

Court File No.: CV-23-00001662-00000 at Kitchener

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE COURT OF THE DRAINAGE REFEREE

BETWEEN:

CORY KITTEL

Appellant

-and-

THE CORPORATION OF TOWNSHIP OF WILMOT

Respondent

MOTION RECORD

Date: January 10, 2024

COUREY LAW Professional Corporation
18 Queen St S, P.O. Box 178
Tilbury, ON N0P 2L0

PAUL COUREY
LSUC # 32630L

Tel: 519-682-1644

Fax: 519-682-1146

Email: mail@coureylaw.com

Lawyer for the Moving Party/Respondent

The Corporation of the Township of Wilmot

To: THE LAW OFFICE OF SAMUEL KIRWIN PROFESSIONAL CORP

472 Ridout St N

London, ON N6A 2P7

Samuel J. Kirwin

LSO No. 81800K

Email: samuel@kirwinlaw.ca

Tel: 519-494-1092

Lawyers for the Appellant

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**ONTARIO
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BETWEEN:

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Appellant

-and-

THE CORPORATION OF TOWNSHIP OF WILMOT

Respondent

NOTICE OF MOTION

THE Respondent will make a motion to the Referee, at a time and place and method to be fixed by the Referee on January 17 (p.m.), 18, 19 (p.m.), 22, 23 or 24, 2024 in consultation with counsel.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing because it is on consent, unopposed or made without notice;
- in writing as an opposed motion;
- orally by video conference on a date and at a time to be set by the Referee.
- orally in person.

THE MOTION IS FOR:

1. An order confirming that the style of cause is as set out above.
2. An order settling the procedure to be used in the conduct of this Appeal including a timetable, based on submissions by the parties, and adjourning the February 21, 2024 assigned date.

3. An order that the proceedings are governed by O.Reg. 232/15.
4. An order abridging the time for service of this Motion, if necessary.
5. Other relief as may be permitted.

THE GROUNDS FOR THE MOTION ARE:

1. The pleadings and proceedings herein.
2. Rules of Practice, O. Reg. 232/15, particularly s. 15.
3. Drainage Act. R.S.O. 1990, c. D.17.
4. There is uncertainty as to the sequence and compliance with legislation of events prior to the filing of this Motion.
5. The limited time available, in the absence of a Clerk of the Respondent, to instruct counsel and consider the status of the Engineer in light of the holiday season and the overture of the Court to a non-party.
6. The Court appears to have proceeded on the equivalent of a view without making a report thereof with respect to documents not in the Record, prior to issuance, service and filing of originating process.
7. Thereafter on its own motion the Court approached a non-party witness who would necessarily be called by Respondent in any event, seeking production of documents.
8. The February 21, 2024 “case management” date was assigned without an adequate opportunity for counsel to respond.
9. Such further grounds as may be permitted.

THE FOLLOWING EVIDENCE will be used at the hearing of the motion:

1. The pleadings herein.
2. The Affidavit of Jeffrey Bunn, sworn January 10, 2024.
3. Correspondence to and from the parties and the Court.

4. Such other evidence as may be permitted.

Date: January 10, 2024

Paul Courey
COUREY LAW PROF. CORP.
18 Queen St. S., P.O. Box 178
Tilbury, Ontario N0P 2L0
Tel.: (519) 682-1644
mail@coureylaw.com
Lawyers for the Respondent

To: **THE LAW OFFICE OF SAMUEL KIRWIN PROFESSIONAL CORP**
472 Ridout St N
London, ON N6A 2P7
Samuel J. Kirwin
LSO No. 81800K
Email: samuel@kirwinlaw.ca
Tel: 519-494-1092
Lawyers for the Appellant

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**AFFIDAVIT OF JEFFREY BUNN
Sworn January 10, 2024**

I, JEFFREY BUNN, of the Township of Wilmot, in the Region of Cambridge, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Clerk of the Township of Wilmot ("Wilmot") and have knowledge of the matters to which I depose. The Township had been without a Deputy Clerk, the position that deals with drainage matters since November 8, 2023 until recently. I am also covering a third position.
2. I am familiar with the petition for drainage that resulted in a report by the appointed engineer and is the subject of an appeal to the Referee by Cory Kittel.
3. The by-law adopting the report was provisionally adopted by Wilmot on June 26, 2023.
4. A Court of Revision was subsequently held.
5. Cory Kittel delivered to Wilmot a document dated September 6, 2023, a copy of which is attached as **Exhibit A**, apparently based on the requirement for notice in section 47 of the Act.
6. Wilmot forwarded the document to the clerk of the Superior Court in Kitchener, being the office that has jurisdiction locally, as required by the Act.
7. Since Mr. Kittel appeared to be unrepresented, Wilmot's counsel served a Notice of Appearance on him, notwithstanding that originating process had not been delivered as required

by Section 111 of the Act, to establish contact and because it was uncertain what Mr. Kittel may have filed directly with the Court. Wilmot's counsel gratuitously intervened with Court staff to assist them in opening the file as these matters are not familiar to them.

8. Wilmot was later served with a Notice of Application, provided by Mr. Kittel's counsel, albeit not in the prescribed form but rather in a form gratuitously suggested by the Court. The General Heading refers to unnamed parties and Wilmot cannot serve its Notice of Appearance on whomever that is.

9. Considerable relevant correspondence to and from the Court and parties has ensued with respect to preliminary matters largely prior to originating process. Copies together with a chronology are attached as **Exhibit B**.

10. Wilmot wishes to see this matter proceed because the by-law that is under appeal was passed to address a lack of drainage on the lands of the original petitioner and there is a hardship.

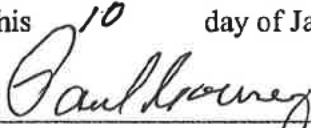
11. There is also an outstanding appeal by Cory Kittel to the Ontario Ministry of Agriculture, Food and Rural Affairs Appeal Tribunal ("Tribunal"), that will not proceed until after the appeal to the Referee is dealt with, according to the Tribunal.

12. Accordingly, Wilmot desires to see the matter move forward and therefore brings a motion to set the procedure, being the prescribed manner of advancing the matter.

13. Wilmot has created a draft procedural order in accordance with the *Rules*, a copy of which is attached as **Exhibit C**.

14. I make this affidavit in support of a motion to establish the procedure in this matter and for no improper purpose.

Sworn before me at the Township of
Wilmot, in the Region of Cambridge, Windsor
this 10 day of January, 2024.



Signature of Commissioner
(or as may be)

in person OR by video conference



JEFFREY BUNN

Notice of Appeal

Township of Wilmot
60 Snyder's Road West
Bayden ON N3A 1A1

RECEIVED SEP 06 2023 @ 3:58 pm

September 6, 2020

Attention: Municipal Clerk, Township of Wilmot

To Whom it May Concern,

I Cory Kittel, am hereby serving notice to the Township of Wilmot, Ontario, that I intend to have issued a Notice of Application in the Waterloo Region Court for the attention of the Court of the Drainage Referee. This appeal is made under the *Drainage Act* with respect to the decision of the Councilors of the Township to pass a by-law adopting the Drainage Report of Headway Engineering, dated April 28, 2023, which is founded upon an invalid drainage petition.

Should you have any concerns with the appeal period I would refer you to s. 113 of the *Drainage Act*, which permits a Referee to extend the time for appeal.

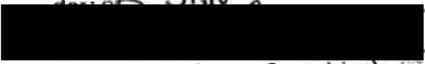
Regards,

[Redacted Signature]

Cory Kittel

This is Exhibit A referred to in the affidavit of Jeffrey Bunn sworn before me this 10 day of JAN, 2024
[Redacted Name]
A Commissioner for taking affidavits.

This is Exhibit B referred to in the affidavit of Jeffrey Bunn sworn before me this 10 JAN, 2024


A Commissioner for taking affidavits.

