

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

BETWEEN:

DAVID WINDSOR and AGNES WINDSOR

Plaintiffs

AMENDED this 21 day of NOV - and -

2005 Pursuant to

Rule 135

dated the 21 day of NOV, 2005 CANADIAN PACIFIC RAILWAY LIMITED

Defendant

V.A. BRANDT



CLERK OF THE COURT

This Action is commenced pursuant to the  
*Class Proceedings Act* of Alberta,  
S.A. 2003, c. C-16.5

**AMENDED STATEMENT OF CLAIM**

A. LITIGANTS

1. The Plaintiffs David Windsor and Agnes Windsor are individuals residing in the City of Calgary in the Province of Alberta.

2. The Defendant, CANADIAN PACIFIC RAILWAY LIMITED (“C.P.R.”), is a corporation federally incorporated pursuant to the *Canada Business Corporations Act*. C.P.R.’s Canadian head office is located at Suite 500, 401 –9<sup>th</sup> Ave. S.W. Calgary, Alberta T2P 4Z4.

## **B. BACKGROUND**

3. This case involves the environmental exposure to and or contamination of lands in the City of Calgary in the community defined by the City as Ogden (the “Lands”) which have sustained damage as a result of the escape of quantities of offensive and noxious matter which has spread and diffused itself from the Defendant’s property adjacent to the Lands, which is commonly known as the C.P.R. Ogden Shops.

4. The Defendant, C.P.R. operates railway shops in the City of Calgary commonly known as the Ogden Shops. The C.P.R.’s Ogden shops are hereinafter referred to as the “Ogden Shops”.

5. At the Ogden Shops, the C.P.R. and or its employees, and or agents use or did use offensive and noxious matters including but not limited to a degreasing solvent known as trichloroethylene (“TCE”).

6. The Defendant, C.P.R. misrepresented that its operations at the Ogden Shops were safe and offensive and noxious matter would not issue, proceed or escape from its premises, when in fact its operations contaminated the environment surrounding the Ogden Shops and in particular resulted in the escape of TCE from the Ogden Shops in to the ground water.

7. The escape of environmental contaminates in particular but not limited to the degreasing solvent known as TCE caused lands owned by the Plaintiffs and the lands

owned by all other Class Members being rendered unhealthy and much less fit for use and occupation for the use as a residential property; the Plaintiffs and all other Class Members interest in the Ogden lands being greatly diminished in value.

### **Representative Plaintiffs' Individual Circumstances**

8. The Plaintiff David Windsor and his wife Agnes Windsor are the registered owners of the lands municipally known as 7227 – 21A Street S.E. Calgary, Alberta, being in Ogden, since 1993, and at all material times this property has been their primary residence.

9. The Plaintiffs have installed at their house a ventilation system necessary to protect the occupants of the house from the pollutants that escaped from the Ogden Shops. This system required damage and alteration to the Plaintiff's property; and requires electrical power to operate, which the Plaintiffs pay.

10. The Plaintiffs further have damage to their property due to the contamination itself.

11. As a consequence of said damage, the Plaintiffs have suffered and continue to suffer damages resulting therefrom, including but not limited to the cost of electricity, the loss in value of their property due to said damage, and the loss in rental value of their property due to said damage.

### **C. CAUSE OF ACTION**

12. The Defendant as an adjacent land owner, owed a duty to the Plaintiffs and all residents of Ogden to ensure that offensive and noxious matter including but not limited

to a degreasing solvent known as trichloroethylene (TCE) would not issue, proceed and or escape from the Ogden Shops near, under or upon the Lands.

13. The Defendant knew or ought to have known that TCE was potentially hazardous to the environment and to people, and the Lands in particular. The Defendant knew or ought to have known that TCE could issue, proceed and escape from its lands if the proper precautions were not taken. The Defendant owed a duty to the Plaintiffs and all other Class Members to warn them of the risks of the escape of and exposure to offensive and noxious matter used by the Defendant at the Ogden Shops. The Defendant breached that duty by failing to give any or adequate warning of the risks associated with escape of and exposure to offensive and noxious matter used at the Ogden Shops in particular but not limited to the use of TCE.

14. The Defendant caused or failed to prevent, and continues to cause or fails to prevent, allows or permits to issue, proceed and escape from its premises, quantities of offensive and noxious matter including but not limited to TCE which has spread and diffused themselves and continue to spread and diffuse themselves into, under and upon the Plaintiffs' lands and the lands of all other Class Members.

