

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

HENCO INDUSTRIES LIMITED

Applicant

- and -

HAUDENOSAUNEE SIX NATIONS CONFEDERACY COUNCIL, JANIE JAMIESON,
DAWN SMITH, OR ANY AGENT OR PERSON acting under their instructions, JOHN
DOE, JANE DOE and any Persons unknown, and THE CORPORATION OF HALDIMOND
COUNTY

Respondents

Court File No. 93/06

B E T W E E N :

RAILINK CANADA LTD. carrying on business as the
SOUTHERN ONTARIO RAILWAY

Applicant

- and -

HAUDENOSAUNEE CONFEDERACY OF MOHAWK, SENECA, CAYUGA,
ONONDAGA, ONEIDA, TUSCARORA NATIONS, SIX NATIONS OF THE GRAND
RIVER BAND OF INDIANS, CLYDE POWELESS, JAQUELINE HOUSE, HAZEL HILL,
DAWN SMITH, SEAN MT. PLEASANT, WES HILL, JANE DOE, JOHN DOE and
PERSONS UNKNOWN

Respondents

**OUTLINE OF SUBMISSIONS OF THE COURT-APPOINTED *AMICUS CURIAE*
FOR THE RESIDENTS OF CALEDONIA
(motion returnable Tuesday, August 22, 2006)**

PART I - ORIGIN AND NATURE OF THE MOTION

1. By Notice of Motion dated August 17, 2006, in conjunction with a Notice of Appeal of the same date, the Attorney General of Ontario seeks to stay, pending the hearing of its appeal, the Order of the Honourable Justice Marshall dated August 8, 2006.
2. By Order dated August 21, 2006, this Court appointed David Brown as amicus curiae to make submissions on the issues before this Court reflecting the views and interests of the residents of Caledonia.

PART II - REPORT ON THE INQUIRIES MADE BY THE AMICUS CURIAE

A. MEETINGS HELD AND AREAS VISITED

3. This Amicus has undertaken the following activities in preparation for the hearing of this motion:
 - (a) a meeting on Friday, August 18, 2006 with 10 residents of Caledonia at the offices of the Caledonia Chamber of Commerce in the old Caledonia train station;
 - (b) a tour on Friday, August 18, 2006, of the protest areas in Caledonia by Mr. Warren Berger, a former Chief of Police of Caledonia, now retired;
 - (c) a meeting on Monday, August 21, 2006, with the Mayor and Councillors of the Haldimond County Council;
 - (d) meetings on Monday, August 21, 2006 with a resident of Braemar Avenue and a resident of Thistlemoor Drive;
 - (e) photographing the affected areas on Monday, August 21, 2006; and
 - (e) reviewing newspaper reports published on the events at Caledonia since April 13, 2006 in the Hamilton Spectator, the Brantford Expositor, The Globe and Mail and The National Post.

(a) August 18, 2006 Meeting with Town Residents

4. A three-hour meeting was held in Caledonia on August 18, 2006 with members of the Caledonia Regional Chamber of Commerce (the “Chamber”) and the Caledonia Citizens Alliance. Present from the Chamber were:

- Randy Pierson, President of the Chamber and co-owner of a local printing business;
- Barbara Martindale, Executive Director of the Chamber;
- Janice Renshaw, a Director of the Chamber and owner of a local fitness club located on Argyle Street near the easternmost barricade formerly erected on that street;
- Maureen Thomson, a Director of the Chamber and owner of a local mortgage broker business;
- Carol Ritchie, a Director of the Chamber and owner of a local restaurant and tavern.

5. The Caledonia Citizens Alliance (www.caledoniacitizensalliance.com) describes itself as follows:

“The Caledonia Citizens Alliance is a group of Caledonia and area residents who have informally and voluntarily responded to the First Nations protest, namely the occupation of Douglas Creek Estates.

The Alliance functions as a voice and advocate of recovery and renewal for the community, businesses, households, service groups and community organizations, by providing information, support and planning.

Purpose:

- 1) To provide the community with information and planning via meetings and maintaining the website;
- 2) To provide a means for community stakeholders to share experiences and access support; and,
- 3) To live in harmony as a caring and diverse community.”

6. The following members of the Caledonia Citizens Alliance were present at the meeting:

- Ron Howden, a local real estate broker;
- Ken Hewitt, a financial planner;
- Ralph Luimes, CEO of the Hald-Nor Credit Union located in Caledonia; and,
- Steve Tong.

