

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable Justice R. Smith)
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Wednesday, the 29th day of June, 2011

BETWEEN:

**GRAHAME PLAUNT, PETER PLAUNT
and ALAN PLAUNT**

Plaintiffs

- and -

RENFREW POWER GENERATION INC.

Defendant

A Proceeding under the Class Proceedings Act, 1992

CERTIFICATION ORDER

THIS MOTION, made by the Plaintiffs, for an Order certifying this action as a class proceeding was heard on March 21 and 22, 2011 at 161 Elgin Street, Ottawa, Ontario.

ON READING all materials filed including the Amended Amended Statement of Claim of the Plaintiffs, and on hearing the submissions of counsel for all parties, and for the reasons delivered this day:

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INSCRIT A OTTAWA
ON/LE DEC 07 2011
DOCUMENT # 3548
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

Certification & Class Definition

1. **THIS COURT ORDERS** that this proceeding is hereby certified as a Class Proceeding on behalf of the following class of persons:
 - a. all persons who, on September 15, 2008, owned lands contiguous to Round Lake, an Ontario Lake fed by the Bonnechere River, including lands contiguous to Round Lake where a narrow strip of notionally reserved land (false road allowance) exists or where applicable, reserved land (a road allowance) exists between the legal description of the lands and the lake edge; and
 - b. all persons who, on September 15, 2008, owned lands contiguous to the Bonnechere River from Round Lake to the Tramore Dam, including lands where a narrow strip of notionally reserved land (false road allowance) exists or where applicable, reserved land (a road allowance) exists between the legal description of the lands and the lake edge.
2. In the event that any individual mentioned above sells their land after September 15, 2008, then the buyer of that land will replace the seller as class member, unless the seller retains an assignment of a cause of action in trespass against the Defendant as part of the purchase/sale of the property.

Representative Plaintiffs

3. **THIS COURT ORDERS** that Grahame Plaunt and Kenneth L.W. Boland are appointed together to be the Representative Plaintiffs on behalf of the Class, and that the title of proceedings be amended accordingly.

Common Issue

4. **THIS COURT ORDERS** that the following issue is certified in this action:
 - a. Are the Plaintiffs entitled to a declaration that the Licences of Occupation granted to the Defendant or its predecessors by the Ministry of Natural Resources are to be interpreted such that the contour line, if any, at the 107.5-foot elevation

referred to therein established a fixed property line between public and private lands, which defines the legal boundaries of the class members' properties for the purpose of determining the claims of trespass advanced herein?

Litigation Plan

5. **THIS COURT ORDERS** that no later than November 11, 2011 the Plaintiffs shall serve a Fresh Statement of Claim incorporating all amendments to date, which shall be further amended to better reflect the claim being advanced, specifically that the contour line at the 107.5-foot elevation referred to in the Licences of Occupation establishes the basis for a fixed property line between the private lands of the Plaintiffs and the public lands on which the Defendants are permitted to store water, and that incursion of water and ice beyond this property line constitutes trespass by the Defendant.
6. **THIS COURT ORDERS** that the form and content of the litigation plan shall be amended to provide as follows:
 - a. no later than 45 days after the service of the Plaintiffs' Fresh Statement of Claim as set out in paragraph 5 above, the Defendant shall serve a Statement of Defence;
 - b. within 60 days after the close of pleadings the parties shall disclose every document that is or has been in their respective possession, control or power that is relevant to the determination of the certified common issue set out in paragraph 4.a above; and
 - c. upon completion of disclosure the parties may seek the further direction of this Court in respect of further disclosure and production of documents.
7. **THIS COURT ORDERS** that upon completion of the procedural steps set out in paragraph 6 (a) & (b) above, the parties shall seek further direction from this Court in respect of whether examinations for discovery are required, the timelines for delivery of any expert reports, and the procedure for adjudicating the certified common issue. The parties may make written submissions regarding the procedure for adjudicating the certified common issue.

8. **THIS COURT ORDERS** that should it be necessary, the manner of proceeding and timetable for such procedure shall be dealt with by further order of this Court.
9. **THIS COURT ORDERS** that following the determination of the certified common issue, the certification of the class proceeding on other common issues will be reconsidered if and as necessary.

Notice of Certification

10. **THIS COURT ORDERS** that the form of notice of this certification order, the manner of giving notice and all other related matters shall be determined by further order of this Court.

Opting Out

11. **THIS COURT ORDERS** that a Class Member may opt out of this Class proceeding by mailing or faxing written notice to Class Counsel,

K. Scott McLean
FRASER MILNER CASGRAIN LLP
Barristers and Solicitors
1420 – 99 Bank Street
OTTAWA ON K1P 1H4

on or before the expiry of the 90th day after the date of the first notice of certification is published in accordance with the further order referred to in paragraph 10 above.

12. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the 90th day after the date the first notice is published in accordance with the further order referred to in paragraph 10 above.
13. **THIS COURT ORDERS** that Class Counsel serve on the Defendant and file with the Court, within 14 days after the close of the opt-out period referred to in paragraph 11 above, an affidavit containing a list of persons who have opted out of the class proceeding, if any.

GRAHAMME PLAUNT et al.
Plaintiffs and RENFREW POWER GENERATION
INC.
Defendant

Court File No: 08-CV-42639CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

Proceeding under the
Class Proceedings Act, 1992

CERTIFICATION ORDER

Fraser Milner Casgrain LLP
1420 – 99 Bank Street
Ottawa, Ontario, Canada K1P 1H4

K. Scott McLean
LSUC No. 16455G
Tel: 613-783-9665 (direct)
email: scott.mclean@fmc-law.com

James M. Wishart
LSUC No. 58794G
Tel: 613-783-9651 (direct)
email: james.wishart@fmc-law.com
Fax: 613-783-9690

Lawyers for the Plaintiffs

Box 127.