SUPERIOR COURT OF JUSTICE
JUDGES' CHAMBERS
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NUMBER OF PAGES: 13

RE: F.L. Ravin Limited v. Southwestern, 6155/13 (St. Thomas)

MESSAGE: Enclosed please find Justice Nolan's Endorsement with reference to the above-noted.

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CITATION: F.L. Ravin Limited v. Southwestern, 2013 ONSC 1912
COURT FILE NO.: 6155/13 (St. Thomas)
DATE: April 2, 2013

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: F.L. RAVIN LIMITED and THE BADDER GROUP INCORPORATED, Plaintiffs

AND:

SOUTHWESTERN ONTARIO STUDENT TRANSPORTATION SERVICES, Defendant

BEFORE: Nolan J.

COUNSEL: Counsel for the Plaintiffs J.C. Lisus and D.A Schwartz

Counsel for the Defendant D.B. Williams and A.M. Webster

Counsel for Her Majesty the Queen in Right of Ontario (Non Party Intervenor by Agreement in This Motion) R. Carr and N. Laeeque

HEARD: March 27, 2013

ENDORSEMENT

INTRODUCTION

[1] This motion was brought by the plaintiffs ("Ravin" and "Badder") for an interim and interlocutory injunction restraining the defendant ("STS") from closing its Request For Proposals ("RFP") on April 2, 2013, at 4:00. The RFP seeks proposals from bus transportation companies interested in providing student transportation for the school catchment area served by STS, an area in excess of 7000 square kilometres in size, much of it rural.

[2] This is the third RFP engaged in by STS. The first RFP in 2011 dealt with one-third of the catchment area in the 2011-2012 school year. The second RFP in 2012 dealt with another one-third of the catchment area for the school year 2012-2013. The current RFP for the final one-third of the catchment area for the 2013-2014 school year which was issued on January 8, 2013, was due to close on February 19, 2013. When STS would not agree to temporarily withdraw or suspend the RFP voluntarily as a number of other consortia across the province have done, the plaintiffs commenced an action by way of

statement of claim on February 5, 2013. The plaintiffs are seeking interim and permanent injunctive relief, a declaration that STS breached certain common law duties to the plaintiffs including a duty to act in good faith and in accordance with certain warranties and representations made by STS, and acted in a manner that contravened mandatory procurement requirements set out in the Directive issued pursuant to s. 12 of the *Broader Public Sector Accountability Act, 2010*, S.O. 2010, c. S-25.

[3] In an amended statement of claim of February 28, 2013, the plaintiffs sought certain equitable remedies on account of breaches of natural justice, procedural fairness and other illegalities in the exercise of their statutory duties pursuant to the BPS Directives and s. 190(6) of the *Education Act*, R.S.O. 1990, c. E-2, along with leave pursuant to s. 6(2) of the *Judicial Review Procedures Act*, R.S.O. 1990, c. J.1, permitting them to have the requested relief determined by this court on the grounds of urgency.

[4] The plaintiffs also brought this motion for an interlocutory and interim injunction on February 7, 2013, first returnable on February 12, 2013. On the first return, the motion was scheduled to be heard on March 27, 2013. Although various dates were set for the filing of responding and reply material, for reasons that are not at all clear, the parties agreed that all facta would be filed on the same day, March 25, 2013. In all, close to 8000 pages of material were filed by both parties on the motion.

BACKGROUND

[5] The plaintiffs/moving parties are two relatively small bus transportation companies that have been in operation since the 1950s in the case of Ravin and 1943 in the case of Badder. Both companies have been providing student transportation in counties of Middlesex, Oxford and Elgin for schools under the jurisdiction of two amalgamated school boards, Thames Valley District School Board ("TVDSB") and London District Catholic School Board ("LDCSB").