CHRONOLOGY

PARTY	DESCRIPTION	DATE
Kittel	Notice to Wilmot	Sept 6/23
Referee	Letter to Kittel – Style of Cause	Dec 15/23
Kittel	Letter to Referee and counsel attaching unissued Application	Dec 18/23
Referee	Letter re: unissued Application requesting <u>inter alia</u> documents from S. Brickman, P.Eng, a non-party	Dec 19/23
Kirwin	Letter to Referee re: issuing Application	Dec 19/23
Referee	Message re: issuing	Dec 20/23
Kirwin	Affidavit of Service attaching correspondence between counsel re: Application	Dec 20/23
Courey	Message to Referee re: time to respond to December 19 letter	Dec 20/23
Courey	Message to counsel re: procedure	Dec 21/23
Referee	Letter setting date	Dec 28/23
Courey	Message to Referee and counsel	Dec 29/23
Wilmot	Letter confirming Deputy Clerk (Drainage) position is vacant	Jan 4/24
Courey	Letter responding to Referee	Jan 10/24

OFFICE OF THE
ONTARIO DRAINAGE REFEREE

ROBERT G. WATERS, B.A., LL.B.

REFEREE

7 Kittridge Avenue East
STRATHROY, Ontario, N7G 2A9
Telephone: (519) 245-2958
E-mail: rob@robwaters.ca

ANDREW C. WRIGHT

ACTING REFEREE

12 The Ridgeway,
LONDON, Ontario, N6C 1A1
Telephone: (519) 671-5786
E-mail: andrewcwrightis@outlook.com

December 15, 2023

Cory Kittel via e-mail to [REDACTED]
Address Unknown

Dear Mr. Kittel:

Re: Cory Kittel v Township of Wilmot
Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

1. I am the Acting Drainage Referee and have been assigned to preside in this case.
2. I have reviewed the September 6, 2023 Notice document which you have served on the Township of Wilmot. It has been filed with the Court of the Drainage Referee in Kitchener and has been assigned Court File No.: CV-23-00001662-0000.
3. The Notice indicates your intention to commence proceedings by way of a Notice of Application. Presumably, that Notice of Application will include specifics of the grounds upon which you rely for your assertion that the petition is invalid.
4. The principal purpose of this letter is to ask if you will be representing yourself or if you have retained or will be retaining legal counsel.
5. If you will be self-represented, then I ask that you provide a mailing address and telephone number.
6. If you will have legal representation, I ask that you provide the name of your lawyer.
7. Either way, will you or your lawyer please indicate when the formal Notice of Application can be expected? In addition to having the Notice of Application served on the Township and issued by the Court, I ask that a copy be e-mailed to me directly.
8. If you have a lawyer, they will know the form of the style of cause and the format to be used for the formal Notice of Application. If you are doing it yourself, I have attached a

template style of cause; I will leave it to you to familiarize yourself with the suitable form for the Notice of Application.

9. I conclude by saying that any communication you or your lawyer have with me about this case needs to be copied to the Township's lawyer, Mr. Courey, whose contact information appears below. Mr. Courey's telephone number is: (519) 682-1644.

Respectfully,



Andrew Wright, Acting Drainage Referee

cc: Courey Law Professional Corporation via e-mail to mail@coureylaw.com
18 Queens Street, South,
P.O. Box 178,
Tilbury, Ontario N0P 2L0
Attention: Paul Courey, Lawyer via e-mail to pc@coureylaw.com

Lawyer for the Township of Wilmot

Court File No.: CV-23-00001662-0000 (Kitchener)

ONTARIO
SUPERIOR COURT OF JUSTICE
IN THE COURT OF THE DRAINAGE REFEREE

B E T W E E N:

CORY KITTEL

Applicant

- and -

THE CORPORATION OF THE TOWNSHIP OF WILMOT

Respondent

- and -

OTHERS WHO MAY BE GRANTED PARTY
STATUS UPON APPLICATION

Respondents

TEMPLATE STYLE OF CAUSE

Paul Courey

From: Andrew Wright <[REDACTED]>
Sent: December 18, 2023 2:06 PM
To: Cory Kittel
Cc: Paul Courey; Samuel Kirwin; CLPC General
Subject: Re: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)
Attachments: 2023-12-18 Notice of Application.pdf

Acknowledged with thanks. Respectfully. Andrew Wright, Acting Drainage Referee

Sent from my iPad

On Dec 18, 2023, at 1:47 PM, Cory Kittel [REDACTED] wrote:

Mr. Wright
Mr. Courey

Thank you for reaching out and shedding light on a path forward for my Application.

In September prior to the notice letter served on the Township, I submitted my formal Application (in proper format and form) to the Superior Court of Justice in accordance to the Rules of Practice and Procedure in Proceeding Before the Referee.

This was first attempted in-person at the Waterloo Region (Kitchener) Courthouse. After talking with multiple staff, it became evident there was some unfamiliarity with the Court of the Drainage Referee and its procedures.

Additional attempts were made by phone, email and online submission, but I continued to be met with obstacles and unfamiliarity of the subject matter – for lack of a better description, they just didn't know what to do with my Application. I even sought advice from the folks at OMAFRA, who suggested I pass along reference to section 106 of the procedures manual, which I did multiple times.

Suffice to say, a significant attempt was made. My next hope was that the Tribunal proceedings underway could shed some light on possible next steps. But it looks like through some persistence via multiple parties, there is now a contact at the Waterloo Region (Kitchener) Courthouse who is ready to see this through.

As bumpy as the experience has been, I can understand the outcome if the Waterloo Region Courthouse has never dealt with an Appeal/Application like this. I just wanted to take this opportunity to shed some light on my path and the absence of the formal Application to-date and the potential path of future applications.

As a side note, the OMAFRA page on appeals states *"To appeal to the Referee a written notice must be served upon the Council of the initiating municipality. The clerk records the appeal and forwards it to the*

Clerk of the Court of the Referee". I just wanted to highlight this statement just in case there is any discrepancy.

You can find the formal Notice of Application attached here with the court file number and revised date. This will be promptly re-submitted to the court to have it issued and served on the Township.

I'm in the process of retaining legal representation which will help smooth the path moving forward...

Samuel Kirwin, Lawyer
The Law Office of Samuel Kirwin Professional Corporation
472 Ridout Street North
London, Ontario N6A 2P7
Telephone: (519) 494-1092
Email: samuel@kirwinlaw.ca

And just so you have it, my full contact information can be found below...

Cory Kittel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Thank you for your patience and clarity on this matter. It's very much appreciated.

Please kindly confirm receipt of this email when you have the opportunity.

Thanks again

On Fri, Dec 15, 2023 at 7:28 AM Andrew Wright [REDACTED] > wrote:
Cory Kittel via e-mail to [REDACTED]

Dear Mr. Kittel:

Re: Cory Kittel v Township of Wilmot
Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Please see and respond to the attached letter.

Respectfully. Andrew Wright, Acting Drainage Referee

Court File No.: CV-23-00001662-0000 (Kitchener)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE COURT OF THE DRAINAGE REFEREE

BETWEEN:

CORY KITTEL

Applicant

-and-

THE CORPORATION OF THE TOWNSHIP OF WILMOT

Respondent

-and-

OTHERS WHO MAY BE GRANTED PARTY STATUS UPON APPLICATION

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim is set out in the following pages.

THIS APPLICATION will come for a hearing at a date and time to be determined, at the Waterloo Courthouse, 85 Frederick Street, Kitchener, Ontario.

