

COURT OF APPEAL FOR ONTARIO

CITATION: Clearview (Township) v. 12966344 Canada Inc., 2026 ONCA 305

DATE: 20260428

DOCKET: M56835 (COA-26-CV-0265)

Miller J.A. (Motion Judge)

BETWEEN

The Corporation of the Township of Clearview

Applicant (Appellant/  
Moving Party)

and

12966344 Canada Inc. and Angelina Williams

Respondents (Respondents/  
Responding Parties)

Emerson Wargel, for the appellant/moving party

Christine Carter, for the respondents/responding parties

Heard: April 7, 2026

REASONS FOR DECISION

[1] The moving party, The Corporation of the Township of Clearview (the “Township”), seeks a stay pending appeal of an order requiring it to immediately issue a permit that would allow the responding parties to deposit fill on their property. For the reasons set out below, the motion for a stay pending appeal is granted.

## **BACKGROUND**

[2] The responding party, 12966344 Canada Inc. (“129 Canada”), owns property in the Township (the “Property”). The responding party, Angelina Williams, is the president of 129 Canada. The Property comprises 172.38 acres of vacant land zoned as airport industrial, with a small portion located at the rear zoned as environmentally protected.

[3] The Property neighbours the Edenvale Aerodrome (“Edenvale”). Edenvale is an unregulated aerodrome and has not registered any zoning by-laws under the *Aeronautics Act*, R.S.C. 1985, c. A-2 (“*Aeronautics Act*”). Therefore, 129 Canada, as an adjoining property, is not restricted in its use of the Property by any regulations under the *Aeronautics Act*.

[4] While Edenvale is not an airport, it is used commercially for aviation and has also been used for the importation of fill.

[5] 129 Canada intends to develop the Property. In furtherance of that objective, it sought to build a noise and privacy berm to shield the Property from the fill operation occurring at Edenvale.

[6] On June 28, 2024, Township staff learned that fill was being hauled and deposited at the Property, and heavy grading was underway. A Stop Work Order was issued, and 129 Canada was notified that a fill permit was required from the Township before proceeding with the work to construct the berm.

[7] The Township's By-Law 02-62 (the "By-Law") regulates the placement of fill within the municipality. The By-Law prohibits the placing or dumping of fill without a permit.

[8] On November 19, 2024, Ms. Williams, on behalf of 129 Canada, submitted a Fill and Grading Permit application ("Permit Application"), along with supporting materials, to the Township. The purpose of the Permit Application was for approval to construct the privacy and noise berm on the Property, to facilitate its eventual subdivision and development.

[9] The Township retained an engineering consultant to assist in peer reviewing the Permit Application. Between December 2024 and March 2025, the Township and its engineering consultant provided comments to 129 Canada to address before the permit could issue. This resulted in 129 Canada submitting amended drawings, among other materials, as well as a Fill Management Plan, and upon further peer review, a revised Fill Management Plan.

[10] On April 16, 2025, the Township advised 129 Canada that it could not issue a permit until outstanding matters were resolved, including revisions to the Fill Management Plan, confirmation of a haul route, and execution of a Fill Permit Agreement with the posting of security for potential damage caused to municipal infrastructure. The Township also required confirmation from a qualified person

that the berm's siting and elevation would not create a safety risk, given its proximity to active aerodrome runways.

[11] On June 3, 2025, 129 Canada provided the Township with an aviation safety report, a letter from Nav Canada, and amended engineering drawings. The aviation safety report acknowledged that there were no applicable zoning standards to apply in this case because the Edenvale aerodrome was unregulated. However, the report nevertheless applied the most recent Obstacle Limitation Surfaces ("OLS") Guidelines (Transport Canada's TP312 – Aerodrome Standards and Recommended Practices, 5<sup>th</sup> Ed.) to demonstrate that the proposed berm would not in any event interfere with flight patterns of planes using Edenvale. OLS standards promote safe airport operations during takeoff and landing by defining surfaces that must be kept clear of obstacles. The letter from Nav Canada confirmed it had no objection to the project as submitted.

[12] On June 20, 2025, the Township provided 129 Canada with a draft Fill Permit Agreement and advised that it anticipated receiving further peer review comments in respect of the aviation safety report.

