

NOVA SCOTIA COURT OF APPEAL  
Cite as: **Metropolitan Authority v. Brown, 1996 NSCA 91**

Chipman, Pugsley, and Flinn, JJ.A.

**BETWEEN:**

THE METROPOLITAN AUTHORITY )

Appellant )

- and - )

HEATHER BROWN )

Respondent )

) D. Kevin Latimer  
) for the Appellant

) John Di Costanzo  
) for the Respondent

) Appeal Heard:  
) April 2, 1996

) Judgment Delivered:  
) April 12, 1996

**THE COURT:** Appeal dismissed per reasons for judgment of Pugsley, J.A.; Chipman and Flinn, JJ.A., concurring.

**Pugsley, J.A.**

At the conclusion of submissions on behalf of the Metropolitan Authority (the "Authority"), the panel recessed. After due deliberation, the Chairman advised that it was not necessary to hear submissions on behalf of Ms. Brown, that it was the unanimous decision of the Court that the appeal should be dismissed with written reasons to be filed, and that the Order of the Court would provide for payment of the sum of Ten Thousand Dollars to Ms. Brown by the Authority. The matter of costs was reserved.

The following is the opinion of the Court.

The Community of Sackville Landfill Compensation Act, S.N.S. (1993), c. 71 (the "Act") authorized the Authority to pay compensation to individuals on account of damages arising out of the operation of the Highway 101 landfill.

Since 1984, Heather Brown, and her children have occupied premises in close proximity to the landfill.

The Sackville Landfill Compensation Review Board (the "Board") was established by the Authority to review individual claims for compensation.

In response to an invitation from the Board extended to those individuals who lived or owned property in the community of Sackville and had suffered loss of property value or of quality of life because of landfill-related impacts, Ms. Brown filed a claim in June, 1994, for compensation for damages on the claim form provided by the Board. As all members of her family had developed symptoms of disease which Ms. Brown attributed to the operation at the landfill site, she included in her claim a request for a "copy of all chemicals" used at the landfill site.

Ms. Brown was notified by the Board on August 8, 1994, that the Authority was prepared to pay to her the sum of Ten Thousand Dollars on the condition she execute and deliver the release

enclosed with the letter (the "Release").

No information was forwarded to Ms. Brown concerning the chemicals used at the landfill site, nor was her request referred to in the Board's letter.

On November 23, 1994, the Authority wrote Ms. Brown advising her that unless they received the Release by December 28, 1994, that "the offer of payment of your claim will be withdrawn as of that date".

Ms. Brown made further requests for the information but eventually concluded that she would not receive it "without a complicated legal battle" which she was unable to fund, and, accordingly, had her solicitor advise the Board on January 5, 1995, that she would accept the offer.

The duly executed Release was forwarded by Ms. Brown's lawyer to the Board on January 10, 1995. The following day the Authority returned the Release "since it was received after the deadline". The Authority accepts that the Release was completed in the manner and form requested by it, its only objection being that it was filed too late.

As the operations of the landfill site were extended from July 1, 1994, to December 31, 1996, the Act was amended in January 1995, to extend the time limit within which claims could be filed to July 13, 1995.

In March 1995, Ms. Brown forwarded a second claim form for compensation, advising that the detail "of nuisance impacts have previously been provided to the Board".

The Board responded that since her claim had already been dealt with, it could "not process the claim" except for damages occurring in the thirty-month extension commencing July 1, 1994.

Ms. Brown's counsel applied to a Chambers Judge for a mandamus, initially requesting an order to compel the Authority and the Board to forthwith make a decision and exercise its jurisdiction pursuant to s. 8(1) of the Act, as well as for an order compelling the Authority to pay Ms. Brown's compensation in the amount of Ten Thousand Dollars. Before the motion was heard, counsel for Ms. Brown withdrew the request for the order for payment.

The Chambers Judge granted the mandamus in the modified form.

The Authority has appealed to this Court asking the Order be set aside.

