

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable Justice R. Smith ) *Thurs* day, the *16<sup>th</sup>* day of March, 2012  
)  
)  
)

BETWEEN:

**GRAHAME PLAUNT and KENNETH L.W. BOLAND**

Plaintiffs

- and -

**RENFREW POWER GENERATION INC.**

Defendant

***A Proceeding under the Class Proceedings Act, 1992***

**ORDER APPROVING NOTICE TO CLASS**

**WHEREAS** by Order of this Court dated 29 June, 2011, (the "Certification Order") this action was certified as a Class Proceeding under the *Class Proceedings Act*;

**AND WHEREAS**, by the Certification Order,

- a. Grahame Plaunt and Kenneth L.W. Boland are appointed together as Representative Plaintiffs;
- b. the Class is defined as:
  - i. "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

- ii. 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.

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.”

- c. the common issue is defined as:

“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?”;

**ON REVIEWING** the proposed forms of notice under the *Class Proceedings Act, 1992*;

1. **THIS COURT ORDERS** that Class Members shall be notified by Class Counsel that this proceeding has been certified as a Class Proceeding as follows:

- a. within 30 days after the date of entry of this Order, by a notice sent by regular mail, in substantially the same form as the notice attached hereto as Schedule “A”

(the “Long Form Notice”), to the Class Members whose contact information has been provided to Class Counsel, or who have otherwise contacted Class Counsel;

- b. within 30 days after the date of entry of this Order, by placement of a notice, in substantially the same form as the notice attached hereto as Schedule “B” (the “Short Form Notice”), in the newspapers set out in Schedule “C” attached hereto in at least ¼-page size in the weekend edition of each paper, if possible; and
  - c. within 30 days after the date of entry of this Order, by posting the Long Form Notice on a website maintained by Class Counsel.
2. **THIS COURT ORDERS** that a Class Member may opt out of this Class Proceeding by mailing or faxing written notice as further set out in the Long Form Notice and Short Form Notice to Class Counsel,

K. Scott McLean or James M. Wishart  
**FRASER MILNER CASGRAIN LLP**  
Barristers and Solicitors  
1420 – 99 Bank Street  
Ottawa, Ontario K1P 1H4  
ATTN: Round Lake Class Action

on or before the expiry of the 90<sup>th</sup> day after the date of the first notice of certification is published in accordance with paragraph 1(b) above.

3. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the 90<sup>th</sup> day after the date the first notice is published under paragraph 1(b) above.
4. **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 3 above, an affidavit containing a list of persons who have opted out of the class proceeding, if any.

5. **THIS COURT ORDERS** that, subject to future variation of this Court, the expense of giving notice in paragraphs 1(a) and (b) above shall be borne by the Plaintiffs.

  
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**SCHEDULE "A"**

Court File No.: 08-CV-42639 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**GRAHAME PLAUNT and KENNETH L.W. BOLAND**

**Plaintiffs**

**- and -**

**RENFREW POWER GENERATION INC.**

**Defendant**

**A Proceeding under the Class Proceedings Act, 1992**

**NOTICE OF CLASS CERTIFICATION**

**LEGAL NOTICE PURSUANT TO THE *CLASS PROCEEDINGS ACT 1992, S.O. 1992, c.6***

**If you own land around Round Lake or on the Bonnechere River between Round Lake and the Tramore Dam in Renfrew County, Ontario, this lawsuit may affect your rights. You are not being sued. Please read this Notice carefully and please take note of the deadline for excluding yourself from this lawsuit should you choose to do so.**

A class action has been commenced in the Ontario Superior Court of Justice against Renfrew Power Generation Inc. (the "Defendant" or "RPG"). The proceeding has been brought by Grahame Plaunt and Kenneth L.W. Boland as representative Plaintiffs on behalf of a "Class" of people (as defined below) which might include you.