IF THE CORPORATION WISHES TO OPPOSE THIS APPLICATION, to receive notice of any step in the application, or to be served with any documents in the application, the Corporation or its Ontario lawyer acting for it must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure, infra*, serve it on the applicant, and file with it, proof of service in the court office and the Corporation or its lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, the Corporation or its lawyer must, in addition to serving the notice of appearance, serve a copy on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by: _____
Local Registrar

Address of Court Office:
85 Frederick Street
Kitchener ON N2H 0A7

TO: **OFFICE OF THE ONTARIO DRAINAGE REFEREE**
12 The Ridgeway
London ON N6C 1A1

Andrew C. Wright
Tel: 519-671-5786
Email: [REDACTED]

Acting Referee

AND TO: **COUREY LAW PROFESSIONAL CORPORATION**
8 Queen Street South
Tilbury ON N0P 2L0

Paul Courey – LSO No. 32630L
Tel: 516-682-1644
Email: pc@coureylaw.com

Lawyers for the Respondent,
The Corporation of the Township of Wilmot

APPLICATION

1. The Applicant, Cory Kittel (the "Applicant") makes this Application for:
 - a. An Order setting the procedure, establishing the steps to be taken and the sequence in which they shall occur in this proceeding;
 - b. An Order setting the date or dates for the hearing and such other matter as this Application and the investigative work preceding it may make necessary;
 - c. An Order pursuant to paragraph 106(1)(b) of the *Drainage Act, infra*, setting aside the by-law, or provisional by-law, enacted by the Council of the Township of Wilmot, which implements the drainage report prepared by Headway Engineering, dated April 28, 2023 (herein "the drainage report");
 - d. An Order declaring the drainage report to be a nullity, void and inoperative;
 - e. An Order pursuant to ss. 106(1)(b) of the *Drainage Act, infra*, declaring the drainage petition received by the Respondent on April 26, 2021 (herein "the drainage petition") is not a valid petition that meets the requirements set out in ss. 4(1) of the *Drainage Act, infra*;
 - f. The Applicant's costs of this proceeding on a solicitor and his own client basis, plus harmonized sales tax where required by law;
 - g. An Order pursuant to s. 113 of the *Drainage Act, infra*, extending the time for the completion any step(s) in this proceeding; and,
 - h. Such further and other relief as the Applicant may request and the Drainage Referee may deem just.

2. The grounds for the Application are:

- a. The Applicant and his family live on a 98-acre farm identified municipally as 1010 Gerber Road, St. Agatha, Ontario;
- b. The Applicant's property is situated wholly in the Township of Wilmot, approximately 6.8 kilometers east of the Town of Wellesley and approximately 1.6 kilometers south of the Village of Bamberg;
- c. The Applicant grew up working on this farm, which has been owned by his family for multiple generations;
- d. The Applicant's property consists primarily of a house, several outbuildings, and farm fields;
- e. The Bamberg Creek flows southwest across the southern part of the Applicant's property;
- f. The farm field abutting the westernmost edge of the Applicant's land is owned by Jananna Corp.;
- g. The Jananna Corp. property is identified municipally as 1184 Gerber Road. It is situated wholly within the Township of Wilmot;
- h. Jananna Corp. leases the fields at 1184 Gerber Road to cash-crop farmers;
- i. The Jananna Corp. property has extensive systematic land tillage and there is no evidence visual or otherwise that there is a significant or persistent drainage problem on this property that impacts their farmable land;

- j. The Koch-Leis Drain flows southeast across the southern portion of the Jananna Corp. property, then the drain outlets into the Bamberg Creek at a point south of the both the Jananna Corp. property and the Applicant's property;
- k. The Koch-Leis Drain does not flow across the Applicant's property;
- l. On April 26, 2021, the Respondent received a petition from Jananna Corp. for 500 metres of drainage to improve a southeast low portion of a field owned by the Jannana Corp.;
- m. The Jananna Corp. field that is the subject of the drainage petition abuts the Applicant's field;
- n. The drainage petition has been signed only by Jananna Corp.;
- o. The Council of the Township of Wilmot appointed Headway Engineering to prepare a drainage report on July 12, 2021;
- p. The drainage report was submitted to the Respondent on April 28, 2023;
- q. The drainage report recommends the establishment of a new municipal drain that would be called the Jananna Drain, which would consist of two separate branches;
- r. The proposed eastern branch of the new drain would commence at the property line between the Applicant's property and the Jananna Corp. property. It would flow southeast down the property line then veer east across the Applicant's field to outlet into the Bamberg Creek;
- s. In early 2023, a counter-petition was signed by 28 landowners who constitute the watershed community that is opposed to the construction of

the Bamberg Creek, Jananna, and Koch-Leis Drains. The counter-petition demonstrates that most of the landowners within the watershed community do not recognize any need or benefit of the proposed work;

- t. To date, the numerous concerns with the proposed work held by the counter-petitioner landowners have gone largely unanswered by the Respondent;
- u. Despite Headway Engineering's assertion that the drainage petition signed by only Jananna Corp. amounts to a valid petition, the Applicant respectfully submits that it is not a valid petition under the *Drainage Act, infra*, as it does not meet the requirements set out in ss. 4(1), the particulars of which deficiency include:
 - i. The drainage petition was not signed by a majority in number of the owners of lands in the area;
 - ii. The drainage petition was not signed by the owners of lands in the area representing at least 60 per cent of the hectarage in the area; and,
 - iii. The drainage petition was not signed by the Director.
- v. There is a defined drainage basin requiring drainage that extends onto both the Jananna Corp. property and onto the Applicant's property. The majority of this area requiring drainage lies on the Applicant's property.
- w. Even the original drainage petition visually shows the drainage area spans across part of the Jananna Corp. property and across part of the Applicant's property;

- x. All mapping applications show a consistent and defined drainage area, currently and historically, that spans from the Applicant's property onto the Jananna Corp. property;
- y. Despite this, the drainage engineer stated that the area requiring drainage was only on the Jananna Corp. property. This does not excuse or save the petition from being deficient according to ss. 4(1) of the *Drainage Act, infra*;
- z. The Court of the Drainage Referee has jurisdiction to determine the validity of, or to set aside any petition pursuant to s. 106(1)(b) of the *Drainage Act*;
- aa. Property boundaries should not be preferred over topographical contour features delimiting areas where water lies as a basis for establishing an area requiring drainage pursuant to s. 4 of the *Drainage Act*;
- bb. An engineer's opinion as to the area requiring drainage cannot stand, is not beyond review by the Court of the Drainage Referee, and the opinion must be set aside if it is patently wrong;
- cc. The Applicant did not sign the drainage petition so the sole signature on it by Jananna Corp. did not constitute a majority of the owners of the area requiring drainage;
- dd. Should the Drainage Referee find that the drainage report is not founded upon a valid petition, then it is respectfully submitted that the drainage works proposed in that report ought not to be constructed;
- ee. Another reason for the application is that a separate new branch of the drain was added to the project exclusively by the Township Drainage

Superintendent and Engineer without due authority. The new branch of the proposed drain is called the Jananna West Branch. It is located in a separate dissimilar drainage area that is far from the original petitioned drain, on the opposite side of the farm;

- ff. The Jananna West Branch was created to deal with a road drain. This added drain was not contemplated on the original petition and does not have its own petition;
- gg. The engineer failed to call a second site meeting when the areas requiring drainage had changed;
- hh. It is respectfully submitted that the *Drainage Act, infra*, does not authorize a municipality to pass a by-law for the construction of a drainage system, such as the proposed Bamberg Creek, Jananna Drain, and Koch-Leis Drains which differs substantially in size and cost from the drain petitioned for;
- ii. Both the issue of petition validity and the issue of the improper expansion of the drainage project were expressed to the Council of the Township of Wilmot at the Meeting to Consider, however, the councillors and the drainage engineer did not address these issues at said meeting;
- jj. The Applicant pleads and relies upon on sections 4, 9, 32, 33, 44, 47, 58, 106, 111, 113, 114, 117, 118, 119 and 120 of the *Drainage Act*, R.S.O. 1990, c. D. 17, as amended, and the regulations thereto;
- kk. Rules 1.04, 10.5, 2.01, 3.02, 14.05, 38, 39, 53, and 57 of the *Rules of Civil Procedure*, as amended;

- ll. Rule 131 of the *Courts of Justice Act*, R.S.O. 1990, c. 43; and,
- mm. Such further and other grounds as counsel may advise and the Drainage Referee may permit.

3. The following documentary evidence will be used at the hearing of the Application:

- a. The Affidavit of Cory Kittel, to be sworn, and Exhibits attached thereto;
- b. The drainage petition received by the Respondent on April 26, 2021;
- c. The drainage report of Headway Engineering, dated April 28, 2023;
- d. The Notice of Application;
- e. A Guide for Engineers working under the Drainage Act in Ontario Publication 852 OMAFRA; and,
- f. Such further and other evidence as counsel may advise and the Drainage Referee permit.