Also present was Mr. Warren Berger, the chief of police of the former Caledonia Police Force, now retired.

(b) August 21, 2006 Meeting with Haldimond County Council

7. On Monday, August 21 this Amicus met with Haldimond City Council during a regular council meeting.

(c) Tour of Affected Areas

8. On August 18 and 21, 2006 this Amicus toured the affected areas with Messrs. Berger and Tong. The areas visited included Argyle St. South to the Highway 6 Bypass, the Highway 6 Bypass, 6th Line Road from Argyle St. South to the Six Nations Indian Reserve and the residential community abutting the Douglas Creek Estate lands, including Thistlemoor Drive, and Braemar Avenue.
9. A map of Caledonia and the areas visited can be found at Tab "1" to the Brief of Documents.
10. Photographs of the affected areas taken during the tours can be found at Tab "7" to the Brief of Documents and will be presented in Court.

B. SUMMARY OF VIEWS EXPRESSED BY CALEDONIA RESIDENTS

11. In the short period since the appointment meetings could only be held with a limited number of people in Caledonia. Like any community, a diversity of views no doubt permeates the community. However, several common themes ran through the discussions held with the Caledonia residents. They can be summarized as follows:

(a) The residents are extremely frustrated by the failure of governmental authorities to secure a final solution to the problem. The phrase most commonly used was that Caledonia “has been abandoned” by all levels of government;

(b) The residents were strongly critical of the Ontario Provincial Police Force (“OPP”) and did not seem to have any confidence that the OPP was capable of enforcing the law in the Caledonia area. The residents stated that the OPP refuses to patrol the 6th Line Road, which forms the western boundary of the occupied area and on which several families live;

(c) The residents expressed the view that a “double standard” was used in applying the law in Caledonia. This view related primarily to the unwillingness of the OPP to enforce the orders of Justice Marshall;

(d) The residents expressed strong support for the decisions of Justice Marshall and viewed the courts as the only governmental body prepared to take into account the interests of the residents of Caledonia;

(e) The residents were asked about the climate in the community since July 1, 2006. The residents described an on-going tension between the occupiers of the Douglas Creek Estates and Caledonia residents. In particular three areas of Caledonia seem to give rise to conflicts between the protesters and the community:

(i) Thistlemoor Drive:

This street runs along the easternmost boundary of the Douglas Creek Estates and consists of residential housing. Residents stated that protestors frequently drive ATVs along the rear of houses located on Thistlemoor and that after the release of Justice Marshall’s judgment a group of about 300 protestors marched from Argyle, along the backs of the homes up to the railroad tracks and back. Stones were thrown at one of the houses.

(ii) Braemar Ave. and MacCrae Drive:

The part of Braemar Avenue nearest Argyle Street borders on the eastern boundary of the Douglas Creek Estates while the northern-most part of the street parallels the CNR railroad tracks.

Notre Dame Catholic Elementary School is located on the western side of Braemar close to Argyle and backs onto the Douglas Creek Estates. Residents stated that the school board was considering erecting a barrier wall between the school property and the Estates. A newspaper article to that effect is contained in the Brief of Documents.

Residences on Braemar and MacCrae back onto the tracks. Residents stated that:

- Protestors frequently drive ATVs back and forth along the tracks at the rear of the houses or in the woods just past the tracks;
- protestors often shine flashlights into the backyard windows of residents on those streets;
- verbal exchanges occur between residents and protestors moving in the vicinity of the tracks;
- smoke from protestors' fires along the tracks drifts into the residents' backyards;
- protestors look into the backyards of the residents.

Residents described one couple who live with their young children on MacCrae who would not put their children's inflatable pool in their back yard because of the protestors and instead put it in the front. Community members described the residents living on Braemar and MacCrae as living in their front yards instead of their back yards. Steve Tong, who lives on Braemar, stated that one of the constant concerns of residents of those streets was the unknown in that they did not know what the protestors were going to do next.

Residents perceive the frequent driving of ATVs close to homes and the shining of lights in windows as efforts by the protestors to provoke the residents into a confrontational activity.

Community members related incidents of objects, including animal parts, being thrown into backyard pools and hot tubs.

One person described the tension as “frying people’s nerves” and said that it was easy for people to get on edge and to be provoked by the protestors.

