detailed costs outline and any offers to settle attached within 15 days of the release of this decision, and the applicant may file costs submissions on the same terms a further 10 days thereafter.

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A. J. Ohler J.

**Date Released:** April 23, 2026

**Schedule A**

Court File No.: CV-24-00062358-0000

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 3rd DAY  
JUSTICE A. J. OHLER ) OF FEBRUARY, 2026

**BETWEEN:**

**BROX COMPANY LIMITED**

Applicant

and

**KONZELMANN VINEYARDS INC.**

Respondent

and

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

Respondent



**ORDER**

**THIS APPLICATION** was heard this day at St. Catharines, Ontario, this order being on consent, and with decision on the balance of the application reserved;

**UPON READING** the Application Record, the Applicant’s Factum, the Applicant’s Book of Authorities, the Applicant’s Reply Factum, the Affidavit of Jim Reschke, sworn December 3, 2024, the Affidavit of Kirsten McCauley sworn November 29<sup>th</sup>, 2024, the Responding Application Record of The Corporation of the Town of Niagara-on-the-Lake (“Town”), the Town’s Factum, and the Town’s Book of Authorities, and upon hearing the submissions of Counsel for the Applicant and Respondents:

1. **THIS COURT DECLARES** that the Respondent, Konzelmann Vineyards Inc. (“Konzelmann”) during the years 2024 and 2025 used lands known municipally as 1096 Lakeshore Road, in the Town of Niagara-on-the-Lake, Ontario (“Subject Lands”) for outdoor events, that was contrary to the permitted uses of the Town of Niagara-on-the-Lake

Zoning By-law (“**Zoning By-law**”);

2. **THIS COURT ORDERS**, by way of a permanent injunction restraining Konzelmann and any agent, servant, employee, assign, officer, director or anyone else acting on its behalf, and any and all persons with notice of this injunction, from conducting or permitting to be conducted on the Subject Lands, any use not permitted by the Zoning By-law as may be amended, including an Outdoor Event Space;
3. **THIS COURT DECLARES** that Konzelmann have used the Subject Lands for outdoor events in a manner inconsistent with the approved site plan agreement between Konzelmann and the Town;
4. **THIS COURT ORDERS** by way of a permanent injunction restraining Konzelmann and any agent, servant, employee, assign, officer, director or anyone else acting on its behalf, and any and all persons with notice of this injunction, from conducting or permitting to be conducted on the Subject Lands, any use inconsistent with the approved site plan agreement between Konzelmann and the Town;
5. **THIS COURT ORDERS** by way of a permanent injunction restraining Konzelmann or any agent, servant, employee, assign, officer, director or anyone else acting on its behalf, and any and all persons with notice of this injunction, from conducting or permitting to be conducted on the Subject Lands, any use that is inconsistent with any license that may be issued by the Alcohol and Gaming Commission of Ontario;



6. **THIS COURT ORDERS** that this Order does not apply in any way against the Town, its employees and agents and reserves its decision on any relief against the Town.

Date of Issuance:  
February 14, 2026  
Registrar



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Ohler, J.

Alison Price Digitally signed  
by Alison Price  
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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
  
ST. CATHARINES

**ORDER**

**SULLIVAN MAHONEY LLP**  
Lawyers  
40 Queen Street, P.O. Box 1360  
St. Catharines, ON L2R 6Z2  
Tel: 905-688-6655

**Thomas A. Richardson (LSO No. 131141)**  
tarichardson@sullivan-mahoney.com

**J. Patrick Maloney (LSO No. 540631)**  
jmaloney@sullivan-mahoney.com

Lawyers for the Applicant/Moving Party



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– and –

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Respondent

– and –

The Corporation of the Town of  
Niagara-on-the-Lake

Respondent

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**REASONS FOR JUDGMENT**

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A. J. Ohler J.

**Date Released:** April 23, 2026