Court File No. 08-CV-42639 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

GRAHAME PLAUNT and KENNETH L.W. BOLAND

Plaintiffs

- and -

RENFREW POWER GENERATION INC.

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

REPLY FACTUM OF THE DEFENDANT, RENFREW POWER GENERATION INC.

(Decertification Motion Returnable January 25, 2017)

Goodmans LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Alan Mark LSUC# 21772U
amark@goodmans.ca

Melanie Ouanounou LSUC# 55336S
mouanounou@goodmans.ca

Tel: (416) 597-4264
Fax: (416) 979-1234

Lawyers for the Defendant, Renfrew Power Generation Inc.

TO: **DENTONS LLP**
99 Bank Street Suite 1420
Ottawa Ontario K1P 1H4

K. Scott McLean LSUC# 16455G
Tel: 613 783-9665

James M. Wishart LSUC#: 58794G
Tel: 613 783-9651
Fax: 613-783-9690

Lawyers for the Plaintiffs

TABLE OF CONTENTS

PART I – OVERVIEW

1. This reply factum is filed by the defendant, Renfrew Power Generation ("**RPG**"), to address the following new issues raised in the Plaintiffs' Responding Factum:

   (a) whether RPG's decertification motion raises issues that were addressed at the Certification Motion;

   (b) whether the Common Issue must still be necessary to the resolution of all class members' claims even though the answer to the Common Issue need not be the same for all class members; and

   (c) whether enabling the Court to weigh live expert evidence at a trial is necessary in this case.

2. Any capitalized terms not defined herein shall have the meanings ascribed to them in RPG's original factum dated December 16, 2016.

PART II – ISSUES AND THE LAW

RPG's decertification motion does not raise issues that were addressed at the Certification Motion

3. In its Responding Factum, the Plaintiffs argue that RPG is essentially attempting to appeal the Certification Order because it is raising issues on this decertification motion that were already addressed, or could have been addressed, at the Certification Motion.[1]

4. This assertion by the Plaintiffs is undermined by the mere fact that the Common Issue, as currently phrased, was not raised prior to the hearing of the Certification Motion, no matter how much the Plaintiffs try to characterize it as an amalgamation of existing common issues.[2]

---

[1] Plaintiffs' Responding Factum at paras. 31-36

[2] Costs Decision at paras. 4 and 5, Motion Record Vol.I, Tab 7, p.168

5. At no point prior to the hearing of the Certification Motion did the Plaintiffs assert that the 107.5 Contour established a *property line* for purposes of determining the class members' claims for trespass. Instead, the Plaintiffs' position was that the 107.5 Contour represented RPG's *flooding limit*, and this flooding limit governed the rights of the class members and the obligations of RPG based on the following logic:

(a) the class members are riparian owners who are entitled to the use of the natural flow of the water in Round Lake;

(b) the Licences of Occupation permit RPG to interfere with the drainage and levels of Round Lake, but not in excess of the 107.5 Contour;

(c) where RPG has raised the level of Round Lake such that the water extends beyond the 107.5 Contour, this is a breach of the terms of the Licence of Occupation; and

(d) it is this breach that is the trespass alleged by the Plaintiffs.[3]

6. Prior to the hearing of the Certification Motion, there was no allegation by the Plaintiffs, in the Statement of Claim or otherwise, that the basis for the trespass is that the 107.5 Contour represents a property line which has been crossed. Instead, as explained by the Plaintiffs in their factum on the Certification Motion: "the trespass referred to by the plaintiffs *is the breach by RPG of the terms and conditions of the Licences of Occupation*, the Licences being the only authority on which RPG can rely in support of its interference with the natural drainage and therefore the level of Round Lake."[4] In other words, the Plaintiffs' case was not stated to be dependent upon the nature or location of the boundary of their properties, or the contiguity of the

---

[3] Plaintiffs' Factum on the Certification Motion at paras. 25, 26, 31 and 76, Responding Motion Record Tab 2, p.21, 23, 34-35

[4] Plaintiffs' Factum on the Certification Motion at para. 26, Responding Motion Record Tab 2, p.21

class members' property and the lands subject to lawful flooding, but solely on the question of whether any flooding of their property was a consequence of a breach of the Licences of Occupation.