Dated: December 18, 2023

Cory Kittel

██████████ ██████████
St. Agatha, Ontario

Email: ████████████████████n

CORY KITTEL
Applicant

-and- THE CORPORATION OF THE TOWNSHIP OF WILMOT
Respondent

Court File No. CV-23-00001662-0000 (Kitchener)

ONTARIO
COURT OF THE DRAINAGE REFEREE

PROCEEDING COMMENCED AT
WATERLOO

NOTICE OF APPLICATION

Cory Kittel

[REDACTED]

St. Agatha, Ontario, N0B 2L0

Email: [REDACTED]

OFFICE OF THE

ONTARIO DRAINAGE REFEREE

ROBERT G. WATERS, B.A., LL.B.

REFEREE

7 Kittridge Avenue East
STRATHROY, Ontario, N7G 2A9
Telephone: (519) 245-2958
E-mail: rob@robwaters.ca

ANDREW C. WRIGHT

ACTING REFEREE

12 The Ridgeway,
LONDON, Ontario, N6C 1A1
Telephone: (519) 671-5786
E-mail: andrewcwrightis@outlook.com

December 19, 2023

Cory Kittel via e-mail to [REDACTED] [1](#)
[REDACTED],
St. Agatha, Ontario (Wilmot Township)
N0B 2L0

Courey Law Professional Corporation via e-mail to mail@coureylaw.com
18 Queens Street, South,
P.O. Box 178,
Tilbury, Ontario N0P 2L0
Attention: Paul Courey, Lawyer via e-mail to pc@coureylaw.com
Lawyer for the respondent Township of Wilmot

Stephen Brickman, P.Eng., President
Headway Engineering via e-mail to info@headwayeng.ca
23-500 Fairway Road, South
Suite 308
Kitchener, Ontario
N2C 1X3

Dear parties and Mr. Brickman:

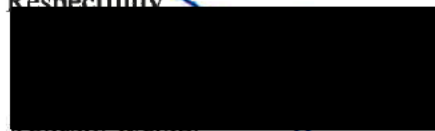
Re: Cory Kittel v Township of Wilmot
Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

1. This is further to Mr. Kittel's e-mail of December 18, 2023 in which he provided a copy of the Notice of Application and an explanation of efforts heretofore made to have it issued. When it is issued, I would appreciate a copy as issued.
2. I will continue to deal with Mr. Kittel directly until I am advised that Mr. Kirwin has been retained, after which I will deal with Mr. Kirwin. In the meantime, I will provide Mr. Kirwin with copies of my communications with Mr. Kittel unless otherwise directed by Mr. Kittel.

3. Mr. Brickman, the reason you are receiving this correspondence relates to the production of your file relating to your Engineer's Report on the proposed Jananna Drain dated April 28, 2023. Mr. Courey has been retained by Wilmot Township, but he has confirmed that he is not acting for you or your firm. In another case, recently, he asserted that not being in possession or control of the engineer's files, his municipal client was not able to produce the engineer's file contents or persuade the engineer to do so. And, not being the lawyer for the engineer, he has no authority to speak for the engineer. My intention, therefore, is to address that part of the Order for production of the contents of your engineering file directly to you and your firm, but before doing so, I want to give you the opportunity to be heard. If you wish me to exclude any part of your file from my proposed Order to produce, I will want to hear from you which part and why at the time of the case management conference I am trying to schedule.
4. As some of you will be aware, Referee Waters has assigned me to preside over this application.
5. To begin case management, I would like to schedule a pre-hearing conference to begin to address the following:
 - (a) Providing for the delivery directly to me, as presiding Referee, of anything a party is required to provide to the other party(ies) or is filed with the Court concurrently with its delivery or filing with the Court.
 - (b) Identifying parties, including those who may be affected by the result of this application and, establishing a means of putting those potentially affected persons on notice of this application and giving them an opportunity to participate as a party.
 - (c) Fixing a time for the delivery by the Township of documentation, having regard for subsection 11(1) of Regulation 232/15, being the Rules of Practice and Procedure in Proceedings Before The Referee.
 - (d) Fixing a time for the delivery of copies of the contents of the files of Stephen Brickman, P.Eng., and Headway Engineering relating to the Engineer's Report on the proposed Jananna Drain dated April 28, 2023 issued by Headway Engineering and signed by Mr. Brickman.
 - (e) Fixing a time for the applicant to deliver supporting evidence.
 - (f) Fixing a time for the respondent to deliver responding materials.
 - (g) Identifying preliminary issues.
 - (h) Scheduling pre-hearing production and exchange of documents, including affidavits and witness statements for expert witnesses and affidavits and evidence summaries for other witnesses.
 - (i) Making provisions about access to and login credentials for participants in the hearing.

- (j) Providing for service by personal service, registered mail or electronically (unless a statute or the Referee requires another method of service).
 - (k) Identifying the number and nature of witnesses to be called by each party.
 - (l) Estimating the amount of time required for the hearing.
 - (m) Setting the commencement date for the hearing.
 - (n) Dealing with such other matters or things as may arise and which the presiding Referee may determine is expedient to permit.
6. I remind the Township that its obligations under subsection 11(1) of Regulation 232/15 are in effect currently and are to be complied with in a reasonable time, say the end of January 2024. A future Order may need to include more particular details and timetables if there has not been fulsome disclosure by that time. Copies of all documentation produced to the applicant are to be sent, electronically, directly to me concurrently with delivery to the applicant.
7. The case management conference will be conducted by video conference using the Zoom platform at a time that is mutually agreeable.
8. I ask each of you – Mr. Kittel, Mr. Courey and Mr. Brickman - to provide conflict dates in February and March 2024. If Mr. Kirwin is retained, he, too, should provide his conflict dates.
9. In the meantime, as soon as possible, I would like to receive, electronically, from the Township copies of the disputed petition, the Engineer's Report issued by Headway Engineering and dated April 28, 2023, including plan and profile, and the Township's adopting by-law. I do not believe there have been any appeals to the Agriculture, Food and Rural Affairs Appeal Tribunal in connection with the proposed Jananna Drain, but if there have been, I ask the Township to provide copies of the Tribunal decision(s).
10. I may be spoken to by the parties and Mr. Brickman for clarification or elaboration.

Respectfully,



Andrew Wright,
Acting Drainage Referee

cc: The Law Office of Samuel Kirwin Professional Corporation,
472 Ridout Street, North,
London, Ontario. N6A 2P7
Attention: Samuel Kirwin, via e-mail to samuel@kirwinlaw.ca

THE LAW OFFICE OF SAMUEL KIRWIN
PROFESSIONAL CORPORATION

472 Ridout Street North
London ON N6A 2P7

Telephone: (519) 494-1032
Email: samuel@kirwinlaw.ca

December 19, 2023

SENT VIA EMAIL TO: andrewcwrightis@outlook.com

**THE OFFICE OF THE ONTARIO
DRAINAGE REFEREE**

12 The Ridgeway
London ON N6C 1A1

Dear Referee Wright:

Re: CV-23-00001662-0000 (Kitchener)

Further to your letter of today's date, please note that the undersigned will meet with the applicant Mr. Kittel on December 21, 2023 for the purpose entering into a retainer. An update will be circulated if/when a retainer is executed.

This afternoon a staff member named Ingrid Peters at the Kitchener court stated that this proceeding is the first drainage matter that Kitchener court has dealt with. She expects to be the contact person at the court for the parties to this proceeding. Ms. Peters' telephone number is (519) 741-3200 ext. 3307 and her email address is Ingrid.M.Peters@ontario.ca.

Ms. Peters stated that she expects Mr. Kittel to obtain a hearing date from the trial coordinator before submitting the Notice of Application online for issuance. The undersigned is now responsible for having the Notice of Application issued.

There is some uncertainty about whether a court hearing date will be required in this proceeding since in the undersigned's rather limited experience most hearings before Referees occur virtually and are not attended by court staff. If a specific date will not be required then a placeholder date may need to be obtained from the trial coordinator, if Ms. Peters so requires.

It would be appreciated if you could advise whether there are certain court hearing dates that should be requested from the trial coordinator.

Thank you in advance for your time and direction in this matter.

