

PRESS RELEASE

Ogden Residents Have Success in Class Action Against CPR

The Alberta Court of Appeal has confirmed the Class Action by Ogden residents against CPR. Attached is the Court Order filed June 19, 2008. Attached also is the detailed Court Order setting the Class Action.

Lawyers representing residents will be holding a Town Hall Meeting at:

Place: Ogden House Senior Citizens 50+ Club
Location: 2102 - 69th Avenue SE
Date: November 27th, 2008
Time: 7:30 p.m.

- 30 -

For further information please contact:

Mark Freeman
Docken & Company
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Calgary, Alberta
T2P 3G3
Tel: (403) 269-3612

Action No. 0501-00241

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY**

BETWEEN:

DAVID WINDSOR and AGNES WINDSOR

-and-

Plaintiffs

CANADIAN PACIFIC RAILWAY LIMITED

Proceeding Under the *Class Proceedings Act*, S.A. 2003

Defendant

Before the Honourable
Mr. Justice J.D. Rooke
In Chambers

At the Court House, in the City of
Calgary, in the Province of Alberta
This Tuesday, the 17th day May,
2006

ORDER

UPON THE APPLICATION of the Plaintiffs for Certification of this Action as a Class Proceeding pursuant to the *Class Proceedings Act* of Alberta; AND UPON reading all material filed in this Action to date including briefs of law and fact; AND UPON hearing from counsel for the Plaintiffs and Defendant, December 12th and 13th, 2005;

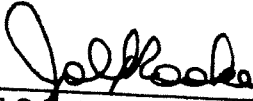
IT IS HEREBY ORDERED:

1. This Action is Certified to proceed as a Class Proceeding under the *Class Proceedings Act*;

2. The Class that is Certified is described as:
"All persons or corporations that own or did own land on or after January 7, 2003, within the area of Ogden, in the City of Calgary, in the Province of Alberta, described as within the boundaries of 72nd Avenue SE (as the north boundary of the area), to the CPR's property line adjacent to Ogden Road SE (as the east boundary of the area), to 76 Avenue SE (as the south boundary), to 20th Street SE going north to the base of what is known as Lynwood Ridge SE (as the west boundary – 20th Street SE to 74 Avenue SE to 72 Avenue SE)."
3. The Plaintiffs herein are appointed Representative Plaintiffs for the Class;
4. The nature of the claims asserted on behalf of the Class are negligence, nuisance, strict liability and trespass;
5. The relief sought by the Class is for damages, as alleged in paragraphs 15 and 20 of the Amended Statement of Claim, specifically for losses in property values, diminution of rental income from said property and all damages for modifications, alterations or additional expenses made or incurred to the property;
6. The Common Issues for the Class are:
 - a. Are there certain common polluting substances within the defined area in Ogden that are:
 - i. Present in the class members' properties; or
 - ii. Affecting the class members' properties; or
 - iii. Both (i) and (ii)?
 - b. If so, did the common polluting substances escape from the Defendant's property?

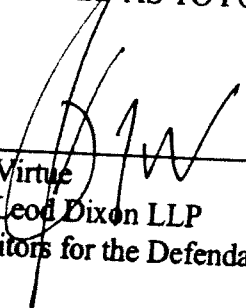
- c. If so, does the Defendant owe the class at large a duty of care to prevent the escape of the polluting substances?
 - d. Did the Defendant breach its duty of care to the class at large?
 - e. If there are common polluting substances present and / or affecting the class members' properties, is the Defendant liable in strict liability (*Rylands*) for the escape and subsequent pollution of the class members' properties with the common polluting substances?
 - f. If there are common polluting substances present and / or affecting the class members' properties, is the Defendant liable in nuisance for the escape and subsequent pollution of the class members' properties with the common polluting substances?
 - g. If there are common polluting substances present and / or affecting the class members' properties, is the presence of the common polluting substances on the class members' properties a trespass?
 - h. If there are common polluting substances present and / or affecting the class members' properties, was the Defendant negligent in respect of the escape and subsequent pollution of the class members' properties with the common polluting substances?
7. Subject to s. 17 of the *Class Proceedings Act*, any Class member as described in paragraph 2 above, may opt out of this action by providing written notice in a manner and form approved by the Court, within ninety (90) days of notice of certification being made public as specified by the Court pursuant to s. 20 of the *Class Proceedings Act*;

8. Subject to s. 17 of the *Class Proceedings Act*, any person or corporation that is not a resident of Alberta and that otherwise meets the description set out in paragraph 2 above may opt into this action by providing written notice in a manner and form approved by the Court, within ninety (90) days of notice of certification being made public as specified by the Court pursuant to s. 20 of the *Class Proceedings Act*:
9. This Order shall be entered notwithstanding Rule 327.
10. Costs may be spoken to.



