

COURT OF APPEAL FOR ONTARIO

CITATION: Amyotrophic Lateral Sclerosis Society of Essex v.
Windsor (City), 2015 ONCA 867

DATE: 20151209

DOCKET: C59525 & C59526

Strathy C.J.O., LaForme and Tulloch JJ.A.

DOCKET: C59525

BETWEEN

Amyotrophic Lateral Sclerosis Society of Essex County

Plaintiff (Respondent)

and

The Corporation of the City of Windsor

Defendant (Appellant)

DOCKET: C59526

BETWEEN

Belle River District Minor Hockey Association Inc. and
Essex County Dancers Incorporated

Plaintiffs (Respondents)

and

The Corporation of the Town of Tecumseh

Defendant (Appellant)

Scott Hutchison, for appellant City of Windsor

Brendan van Niejenhuis, for the appellant Town of Tecumseh

Peter W. Kryworuk and Yola S. Ventresca, for the respondents

Heard: By written submissions

On appeal from the orders of the Divisional Court (Justices James C. Kent, Clayton Conlan and Michael N. Varpio), dated April 28, 2014.

ENDORSEMENT RE. COSTS

[1] Having considered the parties' submissions with respect to the costs in the Divisional Court, it is our view that the appropriate order is no order as to costs in either this court or the Divisional Court.

[2] This reflects the divided success of the appeal process. It also recognizes that it was for the plaintiffs (respondents), not for the defendants (appellants) or the court, to produce a rational and workable class definition. The plaintiffs' definition was arbitrary and, as we noted in our reasons, it resulted in common issues that were not common. The failure of the plaintiff to address this at the outset, or to amend the class definition when it had opportunities to do so, has contributed to the delay in moving this action forward and has added to the costs at all levels.

[3] Order accordingly.

"G.R. Strathy C.J.O."
"H.S. LaForme J.A."
"M. Tulloch J.A."