[6] The defendant/responding party on the motion is Southwestern Ontario Student Transportation Services ("STS"), a student transportation consortium that was established in 2008 in accordance with the direction of the Ministry of Education ("the Ministry"). STS is a private corporation which administers the transportation services for TVDSB and LDCSB. This consortium and other consortia established across the province were formed to implement competitively determined practices for transportation services for students.

[7] The "informal" intervenor on the motion was Her Majesty in Right of Ontario as represented by the Minister of Education ("the Ministry") who appeared with the consent of the parties. I use the term "informal" because there was no court order granting intervenor status as there has been in at least one other action in Ontario, to which I will refer later in this endorsement.

[8] By way of brief background, prior to the formation of the transportation consortia, student transportation services were negotiated by individual boards of education with an Association comprised of area school bus operators. There is no question that the process

of negotiation under that regime was not competitive. There was no system of bidding and unless significant problems arose in the service provided by any of the bus companies, they continued to provide service in the areas customarily served by them for a price agreed on between the school boards and the Association. Because the Association represented all of the bus companies, individual companies that made up that Association did not seek to take over routes customarily serviced by another bus company. There is also no issue that the provision of student transportation services across the province is currently at a cost of almost $1 billion, and funded entirely by the taxpayers of Ontario.

[9] It is not surprising therefore, that the Ministry, in approximately 2007, began to review the contracting practices of school boards with the goal of instituting a process of competitive procurement practices across the province. The history of how that process developed is set out in detail in the evidence and facta filed by the parties and the intervenor. Because of the tight turnaround time for the release of this endorsement, I will only mention a few of the steps. In December 2008, the Ministry issued Memorandum B15 which contained the Ministry's review of how services were contracted by school boards and a description of the work of the Contracting Practices Advisory Committee ("CPAC"), which was formed to study the best way to implement competitive procurement practices across the system.

[10] Subsequently, the Ministry released a resource package consisting of procurement guidelines, a template for contracts, as well as an RFP template. The Ministry told the transportation consortia to use the contract template for the 2009-2010 school year. The Ministry also set up three pilot projects in various areas of the province to experiment with the contract and RFP templates.

[11] From the beginning of the new process, concerns were expressed from various quarters including small bus lines, Chambers of Commerce and others as to the ability of small bus lines that had historically provided bus service to students in primarily rural areas to compete under the new system. In December 2008, the then Minister of Education, Kathleen Wynne, sent a letter to the concerned parties, expressing both an acknowledgment of the concerns and a commitment to institute a process that would be fair to all.

[12] Various other memoranda followed in 2009 including Memorandum SB28 and the Broader Sector Supply Chain Guideline which included a Supply Chain Code of Ethics along with procurement policies and procedures, Memorandum SB39 and Memorandum B13 regarding the release of a final RFP resource guide based on a review of the overall experience of the pilot sites. The area served by STS was not one of the pilot sites. Transportation consortia were told by the Ministry not to enter into renegotiated contracts beyond the 2011-2012 school year with the expectation that transportation consortia would be initiating competitive procurement procedures by the 2012-2013 school year.

[13] For reasons that were not clear in the materials filed, other than that the process would be a stepping stone to an RFP procedure for the 2011- 2012 school year, STS decided to implement a more aggressive timetable than the timetable directed by the Ministry. In the

2010-2011 school year STS began negotiating with individual bus lines as opposed to negotiating with their Association. By September 2010, STS had approved a five-year operational plan which included procurement by way of RFPs.

[14] In April 2010, STS held individual meetings with bus operators to prepare them for the RFP process which STS had already determined it would use for entering into contracts for student transportation for the 2011-2012 school year. Several months later in the summer of 2010, school bus operators were advised that STS would be using an RFP procedure to procure a third of its bus routes for the 2011-2012 school year.

[15] In the fall of 2010, the Deloitte accounting firm was retained by the Ministry to carry out a review of STS and make recommendations with respect to the competitive procurement of student transportation services. Deloitte recommended, among other things, a focus on determining local market conditions and advised that in procuring appropriate and safe student bus services, price should not be the primary factor in entering into contracts for these services. After hiring PPI Consulting services to prepare an RFP, STS issued its first RFP on January 11, 2011. It is the position of the plaintiffs that this first RFP did not take into account local experience or conditions.