RPG is a private hydro power producer that owns and operates the Tramore Dam on the Bonnechere River and has licences from the Ontario government to store water in Round Lake for the purposes of hydro-electricity generation. The Plaintiffs allege that RPG has, by its operation of the dam, trespassed on private lands belonging to the Plaintiffs and the Class surrounding Round Lake and the Bonnechere River. The Plaintiffs are seeking a legal determination of this claim including a declaration by the Court and payment by RPG of general, special and punitive damages for injuries suffered as a result of this alleged trespass.

The Defendant denies the Plaintiffs' allegations and has stated that it will defend the action and will deny any wrongdoing and liability for damages.

The Ontario Superior Court of Justice has ruled that this claim shall proceed as a Class Action on behalf of the "Class". The Court has not ruled that the Defendant did anything wrong, and there is no money available now for Class Members and no guarantee that there will be in the future. This Notice is provided because you may be a member of the Class whose rights may be affected by the lawsuit.

| <b>IF YOU ARE A MEMBER OF THE CLASS AS DEFINED YOU HAVE THE FOLLOWING OPTIONS AT THIS STAGE</b> |  |
|---|--|
| <b>DO NOTHING</b>   | <p><b>Stay in this lawsuit. Await the outcome. Share in possible benefits. Give up certain rights.</b></p> <p>By doing nothing, you retain the possibility of getting money or other benefits that may come from a trial or settlement. However, you will give up any rights to bring or maintain any other legal claim or proceeding against RPG in respect of any of the allegations asserted in this lawsuit.</p>     |
| <b>EXCLUDE YOURSELF FROM THIS LAWSUIT ("OPT OUT")</b>   | <p><b>Get out of this lawsuit. Get no benefits from it. Retain certain rights.</b></p> <p>If you decide to Opt Out of the lawsuit and money or benefits are later awarded, you won't share in those. However, you will keep any rights to bring or maintain any other legal claim or proceeding against RPG in respect of any of the allegations asserted in this lawsuit. <b>To Opt Out you must act by [date].</b></p> |

If, after reading this Notice, you are having difficulty understanding how this lawsuit affects your rights, or would like more information, you may contact the lawyers for the Class as approved by the Court ("Class Counsel") at the address or phone number listed at the end of this Notice, or you may seek independent legal advice from your own lawyer.

### **1. Are you included?**

The court approved a definition of the Class as follows:

"(i) 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

(ii) 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.

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."

In plain language, you are a member of the Class if:

- You currently own land around Round Lake or on the Bonnechere River downstream from Round Lake as far as the Tramore Dam.
- On September 15, 2008, you owned land around Round Lake or on the Bonnechere River downstream from Round Lake as far as the Tramore Dam and have subsequently sold that land but you retained an assignment of any cause in action in trespass against RPG.

If you are not sure whether you are a member of the Class, please contact Class Counsel (contact information below) for further information.

## **2. Why was this Notice Issued?**

This lawsuit has been “certified” as a Class Action. This means that the lawsuit meets the legal requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against RPG on your behalf are correct. This notice was approved by the Court and explains all of these issues.

The Honourable Mr. Justice R. Smith of the Ontario Superior Court of Justice in Ottawa is currently overseeing this case, which is known as *Plaunt et al v. Renfrew Power Generation* Court File No. 08-CV-42639 CP. Inquiries about the Class Action should not be directed to the Court or to Justice Smith. If you have questions about the Class Action, please consult the Class website (described below) or contact Class Counsel.

## **3. What is this lawsuit about?**

The claim states that RPG, by its control of the Tramore Dam, has caused and continues to cause water and ice to intrude onto private lands around Round Lake and the Bonnechere River, resulting in damage including erosion and ice damage to those properties. In brief, the Plaintiffs say that RPG’s right to store water on Round Lake and the Bonnechere River for hydroelectric power generation was created by licences (the “Licences”) granted many years ago by the Ontario government. It is alleged that the Licences establish a legal and geographical limit for water storage, and that RPG has illegally exceeded and continues to exceed this limit by its operation of the dam. The Plaintiffs say that this gives them and other Class members a legal claim in trespass. The Plaintiffs will have to prove these claims in Court.

## **4. What are the Plaintiffs asking for?**

The Plaintiffs are asking the Court to find that RPG has trespassed on their properties and to require RPG to compensate them for this. They are also asking that RPG pay their legal fees and costs, plus interest.