7. The Plaintiffs attempt to confuse the Court by suggesting that the Common Issue is intended to address whether the Licences of Occupation created a fixed flooding limit at the 107.5 Contour (which was their allegation prior to the Certification Motion).[5] But, it is clear from the plain wording of the Common Issue as certified that the new question is whether the 107.5 Contour "established a fixed property line between public and private lands, which defined the boundaries of the class members' properties for the purpose of determining the claims of trespass advanced herein."[6] That question was never posed prior to the hearing of the Certification Motion and RPG had no reason to address it in the evidence at that time.

8. It is apparent from the Plaintiffs' Responding Factum on this motion what they are now about. Having managed to get their action certified on a common question that is not common among all the class members (the property line question) and will not materially advance the litigation, they now want to continue the litigation as if a different question (the nature of RPG's flooding rights created by the Licences of Occupation) were certified. This explains why the Plaintiffs' expert does not address the question certified by the Court but, instead, focuses on a question not certified: whether the Boswell Line can be retraced. It is the Plaintiffs, not RPG, who seeks to revise what the Court ordered on the Certification Motion.

---

[5] Plaintiffs' Responding Factum at paras.104, 112-114

[6] Certification Order at para. 4, Motion Record Vol.I, Tab 5, p.140-141

9. The Plaintiffs' suggestion that the expert evidence contained in the deRijcke Reports could have been placed before this Court at the Certification Motion also ignores the fact the deRijcke Reports were tendered expressly in *response* to the newly formed Common Issue.[7] It also runs contrary to this Court's finding in *Pearson v. Inco* that since certification motions are decided at an early stage of the proceedings and are not intended to be "cast in stone", it is consistent with the statutory objectives of the CPA to adopt a more lenient approach to the introduction of new evidence on a decertification motion.[8]

10. As the issues evolved over the course of this proceeding – including the Plaintiffs' amendment to their Statement of Claim post-certification that the 107.5 Contour "established a geographically fixed and permanent property line between the private lands of the plaintiffs and the public or Crown lands on which RPG is permitted to store water" where no such allegation existed in the Statement of Claim before[9] – the parties then tendered the deRijcke and Stewart Reports to address the newly framed Common Issue. Prior to the Certification Motion and the Plaintiffs' clarification of the basis of their claim, there was no reason for the parties to have tendered evidence regarding the determination of property boundaries and whether the 107.5 Contour establishes a property line between Crown and private land. Instead, it was the Plaintiffs' introduction of evidence (beginning with the 2013 Stewart Report) as to the method of retracing class members' property boundaries and the 107.5 Contour, as well as the production of

---

[7] 2014 deRijcke Report at paras. 1.1 and 1.2, Motion Record Vol.I, Tab 2A, p.12 and 13

[8] *Pearson v. Inco Ltd.*, [2009] O.J. No. 780 (Ont. SCJ) at paras. 25 and 26, RPG Book of Authorities Tab 1; *LeFrancois v. Guidant Corp.*, [2009] O.J. No. 2481 (Ont. SCJ) at paras. 10-12 and 17-26, leave to appeal refused, [2009] O.J. No.4129 (Div. Ct.), RPG Supplementary Book of Authorities, Tab 1

[9] Certification Order at para. 5, Motion Record Vol.I, Tab 5, p.141; Amended Amended Statement of Claim, Motion Record, Vol. 3, Tab C2, p.729-742; Fresh Statement of Claim at para. 14, Supplementary Motion Record Vol. IV Tab 7, p. 806

documents evidencing the history behind the patentees' original acquisition of title from the Crown to the township lots surrounding Round Lake and RPG's acquisitions of flooding rights, which began the revelation that the Common Issue is not, in fact, common and will not sufficiently advance the class members' claims.

11. It is also disingenuous for the Plaintiffs to assert that RPG "sat on this motion". It was the Plaintiffs who did not make any attempts to advance the action for close to 2 years following RPG's delivery of the 2014 deRijcke Report.[10] RPG brought this motion promptly upon the Plaintiffs signalling their intention to reactive the litigation.