J.C.Q.B.A.
June 17/08

APPROVED AS TO FORM AND CONTENT:



J.E. Virtue
MacLeod Dixon LLP
Solicitors for the Defendant

ENTERED this 19 day of June, 2008.

V.A. BRANDT 

Clerk of the Court

ACTION NO.: 0501-~~0~~00241

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**DAVID WINDSOR and AGNES
WINDSOR**

Plaintiff

- and -

**CANADIAN PACIFIC
RAILWAY LIMITED**

Defendant

ORDER

CLERK OF THE COURT

JUN 19 2008

CALGARY, ALBERTA

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Solicitor's File No.: 7155

Appeal No. 0601-0155-AC
Registry: Calgary

IN THE COURT OF APPEAL OF ALBERTA

At the Court of Appeal, Calgary, Alberta, the 25th day of September, 2007.

BEFORE:

THE HONOURABLE JUSTICE BERGER
THE HONOURABLE JUSTICE MARTIN
THE HONOURABLE JUSTICE SLATTER

BETWEEN:

DAVID WINDSOR and AGNES WINDSOR

Respondents
(Plaintiffs)

-and-

CANADIAN PACIFIC RAILWAY LIMITED

Appellant
(Defendant)

Proceeding Under the Class Proceedings Act, S.A. 2003

ORDER

THIS APPEAL herein, coming on for hearing before this Honourable Court on the 10th day of May, 2007; **AND UPON HEARING** Counsel for the Appellant and

Counsel for the Respondents; AND UPON JUDGMENT having been reserved and written Reasons for Judgment delivered on September 25, 2007;

THIS COURT DOES ORDER:

1. That this Appeal is dismissed subject to an amendment to the class definition removing the word, "affected";
2. That the Class will henceforth be defined as:

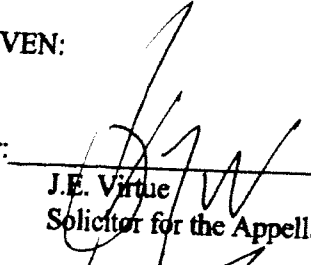
"All persons or corporations that own or did own land on or after January 7, 2003, within the area of Ogden, in the City of Calgary, in the Province of Alberta, described as within the boundaries of 72nd Avenue SE (as the north boundary of the area), to the CPR's property line adjacent to Ogden Road SE (as the east boundary of the area), to 76 Avenue SE (as the south boundary), to 20th Street SE going north to the base of what is known as Lynwood Ridge SE (as the west boundary – 20th Street SE to 74 Avenue SE to 72 Avenue SE)."
3. That, pursuant to Rule 607 of the *Alberta Rules of Court*, costs of this appeal shall be paid to the Respondents forthwith.

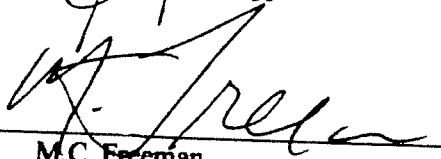
(a D) REGISTRAR COURT OF APPEAL

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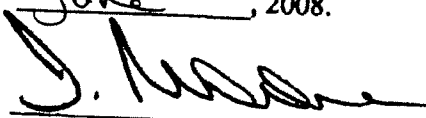
APPROVED AS BEING THE JUDGMENT

GIVEN:

Per: 
J.E. Virtue
Solicitor for the Appellant

Per: 
M.C. Freeman
Solicitor for the Respondents

ENTERED this 23rd day of
June, 2008.


D/ REGISTRAR AT CALGARY, ALBERTA

ACTION NO.: 0601-0155AC
Q.B. Action No: 0501-00241

THE COURT OF APPEAL OF ALBERTA

BETWEEN:

DAVID WINDSOR and AGNES WINDSOR

**Respondents
(Plaintiffs)**

- and -

CANADIAN PACIFIC RAILWAY LIMITED

**Appellant
(Defendant)**

ORDER

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Solicitor's File No.: 7155

FILED
JUN 23 2008
**COURT OF APPEAL
CALGARY**