## **BACKGROUND**

The claim form filed by Ms. Brown eloquently describes the significant interference with the family's enjoyment of life caused by the landfill site:

I have two small children which I can't leave outside to play in their own yard on a beautiful sunny day winter or summers, the stench which comes directly from the landfill when they begin work each day and use the bulldozers throughout is ghastly and unbearable to the nostrils. . . . you can't leave a window open even a crack, or it also will linger inside your house. It not only affects your nostrils when you are outside it also makes you feel nauseated . . . During the spring and summer seasons when the temp. rises, the landfill experiences chemical and gas fires on site. As a resident we refer to these as blackouts. It can be a beautiful sunny day but when a fire starts at the fill and the wind blows in the direction of your house the sky becomes black with a residue-like substance showering everything it comes in contact with . . . as a tax paying citizen I would like you to forward me a copy of all chemicals that have been dumped there from its beginning and to date. The Freedom of Information Act guarantees me the right to obtain all this information. These chemicals of unknown substance are not only inhaled but are also absorbed into the skin. Combinations of gas and chemical or foreign substances as you must surely realize have serious ramifications and effects short terms as well as long term on a persons health. (emphasis added)

Ms. Brown, as well, described the nuisance caused by seagulls carrying garbage, damaging windows, and depositing their droppings on her back deck.

According to an information booklet which was enclosed with the compensation form distributed by the Board, the Board was:

. . . established by the Metropolitan Authority to review individual claims for compensation for damages caused by the operation of the Highway 101 landfill. The purpose of the Review Board is to offer a fair and efficient alternative to legal proceedings to people who live or own property in the Community of Sackville and have suffered loss of property value or of quality of life because of landfill related impacts. (emphasis added)

The informality of the process is emphasized in the brochure. It states in part:

*The Community of Sackville Landfill Compensation Act* authorizes the Metropolitan Authority to pay damages to individuals with substantiated claims. The purpose of the Review Board is to operate at arms length from the Authority in order to give the Authority advice on what would be a fair settlement. The process is intended to be easier, less expensive and shorter than going to court. . . . Claimants may wish to obtain legal advice before filing a claim with the Review Board, but the process does not require that they hire the services of a lawyer. (emphasis added)

Claimants were instructed to read the information booklet carefully before making their application.

There is no provision in the **Act**, or in the information distributed to the public, requiring a claimant, after notification that a claim will be paid, to execute and return a release within any specified period of time.

The relevant provisions of the **Act** are as follows:

8 (1) Upon receipt of a claim documented to its satisfaction, the Authority may pay an amount to a person who is a resident of the Community of Sackville or an owner or occupier of real or personal property located in the Community of Sackville on account of damages suffered by that person arising out of the operation of the Landfill Site.

(2) If the Authority pays any amount to a person pursuant to subsection (1), the Authority shall obtain from that person a complete release of the Authority from all liability for such damages.

(3) Any claim pursuant to this Section shall be made to the Authority within one year of this Act coming into force.

Subsection 8(3) was repealed effective January 13, 1995, to read:

(3) Any claim pursuant to this Section shall be made to the Authority within six months after this subsection comes into force.

The chronology of events relevant to the issues in this appeal are as follows:

- On June 7, 1994, Ms. Brown's claim was filed with the Board;
- On July 7, 1994, the Chairman of the Board wrote the Chairman of the Authority recommending that "for quality of life redress that Ms. Brown receive \$1,000 per year for 10 years, totally \$10,000". No reference was made to Ms. Brown's request for information concerning the chemicals that were used at the site;
- On July 20, 1994, the Authority approved payment of Ms. Brown's claim;
- On August 6, 1994, Ms. Brown directed a letter to the Board at 506 Sackville Drive, Sackville, NS (rather than to the correct address at Lower Sackville). The zip code was not included in the address. The Board claims it never received, or was aware, of the contents of the letter, before the material filed in support of the application was received in November 1995. Ms. Brown reiterated her request for information and wrote, in part:

. . . I will not sign a release to future claim in regards to the land fill until the following requirements are met and addressed.