15. As a result of the Defendant's conduct as aforesaid:

- a. The Plaintiffs' lands and those lands owned by all other Class Members were and are rendered unhealthy and much less fit for use and occupation as the residences of the Plaintiffs and their family and as residences of all other Class Members and their families, and are damaged as such;
- b. The Plaintiffs' lands and the lands owned by all other Class Members has a reduced value for the purposes of renting to third parties as a result of said damages;
- c. The value of the Plaintiffs' lands and the lands owned by all other Class Members has greatly diminished in value as a result of the exposure to the offensive and noxious matter including but not limited to TCE that escaped from the premises of the Defendant, and resulting damage to said premises caused to control the contamination.

16. The Defendant intends, unless restrained by this Honourable Court, to continue its improper conduct as aforesaid and to thereby continue to commit or allow nuisance and trespass, and cause the Plaintiffs and the other Class Members to suffer injury and or damages in general.

17. Particulars of the negligence of the Defendant is as follows:

- a. failing to adequately and or fully disclose the issuance, proceed and escape from its premises, quantities of offensive and noxious fumes, vapours and gases and other offensive and noxious matter which have spread and diffused themselves and continue to spread and diffuse themselves into, under and upon the Plaintiffs' and other Class Members' lands and the magnitude of the risks associated with offensive and noxious matter including but not limited to TCE, and in particular, their use over extended periods of time;
- b. failing to adequately warn the Plaintiffs and the other Class Members of the increased potential for liver disease or various other medical conditions;
- c. failing to warn the Plaintiffs, the other Class Members and or the general public about the need for comprehensive regular environmental monitoring of the Lands;
- d. failing to provide any or any adequate updated and current information to the Plaintiffs, the other Class Members and or the general public respecting the risks in relation to the exposure of noxious and offensive matter including but not limited to TCE, as it came available from time to time;
- e. after notice of the escape of TCE from the lands of the Ogden Shops, failing to issue adequate warnings, publicize the problem and otherwise act properly and in a timely manner to alert the public, including the Plaintiffs, the other Class Members and or the general public, of the inherent dangers in relation to the exposure to TCE and other noxious and offensive matters;
- f. after learning of the escape of TCE from the lands of the Ogden Shops, failing to adequately and or fully stop the issuance, proceed and escape from its premises, quantities of offensive and noxious fumes, vapours and gases and other offensive and noxious matter which have spread and diffused themselves and continue to spread and diffuse themselves.

18. The defendant is Liable in Strict Liability for the release, escape or otherwise of the said contamination which now affects the Plaintiffs and Class Members' properties as aforesaid.

19. The Plaintiffs and all other Class Members claim punitive and exemplary damages against the Defendant for the reckless conduct and intentional omissions, acts or failures to act, and misrepresentations of the Defendant as described above.

19. The Plaintiff and all other Class Members continued to incur damages due to the escape of including but not limited to a degreasing solvent known as trichloroethylene and offensive and noxious matter in general from the Defendant's Ogden Shops.

20. For the foregoing reasons, the Plaintiffs claim damages for losses in property values and diminished rental income from said properties as described in paragraph 15 herein. The Plaintiffs do not claim damages for physical injury or health problems.

21. The Plaintiff propose that the trial of this action, which is not expected to last more than 25 days, be held at the Courthouse, in the City of Calgary, in the Province of Alberta.

WHEREFORE THE PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL OTHER CLASS MEMBERS CLAIM AGAINST THE DEFENDANT:

- A. An interlocutory and permanent injunction restraining the Defendant from continuing to commit the aforesaid nuisance;
- B. General damages in the sum to be determined at the trial of this matter;
- C. Special damages in the amount to be proven at trial of this action;
- D. Punitive and exemplary damages;
- E. Interest pursuant to *Judgment Interest Act*, R.S.A. 2000, c. J-0.5;

- F. Costs of this action; and
- G. Such further and other relief as to this Honourable Court may allow.

DATED at the City of Calgary, in the Province of Alberta, this 6<sup>th</sup> day of January, 2005; and DELIVERED by Docken & Company, Barristers and Solicitors, Suite 640, 840 - 6<sup>th</sup> Avenue SW, Calgary, Alberta, T2P 3E5, Solicitors for the Plaintiff, whose address for service is in care of the said Solicitors.

ISSUED out of the office of the Clerk of the Court for the Judicial District of Calgary, this 6<sup>th</sup> day of January, 2005.

V.A. BRANDT



Clerk Of The Court

AMENDMENT CONSENTED TO:

  
Judson E. Nivtue  
Counsel for Canadian Pacific Railway Limited