Yours truly,

Sam Kirwin

PER:
SAMUEL KIRWIN

cc: corykittel@gmail.com, pc@coureylaw.com, mail@coureylaw.com, info@headwayeng.ca

Paul Courey

From: Andrew Wright <[REDACTED]>
Sent: December 20, 2023 9:23 AM
To: Samuel Kirwin
Cc: info@headwayeng.ca; Paul Courey; CLPC General; Cory Kittel
Subject: Re: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Mr. Kirwin, I recommend that you submit the Notice of Application through the Superior Court online portal, including payment of any issuing fee. Ms Peters will be watching for it and will issue it and return a sealed copy to you for formal service on the Township.

If there is any difficulty, please advise; otherwise, I'd be grateful for a status report when issuance has been accomplished.

Compliments of the Season to you and to all to whom this e-mail is copied.

Respectfully. Andrew Wright, Acting Drainage Referee

On Dec 19, 2023, at 2:29 PM, Andrew Wright <[REDACTED]> wrote:

Leave this with me for the moment, Mr. Kirwin. I'll get back to you when I have a solution.

Respectfully. Andrew Wright, Acting Drainage Referee

On Dec 19, 2023, at 1:01 PM, Samuel Kirwin <samuel@kirwinlaw.ca> wrote:

Hello Referee Wright,

Please see my letter, attached.

Regards,

Sam

<Outlook-zsnqkp0o.png>

This communication is intended for the use of the addressee(s) only and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any other dissemination, distribution, disclosure or copying of this communication is strictly prohibited except where my express permission has been granted. If you have received this communication in error, please notify the sender immediately and delete this message without making a copy. The integrity and security of this message cannot be guaranteed on the Internet.

Court File No. CV-23-00001662-0000 (Kitchener)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE COURT OF THE DRAINAGE REFEREE

BETWEEN:

CORY KITTEL

Applicant

-and-

THE CORPORATION OF THE TOWNSHIP OF WILMOT

Respondent

-and-

OTHERS WHO MAY BE GRANTED PARTY STATUS UPON APPLICATION

Respondents

AFFIDAVIT OF SERVICE

I, Cory Kittel, of the Township of Wilmot, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the Applicant in this application and, as such, have knowledge of the following matters.
2. I served the defendant the Corporation of the Township of Wilmot at 7:50 p.m. on December 20, 2023, by emailing a copy of the issued Notice of Application to pc@coureylaw.com, which is the email address of the township's lawyer, Paul Courey of Courey Law Professional Corporation. A copy of my service email is affixed to this my affidavit as **Exhibit "A"**. A copy of Mr. Courey's email in which

he states that he will accept service of the Notice of Application on behalf of the township is affixed to this my affidavit as **Exhibit "B"**.

SWORN before me at the Township of Wilmot, in the Province of Ontario, by Cory Kittel of the Township of Wilmot, in the Province of Ontario, before me on December 21, 2023.

}



Commissioner for Taking Affidavits
(or as may be)



CORY KITTEL

Exhibit "A" to the Affidavit of Cory Kittel

Sworn before me this 21st day of December, 2023.

[REDACTED]

Commissioner for Taking Affidavits, etc.

12/21/23, 9:04 AM

Mail - Samuel Kirwin - Outlook

Issued Notice of Application

Cory Kittel <corykittel@gmail.com>

Wed 2023-12-20 7:50 PM

To: pc@coureylaw.com <pc@coureylaw.com>

Cc: Samuel Kirwin <samuel@kirwinlaw.ca>

 1 attachments (235 KB)

2023-12-20 Notice of Application (issued).pdf;

Mr. Courey

Please find attached the issued Notice of Application, which is served upon you pursuant to the Rules of Civil Procedure and the Rules of Practice and Procedure in Proceedings Before the Referee.

My lawyer, Mr. Kirwin will send a copy to Referee Wright.

Exhibit "B" to the Affidavit of Cory Kittel

Sworn before me this 21st day of December, 2023.

 _____

Commissioner for Taking Affidavits, etc.

RE: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Paul Courey <pc@coureylaw.com>

Wed 2023-12-20 9:28 AM

To: Cory Kittel <[REDACTED]>

Cc: Samuel Kirwin <samuel@kirwinlaw.ca>; Sheri Clark <sheri@coureylaw.com>

📎 1 attachments (130 KB)

2023-12-18 Notice of Application.pdf;

Thank you.

Please provide a copy of whatever document you attempted to file at Court in September. Please also advise as to the date and time you attempted to file it, and the name of the person who declined to accept it.

There are issues with your draft Application as attached.

The Rules, with which you are clearly familiar, set out in Rule 3 the required style of cause. There is no provision for "and others who may be granted party status upon application". Those words convey no meaning. Moreover, since whomever those persons are, or will be, are named as Respondents, Wilmot cannot respond to nor serve them with an Appearance, nor cross claim against them.

Parties can be added on their Motion after commencement of proceedings. Please restyle your pleading before filing, to delete that reference.

The claim for relief, in para. a and b, is for a procedural order, which by the Rule 6 cannot be sought until after 20 days after the Notice of Appearance. Wilmot will consent to an adjournment of those items until the required time passes.

I will accept service for Wilmot.

I suggest that you finalize your retainer with counsel before taking further steps. It may avoid a needless Motion and will avoid this unneeded flurry of email.

Please recall that the Referee is not part of most conversations between counsel. He should not be included absent prior agreement of all counsel.

Paul Courey

COUREY LAW Professional Corporation

Paul Courey

18 Queen St. S., Box 178

Tilbury, ON. NOP 2LO

Tel: 519-682-1644 Fax: 519-682-1146

Email: mail@coureylaw.com

This e-mail is solicitor-client privileged and contains confidential information intended only for the person(s) named above. Any other distribution or disclosure is strictly prohibited. If you have received this e-mail in error, please notify us immediately by telephone and delete this message from your system without making a copy. Nothing in this message constitutes an electronic signature unless so specified.

From: Cory Kittel <corykittel@gmail.com>

Sent: Monday, December 18, 2023 1:47 PM

To: andrewcwrightis@outlook.com

Cc: Paul Courey <pc@coureylaw.com>; Samuel Kirwin <samuel@kirwinlaw.ca>

Subject: Re: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Mr. Wright

Mr. Courey

Thank you for reaching out and shedding light on a path forward for my Application. In September prior to the notice letter served on the Township, I submitted my formal Application (in proper format and form) to the Superior Court of Justice in accordance to the Rules of Practice and Procedure in Proceeding Before the Referee.

This was first attempted in-person at the Waterloo Region (Kitchener) Courthouse. After talking with multiple staff, it became evident there was some unfamiliarity with the Court of the Drainage Referee and its procedures.

Additional attempts were made by phone, email and online submission, but I continued to be met with obstacles and unfamiliarity of the subject matter – for lack of a better description, they just didn't know what to do with my Application. I even sought advice from the folks at OMAFRA, who suggested I pass along reference to section 106 of the procedures manual, which I did multiple times.

Suffice to say, a significant attempt was made. My next hope was that the Tribunal proceedings underway could shed some light on possible next steps. But it looks like through some persistence via multiple parties, there is now a contact at the Waterloo Region (Kitchener) Courthouse who is ready to see this through.

As bumpy as the experience has been, I can understand the outcome if the Waterloo Region Courthouse has never dealt with an Appeal/Application like this. I just wanted to take this opportunity to shed some light on my path and the absence of the formal Application to-date and the potential path of future applications.

As a side note, the OMAFRA page on appeals states "To appeal to the Referee a written notice must be served upon the Council of the initiating municipality. The clerk records the appeal and forwards it to the Clerk of the Court of the Referee". I just wanted to highlight this statement just in case there is any discrepancy.

You can find the formal Notice of Application attached here with the court file number and revised date. This will be promptly re-submitted to the court to have it issued and served on the Township.

I'm in the process of retaining legal representation which will help smooth the path moving forward...

Samuel Kirwin, Lawyer
The Law Office of Samuel Kirwin Professional Corporation
472 Ridout Street North
London, Ontario N6A 2P7
Telephone: (519) 494-1092
Email: samuel@kirwinlaw.ca

And just so you have it, my full contact information can be found below...

Cory Kittel
[Redacted]
St. Agatha, Ontario (Wilmot Township)
N0B 2L0
[Redacted]

Thank you for your patience and clarity on this matter. It's very much appreciated.

Please kindly confirm receipt of this email when you have the opportunity.