It is my belief that I have the right not only as a taxpaying citizen but also as a person who resides within the close proximity of the land fill site to be provided in written documentation a list of chemicals that may have been disposed of at this site. As well as the medical effects those chemicals can have on a person who is subjected to them on a daily and long term period of ten years. . . .

Recent studies have shown that in previous surveys people who have lived in close proximity to a landfill site have developed numerous diseases; short-term skin rashes, fatigue syndrome, nausea, etc. Long-term cancer, respiratory disfunction, brain deficiency, etc.

My concern is that while in residence of the said property all members of my family have one or more symptoms of such illnesses. I have also had problem pregnancies in which one child was born premature at a weight of 2 lbs. . . .

Due to the sudden changes happening with MSI I am reluctant to sign a Release until I am in positive that in 2-5-10 yrs myself or children will not contract a disease from the direct or indirect result of our close proximity to the landfill . .

- On August 8, 1994, the Board wrote Ms. Brown advising:

The Metropolitan Authority is prepared to pay to Heather Brown (the "Claimant") the sum of \$10,000 pursuant to section 8(1) of the *Community of Sackville Compensation Act* on the condition that the enclosed Release (the "Release") is duly executed by all of the Claimants, witnessed and dated.

Upon determining that the Release has been completed satisfactorily, the Metropolitan Authority will forward a cheque for the agreed amount to the attention of Heather Brown.

Please note that the Release requires the Claimant to confirm that they have received independent legal advice. It would be prudent, therefore, for the claimant to ensure that they have obtained independent legal advice with respect to the Release.

The Metropolitan Authority would appreciate receiving your response within sixty (60) days.

- On August 29, 1994, Ms. Brown's solicitor wrote to the Board in part:

I would ask that you provide me with any and all information which assisted you in arriving at the proposed compensation amount.

I look forward to receiving this information at your earliest convenience so that I can properly assess the fairness of the amount proposed . . .

The Chairman of the Board has deposed in an Affidavit filed on behalf of the Authority that on receipt of this letter, he phoned Ms. Brown's counsel and advised him that as "the Board had already made a report to the Authority on the Claim, he should direct any inquiries relating to the Claim to the Authority or its legal counsel".

- On November 23, 1994, the Authority wrote Ms. Brown in part as follows:

We refer to a letter dated the 8th day of August, 1994, from the (Board) indicating that the (Authority) is prepared to pay you the sum of \$10,000 pursuant to Section 8(1) of the (Act) upon receipt of the duly executed Release enclosed in that letter.

We have not yet received the executed Release and wish to advise that unless the executed Release is returned to the (Authority) . . . by the 28th day of December 1994, the offer of payment of your claim will be withdrawn as of that date.

The Chairman of the Board deposed, as well, in his Affidavit, that some time before December 28, 1994, he explained to Ms. Brown on the phone:

. . . how the Review Board process worked and made it clear that the Release for the Authority had to be signed and returned before December 28, 1994 in order for her to recover compensation from the Authority.

- On January 5, 1995, Ms. Brown's counsel wrote the Authority:

Ms. Brown has been attempting to obtain information with respect to items that have been dumped at the landfill site and whether dumping regulations have been complied with. This information has not yet been received from any of the government authorities and therefore Ms. Brown has not been in a position to make a decision on this matter.

Ms. Brown now feels that she may never receive this information and is therefore, now prepared to accept the compensation pursuant to the closeout committee report . . .

- On January 6, 1995, the Acting Executive Director of the Authority wrote Ms. Brown's counsel advising:

The (Authority) has made an offer of settlement to Ms. Brown, in accordance with Section 8 of the (Act). Claimants are requested to respond within 60 days. The (Authority) has decided that in order to finalize claims, an additional period of thirty days was given to claimants to respond. If the claimant has not provided the executed release agreement to the (Authority) by the end of thirty days the offer of settlement is withdrawn. . .