Even though the answer to the Common Issue need not be the same for all class members, the question itself must still be necessary to the resolution of all class members' claims

12. While the Plaintiffs are correct that the commonality requirement under the CPA does not require that the *answer* to the common question have the same consequences for all the members of the class, this does not detract from the established authority that the *question itself must be necessary to the resolution of all class members' claims.*[11]

13. Even the cases cited by the Plaintiffs in their Responding Factum support the proposition that while the answer to the question need not be the same for all the class members, the question must still be common.[12] In these cases, the proposed common issues were all necessary elements

---

[10] Affidavit of Monique Allen sworn May 31, 2016 at Exhibits "A" and "B", Motion Record Vol. 1, Tab 3, p.123-126

[11] See cases cited at para. 47 and 49 of RPG's original factum.

[12] *Dell'Aniello c. Vivendi Canada Inc.*, [2014] 1 S.C.R. 3 at paras. 2, 4, 46, 59, 60, 72 and 75, Plaintiffs' Book of Authorities, Tab 6. (The Plaintiffs reliance on this case is, in any event, troublesome because this case concerns the Quebec *Code of Civil Procedure*, which the Supreme Court confirmed requires a broader and more flexible approach to the commonality requirement than in the common law provinces – see paras. 53-59). *Wright v. United*

that each of the class members would have to establish in order to make out their claims, even though the answer to that question might vary among the class.[13] This is completely different than the circumstances of this case where the *question itself* in the Common Issue is entirely irrelevant to many of the class members (as discussed at paras. 41-50 of RPG's original factum). There is no authority for the proposition advanced by the Plaintiffs that the resolution of the Common Issue need only be relevant to the resolution of some class members' claims.

14. The Plaintiffs, at paragraph 50 of their Responding Factum, boldly assert that an interpretation of the Licenses of Occupation "would quite obviously apply to all class members", but do not go on to provide any reason whatsoever as to why this would "obviously" be the case. Not only are the Licenses of Occupation not the sole means through which RPG acquired flooding rights around Round Lake (see paras. 12, 17, 18 and 43 of RPG's original factum), but more fundamentally, it is clear that the Plaintiffs are asserting a mischaracterization of the nature of the Common Issue. At para. 104 of their Responding Factum, the Plaintiffs assert that there is no need for the Court to concern itself with the boundaries of the class members' properties since

---

Parcel Service Canada Ltd., 2015 ONSC 2220 (Ont. Div Ct) at paras. 22, 23 and 37, Plaintiffs' Book of Authorities, Tab 7.

[13] For example, in *Vivendi*, the class action was commenced on behalf of beneficiaries of a health insurance plan challenging certain amendments made to the plan which adversely affected their benefits. The proposed common issues concerned the validity or legality of these amendments. The Supreme Court held that the commonality requirement was met because "since all the claims of all the group's members are based on the Plan, the question of the validity or the legality of the 2009 amendments arises for all members. The answer to this question can serve to advance the resolution of all the claims." (See *Vivendi, supra* at paras. 11, 75 and 79, Plaintiffs Book of Authorities, Tab 6). Similarly, the class proceeding in *Wright* concerned allegations against UPS for violations of the *Consumer Protection Act* when it charged additional fees for brokerage services on deliveries of imported packages. The proposed common issue was whether the brokerage services were "unsolicited" within the meaning of the *Consumer Protection Act.* The Ontario Divisional Court held that even though the answer to the common question could vary among class members based on their individual knowledge about paying for brokerage services, given that the claim of all of the class members is based on UPS' standard form contracts (which do not contain a provision for the provision or payment of brokerage services), the common question is one which is still common to all class members. (See *Wright, supra* at paras. 32-37 and 41, Plaintiffs' Book of Authorities, Tab 7.)

the question underlying the Common Issue is whether the Licences of Occupation created a fixed flooding limit for RPG. That, however, is plainly not the question posed by the Common Issue. The Common Issue asks whether the Licences of Occupation (and the 107.5 Contour referenced therein) created the legal boundary for the class members' properties for purposes of determining their claims for trespass, which requires that the licences be relevant to a determination of the class members' property boundaries. Again, the Plaintiffs appear to be engaged in an impermissible effort to litigate, as a common issue, a question other than the one certified.