Thanks again

On Fri, Dec 15, 2023 at 7:28 AM Andrew Wright [Redacted] wrote:

Cory Kittel via e-mail to [Redacted]

12/21/23, 9:07 AM

Mail - Samuel Kirwin - Outlook

Dear Mr. Kittel:

Re: Cory Kittel v Township of Wilmot

Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Please see and respond to the attached letter.

Respectfully, Andrew Wright, Acting Drainage Referee

CORY KITTEL
Appellant

-and- THE CORPORATION OF THE TOWNSHIP OF WILMOT
Respondent

Court File No.

ONTARIO
COURT OF THE DRAINAGE REFEREE
PROCEEDING COMMENCED AT
WATERLOO

AFFIDAVIT OF SERVICE

**THE LAW OFFICE OF
SAMUEL KIRWIN
PROFESSIONAL CORPORATION**

472 Ridout Street North
London ON N6A 2P7

Samuel Kirwin
(LSO No. 81800K)
samuel@kirwinlaw.ca
Tel: 519-494-1092

Lawyer for the appellant

File Number:

Paul Courey

From: Andrew Wright <[REDACTED]>
Sent: December 20, 2023 7:41 PM
To: Paul Courey
Cc: CLPC General; Samuel Kirwin; Cory Kittel
Subject: Re: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

I take this to be an acknowledgement of your receipt of my December 19, 2023, e-mail and attached letter.

Respectfully, Andrew Wright, Acting Drainage Referee

On Dec 20, 2023, at 3:25 PM, Paul Courey <pc@coureylaw.com> wrote:

I received your message.

A great deal of effort is required in forming a response, not least of which is consultation with others affected and obtaining instructions from a public sector client.

I have other commitments to manage concurrently.

Considering that I have yet to be served with originating process, had to facilitate an opportunity for Appellant to even commence proceedings, have seen a draft notice that is deficient and offered accommodation to correct it, I think in a reasonable amount of time I will be able to respond.

There is no reason or desire on the part of Wilmot to delay this matter, but in reality it has not even begun yet, and that is not Wilmot's doing.

Paul Courey

COUREY LAW Professional Corporation

Paul Courey

18 Queen St. S., Box 178

Tilbury, ON. N0P 2L0

Tel: 519-682-1644 Fax: 519-682-1146

Email: mail@coureylaw.com

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From: Andrew Wright <[REDACTED]>
Sent: Wednesday, December 20, 2023 10:17 AM
To: Paul Courey <pc@coureylaw.com>; CLPC General <mail@coureylaw.com>
Cc: Samuel Kirwin <samuel@kirwinlaw.ca>; info@headwayeng.ca; Cory Kittel <[REDACTED]>
Subject: Re: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Mr. Courey, if you received my e-mail yesterday, please acknowledge it. If not, please advise, and I will re-send it.

Will you please also advise when I might expect to receive from you or your client the documentation mentioned in the penultimate paragraph 9.

M. Kirwin, I reiterate: If there is any difficulty, please advise; otherwise, I'd be grateful for a status report when issuance has been accomplished.

Respectfully. Andrew Wright, Acting Drainage Referee

On Dec 20, 2023, at 9:33 AM, Paul Courey <pc@coureylaw.com> wrote:

I have communicated with Mr. Kittel and Mr. Kirwin as to the proposed Notice of Application. There are some issues with it that are most easily addressed prior to issuing/serving/filing.

With the progress I made with Court staff and the involvement of counsel, I am confident we will sort out the pleadings in due course without burdening your office with minutia.

Paul Courey
COUREY LAW Professional Corporation
Paul Courey
18 Queen St. S., Box 178
Tilbury, ON. NOP 2LO
Tel: 519-682-1644 Fax: 519-682-1146
Email: mail@coureylaw.com

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From: Andrew Wright [REDACTED]
Sent: Wednesday, December 20, 2023 9:23 AM
To: Samuel Kirwin <samuel@kirwinlaw.ca>
Cc: info@headwayeng.ca; Paul Courey <pc@coureylaw.com>; CLPC General <mail@coureylaw.com>; [REDACTED]
Subject: Re: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Mr. Kirwin, I recommend that you submit the Notice of Application through the Superior Court online portal, including payment of any issuing fee. Ms Peters will be watching for it and will issue it and return a sealed copy to you for formal service on the Township.

If there is any difficulty, please advise; otherwise, I'd be grateful for a status report when issuance has been accomplished.

Compliments of the Season to you and to all to whom this e-mail is copied.

Respectfully. Andrew Wright, Acting Drainage Referee

On Dec 19, 2023, at 2:29 PM, Andrew Wright

[REDACTED] wrote:

Leave this with me for the moment, Mr. Kirwin. I'll get back to you when I have a solution.

Respectfully. Andrew Wright, Acting Drainage Referee

On Dec 19, 2023, at 1:01 PM, Samuel Kirwin

<samuel@kirwinlaw.ca> wrote:

Hello Referee Wright,

Please see my letter, attached.

Regards,

Sam

<Outlook-zsnqkp0o.png>

This communication is intended for the use of the addressee(s) only and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any other dissemination, distribution, disclosure or copying of this communication is strictly prohibited except where my express permission has been granted. If you have received this communication in error, please notify the sender immediately and delete this message without making a copy. The integrity and security of this message cannot be guaranteed on the Internet.

From: Andrew Wright

[REDACTED]

Sent: December 19, 2023 9:14 AM

To: Cory Kittel

[REDACTED]; mail@coureylaw.com <mail@coureylaw.com>; Paul Courey <pc@coureylaw.com>; info@headwayeng.ca <info@headwayeng.ca>

Paul Courey

From: Paul Courey
Sent: December 21, 2023 8:14 AM
To: Samuel Kirwin
Cc: Cory Kittel; Sheri Clark
Subject: RE: Issued Notice of Application
Attachments: 2023-12-20 Notice of Application (issued).pdf; Notice of Appearance - Respondent - Wilmot - 14 Dec 2023.pdf

See below and attached.

Do I take this to mean that you are now counsel of record and Mr. Kittel's communication was merely in the capacity of process server?

The issue of your involvement has been unclear.

I am going to treat the fact that your name is on the Pleading Mr. Kittel served last evening on me as evidence you are counsel to Kittel. Please confirm that. I had advised that I would accept service of the Notice of Application Accordingly, I will not acknowledge further communication, including service, from Mr. Kittel.

I observe that a great amount of effort has been wasted on the matter of your status. Counsel, even if clients don't, should know that one is either retained or is not. Respondents are not required to shadow box. Nor is the Court, which it also has been doing in this case.

Wilmot is conscious that costs may fall to the project, or the petitioner, and intends to run this appeal efficiently. Wasted effort is wasted cost, and where Appellant causes the waste, he should be aware that recovery will be sought. Since Mr. Kittel gave the impression that he would rely on his note to Wilmot of Sept. 06 as originating process, I delivered a Notice of Appearance, copy attached. I rely on it as being properly served on Respondent in response to the Application..

Procedure needs to be established, including productions. I am willing to discuss that informally with you.

Paul Courey

COUREY LAW Professional Corporation

Paul Courey
18 Queen St. S., Box 178
Tilbury, ON. NOP 2LO
Tel: 519-682-1644 Fax: 519-682-1146
Email: mail@coureylaw.com

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From: Cory Kittel [REDACTED] >
Sent: Wednesday, December 20, 2023 7:51 PM
To: Paul Courey <pc@coureylaw.com>
Cc: Samuel Kirwin <samuel@kirwinlaw.ca>
Subject: Issued Notice of Application

Mr. Courey

Please find attached the issued Notice of Application, which is served upon you pursuant to the Rules of Civil Procedure and the Rules of Practice and Procedure in Proceedings Before the Referee.

My lawyer, Mr. Kirwin will send a copy to Referee Wright.

Paul Courey

From: Paul Courey
Sent: December 29, 2023 9:10 AM
To: Andrew Wright
Cc: CLPC General; info@headwayeng.ca; Samuel Kirwin
Subject: RE: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener) - Case Management Conference on February 21, 2024

Received.

Response re previous letter is in preparation, now that holiday interruptions are diminishing.