[13] On July 14, 2025, the Township provided its peer review comments and asked that 129 Canada's experts address the concerns set out in the peer review through revisions or supplemental information, before resubmitting their material. The Township also directed 129 Canada to approach its neighbour, Edenvale, to

ask what zoning standards Edenvale believed should apply to the Edenvale uncertified aerodrome. Shortly thereafter, 129 Canada abandoned its efforts to obtain a fill permit with the Township.

[14] In late August 2025, officials from the Township observed fill being deposited on the Property, without a permit. The Township issued a Stop Work Order under s. 444 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act, 2001*”). A municipal by-law enforcement officer subsequently laid charges against Ms. Williams under Part III of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 for 129 Canada’s contravention of the By-Law.

[15] After discovering that fill was being deposited at the Property, the Township removed culverts at the entrances of the Property to prevent anyone from entering or leaving. The rationale for taking such action, according to the Township, was to protect the integrity and safety of the roadway, as no security to repair any potential damage to Township infrastructure had been posted. Following a letter from counsel for the responding parties advising that blocking access to the Property was illegal, the Township reinstalled the culverts.

### **The underlying proceeding**

[16] On September 9, 2025, the Township commenced an application seeking, among other relief, an order restraining the responding parties from placing,

dumping or otherwise depositing fill on the Property, except in strict compliance with the By-Law.

[17] On September 19, 2025, the responding parties brought a separate application seeking, among other relief, a declaration that the By-Law was invalid. In the alternative, they sought an order pursuant to s. 440 of the *Municipal Act, 2001*, requiring the Township to comply with the By-Law and forthwith issue a fill permit to 129 Canada.

[18] After two days of hearing, Casullo J. issued an order dated February 4, 2026, granting 129 Canada's application and ordering that the Township issue the fill permit forthwith. The Township's application was dismissed.

[19] In granting the order, the application judge held that while the By-Law was valid, the Township's requirement that 129 Canada verify the OLS used by Edenvale was *ultra vires* its authority because aeronautics falls within the sole purview of the federal government and, accordingly, the Township does not have authority to regulate the height placement or scope of the proposed berm. The application judge further held that because "the Township has contravened the By-Law by requiring information outside of its authority, and 129 has met all other requirements under the By-Law, the Township shall forthwith issue a fill permit to 129."

[20] The application judge also found that a Notice of Constitutional Question was not required because the responding parties were not seeking a determination of the constitutional validity of the By-Law. Instead, they sought “a determination that the Township has exceeded its jurisdiction by refusing to issue the permit over concerns about flight paths.”

[21] Following the order, the Township advised the responding parties that it intended to appeal the order; however, it was prepared to issue the permit if the outstanding requirements in the By-Law – other than the requirement that the application judge found to be beyond the Township’s authority – were satisfied. The Township submits that the outstanding requirements include the execution of a Fill Permit Agreement and the posting of security, among other technical requirements. The responding parties take the position that the permit should have been issued forthwith in accordance with Casullo J.’s order.

[22] According to the Township, it has continued to observe fill being deposited at the Property up to as recently as February 27, 2026.

## **ANALYSIS**

[23] The test governing motions for a stay under r. 63.02 of the *Rules of Civil Procedure* is adapted from *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385, at p. 334. It requires a reviewing court to make three inquiries:

1. A preliminary assessment of the merits of the appeal, to determine whether the appeal raises a serious question;
2. A determination of whether the moving party would suffer irreparable harm if the order were refused; and
3. A determination of which of the parties would suffer greater harm from granting or refusing the stay pending a decision on the merits of the appeal.

[24] The burden is on the moving party to establish that the stay pending appeal should be granted: *Stuart Budd & Sons Limited v. IFS Vehicle Distributors*, 2014 ONCA 546, 122 O.R. (3d) 472, at para. 23. The three inquiries are intended to put the court in a position to make the ultimate determination of whether the interests of justice require a stay: *Zafar v. Saiyid*, 2017 ONCA 919, at para. 18.

### **A serious question**

[25] Whether an appeal raises a serious question requires the court to make a preliminary assessment of the appeal's merits to determine that the appeal is not frivolous or vexatious. The threshold to establish a serious question on the appeal is low: *Farrell v. Kavanagh*, 2021 ONCA 213, at para. 7.