The Authority has been advised by its solicitor that the Authority has every right to put in place time limits for responses to offers of settlement, and there is nothing in the legislation that would prohibit it.

- On January 10, 1995, Ms. Brown's solicitor forwarded the Release, duly executed, in the form prescribed by the Authority;

- On January 11, 1995, the Authority advised Ms. Brown's counsel that the Release could

not be accepted since it was received after the deadline for receipt. The letter also advised that since the Authority implemented the deadline at an "in-camera" meeting held October 25, 1994, the minutes of the meeting could not be provided.

- On March 3, 1995, Ms. Brown completed a second compensation claim form which she forwarded to the Board. In the section providing for a detailed description of the claim, she stated:

Details of nuisance impacts have previously been provided to the Board. If you require further details, please advise.

- On May 29, 1995, the secretary of the Board wrote to Ms. Brown:

I wish to advise a claim for the period up to June 30, 1994, has already been dealt with by the (Board) and a recommendation was sent to the (Authority) on July 8, 1994.

Because this claim has already been dealt with, the Board cannot process the claim recently submitted by yourself, however, the claim for the thirty month extension of the landfill site from July 1, 1994, to December 31, 1996, can be accepted once this process is in place.

## ISSUES

The Authority characterized the issues as follows:

1. The Chambers judge misconstrued the evidence in concluding that the Authority relied on a time limit prescribed by the Terms of Reference to decline acceptance of the Release delivered by Ms. Brown after December 28, 1994;

2. The Chambers Judge erred in law in giving the words "may pay" as used in section 8 of the **Act** a mandatory connotation;

3. The Chambers Judge erred in deciding that the Authority had no discretion to stipulate a time limit for return of a release from Ms. Brown pursuant to the **Act**.

To these issues I would add the following:

4. Does this court have the authority to order relief not requested by the parties before the Chambers Judge?
5. Are solicitor-client costs appropriate in the circumstances?

## **ANALYSIS**

### **Issue No.1**

The Chambers Judge concluded that the Authority justified its rejection of Ms. Brown's release on the basis of the "Terms of Reference" established for the Board.

The Chambers Judge said in part:

. . . the terms of reference, which did not have the force of law, are being used to limit or take away a right of action . . . The Act sets out no time limit for giving a release. The time limit is set out in the terms of reference. . . .

Counsel for the Authority points out that the Terms of Reference do not contain any provision respecting the imposition of a time limit for acceptance of a release, rather the decision to determine a cut off of December 28, 1994, took place at an in-camera meeting held on October 25, 1994.

I conclude that the error committed by the Chambers Judge is not material. The absence of any authority in the Terms of Reference, if anything, is harmful to the position advanced by the Authority.

### **Issue No.2**

The Chambers Judge concluded:

Section 8(2) of the Act contains words which appear to be discretionary rather than mandatory:

8 (2) Upon receipt of claim documented to its satisfaction, the Authority may pay an amount . . .

I would agree that payment is discretionary up to the point of time when a claim is approved. But once it is approved, it is no longer discretionary. It is mandatory. The words "may pay" cannot be taken at their face value because, if payment of the claim was totally discretionary, the purpose and intent of s. 8 of the Act could easily be frustrated. The Metropolitan Authority, even though authorized by the Legislature to process claims and pay them, could, in its discretion, decide not to pay anything to anybody. That could never have been the intention of the Legislature. So, while there is an element of discretion involved in processing claims for payment, payment becomes mandatory once approval for payment is given.

I agree with the foregoing analysis.

The Chambers Judge was quite right in directing his attention to the policy and objects of the **Act**.

It was passed by the legislature to enable compensation to be paid to those who suffered damages caused by the operation of the Highway 101 landfill. The Authority established the Board to review individual claims and make recommendations to the Authority respecting the amount of the claim, if any, to be paid.