Paul Courey

COUREY LAW Professional Corporation

Paul Courey
18 Queen St. S., Box 178
Tilbury, ON. N0P 2L0
Tel: 519-682-1644 Fax: 519-682-1146
Email: mail@coureylaw.com

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From: Andrew Wright [REDACTED] >
Sent: Thursday, December 28, 2023 10:40 AM
To: Samuel Kirwin <samuel@kirwinlaw.ca>; Paul Courey <pc@coureylaw.com>; CLPC General <mail@coureylaw.com>; info@headwayeng.ca
Cc: Cory Kittel [REDACTED] >
Subject: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener) - Case Management Conference on February 21, 2024

The Law Office of Samuel Kirwin Professional Corporation
472 Ridout Street, North,
London, Ontario. N6A 2P7
Attention: Samuel Kirwin, via e-mail to samuel@kirwinlaw.ca
Lawyer for the applicant

Courey Law Professional Corporation via e-mail to mail@coureylaw.com
18 Queens Street, South,
P.O. Box 178,
Tilbury, Ontario N0P 2L0
Attention: Paul Courey, Lawyer via e-mail to pc@coureylaw.com
Lawyer for the respondent Township of Wilmot

Stephen Brickman, P.Eng., President

Headway Engineering via e-mail to info@headwayeng.ca
23-500 Fairway Road, South
Suite 308
Kitchener, Ontario
N2C 1X3

Dear counsel and Mr. Brickman:

Re: Cory Kittel v Township of Wilmot
Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

Please see the attached correspondence

Respectfully. Andrew Wright, Acting Drainage Referee

G. OFFICE OF THE

ONTARIO DRAINAGE REFEREE

ROBERT G. WATERS, B.A., LL.B.

REFEREE

7 Kittridge Avenue East
STRATHROY, Ontario, N7G 2A9
Telephone: (519) 245-2958
E-mail: rob@robwaters.ca

ANDREW C. WRIGHT

ACTING REFEREE

12 The Ridgeway,
LONDON, Ontario, N6C 1A1
Telephone: (519) 671-5786
E-mail: andrewcwrightis@outlook.com

December 28, 2023

The Law Office of Samuel Kirwin Professional Corporation,
472 Ridout Street, North,
London, Ontario. N6A 2P7
Attention: Samuel Kirwin, via e-mail to samuel@kirwinlaw.ca
Lawyer for the applicant

Courey Law Professional Corporation via e-mail to mail@coureylaw.com
18 Queens Street, South,
P.O. Box 178,
Tilbury, Ontario N0P 2L0
Attention: Paul Courey, Lawyer via e-mail to pc@coureylaw.com
Lawyer for the respondent Township of Wilmot

Stephen Brickman, P.Eng., President

Headway Engineering via e-mail to info@headwayeng.ca
23-500 Fairway Road, South
Suite 308
Kitchener, Ontario
N2C 1X3

Dear counsel and Mr. Brickman:

Re: Cory Kittel v Township of Wilmot
Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener)

1. This letter is further to my letter to you dated December 19, 2023, and should be read together with that letter. In that December 19th letter, I set out an agenda for a pre-hearing case management conference and asked for conflict dates in February and March 2024.
2. Counsel for the applicant has acknowledged that letter and provided his conflict dates.

3. Counsel for the respondent Township has not provided conflict dates. Mr. Brickman has neither acknowledged the letter nor provided conflict dates.
4. I, therefore, hereby fix the date for the pre-hearing case management conference on Wednesday, February 21, 2024, commencing at 10:00 a.m. The conference will be conducted by video conference using the Zoom platform. A day or two before the case management conference, I will send counsel and Mr. Brickman login credentials.
5. If the parties or Mr. Brickman do not attend or are not represented at this hearing, the presiding Referee may proceed in their absence, and they will not be entitled to any further notice of the proceeding. This notice is being given in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, Chapter S.22.
6. No adjournments or delays will be granted before or during the pre-hearing case management conference except for serious hardship or illness.
7. The video conference will be recorded. After the session, I will send you links from which you may download a copy of the audio/video file and a transcript.
8. If there are others whom you would like to have with you for the case management conference, please provide me with their names, e-mail addresses and reasons for including them; I will then send the login credentials to them directly and thereby know which persons to admit to the video conference.
9. I may be spoken to by counsel or Mr. Brinkman for clarification or elaboration.

Respectfully


Andrew Wright,
Acting Drainage Referee

Paul Courey

From: Paul Courey
Sent: December 29, 2023 9:10 AM
To: Andrew Wright
Cc: CLPC General; info@headwayeng.ca; Samuel Kirwin
Subject: RE: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener) - Case Management Conference on February 21, 2024

Received.

Response re previous letter is in preparation, now that holiday interruptions are diminishing.

Paul Courey

COUREY LAW Professional Corporation

Paul Courey
18 Queen St. S., Box 178
Tilbury, ON. N0P 2L0
Tel: 519-682-1644 Fax: 519-682-1146
Email: mail@coureylaw.com

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From: Andrew Wright <[REDACTED]>
Sent: Thursday, December 28, 2023 10:40 AM
To: Samuel Kirwin <samuel@kirwinlaw.ca>; Paul Courey <pc@coureylaw.com>; CLPC General <mail@coureylaw.com>; info@headwayeng.ca
Cc: Cory Kittel <[REDACTED]>
Subject: Cory Kittel v Township of Wilmot - Court of the Drainage Referee File No.: CV-23-00001662-0000 (Kitchener) - Case Management Conference on February 21, 2024

The Law Office of Samuel Kirwin Professional Corporation
472 Ridout Street, North,
London, Ontario. N6A 2P7
Attention: Samuel Kirwin, via e-mail to samuel@kirwinlaw.ca
Lawyer for the applicant

Courey Law Professional Corporation via e-mail to mail@coureylaw.com
18 Queens Street, South,
P.O. Box 178,
Tilbury, Ontario N0P 2L0
Attention: Paul Courey, Lawyer via e-mail to pc@coureylaw.com
Lawyer for the respondent Township of Wilmot

Paul Courey

From: Jeff Bunn <jeff.bunn@wilmot.ca>
Sent: January 4, 2024 10:40 AM
To: Sheri Clark
Subject: RE: ats Kittel - Jananna Drain

Hi Sheri,

Confirming receipt.

I just wanted to clarify for your records that Chad Curtis is no longer with the Township of Wilmot. I can be the contact for any billings or correspondence.

Kind Regards,
Jeff



Jeff Bunn, CMO

Interim Director of Corporate Services
Manager of Legislative Services / Municipal Clerk
Legislative Services | Township of Wilmot | 519-634-8519 ext. 9230

[Wilmot.ca](#) | [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [YouTube](#)

My work day may look different than your work day. Please do not feel obligated to respond out of your normal working hours.

From: Sheri Clark <sheri@coureylaw.com>
Sent: Thursday, January 4, 2024 9:23 AM
To: Jeff Bunn <jeff.bunn@wilmot.ca>
Subject: ats Kittel - Jananna Drain

CAUTION: This email originated from outside of the organization. Do not click links or open any attachments unless you recognize the sender and know the content is safe.

Attached please find correspondence from Mr. Courey.

Sheri Clark

COUREY LAW Professional Corporation

18 Queen St. S., Box 178
Tilbury, ON. NOP 2LO
Tel: 519-682-1644 Fax: 519-682-1146
Email: sheri@coureylaw.com

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Paul Courey LL.B.
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eric@legalfocus.ca
Lisa Grant J.D. (real estate)
lisa@legalfocus.ca

18 Queen Street South | Box 178 | Tilbury, Ontario | N0P 2L0
T: 519.682.1644 | mail@coureylaw.com

COPY

File No: 23146

January 10, 2024

Ontario Drainage Acting Referee Wright
[REDACTED]

Dear Sir:

Re: Kittel v Wilmot - Court File: CV-23-00001662-0000 (Kitchener)

I am responding to your letters of December 19, 2023, received at 9:14 a.m. and December 28, 2023, received at 10:40 a.m. Clearly these matters are complex and required significant discussion with my client.

As you know, my client is a public sector institution and, like most of them, has curtailed office hours in the holiday period. Attached is a copy of the Township's website showing its holiday hours. Given those hours, there were approximately 29 working hours from receipt of your first letter until the second one. There was no time limit expressed in your December 19 letter for a response.