(iii) Argyle Street South

Some residences are located on the north side of Argyle Street along the boundary with the Estates. One community member stated that a middle-aged couple who lived in one of the houses were “going through hell”.

One Chamber member, Janice Renshaw, owns a fitness centre on the south side of Argyle where one of the original barricades was erected. She described a drop-off in business because people were apprehensive about driving into the area. Although she has received some compensation from the government, she stated that she would prefer not to have to receive government money but, instead, for the occupation to end and the government to negotiate with the Six Nations.

The residents saw no prospects for these types of incidents subsiding as long as an occupation continued of the Douglas Creek Estates;

(f) Several of the residents described the current tensions as a “powder keg” and intimated that further confrontations between protestors and community members might occur within the next month;

(g) Maureen Thomson, a mortgage broker, stated that some alternative lenders had decided not to write mortgages in Caledonia because of the protests and that HomeTrust had recently decided not to do residential or commercial lending in Caledonia.

(h) Community members do not see any tangible progress in the negotiations with the Six Nations and they think any negotiations will be a long, drawn-out process. Residents complained about the lack of transparency in the negotiations and the absence of community representation in the negotiations.

C. VIEWS EXPRESSED BY RESIDENTS ON THE SUBJECT OF THE STAY SOUGHT BY THE ATTORNEY GENERAL OF ONTARIO OF THE ORDER OF MR. JUSTICE MARSHALL DATED AUGUST 8, 2006.

12. During the meeting on August 18 residents were asked about their views on the motion by the AGO to stay the Order of Justice Marshall. Specifically, the residents were asked:

(i) whether they wanted prosecution of the contempt charges to proceed and steps taken to evict the protestors from the Estates; and,

(ii) whether they wanted governmental negotiations with the Six Nations to proceed while the Estates were occupied.

13. The residents strongly voiced the view that they did not want the OPP to attempt to remove the protestors from the Estates. They gave two reasons:

(i) they noted that children and older people are present with protestors on the site and they did not want to see any bloodshed. As one person put it, "We don't want bloodshed, we just want our community back";

(ii) the residents have no confidence that the OPP is capable of removing the protestors given past efforts by the OPP at the site. They also noted that given the proximity of the Estates to the Six Nations reserve, it was very easy for the OPP to be quickly outnumbered by additional protestors coming in from the reserve.

14. By the same token, the residents were unanimous that the protestors had to leave the Estates before any further negotiations took place. They want to see some way put in place for the protestors to leave voluntarily and they think that by suspending

negotiations, the protestors can say that they have made their point, withdraw from the Estates, and then continue negotiations.

15. In terms of desired next steps, those at the August 18 meeting favoured the following sequence of events:
 - (i) a suspension of negotiations with the Six Nations;
 - (ii) a voluntary withdrawal from the Estates by the protestors;
 - (iii) a commitment by the provincial government that nothing will be done with the lands pending negotiations; and,
 - (iv) a continuation of negotiations once the lands have been vacated. The community members made two points. First, they want the negotiations to proceed quickly. Second, they voiced great frustration that the community was being left out of negotiations about the land and its future use and they want to be included.

16. Although community members often talked about the need to maintain the rule of law, their focus was on securing an end to the occupation and the restoration of calm to the communities, both native and non-native communities. The residents clearly recognize the need to deal with the Six Nations claim to the Estates and want to see that process completed expeditiously.

PART III - COMMENTS ON THE OVERARCHING ISSUES

17. Two overarching issues characterize this case and have implications beyond this case:
- (i) What will be the framework for the assertion and resolution of First Nations' land claims in Canada? The facts of this case present a stark contrast between two models:
 - (a) The "occupy first, negotiate second" model; and
 - (b) The assertions and resolution of claims within the framework of section 35 of the *Constitution Act, 1982*.
 - (ii) What authority do the courts possess to administer the laws of Canada in the face of unlawful conduct? Is the authority of the Court subordinate to government decisions as to whether to enforce Canadian law? Are courts, for all practical purposes, powerless where an "occupy first, negotiate second" model of land claim assertion is employed?

PART IV – COMMENTS ON THE LEGAL ISSUES BEFORE THE COURT

A. LEGAL ISSUES BEFORE THE COURT

18. Following are the issues before this Honourable Court:
- (i) Should a stay of the Honourable Justice Marshall's Order of August 8, 2006 be issued pending appeal?
 - (ii) Should an expedited hearing of the within appeal be granted?

