

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:)
))
KRP ENTERPRISES INC., 1643078) John W. Findlay, and Margaret
ONTARIO INC. KEVINCLARK, ESTA) L. McCarthy , counsel on
CLARK, CHRISTINA ACCIACCAFERRO,) behalf of the
JEFFREY ACCIACCAFERRO, STEVE) Plaintiffs/Respondents
TONG, LORI TONG, RUSSELL)
KAVANAGH, MICHELLE KAVANAGH,)
PAUL DURCEK, STEFANY DURCEK,)
QUINTIN CHAUSSE, DONNA CHAUSSE,)
ANNE MARIE VANSICKLE, JAMES)
PAUL VANSICKLE, J.P. WOOLLEY)
SURVEYING LTD. and MARGARET)
COOK)
))
Plaintiff/Respondents)
))
- and -)
))
CORPORATION OF HALDIMAND) Leonard Marsello and
COUNTY, ONTARIO PROVINCIAL) Christopher P. Thompson,
POLICE COMMISSIONER GWEN M.) counsel on behalf of the
BONIFACE, ONTARIO PROVINCIAL) Defendants/Appellants
POLICE INSPECTOR BRIAN HAGGITH)
and HER MAJESTY THE QUEEN IN)
RIGHT OF ONTARIO)
))
Defendants/Appellants)
))
))
0 HEARD: April 30 and May 21,
0 2008
) (at Hamilton)

STAYSHYN J.

[1] The moving parties (defendants), less the Corporation of Haldimand County which is no longer a defendant in the action, argued on April 30, 2008 and may 21, 2008. The motion was for:

- (1) an Order abridging the time for service of this notice of motion for leave to appeal, if necessary;
- (2) an Order granting leave to appeal from the Order of the Honourable Justice Crane, dated December 21, 2007, dismissing the moving parties' motion for an order striking out the statement of claim for failing to disclose a reasonable cause of action;
- (3) the costs of the motion; and
- (4) such further and other relief as this Honourable Court deems just.

GROUNDNS FOR THE MOTIONB

[2] The proposed appeal involves matters of such importance that leave to appeal should be granted.

- (a) the Order adversely impacts on the ability of public officials to carry out their duties in the public

interest in the context of responding to a First Nations land claims dispute;

(b) the Order raises the proper role of the courts in reviewing police discretion in the context of policing a First Nations land claims dispute;

(c) the Order makes possible significant economic loss claims against the police and the Crown by members of the public who may have suffered economic loss as a result of the conduct of public officials in responding to emergency situations.

[3] There appears good reason to doubt the correctness of the Order, for the following reasons:

(a) The court erred in law in failing to properly apply the test to strike a statement of claim for failing to disclose a reasonable cause of action;

(b) The court erred in law in concluding that the defendants may be liable for pure economic loss notwithstanding the indeterminate numbers of plaintiffs, with indeterminate numbers of claims and indeterminate damages over an indeterminate time;

- (c) The court erred in law by failing to conduct the first and second stage of the ***Anns/Kamloops*** test in negligence;
- (d) The court erred in law with respect to negligence, by failing to consider the inherent conflict between public duties and potential private law duties of care in the context of policing a First Nations occupation, and in failing to consider the broader policy implications of imposing a private law duty of care to the numerous individuals and businesses in the various classes;
- (e) The court erred in law in finding that the plaintiffs had pled a cause of action in misfeasance in public office;
- (f) The court erred in law in concluding that, in the context of a First Nations occupation, even absent flagrant impropriety or bad faith, the court will judge and balance police actions as against the class interests to determine whether the police action constitutes an actionable nuisance;