## **5. Why is this a “Class Action”?**

In a class action one or more people called “representative plaintiffs” (in this case Grahame Plaunt and Kenneth L.W. Boland) sue on behalf of a group of other people who have similar claims. All of these people together are a “Class” or “Class Members”. The court resolves some or all of the issues for all Class Members, except for those who choose to Opt Out of the Class. Class Counsel has estimated that about 450 people are affected by this Class Action.

In this case the Court has certified one particular issue (the “Common Issue”) which will be determined before all of the other issues in the case. The Court defined the Common Issue as follows:

Whether the Plaintiffs are 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.

In plain language, the question to be decided is whether the Licences establish a fixed boundary line on the shore of Round Lake, beyond which RPG is not permitted to cause water or ice to flow. Once it has determined this Common Issue, the Court will, if necessary, consider the other issues raised in the claim, including whether or not RPG should pay compensation to Class Members. To date, the Court has made no determination as to whether any of the other issues raised in the claim, including Class Members' claims for compensation, can proceed by way of a common issues trial.

## **6. Who represents the Class?**

The Court has appointed Fraser Milner Casgrain LLP to represent the Class as “Class Counsel”. **You are not required to pay Class Counsel or anyone else in order to participate in the Class Action at this time.**

At a later stage in the proceedings, the court may decide that the participation of individual Class Members is required to determine individual issues unique to each individual member. Each class member will be entitled to decide whether to participate further. If a member chooses to participate further in individual proceedings he or she may have to bear certain costs associated with that individual proceeding.

## **7. How will the lawyers be paid?**

If the Class receives a monetary judgment or settlement and/or receives an award of costs from the Court, the outstanding fees of Class Counsel will be paid out of such funds prior to the distribution of any settlement or award to Class Members.

This class proceeding is also funded by the Class Proceedings Fund (the “Fund”) of the Law Foundation of Ontario. Pursuant to this fee arrangement, the Fund pays certain expenses (not including the fees of Class Counsel) incurred in the prosecution of this action. If the Class Members receive a monetary judgment or settlement, the Fund will reclaim its financial support along with a levy of 10 percent of any monetary judgment or settlement prior to the payment distribution of any settlement or award to Class Members.

## **8. What are your rights and options?**

You have the right to either stay in this Class Action or exclude yourself by Opting Out. If you wish to Opt Out you must do so by no later than **[DATE]** in the manner described below.



1. *Stay in the Class Action:* You do not have to do anything in order to stay in the Class Action. If money or benefits are obtained, you will be notified about how to claim a share. You will be legally bound by all orders and judgments of the Court in this matter, good or bad, and you will not be able to personally sue RPG over the legal claims in this case.

2. *Opt Out of the Class Action:* If you want to keep your personal right to sue RPG over the issues in this case, you need to Opt Out to exclude yourself. If you Opt Out, you cannot receive any money or benefits that may be awarded in this lawsuit, but you will not be bound by any Court orders. To Opt Out, you must send a letter to Class Counsel (address below) by fax or prepaid mail or courier, postmarked or received **no later than [DATE]** that states that you want to be excluded from *Plaunt et al v. Renfrew Power Generation Inc.* Include your name, the address of your property on Round Lake or the Bonnechere River (including tax roll number), your home address (if different), telephone number and signature. Please use the attached form for this purpose.

If a Class Member is deceased, his or her estate trustee has the right to Opt Out.

No further right to Opt Out of this Class Action will be provided.

## **9. What if I want to sell my property before the Class Action is decided or settled?**

If you decide to sell your property before the Class Action is decided or before a possible settlement, you may lose your right to a share of any money or benefits that may be awarded to the Class. If you are thinking of selling your property, you should consult a lawyer about whether and how to retain your right to participate in the Class Action.