15. Determining the property boundaries of each individual class member is the necessary element of each of their claims for trespass. Where the 107.5 Contour is not relevant to a determination of the property boundaries of all of the class members; where the Plaintiffs cannot say which class members' properties, or how many, are defined with reference to the 107.5 Contour; and where there must be a property by property investigation to determine the location of the class members' boundaries and whether they are commensurate with the 107.5 Contour, the Common Issue is neither a necessary nor substantial ingredient of all of the class members' claims for trespass and will not sufficiently advance the litigation. The fact that this Honourable Court recognized that there would have to be individual proceedings to determine damages and the extent of trespass does not mean that it also intended to save for individual trials the question of whether the Licences of Occupation are even relevant to the boundaries of each class members' property.

The Plaintiffs have misinterpreted and unfairly characterized Mr. deRijcke's expert evidence based on class counsel's own interpretation of various reference plans

16. At paras. 62-65 and 72 of their Responding Factum, the Plaintiffs suggest that this Court ought to deny RPG's decertification motion so that the action can proceed to trial where the

Court itself can hear and assess the expert evidence of Mr. deRijcke. This is not a sufficient basis upon which to permit a class action to proceed and the Plaintiffs cite no authority in support of this proposition. At the certification stage, cross-examination by counsel of competing experts' evidence is sufficient.[14] There is certainly no authority – nor could there be – for the assertion that the determination of whether the criteria for certification are established should await the trial of the common issues.

17. In any event, the evidence of the Plaintiffs' own witness, Mr. Stewart, is alone sufficient to warrant the setting aside of the Certification Order. He has acknowledged the fact that the requisite commonality does not exist; indeed, he was not even asked to address the question of identifying the nature or extent of the boundaries for the Plaintiffs' properties.[15]

18. The Plaintiffs have also unfairly characterized much of Mr. deRijcke's evidence. At Appendix "A" to their Responding Factum, the Plaintiffs identify 16 reference plans cited by Mr. deRijcke which they say, contrary to Mr. deRijcke's evidence, demonstrate that the boundary of

---

[14] *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, [2008] B.C.J. No. 1778 (BCSC) at paras. 25, 26 and 32, RPG Supplementary Book of Authorities, Tab 2

[15] See paras. 17-21, 43-45 and 48 of RPG's Original Factum. For example, see the following excerpts from Mr. Stewart's cross-examination: "Q.: In those areas where there was no grant of any flooding rights to HEPCO, one thing we can say for certain is that the boundary between the private property and the public lands will be the inward limit of the road allowance? A: That's correct." (p.44-45, Q.146, Supplementary Motion Record Vol. I, Tab 2, p.52-53.) and "Q: So again, in those cases where the flooding rights may be determined by a contour line, and that contour line is inside the limits of the road allowance, the divide between public and private lands will be the inward limit of the road allowance? A: Yes. Probably just for clarification just so the court knows about inward, you mean upland limit of the shore road allowance? Q: Yes, thank you." (p.45, Q.148, Supplementary Motion Record Vol. I, Tab 2, p.53) "Q: In order to determine whether there has been a trespass, because we know that there are some properties around the lake where the 108 contour is not going to be their boundary, in those cases the issue is not whether the licence of occupation has been exceeded but whether there has been overflowing onto the land of the class member? A: That's correct." (p.61, Q.210, Supplementary Motion Record Vol. I, Tab 2, p.69) "Q: And am I correct that there were some conveyances to HEPCO that didn't refer to a contour line at all but were metes and bounds descriptions? I think those are the ones you outline in yellow on your plan? A: Those were the Crown grants to HEPCO. And they did not refer to a contour. They were all by metes and bounds descriptions." (p.66, Q.227, Supplementary Motion Record Vol. I, Tab 2, p.74).

the relevant property is the 107.5 Contour. The Plaintiffs' list has not been compiled based on any expert evidence, but merely on counsel's own understanding and interpretation of the reference plans. The Plaintiffs have misinterpreted these reference plans in the following ways:

(a) 5 of the 16 reference plans[16] appear to have been prepared in respect of applications for shore road allowance closures by the upland property owner. The upland owner's property is defined with reference to the road allowance, but there is an additional parcel of land within the shore road allowance which is separately identified on the reference plan (presumably for the purposes of making an application to acquire that portion within the road allowance) and the water side boundary of this additional piece of property is identified as either a 108-foot contour line or the water's edge. There is no evidence which, if any, of these applications for shore road allowance closures were made and/or accepted and thus, as acknowledged by the Plaintiffs' own expert, as of the date of these reference plans, the upland owner only had title to a piece of property that was bounded by the shore road allowance and not the 107.5 Contour.[17] The Plaintiffs' suggestion at paras. 85-90 of their Responding Factum that properties where there may be a future application for the closure of the shore road allowance are examples of upland properties that are bounded by the 107.5 Contour is based, as the Plaintiffs themselves acknowledge at para. 88 of their factum, on the assumption that the shore road allowance closures were actually completed, for which there is absolutely no evidence in the record about.