[16] In March 2011, the results of the RFP were announced. Ravin lost a significant number of its bus routes as did a number of other larger companies who had been providing service to the catchment area served by STS. It is not in dispute that the winning bids accepted by STS were for rates approximately 20% below what the Deloitte study for the Ministry had set as the minimum amount for which operators could provide safe and reliable service on an ongoing basis.

[17] The experience of bus companies in the area served by STS was not unique. On June 23, 2011, then Minister of Education Dombrowsky announced a six-month moratorium on the procurement practices and established a Task Force to review the experiences to date of competitive procurement processes, expressing the view that such a review "would be beneficial to all parties." The management of STS did not welcome this announcement, referring to it during a management meeting as a "curveball", possibly because it might interfere with the successful completion of its five-year plan to which STS had committed in September 2010.

[18] STS issued another RFP for another one third of its school bus routes for the 2012-2013 school year. None of the plaintiffs' routes were involved in that RFP. Thus, after the routes were awarded as a result of that RFP, the positions of Ravin and Badder did not change. At issue in this motion is the third RFP set to close today.

ANALYSIS

The Issue

[19] The test that I must apply in determining whether an interlocutory injunction should be granted is set out in *RJR MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. The party requesting the injunction must meet all three parts of the test by establishing on the record that: 1) there is a serious issue to be tried; 2) the party requesting the injunction

faces the risk of irreparable harm if the relief is not granted; and 3) the balance of convenience (or inconvenience) between the parties favours the granting of the interim injunction.

Preliminary Matters

[20] I will deal with each of those provisions in turn. Before I do, however, I want to address two issues. The first is the issue raised by the defendant regarding the appropriateness of the plaintiffs putting up Mr. Chamberlain as an expert to give evidence on this motion. I agree with the concerns of the defendant. Although Mr. Chamberlain signed the required Rule 53 acknowledgement and undertaking, his prior involvement in advocacy roles in matters dealing with issues similar to those before this court impacts on his ability to fulfill the neutral role expected of experts. In addition, the value of expert evidence on any motion is questionable.

[21] In *George Weston Ltd. v. Domtar Inc.* (2012), 112 O.R. (3d) 190 (S.C.J.), Brown J. considered the appropriate use of expert evidence on a summary judgment motion. The court noted the difficulty raised by the motion judge's inability to question the expert regarding the proposed evidence and noted at para. 89:

> The simple reality is that usually if the case is sufficiently complex that its adjudication requires resorting to expert evidence, then that case most likely is not a good candidate for a summary judgment motion. There may be exceptions, such as where the expert evidence is uncontested, but that is not this case.

[22] In *Williams v. Canon Canada Inc.*, 2011 ONSC 6571, [2011] O.J. No. 5049, aff'd 2012 ONSC 3692, [2012] O.J. No. 3120 (Div. Ct.), Strathy J. of the Superior Court of Justice applied the *Mohan* criteria to the request to admit expert evidence on a motion for certification of a class action. At paras. 65-67 of the judgment, Strathy J. noted:

> While the evidentiary burden on a certification motion is the low, "basis in fact" test, that burden must be discharged by admissible evidence. The evidence tendered on a certification motion must meet the usual criteria for admissibility.
>
> This applies to all forms of evidence, including expert evidence...
>
> this means that expert evidence tendered on a certification motion must meet the test of admissibility but, once found admissible, the quality of evidence required to establish a "basis in fact" is not the same as would be required for proof "on a balance of probabilities" at a trial on the merits. (Citations omitted).

[23] This proposition was explicitly upheld by the Divisional Court: see citation above.