[26] The moving party raises numerous grounds of appeal. It predominantly challenges the application judge's finding that the Township's requirement to verify the OLS used by Edenvale is *ultra vires* its authority. The moving party also

submits that the application judge erred by ordering it to issue the fill permit and in finding that the responding parties had met all other conditions under the By-Law such that the permit should issue.

[27] The issues raised by the Township are neither frivolous nor vexatious. To the extent that the application judge reasoned that the township cannot consider whether the placement of a berm on non-federally regulated land might create a risk to aircraft operations because aeronautics is a matter of federal jurisdiction, that conclusion is certainly open to question. In any event, other issues on appeal – e.g. whether the court could order that a permit issue without the provision of security – are arguable.

**The moving party will suffer irreparable harm if the stay is not granted**

[28] Irreparable harm is a matter of the nature of the harm, rather than its magnitude: *RJR-MacDonald Inc.*, at p. 341.

[29] The main harm identified by the moving party is that in issuing a permit where valid requirements have not been satisfied, it would be “compelled” to act in a manner inconsistent with its own by-law. Additionally, it submits that the responding parties’ fill operations to date have caused damage to Township infrastructure, and continuing the operation without complying with outstanding requirements under the By-Law would threaten further permanent damage.

[30] Additionally, were a stay refused and the Township required to forthwith issue the fill permit to 129 Canada, the Township's appeal would become moot. The appeal becoming moot is sufficient to constitute irreparable harm: *Nutrition Guidance Services Inc. v. Schwartz*, 2024 ONCA 636, at para. 12; *Belton v. Spencer*, 2020 ONCA 623, 58 C.P.C. (8th) 16, at paras. 51, 56.

### **Balance of convenience**

[31] The balance of convenience component of the test requires a determination of which of the two parties will suffer the greater harm from the granting or refusal of the stay, pending the disposition of the appeal on the merits: *RJR-MacDonald Inc.*, at p. 342.

[32] The responding parties' submission on irreparable harm is that if the stay is granted, 129 Canada will be at risk of losing the Property. Ms. Williams deposed that 129 Canada has already been financially impacted due to delays: in her affidavit, she states that an agreement of purchase and sale with a developer was terminated due to delays, and that she and 129 Canada have experienced significant costs due to the permit process, and the process has impacted her health.

[33] Appreciating that these are real hardships, the evidence in the record does not establish that harm to the responding parties is irreparable. The responding parties have attested to the risk of losing the Property but have not tendered

evidence showing why an award of monetary damages would not be a sufficient remedy. There is no evidence in the record of any unique or distinctive characteristics of the Property that would make a damages award insufficient: see generally *Hermina Developments Inc. v. Epireon Capital Limited*, 2025 ONCA 559, at para. 19.

[34] Considering all of the above, I find that the balance of convenience favours granting a stay.

### **The “Clean Hands” doctrine**

[35] The responding parties ask this court to refuse to hear this motion and to strike the Notice of Appeal because the moving party does not come forward with clean hands: see generally *Morguard Residential v. Mandel*, 2017 ONCA 177, at paras. 27-28; *Dickie v. Dickie*, 2007 SCC 8, [2007] 1 S.C.R. 346, at para. 6. In support of this position, the responding parties submit that the Township has failed to comply with Casullo J.’s order and engaged in various conduct to deliberately block access to the Property and avoid issuing the permit.

[36] I have considered the actions taken by the Township – essentially engaging in self-help remedies to prevent the illegal dumping, and delaying a month before bringing an appeal, while trying to negotiate an agreement – and am not persuaded that the Township has behaved in a manner that disentitles it to seek relief in this

court. This is particularly the case given that some of the Townships questionable actions were in response to 129 Canada's illegal dumping.

[37] Because of the history of this matter and the nature of the interests at stake, I order that this appeal be expedited.

[38] Finally, because this is a motion for a stay pending appeal and not an interlocutory injunction, an undertaking for damages is not required: see generally *Prince Edward County Field Naturalists v. Ostrander Point GP Inc.*, 2014 ONCA 227, 119 O.R. (3d) 704, at paras. 8-9.

#### **DISPOSITION**

[39] The motion for a stay pending appeal is granted. The hearing of the appeal is to be expedited. The issue of costs is reserved for the panel hearing the appeal.

“B.W. Miller J.A.”