The purpose of the Board was expressed publicly as offering "a fair and efficient alternative to legal proceedings to people who live or own property in the Community of Sackville and have suffered loss of property value or of quality of life because of landfill related impacts".

The Board determined that Ms. Brown was one of the persons entitled to be paid.

The Authority accepted this recommendation.

The only stipulation the Authority placed on the payment of funds was the execution and delivery of a Release by Ms. Brown. She complied with this request and submitted a release that was in the form stipulated by the Authority.

There was, in my opinion, no discretion left to the Authority to impose any further conditions before being required to pay compensation to her.

It is the duty of the Authority not to act in such a manner as to frustrate the policy and objects of the **Act**, and in my opinion, the position taken by the Authority in this case would do just that.

The Authority has confused what is a very clear distinction between a power coupled with a duty and a complete discretion (**Julius v. Bishop of Oxford** (1879-80), 5 App. Cas. 214).

I interpret s.8(1) of the **Act** as requiring the Authority to pay compensation (in the circumstances of this case):

- (1) to an occupier of real property located in the Community of Sackville,
- (2) on account of damages suffered by that person,
- (3) arising out of the operation of the landfill site,
- (4) provided the claim is documented to the satisfaction of the Authority.

Ms. Brown satisfied all these requirements. Her claim was approved.

The Authority had no discretion in the circumstances of this case to refuse payment of the ten thousand dollars once the duly executed Release on the form submitted by the Authority was returned by Ms. Brown on January 10, 1995.

The comments of Lord Chancellor Cairns in **Julius v. Bishop of Oxford** at 225 are

relevant:

Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised.

It is, in my opinion, a misconstruction of the **Act** to impart to the Authority a discretion in these circumstances which would run counter to the policy and objects of the **Act** (see comments of Lord Reid in **Padfield v. Minister of Agriculture, Fisheries and Food** (1968), A.C. 997 at 1030).

The Authority submits that the opening words of s. 8(1), ie. "Upon receipt of a claim documented to its satisfaction, the Authority may pay . . ." grants to it the power to limit the time within which a release must be delivered.

This submission, as well as others advanced in this appeal by the Authority, prompts the protest made by Denning, L.J., in **Magor and St. Mellons Rural District Council v. Newport Corporation** (1951), 2 All E.R. 839:

This was so obviously the intention of the Minister's Order that I have no patience with an ultra-legalistic interpretation which would deprive (the appellants) of their rights altogether. I would repeat what I said in **Seaford Court Estates Ltd v. Asher** (1949), 2 K.B. 481. We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do, and it is the thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.

### Issue No.3

The Chambers Judge determined:

Since there is no time limit for the giving of a release mandated in the governing statute, the claimant is entitled to payment whenever he, she or it fulfils the statutory requirements. In this case, all have been fulfilled except the giving

of the release, and that was completed later. . . . What has happened here is that the applicant has been deprived of a right in circumstances in which the governing Act does not authorize it.

Counsel for the Authority suggests that the need for the imposition of a time limit arose from a lack of response to the Authority's offer by Ms. Brown and others.

The Authority, it is submitted, made an offer to Ms. Brown on August 8; before the offer was accepted, the Authority amended the offer by making its acceptance subject to a condition - delivery of the Release by November 28. Ms. Brown failed to accept the offer in time, and, accordingly, the offer expired.

In my opinion, this contractual analysis is not appropriate when determining the legal relationship between the parties. Once Ms. Brown satisfied the Board of the legitimacy of her claim, and once the Authority accepted the Board's recommendation, the Authority was required to pay the amount stipulated, upon delivery of a Release.

Even if the contractual analysis was apt, the offer of August 8 was never withdrawn. The authority's letter of November 23, 1994, only advised the "offer will be withdrawn". Before notification that the offer had been withdrawn, Ms. Brown accepted the offer when she delivered the Release. (Fridman, The Law of Contract, 3rd ed., p.75)

#### Issue No.4

The Chambers Judge concluded his decision with the following remarks:

I am reminded that the Court cannot make an award which is not sought. Since the Court was previously advised by counsel for the applicant that her request for payment of \$10,000 may have been premature, the decision of the Court should not be taken as adjudicating the question of whether \$10,000 should be paid.