[24] While certain other government documents attached as exhibits to Mr. Chamberlain's affidavit were documents referred to by both the plaintiffs in their affidavits and by Ms. Heath in her affidavits and were of interest and reviewed by me, I made no use of Mr. Chamberlain's own reports and opinions in coming to my determination on this motion.

[25] The second issue that I wish to deal with has to do with the case law provided to me by all the parties and the intervenor. The cases relating to circumstances in which courts have granted interlocutory injunctions and when they have not granted such relief, are all based on the particular facts of each situation. While the principles may be applicable, the facts of each case are important.

[26] Interestingly, the plaintiffs, the defendant and the intervenor all referred me to the case of *Airport Limousine Driver Association v. Greater Toronto Airport Authority,* 2005 CarswellOnt 3806 (On. S.C.J.), a decision of M. G. Quigley J. In my view, the facts of that case can be distinguished from the case before me. One of the significant differences is that Quigley J. found that the Airport Authority was not attempting to change any process that had been in existence prior to the RFP in question. Further, he found on the evidence that the Airport Authority had engaged in significant consultation with the Drivers Association and had modified some of the terms of its RFP in accordance with the consultation.

[27] Those are not the facts as I find them to be on the evidence before me. There has been a long-term contractual relationship between the plaintiffs and STS and its predecessor organization. There were some meetings between the plaintiffs and STS. I find that they fell short of the kind of consultation engaged in by the Airport Authority drivers. As well, there is no evidence that any adjustments were made to any of the STS RFPs, including the current one, as a result of those meetings. An injunction, whether interlocutory as in the case before me or permanent as in other cases, is equitable relief and the facts grounded in the evidence must be considered in the context of the issues at stake for all the parties.

[28] With respect to the test in *RJR MacDonald,* I must consider each part of the test based on the evidentiary record before me. Although voluminous, the record is incomplete. There are still undertakings outstanding from the various cross examinations. As well, there may be other relevant documents that will be made available during the discovery process. There may be other witnesses which have important and relevant evidence to provide the court as this case continues.

1) Serious Issue to be Tried

[29] On a motion for an interlocutory injunction, it is not the role of the court to "undertake a prolonged or detailed examination of the merits when determining if there is a serious issue to be tried. The threshold is low. The motions judge must make a preliminary assessment of the merits and need only satisfy himself or herself that the issues raised are not frivolous or vexatious." (*Canpages Inc. v. Quebecor Media Inc. and Osprey Media LP*, 2008 CANLII 26660 (On SC) para 5.)

[30] It is the position of STS that the plaintiffs do not have a recognized cause of action or claim to support their request for an interlocutory injunction or that there is sufficient evidence to support a finding that there is a serious issue to be tried. The defendant asserts the position that the 2013 RFP and the two prior RFPs are in full compliance with the Ministry's BPS procurement directive. STS argues that there is no evidence of any bias of any kind in the RFPs that would prejudice smaller operators. STS argues that "the evidence of both Ravin and Badder is clear that they believe they can compete equally with other operators on the technical requirements of the RFP, but are limited in the price they can bid. No change to the RFP process will affect that reality." (Paragraphs 130-132 of the Defendant/Respondent's factum and paragraph 34 of the Outline of the Argument of the Defendant/Responding Party, ("Outline").)

[31] STS also argues that the plaintiffs want a process that specifically advantages smaller operators and essentially maintains the old process of contract negotiation. It is the position of STS as set out in their Outline at paragraph 1 that the purpose of the action brought by the plaintiffs is "to force and STS to resort to a previous competitive contractual regime that is no longer appropriate and permitted in the billion-dollar industry of student transportation." The Ministry takes the same position. I disagree.

[32] The purpose of the plaintiffs' action and the other actions that have been commenced across the province are to require the various consortia to follow what the bus companies see as the directives of the Ministry with respect to competitive procurement. It was acknowledged in a letter of December 10, 2012, by counsel for the Ministry that each consortium "has the responsibility to determine which procurement vehicle is the most appropriate for its particular procurement event. There are common standard approaches such as RFT, RFP and RFQ that meet most organizations requirements. Should an organization determine that these common approaches do not meet their needs, they have always had the flexibility to explore other options, under the proviso that whatever approach is selected is compliant with the BPSPD and existing trade agreements."