B. RECOMMENDATIONS ON THE ISSUES

19. Certainly an expedited appeal should be granted. All issues surrounding the lands in Caledonia should be resolved as quickly as possible.
20. As to the granting of a stay, this Amicus recommends that a stay not be granted. Paragraph 1 of Justice Marshall's order is the operative part of the order. It imposes only a reporting requirement on the Attorney General. In the *Canada Post Corp. v. Canadian Union of Postal Workers (CUPW)* case Justice Farley stated:

“...it would seem to me that in any case that was referred by the Court to the Attorney General where he decided not to proceed in his prosecutorial discretion that it would be incumbent upon him to advise in open court why it was felt inappropriate to proceed since in essence the Attorney General is acting to assist the Court. I cannot but emphasize that this falls squarely within the role as set out in *Boucher* and which I have quoted above.”

Justice Marshall essentially is asking the same of the Attorney General in this case.

C. COMMENTS ON THE LAW

i) The Test for Stay Pending Appeal

21. Under Rule 63.02(1)(b) of the Rules of Civil Procedure, a moving party can obtain a stay of an order pending the disposition of an appeal. To do so, the moving party must demonstrate that the pending appeal raises a serious issue to be tried; that there will be irreparable harm if a stay is not granted; and that the balance of convenience favours granting the stay.

Rule 63.02(1)(b).

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] S.C.J. No. 17 (QL), [1994] 1 S.C.R. 311 at para 43 [*RJR* cited to QL].

22. The court must decide whether the interests of justice call for a stay.

Circuit World Corp. v. Lesperance (1997), 33 O.R. (3d) 674, [1997] O.J. No. 2081 (QL) at p. 3 [*Circuit #1* cited to QL], (C.A.)

International Corona Resources Ltd. v. Lac Minerals Ltd., [1986] O.J. No. 2128 (QL), 21 C.P.C. (2d) 252 at p. 3 [*Lac* cited to QL], (C.A.)

Ogden Entertainment Services v. Kay (1998), 38 O.R. (3d) 448, [1998] O.J. No. 1824 (QL) at p. 2 [*Ogden* cited to QL], (C.A.)

23. In determining whether a stay should be granted, regard must be had to the judgment under appeal and a strong case in favour of the stay must be made out by the party seeking the stay. The court must proceed on the assumption that the judgment under appeal is correct and the relief ordered was properly granted, and the *prima facie* findings must be accepted. The court is not engaged in a determination of the merits of the appeal on a stay application.

Ogden at p. 3.

Mosher v. Ontario (Minister of Natural Resources), [2003] O.J. No. 3807 (QL) at para 7, (C.A.)

24. Given the low threshold required by the first branch of the test, it appears that the Attorney General has met the initial threshold.
25. In *RJR*, the Supreme Court of Canada held that where a government authority is the applicant on a motion such as this one, the issue of public interest as an aspect of irreparable harm to the interests of the government will be considered in the second stage, and then again in the third stage when harm to the applicant is balanced against harm to the respondent.

RJR at para 81.

26. The relief sought is significant and its effect is far reaching. A careful balancing process must therefore be undertaken. The refusal to grant relief must so adversely affect the public interest that the harm could not be remedied if the eventual decision on the merits does not accord with the result on the interlocutory application.

RJR at para 37.

27. The key issue on this motion is therefore whether the irreparable harm to the public interest that will be caused by the staying of Justice Marshall's Order is greater than

the irreparable harm if such a stay motion is dismissed. It is the Amicus' submission that the balance of convenience favours dismissing the stay motion.

ii) Balance of Convenience does not Favour a Stay

28. The courts will look to numerous factors when balancing and assessing which parties will suffer greater harm from the granting or refusal of a stay, pending a decision on the merits.

RJR at para 62.

29. In this Amicus' submission, there are five key factors that this Honourable Court should consider in the balance of convenience analysis. It is the Amicus' respective submission that these factors favour dismissing this motion for a stay pending appeal.

First Factor: The Authority of Court Orders

30. The first factor is that granting the stay will call into question the Court's authority to control its own processes. When a court makes an order, the government should recognize that order. If the Crown does not enforce or prosecute an order of the Court, it should explain its action in open court.

Canada Post Corp. v. Canadian Union of Postal Workers (CUPW), [1991] O.J. No. 2472 (QL) (Gen. Div.)