At the outset of the hearing, Counsel for the Authority was asked to respond to the

suggestion that the real issue in this case was whether the Authority had a duty to pay the sum approved by the Authority.

The jurisdiction of this Court on an appeal is very wide.

Civil Procedure Rule 62.23(1) provides in part:

62.23(1) Without restricting the generality of the jurisdiction, powers and authority conferred on the Court by the Judicature Act or any other enactment, the Court may:

(b) . . . make any order which might have been made by the court appealed from or which the appeal may require; . . .

(e) make any order or give any judgment which the appeal may require.

Section 41 of the **Judicature Act**, Chapter 240, R.S.N.S. (1989) provides in part:

41 In every proceeding commenced in the Court, law and equity shall be administered therein according to the following provisions:

(g) the Court, in the exercise of the jurisdiction vested in it and every proceeding pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and condition as to the Court seems just, all such remedies whatsoever as any of the parties thereto appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in the proceeding so that as far as possible all matters so in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided;

It is not in the interests of justice, in my opinion, for this Court only to decide the issues as framed by the Authority. Such a course would merely involve the parties in further litigation and consequent costs (see comments of MacKeigan, C.J.N.S. in **J. W. Lindsay v. Citadel Properties et al.** (1982), 58 N.S.R. (2d) 26).

We have all the material before us that was before the Chambers Judge, we have taken the time to review it, and it is in the interest of justice for us to determine both questions as initially advanced on behalf of Ms. Brown to the Chambers Judge.

I specifically adopt the opinion of Hallett, J.A., on behalf of this Court in **ABM Bank Canada v. NSC Diesel Power Inc.** (1991), 101 N.S.R. (2d) 361 at 363:

There is an inherent jurisdiction in the court to take appropriate action where justice requires the court's intervention. In **Halsbury's Laws of England** (4th Ed.), vol. 37, at p. 22, the inherent jurisdiction of the court is described as follows:

"Inherent jurisdiction of the court. Unlike all other branches of law, except perhaps criminal procedure, there is a source of law which is peculiar and special to civil procedural law and is commonly called 'the inherent jurisdiction of the court'. In the ordinary way the Supreme Court, as a superior court of record, exercises the full plenitude of judicial power in all matters concerning the general administration of justice within its territorial limits, and enjoys unrestricted and unlimited powers in all matters of substantive law, both civil and criminal, except insofar as that has been taken away in unequivocal terms by statutory enactment. The term 'inherent jurisdiction' is not used in contradistinction to the jurisdiction of the court exercisable at common law or conferred on it by statute or rules of court, for the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or rule of court .

..

"In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."

The Court's intervention is required to ensure justice is carried out by ordering the Authority to pay the agreed compensation to Ms. Brown.

#### Issue No. 5 - Costs

In response to a request from the panel requesting submission on costs, counsel for the Authority submitted that costs should be awarded to the successful party, but should be influenced by the modest award (\$250) determined by the Chambers Judge respecting the motion before him.

Counsel for Ms. Brown, on the other hand, submitted that costs, as between solicitor and client, should be awarded in the event that the appeal is dismissed. He stresses Ms. Brown's limited financial circumstances, her unsuccessful attempts to obtain information from the Board and the Authority, and her final attempt in March of 1995 to resolve the matter, without resort to the courts, by filing a second claim.

Ms. Brown's affidavit filed in support of the application before the Chambers Judge, provides in part:

5. **THAT** I have made numerous requests to the (Authority) and (Board) for information relating to the landfill site, and in particular what sort of chemicals were allowed to be dumped in the site which could have an adverse effect on myself and my children . . .
6. **THAT** I never received a response to my correspondence or inquiries made to the (Authority) or the (Board) . . .
8. **THAT** I did not provide the Release as requested on or before December 28, 1994 because I did not want to give up my rights until I had an opportunity to review the documentation I requested from the Board and could make an informed decision based on the information provided to me;
9. **THAT** it became apparent that I would not receive the information requested from the (Authority) without a complicated legal battle, which I was not in a financial ability to undertake, and therefore reconsidered the offer of settlement made to me by the (Authority) . . .