On December 29, 2023, I advised you that a response was being formulated. That was no small task, given that your correspondence involved Mr. Brickman. He and his corporation are not parties to this matter, although most certainly he will be a witness on behalf of the Township, depending on what the Court orders him to do, if it can order him to do anything. The Township is severely prejudiced by the initiative that the Court has taken to seek out and contact Mr. Brickman, even before originating process was issued.

The Court, by that action, has created the potential for Mr. Brickman and the Township to have interests that are not fully aligned. That will severely prejudice the Township. I will return to that subject.

Continuing with the issue of timing, I note that the Rules provide that there will not be any proceedings over the Christmas holiday period. By analogy, one would expect that a response to

correspondence of a non-urgent matter, without a deadline, would not attract the response that arrived on December 28.

I am counsel to the City of Ottawa on a matter before the Ontario Drainage Tribunal, being the Cranberry Creek Drain, which has been scheduled for some time for February 12 – 26. There are perhaps 25 Appellants and this is an extremely large hearing. The chances of settlement are negligible.

In addition to that, on February 21, I have a special appointment scheduled in an estate matter in Superior Court at Chatham. I was able to allow that date to be assigned on the basis that I could manipulate the timing of the Ottawa matter so that my co-counsel could deal with what will occur on February 21.

Clearly there is no opportunity for me to have a third appointment that day. Accordingly, please confirm the adjournment.

As to a return date, I expect that today or tomorrow I will be filing a Notice of Motion for a procedural order, in keeping with the Rules. It will deal with a number of matters, including production of documents.

I must assert, with respect, but nonetheless must assert, that there is no apparent reason for the Court to be taking the initiative that it is taking. Both parties are represented by counsel, counsel are communicating, the Rules provide a framework for moving this matter forward and that framework provides that counsel make submissions as to a procedural order for a decision by the Court. I have drafted the Motion Record to be as complete as possible and I would not be surprised if counsel and I could agree on much of it in advance.

I am returning to the issue of Mr. Brickman. Wilmot is very concerned that the Court would even know who Mr. Brickman is. The only document in the Court file as of December 19 should have been Mr. Kittel's Notice of September 6. It referred to Headway Engineering, but not Mr. Brickman. Mr. Brickman's contact information was not in that Notice. It is not apparent how the Court came to have that information, much less why. It puts Wilmot in the position of wondering whether there has been some investigation done by the Court on its own motion.

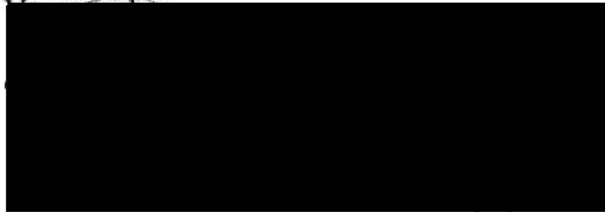
By analogy, the Act provides for the Referee to proceed on a view. Perhaps the interpretation of that section would support an argument that it extends to searching out documents and other information. However the section also requires the Referee to file a report with respect to the view taken, presumably so the parties know what evidence is under consideration. Absent that, the Respondent in particular does not know the case it has to meet.

Mr. Brickman nor his corporation are parties. They are not subject to an order from the Court. I make that as an observation rather than a submission on their part. Wilmot is concerned that the actions of the Court will cause Brickman to resist submitting to the jurisdiction of the Court as what amounts to a party, and perhaps suffer repercussions for that.

In an effort to deal with this matter on the merits and not be sidelined by that issue, Wilmot has begun negotiations with Mr. Brickman and those who advise him. The most appropriate resolution would be to allow that process to play out. If, as part of Wilmot's productions, Wilmot can produce material from Mr. Brickman, then the Court's concern, not one shared by

the Appellant apparently, should be addressed. It would assist in the negotiation with Headway if you would clarify the legal basis supporting the request for the Engineer, a non-party, to produce their file at this early stage?

In all the circumstances, Wilmot requests that your directions, which are not Orders, of December 19, 2023 and December 28, 2023 be suspended pending the outcome of the motion to set procedure that is pending imminently.



PAUL COUREY
PC/slc
Encl.

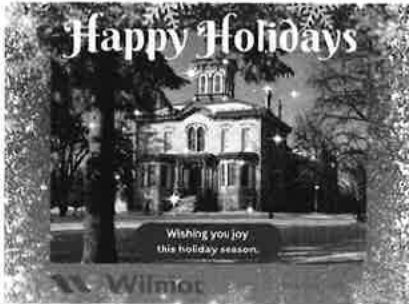
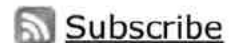


Holiday Hours at the Township of Wilmot

Posted on Thursday December 21, 2023

Like 0

Post



The Township of Wilmot wishes you a Happy Holiday season. Here are the Township's hours of operation during the holiday season.

Administrative Complex

The Township of Wilmot administrative buildings are open during the holidays with the exception of statutory holidays. The administrative offices close starting at 1 p.m. on Friday, Dec. 22. The Township

returns to regular office hours on Tuesday, Jan. 2.

Holiday hours are:

Friday, Dec. 22
8:30 a.m. – 1 p.m.

Wednesday, Dec. 27 and Thursday, Dec. 28
8:30 a.m. – 4:30 p.m.

Friday, Dec. 29
8:30 a.m. – 1 p.m.

Castle Kilbride

Castle Kilbride is open during the holidays for Christmas at the Castle.

Holiday hours are Dec. 20 to 23; Dec. 27 to 30 and Jan. 3 to 7, 2024, from 10 a.m. to 3 p.m.

Visit castlekilbride.ca for more information.

Wilmot Recreation Complex

This is Exhibit C referred to in the
affidavit of Jeffrey Bunn
sworn before me this 16
day of [redacted], 2024
A Commissioner for taking affidavits.

Court File No.: CV-23-00001662-00000 at Kitchener

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE COURT OF THE DRAINAGE REFEREE

THE HONOURABLE REFEREE) **DAY, THE** **DAY**
))
MR.) **OF JANUARY, 2024.**

BETWEEN:

CORY KITTEL

Appellant

-and-

THE CORPORATION OF TOWNSHIP OF WILMOT

Respondent

ORDER SETTING PROCEDURE

THIS MOTION was made by the Respondent for an Order setting the procedure and was heard by video conference on January , 2024.

ON READING the Affidavit of Jeffrey Bunn and hearing submissions of counsel for the Moving Party (“Wilmot”) and of the Responding Party (“Kittel”);

THIS COURT ORDERS THAT:

1. The Style of Cause is as set out herein.
2. Kittel shall serve and file a Notice of Appeal in the form provided in Rule 3 of the Rules of Procedure in O.Reg. 232/15, within one week of the date of this Order, if not previously done.
3. O.Reg. 232/15 shall govern the procedure in this matter.

4. Wilmot shall serve and file a Notice of Appearance within 20 days thereafter, if not previously done.
5. The parties shall discuss the production of documents and provide an Affidavit of Documents to each other within 60 days of the date of this Order, or failing agreement as to the nature and extent of productions, either side may move for Direction.
6. Examinations, if any, shall be held within 30 days after the service of Affidavits of Documents. The Appellant may examine the Engineer for discovery.
7. Either party may request a Pre Hearing Conference and a trial to be set in consultation with counsel, after 30 days after the completion of examinations, subject to any motion arising from the examinations or undertakings from the examinations.
8. This Order may be varied on consent or on further order made on motion.

REFEREE

CORY KITTEL
Appellant

-and-

THE CORPORATION OF THE TOWNSHIP OF WILMOT
Respondent

Court File No.: CV-23-00001662-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at
KITCHENER

ORDER

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Lawyers for the Respondent

CORY KITTEL
Appellant

-and-

THE CORPORATION OF THE TOWNSHIP OF WILMOT
Respondent

Court File No.: CV-23-00001662-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at

KITCHENER

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CORY KITTEL
Appellant

-and-

THE CORPORATION OF THE TOWNSHIP OF WILMOT
Respondent

Court File No.: CV-23-00001662-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at

KITCHENER

MOTION RECORD

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