DATE: 20041104
DOCKET: C40916

COURT OF APPEAL FOR ONTARIO

RE: **BEN SUTCLIFFE and HELEN KIMMERLY (Applicants) (Respondents) – and – MINISTER OF THE ENVIRONMENT (ONTARIO) and CANADIAN WASTE SERVICES INC. (Respondents) (Appellants)**

AND RE: **MOHAWKS OF THE BAY OF QUINTE (Applicant) (Respondent) – and – MINISTER OF THE ENVIRONMENT (ONTARIO) and CANADIAN WASTE SERVICES INC. (Respondents) (Appellants)**

BEFORE: **LASKIN, CHARRON and MacPHERSON JJ.A.**

COUNSEL:

Michael R. Stephenson
for the respondent
(respondent to cross-appeal)
Minister of the Environment (Ontario)

Chris G. Paliare and Andrew K. Lokan
for the respondent
(appellant)
Canadian Waste Services Inc.

Richard D. Lindgren and
Marlene Cashin
for the applicants
(respondents)
Ben Sutcliffe and Helen Kimmerly

Patrick F. Schindler
for the applicant
(respondent)
Mohawks of the Bay of Quinte

Sara Blake
for the intervener
Attorney General for Ontario

Peter Pickfield
for the intervener
Township of Warwick

Joseph F. Castrilli
for the intervener
Warwick Watford Landfill Coalition

Raymond F. Leach
for the intervener
St. Thomas Sanitary Services Limited

Andrew J. Roman and John R. Tidball
for the *amicus curiæ*
Ontario Waste Management Association

HEARD: **June 28, 2004**

On appeal from the judgment of the Divisional Court (Susan E. Lang J., Stanley R. Kurisko J., concurring, and J. Douglas Cunningham A.C.J., dissenting) dated June 17, 2003 and reported at [2003] O.J. No. 2576.

C O S T S E N D O R S E M E N T

[1] We have reviewed the written costs submissions of the parties. We have decided to exercise our discretion by ordering no costs either of the application in the Divisional Court or of the appeal to this court (including the motion for leave to appeal). We do so for the following reasons:

(a) This is the first case to interpret the 1996 amendments to the *Environmental Assessment Act*, especially the new terms of reference provisions, which were added to the statute. Our decision clarifies how these new provisions should be interpreted for all Ontario undertakings subject to the Act. See Orkin, *The Law of Costs* (2nd Ed. 2001) at pp. 2-52 to 2-53.

(b) The point of statutory interpretation in question was a difficult one, as reflected by the opposite conclusions reached by our court and the majority in the Divisional Court. See *Re: Townsend* (1996), 54 O.R. (2d) 449 (C.A.).

(c) Although the respondents are not "public interest" litigants as they had a direct stake in the outcome of the litigation, their application nonetheless raised issues of public importance. See *Mahar v. Rogers Cable Systems Ltd.* (1995), 24 O.R. (3d) 690 (Gen. Div.)

(d) In the Divisional Court where it was unsuccessful CWS argued forcefully that no costs should be awarded against it. Now that it has been successful it takes a different position on costs. In our view CWS should be held to its previous position.

(e) We also take account of the significant disparity in the financial resources of the parties.

[2] For these reasons – taken cumulatively – an award of no costs is justified and we so order.

"John Laskin J.A."
"Louise Charron J.A."
"J.C. MacPherson J.A."