More important, the 107.5-foot (or 108-foot) contour used to demarcate the limits of the new parcels on these 5 reference plans is not the Boswell Line or the 107.5-foot/108-foot elevation associated with the Licences of Occupation at the time of their grant. Instead, the boundary is either the water's edge or the 107.5-foot/108-foot contour identified by the surveyor at the time of the survey which, as both experts agree, will not be the same as the contour line associated with the Licences of Occupation when they were granted a century ago.[18]

---

[16] Plan 49R-8518, 49R-15566, 49R-16331, 49R-16449 and 49R-8936

[17] Stewart Cross-Examination, p.73-75, Q.256-265, Supplementary Motion Record Vol. I, Tab 2, p.81-83. Indeed, in one of the examples on the Plaintiffs' Appendix "A" (Plan 49R-16331), Mr. Stewart admitted that the plan actually makes no reference to a 107.5 or 108 contour line at all (but instead, only to the water's edge as of the date of the survey) – see p.73-75, Q.256-265, Supplementary Motion Record Vol. I, Tab 2, p.81-83.

[18] Stewart Cross-Examination, p. 56-57, Q.191-192; p.59, Q.203; p.62 and 63, Q.214-215 and 219; p.70-71, Q.246-249, Supplementary Motion Record Vol. I, Tab 2, p. 64-65, 67, 70, 71 and 78-79; 2014 deRijcke Report at paras. 7.1, 7.2, 7.6 and 7.7, Motion Record, Vol. 1, Tab 2A, p.30-32

(b) 3 of the 16 reference plans[19] are not even plans that Mr. deRijcke cited for the proposition that the relevant properties are not bounded by the 107.5 Contour. Mr. deRijcke agreed that for these 3 plans, the properties were defined with reference to the 107.5 Contour, but used them as examples of where the contour is not based on the Boswell Line but instead, on the water's edge or the surveyor's own identification of the contour line as of the date of the survey.[20] Mr. Stewart agreed with this interpretation when two of these reference plans were put to him on cross-examination.[21]

(c) 2 of the 16 reference plans[22] relate to properties where the 107.5 Contour, in part, falls within the shore road allowance and then, at other points, is coincident with the inner limit of the shore road allowance. In these cases, Mr. deRijcke's point is made even stronger (contrary to the Plaintiffs' suggestion) because the property lines in these instances do not track the meandering 107.5 Contour line (as it would if it were defined with reference to it) but instead, at all times are defined with reference to the inner limit of the shore road allowance.

(d) 1 of the 16 reference plans[23] relates to properties where the 107.5 Contour is coincident with the inner limit of the shore road allowance. In this instance, based on the reference plan and absent any review of each property's title, it is equally correct to say that these properties are defined with reference to the limit of the shore road allowance.

(e) 1 of the 16 reference plans[24] relates to properties for which it is unclear from the markings on the plan whether the relevant properties are, in fact, bounded by the 107.5 Contour or not.[25]

19. The other reference plans identified in Appendix "B" to the Plaintiffs' Responding Factum as supposed examples of properties which appear to be bounded by the 107.5 Contour suffer from many of the same issues identified above including that:

---

[19] Plan 49R-14557, 49R-16294 and 49R-9960

[20] 2016 deRijcke Report at paras. 5.4.1 – 5.4.3, Motion Record Vol. I, Tab 2B, p.57-58

[21] Stewart Cross-Examination at p.75-77, Q.266-273 and p.78-80, Q.278-288, Supplementary Motion Record Vol. I, Tab 2, p. 83-85 and 85-88.

