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Woman says inspector did nothing about infill

Judge doesn't buy argument, fines company \$18,379

By BEVERLEY WARE South Shore Bureau
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A Bridgewater company and its owner were fined \$18,379 for infilling this piece of land on the LaHave River. The woman also owns the little island. (Beverley Ware / South Shore Bureau)

BRIDGEWATER — A Bridgewater-area woman and her company have been fined just over \$18,000 for infilling a section of land on the LaHave River where an endangered plant grows.

The woman's lawyer, however, said environment officials stood by, watched the work being done and did nothing about it until someone complained.

John MacPherson told Bridgewater provincial court Judge Anne Crawford on Wednesday that an inspector with the provincial Environment Department went to the site in Dayspring three times and had no concerns.

"He was there and saw what was going on and didn't express any concern until there was a complaint," he said.

"It was the last day and everything was infilled," so, he said, it isn't surprising that Corinna Kincaid-Lowe and her company, Nova Stone Exporters Inc., were reluctant to remove the infill when ordered by the province.

Mr. MacPherson said the accused "did not wantonly, willingly or knowingly infill in the LaHave River."

In fact, he said, "The most significant factor is the Department of Environment is not blameless in this matter. It literally had an inspector on site who stood by and watched the defendant do the infilling."

Mr. MacPherson told Judge Crawford his clients went to three government departments to find out if they needed any permits before they did any work. They also hired a surveyor to

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determine the high water mark. He said the provincial departments of Environment and Natural Resources and the federal Fisheries Department told them nothing was required for them to do the infilling.

However, Judge Crawford said it has been clear to Ms. Kincaid-Lowe for nearly seven years that she had to remove the infill, and she didn't do it.

"It appears the defendant dragged her feet one way or another refusing to do what had to be done, taking up the court's time" and unnecessarily delaying the clean up, Judge Crawford said.

If the prosecutor had asked for a heavier fine, she likely would have granted it, the judge added.

Crown attorney Leigh-Ann Bryson said a provincial Environment Department inspector received a complaint of infilling on a section of riverbank in Dayspring on Aug. 20, 2002. Normally, it would fall to the federal Fisheries Department to investigate, but this case involved a wetlands area, which meant it fell to the Environment Department to investigate.

The inspector issued a stop-work order and the department asked Ms. Kincaid-Lowe to present a remediation plan because the area included a salt marsh and a rare plant in danger of extinction.

Ms. Bryson said the department's wetlands biologist explained the salt marsh is "one of the richest wildlife habitats on the planet" and 65 per cent of them in the Maritimes are disturbed or destroyed.

The department ordered Ms. Kincaid-Lowe and her company to remove the infill by Oct. 30, 2002.

It wasn't done, so the department got a ministerial order requiring the work to be done by July 31, 2003. The defendants then came to an agreement to do the work by July 31, 2005. Again, it wasn't done, so the department charged both parties and got three quotes to have the work done, ranging from \$18,379 to \$41,000.

Mr. MacPherson asked for a lower penalty, saying Ms. Kincaid-Lowe makes \$62,000 a year, her company is no longer active and the fine is worth more than the property. Provincial records show the property is valued at \$17,600. However, they also show Ms. Kincaid-Lowe owns a second property in Conquerall Bank worth \$564,800.

Judge Crawford didn't agree, and handed down a fine for \$18,379 "for the defendants' foot dragging and lack of good faith in remediating a site that obviously cried out for remediation."

The fine will be used to remove the fill from the river.

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