[33] In that regard, in a letter to all Directors of Education and Secretary/Treasurers of School Authorities dated March 29, 2012, the Assistant Deputy Minister of the Business and Finance Division of the Ministry gave certain directions with respect to Procurement Strategy including: "Provides clear route information that is suitable for your local market conditions including appropriate bundling or route distribution strategy...." "Allow sufficient proponent response time in your procurement cycle and consider extending submission deadlines if an addendum impacts the initiative in a material way." The plaintiffs assert that STS failed to follow this direction along with others thus creating a process that is unfair and discriminatory.

[34] There is uncontradicted evidence in the material that a number of other consortia have put their RFPs on hold until there is a decision on the issues that will be before the court during the expedited trial to be held in the East Region in June, less than three months from now. STS appears to be the only consortium in the province that has taken such a hard line in refusing to extend or delay its RFP for a reasonable length of time. It is that hard line that has led to this motion before me.

[35] It is the Ministry's position that STS will be in violation of the law if it does not proceed to close its third RFP today. With respect, there are numerous other consortia in the same position. The Ministry has taken no draconian actions against them. The Ministry has sent a letter setting out their obligations but not threatened any action.

[36] In the fall of 2012, 14 bus companies commenced an action against another school transportation consortium, Tri-Board Student Transportation Services Inc. ("Tri-Board") in Belleville, Ontario citing similar concerns as those in the preceding before me. In that case, the defendant brought a motion pursuant to Rule 21 of the *Rules of Civil Procedure* to strike out the plaintiffs' claim as disclosing no cause of action. The plaintiffs sought an interlocutory injunction. At the hearing, R. Scott J. after reviewing the motion records and facta of both the plaintiffs and the defendant and, with the consent of the plaintiffs and defendant, granted an order on October 18, 2012, cancelling the RFP issued by Tri-Board for the 2013-2014 school year, prescribing the manner of negotiations, as well as permitting the plaintiffs' action to proceed.

[37] Also in the fall of 2012, seven transportation companies providing student transportation services under contract to Student Transportation of Eastern Ontario ("STEO") commenced an action against STEO based on similar concerns, including the issuance of an RFP which the plaintiffs alleged was unfair and failed to take into account direction given by the Ministry with respect to the RFPs.

[38] As in the Tri-Board case, the defendant consortium brought a Rule 21 motion to strike the claim as disclosing no cause of action, relying on sections 22 and 23 of the *Broader Public Sector Accountability Act* ("the Act"). The defendant argued that these sections of the Act bar such actions as were commenced by the plaintiffs. Tranmer J. dismissed the defendant's motion and disagreed with the defendant's position that those sections give complete immunity from the claims for injunctive or other relief. Tranmer J. concluded at paragraphs 29-31 of his decision released December 3, 2012:

> I find that it is not plain and obvious that sections 22 and 23 of the Act were intended to and result in a person suffering irreparable harm not compensable in damages with his or her only remedy being for breach of common law duties, and then only in damages, after the fact, despite conduct that is contrary to and in violation of the Act by an organization which is bound to comply with the Act.
>
> In addition, based on the principles set out in *PDC 3* and in *Rizmi*, at this stage of the proceedings, I cannot find that it is plain and obvious that the Plaintiffs' claims are certain to fail. It is not plain and obvious that the Act bars the claims being made. These sections have not been considered judicially and the issues raised are important, novel and complex. In my view, a determination of the issues raised in the Amended Statement of Claim require a complete evidentiary record and should not be disposed of at this stage of the proceedings.

> For these reasons, I am of the view that the motion brought by the Defendant should be dismissed. Therefore, it is unnecessary for me to decide the additional submission made by the Plaintiffs in support of their case as set out in *Dunsmuir*.