[22] Plan 49R-8280 and 49R-1230

[23] Plan 49R-9873

[24] Plan 49R-16960

[25] deRijcke Cross-Examination at p.93-94, Q.376 – 379, Supplementary Motion Record Vol. IV, Tab 3, p. 701-702

(a) some plans[26] appear to be in respect of prospective applications for shore road allowance closures where the upland owner's property, as of the date of the survey, is still bounded by the inner limit of the shore road allowance;

(b) on some plans[27], the 107.5 Contour is coincident with the inner limit of the shore road allowance;

(c) on some plans[28], the 107.5 Contour weaves its way in and out of the shore road allowance, such that some properties are defined with reference to the inner limit of the shore road allowance while others appear to be defined with reference to the 107.5 Contour;

(d) some plans[29] do not even refer to the 107.5 (or 108-foot) Contour, but make reference to, for example, the existing high water mark as the boundary;

(e) on some plans[30], it is not clear from the markings on the plan whether the 107.5 Contour is the boundary for many, or even some, of the properties; and

(f) even on those plans[31] for which the 107.5 Contour line does appear to be the boundary of the upland owner's property, the location of this contour line is based on work done by the surveyor at the time of the survey and not based on the Boswell Line.

20. Very little, if any, weight should be ascribed to the lists contained at Appendix "A" and "B" of the Plaintiffs' Responding Factum since those lists were compiled based solely on class counsel's own review and interpretation of the reference plans post-cross examination and not based on any expert evidence.

21. The Plaintiffs have similarly mischaracterized the "108 Benchmark Note" (as defined in the Plaintiffs' Responding Factum at para. 80). The Plaintiffs suggest that this explanatory note

---

[26] See, for example, the reference plans at Tabs 10, 12-14, 19 and 40

[27] See, for example, the reference plans at Tabs 11 and 18

[28] See, for example, the reference plan at Tab 28

[29] See, for example, the reference plan at Tab 34

[30] See, for example, the reference plan at Tab 16

[31] See, for example, the reference plan at Tabs 8, 15, 17, 20, 22-27, 31, 32, 39 and 41

which is included (with varying wording) in certain reference plans is *prima facie* evidence that the relevant property is in fact bounded by the 107.5-foot (or 108-foot) contour line. Again, the Plaintiffs cite no expert evidence in support of this interpretation. The plain wording of the 108 Benchmark Note does not lend itself to the Plaintiffs' interpretation. All the note tells the reader is that the 108-foot contour line is based on a measurement from a brass plug in a boulder on the bank of the river, but tells us nothing about whether the contour line is the boundary of the properties, whether the location of the contour line was identified anew by the surveyor at the time of the survey or whether the contour line is based on the location of the Boswell Line. Mr. Stewart has confirmed that the 108-foot contour line identified on reference plans containing the 108 Benchmark Note is not necessarily the boundary of the relevant properties and Mr. deRijcke has also disagreed with the Plaintiffs' interpretation of the explanatory note on cross-examination.[32]

PART III – ORDER SOUGHT

22. For the reasons set out above and in RPG's original factum on this decertification motion, it is respectfully requested that RPG's motion be granted, with costs, and the Certification Order be set aside.

January 17, 2017

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Alan Mark

[32] deRijcke Cross-Examination at p.59, Q.224-226; p.60-61, Q.232-234 and p.62, Q.239, Supplementary Motion Record Vol. IV, Tab 3, p. 667-670; Stewart Cross-Examination, p.78-80, Q.279-288 and p.96-98, Q.341-346, Supplementary Motion Record Vol. I, Tab 2, p.86-88 and 104-106.

Melanie Ouanounou

Lawyers for the Defendant,
Renfrew Power Generation

SCHEDULE "A"

LIST OF AUTHORITIES

1. *LeFrancois v. Guidant Corp.*, [2009] O.J. No. 2481 (Ont. SCJ), leave to appeal refused, [2009] O.J. No.4129 (Div. Ct.)

2. *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, [2008] B.C.J. No. 1778 (BCSC)

GRAHAME PLAUNT, *et al.*
Plaintiffs

and

RENFREW POWER GENERATION
Defendant

Court File No.: 08-CV-42639CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

REPLY FACTUM OF THE DEFENDANT, RENFREW POWER GENERATION

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Alan Mark LSUC# 21772L
Melanie Ouanounou LSUC# 55336S

Tel: 416-597-4264
Fax: 416-979-1234

Lawyers for the Defendant,
Renfrew Power Generation

6651893