31. This Court has declined to grant a stay pending appeal in the face of open defiance of orders and statements that the law will continue to be ignored. A court should not condone deliberate and persistent breaches of its orders.

32. In *Circuit #1*, this Honourable Court granted the requested stay pending appeal, but such stay was subsequently lifted due to deliberate breaches of the court's:

Nor can the court condone flagrant breaches of its own orders. As Brooke J.A. wrote in *Ontario (A.G.) v. Paul Magder Furs Ltd.* (1992), 6 O.R. (3d) 188 at 192:

It is elementary that so long as a law or an order of the court remains in force it must be obeyed. In *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, 75 D.L.R. (4th) 577, while the majority

found it unnecessary to deal with the issue, McLachlin J. said at p. 974 S.C.R., p. 635 D.L.R.:

In my opinion, the 1979 order of the Tribunal, entered in the judgment and order book of the Federal Court in this case, continues to stand unaffected by the Charter violation until set aside. This result is as it should be. If people are free to ignore court orders because they believe that their foundation is unconstitutional, anarchy cannot be far behind. The citizens' safeguard is in seeking to have illegal orders set aside through the legal process, not in disobeying them.

Circuit #2, Paras 6 and 9 (quote)

33. The decision whether to grant or lift the stay is an exercise of judicial discretion. In exercising that discretion, a judge is entitled to consider the conduct of the party seeking or resisting the lifting of the stay.

Ontario (A.G.) v. Paul Magder Furs Ltd. (1992) 10 O.R. (3d) 46 at 53 (C.A.) C.J.O., [1992] O.J. No. 1693 (QL) at p. 7 [“*Magder*” cited to QL].

Circuit World Corp. v. Lesperance, [1997] O.J. No. 3628 (QL) at para 10 [“*Circuit #2*”] (C.A.)

Circuit #1 at p. 4.

Magder at p. 7

34. This Court has held on more than one occasion that a finding of contempt transcends the dispute between the parties and strikes at the very heart of the administration of justice in this country and in this province. In *Manis*, the appropriate remedy was not to grant a stay, but to expedite the appeal. Similarly, it would be inappropriate to stay Justice Marshall’s decision, and the remedy may rather be to expedite the appeal.

Manis v. Manis, [2001] O.J. No. 2627 (QL) at para 46 (C.A.)

Magder at p. 7

35. Granting a stay of Justice Marshall’s order would send a clear message to the community and to the protestors that orders of an Ontario court only that such force and effect as the government of the day decides to give them. It will set a precedent that courts will not intervene in an “occupy first, negotiate second” model of asserting land claims.

Magder, pp. 4-5.

Second Factor: The Appropriate Framework for the Assertion of Land Claims

36. Another factor that should be taken into consideration in the balance of convenience analysis is whether the resolution of land claims should be resolved within the framework of the Canadian Constitution and Canadian law, or whether Canadian law has no application to the land claims process. At stake is a choice between an “occupy first and negotiate later” model of land claim assertion or one undertaken within the context of Canadian law.
37. The implications of this choice are not limited to the Caledonia dispute. In the Brief of Documents of this Amicus can be found recent newspaper reports of two further actions with respect to lands within the *Haldimand Proclamation*: the moving of an information trailer onto a conservation area near the Grand River in Brantford and a Six Nations claim to the recently constructed wind farm near Shelburne. This Court must recognize the broader implications of its decision on the manner in which other land claims will be asserted.

Third Factor: Continuing Nuisances Emanating from Crown-Owned Land

38. A further factor involves the ongoing unlawful activity taking place on the occupied lands and the impact that this activity is having on the community of Caledonia and the surrounding areas. The status quo that the government is asking this Court to endorse involves continuous unlawful activity such as nuisance, intimidation and harassment on Crown lands and surrounding lands. The continuous activity is having a deleterious impact on the community and preventing the quiet enjoyment of their property by adjacent landowners.
39. There is a certain “clean hands” factor at play here. The Crown is requesting a type of equitable relief from the court when it continues to permit its lands to be used in a manner that constitutes a nuisance to adjacent landowners. As a practical matter, the Crown is permitting the Douglas Creek Estates to be used in an unlawful manner and with disregard to the residents on the adjacent lands.

40. It appears that the Crown intends for this situation to continue for a considerable period of time. Understandably the Crown has offered no view of how long it will take to conclude land claim negotiations with Six Nations. It is reasonable to assume that the process will be a lengthy one. In the meantime, the Crown has offered no plan to mitigate the nuisances emanating from its property.

