

IN THE NUNAVUT COURT OF JUSTICE

B E T W E E N:

PAUL CROWLEY

Applicant

- and -

MUNICIPALITY OF IQALUIT

Respondent

AFFIDAVIT OF RICHARD KENNETH ROY BUTLER

I, Richard Kenneth Roy Butler, of the City of Iqaluit in the Nunavut Territory, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Administrative Officer of the City of Iqaluit and as such have knowledge of the matters deposed to herein, except where stated to be based upon information and belief.
2. For many years the City of Iqaluit has operated a waste disposal site in the West 40 area across Koojesse Inlet from the Town. The current site, which is referred to as Site 3, has been used for the disposal of municipally collected waste since 1995. The total site area is approximately 3.6 hectares. Since the 1940's, it has been the practice of the City to burn municipal waste in open fires to reduce waste volume and increase site capacity. It is my information and belief that every other community in Nunavut burns waste. I am advised by the City's engineering consultants and verily believe that burning of food wastes at the site also reduces the attraction of the site for birds, thereby reducing a potential hazard to airport traffic.

3. Municipal staff take all reasonable care when waste is burned. Burning is only commenced under favourable wind conditions. Unfortunately, smoke is occasionally blown into town when there are sudden shifts in wind direction. It is difficult to simply extinguish a burn when this happens, but more can be done when the burn pile is relatively small. As a result, our staff try to burn with smaller piles but more frequently. During the recent labour dispute, it did become necessary to burn large accumulated quantities of waste at one time. The five burning conditions listed in Part E #2 of Water Licence NWB31QA0103 reflect the City's standard operating procedures.
4. Until the creation of the Nunavut Territory, the City was subject to the licensing requirements of the *Northwest Territories Waters Act*, (and formerly the *Northern Inland Waters Act*), for municipal undertakings involving the use of water and the deposit of waste into water. The last Licence issued by the Northwest Territories Water Board, which was signed by the Minister of Indian Affairs and Northern Development in accordance with Section 14 of the *Northwest Territories Waters Act*, was issued on January 1, 1996.
5. It is my information and belief that licensing authority over the use of water and the deposit of waste into water in Nunavut was transferred in 1996 to the Nunavut Water Board, in accordance with Article 13 of the Nunavut Land Claims Agreement. The Nunavut Water Board has issued two Licences to the City, (December 31, 1999 and December 31, 2000). Neither Licence has been signed by the Minister of Indian Affairs and Northern Development. Copies of the Licences are attached as Exhibits "B" and "F" to the Affidavit of Paul Crowley dated August 11, 2001.
6. It is my information and belief that the activities of the City in the areas of water supply and distribution, wastewater collection and treatment and waste management are also subject to Territorial statutes and regulations administered by the Nunavut Department of Sustainable Development and the Nunavut Department of Health and Social Services.
7. I am advised by the City's legal counsel and verily believe that the jurisdiction of the Nunavut Water Board and the Northwest Territories Water Board is limited to the use of, and disposal of waste into, inland waters. The City is located on the shores of Koojesse Inlet,

which forms part of Frobisher Bay, and which I understand to be marine waters, not inland waters.

8. On September 15, 2000, the City applied to the Nunavut Water Board for renewal of Licence NWB31QA0103, which was due to expire on December 31, 2000. The Board held a hearing on the application on November 22, 23 and 24, 2000. The Board issued a Licence dated December 31, 2000 and released its Reasons for Decision on January 26, 2001, (attached as Exhibits “F” and “E” to the Affidavit of Paul Crowley dated August 11, 2001).
9. The City has received legal advice that, in order to be valid and in effect, a Licence must be approved by the Minister of Indian Affairs and Northern Development. The City has also received legal advice that the Board exceeded its jurisdiction by purporting to regulate burning at the City’s waste disposal site. On February 15, 2001, Mayor John Matthews wrote to the Honourable Robert Nault, Minister of Indian Affairs and Northern Development, to ask for his assistance in resolving these matters. Attached as Exhibit “A” to this my affidavit are copies of letters from Minister Nault to Mayor Matthews and to the Chair of the Nunavut Water Board, wherein the Minister states that conditions dealing with waste burning are beyond the jurisdiction of the Board and that he cannot approve the Iqaluit municipal licence as issued. This advice is entirely consistent with previous advice received from Department officials.
10. As a result of a lengthy labour dispute between the City and its employees, there are a number of deadlines in the Board’s conditions that we have not or cannot meet. Mayor Matthews wrote to the Board on May 31, 2001 respecting this issue, (see Exhibit “G” to the Affidavit of Paul Crowley).
11. The City of Iqaluit burns waste because it reduces the need for landfill capacity. I am advised by my staff, and verily believe, that significant volume reduction is achieved through

burning.