[39] Not only did Tranmer J. permit the plaintiffs' proceeding to continue, Regional Senior Justice Hackland of the East Region granted an order directing Tranmer J. to case manage the action. As part of the case management process, an expedited trial has been set to be heard during the weeks of June 3, and June 17, 2013, to determine on a final basis many of the same issues that have been raised in the proceeding in this jurisdiction.

[40] I find that the plaintiffs have met the threshold of establishing that there are serious issues to be tried and have, therefore, met the first prong of the test in *RJR MacDonald* for the granting of injunctive relief.

2) Irreparable Harm

[41] The defendant STS and the intervenor argued that the plaintiffs have not established that they will suffer irreparable harm if the RFP closes and the injunction is not granted. STS and the intervenor argued that together, the plaintiffs represent only a small portion of the bus routes contracted for by STS. Thus, the whole RFP process should not be delayed because of this proceeding. Further the defendant and the intervenor argued that any damages that might be suffered by the plaintiffs are quantifiable and thus can be compensated for by way of an award of money damages if they are successful. They also argued that, at this point, any damages are purely speculative. The defendant referred me to a number of cases to support the proposition that unless the party seeking the injunction can establish that an award of money damages cannot fully compensate for any losses, the party will fail to meet the second prong of the test in *RJR MacDonald*. STS argued that both plaintiffs may well be successful in this final RFP.

[42] The plaintiffs argue that the manner in which the current RFP is structured pre-ordains that they will be unsuccessful either in obtaining routes or obtaining routes that are economically viable. In either result, they will suffer financial ruin, impacting not only on their livelihood but on that of their employees as well. The affidavits of Ms. Ravin and Mr. Badder set out in significant detail the results of the 2011 RFP. Given that the 2013 RFP is structured in a similar way to the 2011 RFP, the plaintiffs argue that the result of the current RFP is pre-ordained. The disastrous results are more than speculative. In *RJR MacDonald*, the Supreme Court of Canada recognized that loss of market share can result in irreparable harm. The feature of small rural bus lines and the manner in which they are tied to their individual communicates has been recognized by Deloitte, the Ministry as well as The Honourable Mr. Osborne in comments in his Task Force Report.

[43] In refusing to grant the requested injunction in *RJR MacDonald* the court recognized the power and financial strength of the tobacco companies and the certainty that they would survive in spite of the government regulations that the companies argued cut into their profitability. By contrast, in *Summerside Seafood Supreme Inc. v. Prince Edward Island (Minister of Fisheries, Agriculture and Environment)*, 2006 PESCAD, and *Golden Shell*

Fisheries Ltd. v. Newfoundland (Minister of Fisheries and Agriculture), 2000 N.J. No. 219, the court granted the interim injunctions requested because the plaintiffs in each case were small businesses that would not survive financially until there would be a final determination of their claims.

[44] Fragomeni J. in *Saan Stores Ltd. v. Effigi Inc.*, [2006] O.J. No. 4090 at para. 26, referred the case of *Great Lake Harvester Systems Ltd. v. A.O. Smith Engineered Storage Production Company*, [1998] O.J. No. 873, in which the court granted an injunction on the basis of a lengthy commercial relationship in which the potential loss of market share was considered to be the kind of irreparable harm that could not be compensated for in money damages. Based on that principle, Fragomeni J. found that in the case before him at para. 33, that although full particulars of the harm were not provided in the record before him, there was sufficient information to satisfy him that potential loss of market share constituted irreparable harm.

[45] I have before me a more complete description from both plaintiffs as to the potential consequences to them of a loss of market and which they anticipate will be the result of this RFP because it is structured in the same way as the RFP in 2011.