Counsel for the Authority submits that a time limit was imposed so that the Authority could control its own process; that is, to bring matters to a completion respecting the finalization of claims.

The Authority certainly could not have had any concern respecting the filing of the claim forms itself because the Act, before amendment, stipulated that a claim to the Authority "shall be made within one year" of the Act coming into force (ie. November 25, 1993). The amendment extended that deadline only to July 13, 1995.

We are advised that only two claimants, other than Ms. Brown, failed to meet the December 28, 1994, deadline.

The Authority has not demonstrated that it would have suffered any prejudice if it acted on the Release submitted on January 10, 1995. The Authority has, in addition, failed to establish any legal or equitable justification for failing to finalize her claim at that time.

The amendment which was effective January 13, 1995, repealed s. 8(3) and substituted the following:

8 (3) Any claim pursuant to this section shall be made to the Authority within six months after this subsection comes into force.

The amendment was presumably prompted by the continuing operations of the landfill site after the anticipated closure date of June 30, 1994.

It is significant, however, that the amendment refers to "any claim" and not just claims that have arisen since July 1, 1994.

Ms. Brown was, therefore, entitled to have her entire claim dating from August 1984 considered by the Board and the Authority when she filed her second claim in March of 1995.

The reasons that prompted the Authority to impose the arbitrary deadline of December 28, 1994, could not reasonably be relied upon respecting the acceptance of the March 1995 claim. The Authority could have requested that Ms. Brown execute a new Release. It is a fair inference that she would have complied, in view of her earlier decision to file the Release on January 10, 1995. Alternatively, the Authority, with her consent, could have considered the Release as effective in disposing of her claim.

The Authority did not take either of these approaches but rather concluded:

Because this claim has already been dealt with, the Board cannot process the claim recently submitted by yourself, however, a claim for the thirty month extension of the landfill site from July 1, 1994, to December 31, 1996, can be accepted once this process is in place.

This response was highhanded and arbitrary. It ignored the Authority's failure to respond to Ms. Brown's legitimate requests for information. It showed a complete lack of understanding or sympathy for Ms. Brown's circumstances. It was inconsistent with the purpose and object of

the legislation the Authority was mandated to implement. It is not the type of practice that should be adopted by any public authority.

While it is clear that this Court has the authority to award costs as between solicitor and client, it is also clear that this power is only exercised in rare and exceptional circumstances, to highlight the court's disapproval of the conduct of one of the parties in the litigation (**P.A. Wournell Contracting Ltd. et al. v. Allen** (1980) 37 N.S.R. (2d) 125).

This court has refused to award costs as between solicitor and client even though the conduct of the party in question has been found to be reprehensible. (**Lockhart v. MacDonald** (1981), 42 N.S.R. (2d) 29; **Warner v. Arsenault** (1982), 53 N.S.R. (2d) 146)

The word "reprehensible" is defined in The Concise Oxford Dictionary (1990) as "deserving censure or rebuke".

The conduct of the Authority, in my opinion, deserves that description.

There is, however, a difference between reprehensible conduct as demonstrated here, and those rare and exceptional circumstances which attract the sanction of costs as between solicitor and client. In my opinion, the Authority's actions do not cross that line, and accordingly, I would not award costs as between solicitor and client.

I would dismiss the appeal and order the Authority to pay to Ms. Brown the sum of Ten Thousand Dollars and the costs as awarded by the Chambers Judge.

I would award costs of this appeal to Ms. Brown in the amount of \$3000 plus disbursements.

PUGSLEY, J.A.

Concurred in:

CHIPMAN, J.A.

FLINN, J.A.

