

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

6165347 MANITOBA INC. and 7138793 MANITOBA LTD.	)	D. G. Hill and
	)	K. D. Toyne
	)	<i>for the Appellants</i>
)	
<i>(Plaintiffs) Appellants</i>	)	H. I. Pollock, Q.C.
	)	<i>for the Respondent</i>
	)	D. Hoepfner
)	
<i>- and -</i>	)	K. L. Unruh and
	)	C. Poapst
	)	<i>for the Respondent</i>
	)	C. Dueck
JENNA VANDAL, CAL DUECK, LAURA PEARSON, DIRK HOEPPNER, PARKER WETLANDS CONSERVATION COMMITTEE, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JANE DOE #1, JANE DOE #2, JANE DOE #3, JANE DOE #4 AND PERSONS UNKNOWN	)	N. L. Thomas
	)	<i>on behalf of the</i>
	)	<i>Respondents J. Vandal</i>
	)	<i>and L. Pearson</i>
)	
	)	<i>Chambers motion heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Defendants) Respondents</i>	)	August 16, 2017

CHARTIER CJM

[1] The plaintiffs sought, on an urgent basis, an interlocutory injunction to restrain the defendants from entering upon their property. The motion judge denied the request to have the matter heard on an urgent basis and ordered that it be heard in the ordinary course, approximately three-and-one-half months later. He did not deal with the merits of the case. The

plaintiffs have appealed, asking a) to set aside the decision of the motion judge; b) to grant the injunctive relief sought; and c) costs.

[2] The plaintiffs now seek an expedited hearing date for their appeal. This application is opposed, in part, by the defendants. Their opposition disappears if the expedited hearing is limited only to the motion judge's decision not to hear the matter on an urgent basis and adjourn it to November 2, 2017. The plaintiffs agreed to modify their expedited hearing request limiting their appeal at this time to setting aside the motion judge's decision and costs.

[3] Expedited hearing orders are granted in rare and exceptional circumstances. As I wrote in *BW v Child and Family All Nations Coordinated Response Network*, 2009 MBCA 21, the criteria for determining whether a motion for an expedited hearing should be granted are regularly drawn from a decision of the Federal Court of Appeal, *Apotex Inc v Wellcome Foundation Ltd*, 1998 CarswellNat 1167. As was concisely summed up in Donald JM Brown, QC, *Civil Appeals*, vol 2, loose-leaf (Toronto: Thompson Reuters Canada, 2017), ch 10 at 10:2100, typically, such a request will only be granted "where the harm that would result from denying the request to expedite is substantial and virtually irreparable."

[4] Given that the test for granting or denying such a request has some similarities as to whether an interlocutory injunction should be granted, I will not say more other than, after taking into account the material submitted and the submissions of the parties, I have been persuaded that this is an appropriate case to abridge the time periods and expedite the appeal hearing date on the following terms:

- 1) The expedited hearing for this appeal will be limited to the issues of setting aside the motion judge's decision and costs.
- 2) The plaintiffs are to file and serve their factum and appeal book on or before Friday, August 18, 2017;
- 3) The defendants are to file and serve their factum on or before Friday, August 25, 2017;
- 4) The appeal is to be heard on Wednesday, August 30, 2017 at 2:00 p.m., in courtroom 330;

Chartier CJM