[46] I find that it is more likely than not that irreparable harm will be caused to the plaintiffs if an interlocutory injunction is not granted until either their claims are determined by way of a consolidation with the case being heard in June 2013, or at an expedited trial to be heard in September 2013. If the RFP closes today, and similar claims for relief made by the plaintiffs in the trial to be held in June 2013 are granted, it will be too late for the plaintiffs to benefit from that ruling if the results of the current RFP are similar to those of the 2011 RFP. By then, the contracts for student bus transportation services will be let by STS for another five years plus the potential for a further two years. I find that this represents irreparable harm to the plaintiffs. They have, thus, met the second part of the test in *RSJ MacDonald*.

3) Balance of Convenience

[47] This last factor calls for a court to determine on the record before at which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits. As Fragomeni J. pointed out in the *Saan* case, some of the same considerations apply in the determination of this step in the analysis as in the consideration of irreparable harm. The defendant and the intervenor argue that if an interlocutory injunction is granted enjoining the RFP process STS will be unable to comply with Ministry Directives, putting STS in non-compliance with the law. Further an injunction will require STS to negotiate or extend existing contracts or otherwise negotiate for the services until a final determination of the issues in the proceeding is made. As well, STS argues that it is in the public interest that STS be allowed to proceed with the RFP. Indeed, STS argued at para. 152 of its factum that "The granting of an injunction in this proceeding impacts on all competitive processes in Ontario and threatens the very foundation of the rationale and legal requirement for same." STS also asserted that an injunction would result in an abandonment of its business plan and require it to accept an uncompetitive pricing structure for an

indeterminate length of time. For all of these reasons, STS argued that "The harm that the Plaintiffs allege is speculative. The harm that STS will suffer is known and real, "...thus" the balance of convenience favours STS."

[48] With respect, I disagree. STS is ahead of most other consortia with respect to the number of years it has engaged the RFP process in obtaining student transportation services. The fact that it may be in non-compliance with the law, a position also taken by the Ministry, is not a compelling reason in the circumstances of this case to refuse an injunction at this time and for a relatively brief period of time. If this case is not consolidated with the case set for trial in June 2013, I can fix an expedited trial in St. Thomas for the week of September 12, 2013. A number of other consortia across the province appear to have recognized that a final and proper determination by the court of the serious issues raised by the plaintiffs in this and other actions ultimately best serves the public interest. STS will be in no different position than the other consortia who voluntarily suspended their RFPs. From the evidence before me, STS appears to have been the only consortium in the province to insist on forging ahead with its RFP in the face of questions from potential bidders about the fairness of the process, based on the Directives from the Ministry.

[49] I find that the balance of convenience favours the plaintiffs.

[50] Having found that the plaintiffs have met the three-part test set out in *RJR MacDonald*, it is not necessary for me to deal with the argument of the plaintiffs with respect to other remedies, including judicial review.

[51] The following order shall issue:

1) STS shall withdraw its current RFP with respect to the provision of school bus services for the 2013-14 school year until no earlier than 31 days after the decision is released by the court following the expedited trial scheduled to be heard in the East Region during the weeks of June 3 and June 17, 2013, provided that there is an order granted on motion by the court, subject to the approval of the Regional Senior Justice for the East Region, consolidating this action with court file number 842/12 (Perth) in the East Region; or

2) Thirty-one days after the decision is released following an expedited trial of this action which I will set for the trial sittings at St. Thomas commencing the week of September 12, 2013, fixed as number 1 on the trial list;

3) Costs to the plaintiffs in an amount and on a scale to be agreed upon by counsel or fixed by me; plaintiffs' counsel shall prepare cost submissions no longer than 5 pages in length and a cost outline and serve it on counsel for the defendant no later than 15 days from the release of this decision; counsel for the defendant shall have 15 further days to prepare and serve the same documents on counsel for the plaintiffs; counsel for the plaintiffs shall have a further 7 days to serve any reply

on counsel for the defendant; counsel for the plaintiff shall then provide me with a copy of all the submissions, along with any offers to settle, through the Trial Coordinator at Windsor.

Mary Jo M. Nolan
Justice

Date: April 2, 2013