12. There is a critical shortage of landfill capacity at the current site. We advised the Board at the 2000 hearing that we expected to reach capacity at the site by October 2001, even with burning. That estimate has turned out to be accurate. The area currently used for waste disposal will reach its design capacity by November 2001.
13. The City is working diligently towards a new system of waste disposal. In September 2000, following a year long process that involved extensive public consultation, our consultants J.L. Richards & Associates Limited and Golder Associates Limited completed a Solid Waste Management Planning Study. The purpose of the study was to develop an environmentally responsible, socially acceptable, and cost effective Solid Waste Management Plan for the next twenty years. Municipal Council accepted the recommendations of the study and approved the implementation of a new waste disposal system consisting of an incinerator and an engineered landfill for ash and metal waste.
14. Studies are presently ongoing to evaluate incinerator technologies and to select a site for the new incinerator. Attached as Exhibit "B" to this my affidavit is a document prepared by Dillon Consulting Limited in May of this year that summarizes the proposed solid waste disposal facilities. The document attached as Exhibit "A" to the Supplementary Affidavit of Paul Crowley is an information update to City Council on the status of the Solid Waste Management Plan.
15. Capital funding remains an issue. Despite continuing and aggressive efforts to secure dollars, the City still requires an additional seven to nine million dollars to implement the incinerator and new landfill. To date, no government agency has provided any commitment to provide funding.

16. Until the new waste disposal facilities are constructed, the City needs to continue landfilling as it has always done. Our current best estimate is that, subject to the availability of capital funding, the earliest implementation date for our new incinerator is either 2003 or 2004. We therefore need enough interim landfill capacity for two to three years.
17. The City's consultants, Dillon Consulting Limited, have prepared a preliminary design report for a three-year expansion of the existing landfill. That report was forwarded on August 17, 2001 to the Nunavut Water Board, the Nunavut Department of Community Government and Transportation, Environment Canada, the Nunavut Department of Health & Social Services, the Nunavut Department of Sustainable Development, the Department of Indian Affairs and Northern Development and the Department of Fisheries and Oceans. Attached as Exhibit "C" to this my affidavit is a copy of the Dillon Report, entitled "City of Iqaluit Landfill Facility Expansion Preliminary Design Report – Regulatory Submission".
18. I am advised by the City's consultants, and verily believe, that in order to minimize the interim requirements for landfill capacity, it has based its design for the three year expansion on the assumption that burning will continue in the interim period. As a result, it has designed a three-year expansion, (termed "Cell #1" in the attached Exhibit "C"), for a landfill volume of approximately 25,000 cubic metres. I am further advised, and verily believe, that if the practice of waste burning were to cease, this capacity could be exhausted by the end of 2002. This would mean that we would run out of interim capacity a year or two before the new incinerator becomes operational.
19. We learned during the recent labour dispute what it is like to deal with waste without the ability to burn. In a relatively short period of time, a large quantity had to be managed. We found that it was almost beyond our technical capabilities, since our entire waste disposal infrastructure is not set up to handle landfilling unburned waste. If we were to be required to stop burning waste now, I fear that our staff and equipment would be unable to handle the

higher volumes of waste at the landfill.

20. We advised the Board in our written evidence at the November hearing that allowing garbage to collect at the present site without burning could result in other health hazards. We remain concerned that accumulation of garbage containing food waste could pose a danger to planes using the Iqaluit Airport due to the congregation of birds at the site. We remain concerned with landfilling unburned garbage at a site that is not a modern landfill with any means to contain or collect leachate. Our new ashfill landfill is planned to be properly engineered with a liner.
21. It is my understanding and belief that the practical effect of Condition #3 in Part E is to simply prohibit the burning of waste, despite the apparent continuing ability to burn a “segregated” waste stream. I am advised by my staff, and verily believe, that it is not practically possible or feasible to segregate for burning “food waste, paper products, paperboard packaging and untreated wood” as contemplated by the Board=s Condition #3 in Part E of the latest Licence. To do so would require either the immediate implementation of a fundamentally different method of collecting garbage, which would require a completely new waste collection infrastructure, or a labour-intensive sorting operation for collected waste. Neither alternative could be implemented without either a major new burden to local taxpayers or a funding commitment from other government agencies. Either alternative, if practical at all, would require significant time to implement.
22. Like all Canadian municipalities, the City of Iqaluit is evolving towards greater diversion of recyclable materials from its waste stream. We have devised a new waste recycling program based on “blue bag” collection to separate recyclable materials, such as plastics and aluminum, from the waste stream. This program will be launched in about two months time, as noted in the document in Exhibit “A” of the Supplementary Affidavit of Paul Crowley. Although our blue bag program, when implemented, will help divert some materials from

landfill, it will not result in a segregated waste stream that would meet the Board's condition. I do not know of one Canadian municipality that collects a separate stream that would comply with the Board's condition.

23. The City, like the Applicant, would like to end the practice of burning waste at the landfill. We hope, with focus on our current solid waste disposal and recycling plans, coupled with sufficient funding and financing efforts, to be in a position to do so within two or three years when the new waste disposal system is operational.
24. As Chief Administrative Officer, I find it counter-productive and a waste of very scarce resources to engage in a jurisdictional debate about regulatory authority over waste management. The City of Iqaluit has attempted to cooperate with the Nunavut Water Board and all other regulatory agencies to the extent that it is possible to do so, while at the same time continuing to provide adequate services to its rapidly expanding population. The City has urged the Minister to clarify the jurisdiction issue. I hope that Minister Nault's August 13, 2001 letter achieves that goal. In the meantime, the City is attempting to abide by the spirit of the Board's decision in every way that is practical and affordable.
25. I make this Affidavit in support of the Respondents's submissions on an application by Paul Crowley for an interlocutory injunction, and for no other purpose.

SWORN BEFORE ME at the City)
of Iqaluit, in the Nunavut Territory,)
this day of , 2001)
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_____)
A Commissioner for Taking Affidavits, etc.)

RICHARD KENNETH ROY BUTLER

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This Affidavit filed by:

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