Fourth Factor: Continuing Friction Between Communities Risks further Confrontations

41. The residents of Caledonia desire peace, order and safety, but have been living in an atmosphere that is volatile and charged with conflict. The proximity of the occupiers and the residents is akin to two stones rubbing against each other; there is a risk of further sparks and reoccurrences of breaches of the peace.

Fifth Factor: Diminution in Respect for the Law

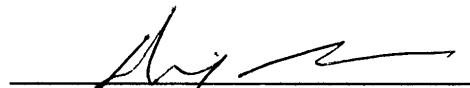
42. Many residents perceive the message of the Crown is that it is acceptable to disregard and violate court orders if the unlawful behaviour occurs in the context of the assertion of a land claim. As mentioned above, Caledonia residents, including the children, regard the government as applying a double standard in the enforcement of the laws. To grant a stay as requested would reinforce this message and contribute to a diminution in the respect for the law.

Summary

43. In the view of this Amicus, these factors outweigh the harm asserted by the Attorney General of being required to explain in open Court whether it will proceed with the Warrant of Arrest issued by Justice Marshall, and the balance of convenience does not justify the granting of a stay.

ALL OF WHICH IS RESPECTFULLY OFFERED,

August 21, 2006



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Court-appointed *Amicus Curiae* for the
Residents of Caledonia

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] S.C.J. No. 17 (QL), [1994] 1 S.C.R. 311
2. *Circuit World Corp. v. Lesperance* (1997), 33 O.R. (3d) 674, [1997] O.J. No. 2081 (QL) (C.A.)
3. *International Corona Resources Ltd. v. Lac Minerals Ltd.*, [1986] O.J. No. 2128 (QL), 21 C.P.C. (2d) (C.A.)
4. *Ogden Entertainment Services v. Kay* (1998), 38 O.R. (3d) 448, [1998] O.J. No. 1824 (QL) (C.A.)
5. *Mosher v. Ontario (Minister of Natural Resources)*, [2003] O.J. No. 3807 (QL) (C.A.)
6. *Ontario (A.G.) v. Paul Magder Furs Ltd.* (1992), 10 O.R. (3d) 46 [1992] O.J. No. 1693 (QL) (C.A.)
7. *Circuit World Corp. v. Lesperance*, [1997] O.J. No. 3628 (QL) (C.A.)
8. *Manis v. Manis*, [2001] O.J. No. 2627 (QL) (C.A.)
9. *Ontario (A.G.) v. Paul Magder Furs Ltd.* (1991), 6 O.R. (3d) 188, [1991] O.J. No. 2025 (QL) (C.A.)
10. *Manmar, Inc. v. Results Marketing Ltd. (c.o.b. Handyman Solutions)*, [2000] F.C.J. No. 2081 (QL) (F.C.T.D.)
11. *Canada Post Corp. v. Canadian Union of Postal Workers (CUPW)*, [1991] O.J. No. 2472 (QL) (Gen. Div.)
12. *R. v. Kolompar*, [1991] O.J. No. 2447 (QL) (Gen. Div.)
13. *Regina v. United Fishermen & Allied Workers' Union et al.*, [1968] 2 C.C.C. 257 (B.C.C.A.)

SCHEDULE "B"
RELEVANT STATUTES

1. *Rules of Civil Procedure, R.R.O. 1990, Reg. 194*

STAY BY ORDER

By Trial Court or Appeal Court

63.02 (1) An interlocutory or final order may be stayed on such terms as are just,

- (a) by an order of the court whose decision is to be appealed;
- (b) by an order of a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken. O. Reg. 465/93, s. 8.

HENCO INDUSTRIES LIMITED
Plaintiff

and
HAUDENOSAUNEE SIX NATIONS CONFEDERACY
COUNCIL ET AL
Defendants

Court of Appeal File No.

Court File No. 48/2006

RAILINK CANADA LTD.
carrying on business as the
SOUTHERN ONTARIO RAILWAY
Plaintiff

and
HAUDENOSAUNEE CONFEDERACY OF MOHAWK
ET AL
Defendants

Court File No. 93/06

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

**OUTLINE OF SUBMISSIONS OF THE
COURT-APPOINTED *AMICUS CURIAE*
(motion returnable Tuesday, August 22, 2006)**

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