## **10. If I do not Opt Out of the Class Action, what happens next?**

The Court has not yet decided on the procedure for determining the Common Issue. Once this procedure is settled, a Court will hear all of the evidence relating to the Common Issue and will come to a decision on whether the action can go forward to the next steps, including a determination of the question of whether money or benefits are owed to the Plaintiffs and the Class. This may take a considerable amount of time and there is no guarantee that any Class Members will receive any money or benefits.

If the Plaintiffs obtain money or benefits as a result of a trial or a settlement, you will be notified about how to ask for a share or what your other options are at that time.

## **11. How can I get more information?**

Class Counsel has created a website with further information including court documents pertaining to this Class Action: [\[URL\]](#). You may also contact Class Counsel as follows:

ATTN: Round Lake Class Action  
James M. Wishart or K. Scott McLean  
Fraser Milner Casgrain LLP  
1420-99 Bank St., Ottawa, ON K1P 1H4

P: 613.783.9651  
F: 613.783.9690

**INQUIRIES SHOULD NOT BE DIRECTED TO THE COURT**

You are encouraged to register your name, Round Lake address and email address on the website so as to automatically receive email updates or further information as the Class Action proceeds.

**This Notice has been approved by the Ontario Superior Court of Justice.**

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**ROUND LAKE CLASS ACTION OPT-OUT FORM**

Complete this Opt-Out form *only* if you are a member of the Class as described in the Notice of Certification and you wish to be excluded from participating in the following Class Action: ***Plaunt et al v. Renfrew Power Generation Court File No. 08-CV-42639 CP*** (the "Round Lake Class Action"). This completed and signed Opt-Out Form must be received by prepaid mail, courier or fax, on or before **[DATE]**, 5:00 p.m. Ottawa time, by Class Counsel at the following address or fax number:

ATTN: Round Lake Class Action  
K. Scott McLean or James M. Wishart  
Fraser Milner Casgrain LLP  
1420-99 Bank St., Ottawa, ON K1P 1H4  
F: 613.783.9690

**Name and Address of Person Opting Out:**

Name: \_\_\_\_\_

Address and tax roll number of property within the Class area:

\_\_\_\_\_

If property is co-owned, name of other property owner(s): \_\_\_\_\_

Contact Address (if different than above):

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address (if you wish confirmation of receipt): \_\_\_\_\_

**Certification:**

By signing below, I certify that:

1. I do not wish to participate in the Round Lake Class Action. I understand that by Opting Out, I will not receive any part of any money or benefits that may be obtained on behalf of Class Members by the Representative Plaintiffs.
2. I certify that I am the person who is opting out or that I have the authority to complete this Opt-Out Form on behalf of the person opting out. [If you are opting out on someone else's behalf, please include copies of documentation establishing your authority to do so.]
3. I acknowledge and agree that Class Counsel may disclose all information relating to this opt-out to the Ontario Superior Court of Justice and to the lawyers for the Defendant.
4. I certify that the information provided in this Opt-Out Form is true, correct and complete to the best of my knowledge, information and belief.

**Signature of person opting out or  
representative**

**Date**

<>

<>

**Print full name of person who signed  
above**

**NOTE: Please keep a copy of this completed Opt-Out Form and all supporting documents for your records.**

## SCHEDULE "B"

**Authorized by the Ontario Superior Court of Justice**  
**NOTICE OF CERTIFICATION OF THE CLASS ACTION PLAUNT *et al v.***  
**RENFREW POWER GENERATION INC.**  
Please read this notice carefully as it may affect your rights.

### THE CLASS ACTION

This notice is directed to the "Class", which is defined as:

**"(i) 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**

**(ii) 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.**

**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."**

The Class Action alleges that Renfrew Power Generation Inc. ("RPG"), through its control of the Tramore Dam on the Bonnechere River, has trespassed on private lands belonging to the Class by causing water and ice to intrude onto such private lands, resulting in damage including erosion, ice damage, loss of use and loss of value. The Class Action seeks, among other things, compensation for Class Members who suffered such damage.

### THE CERTIFICATION ORDER

On June 29, 2011 the action was certified as a class proceeding by Order of the Ontario Superior Court of Justice. The Court appointed Grahame Plaunt and Kenneth L.W. Boland as representative plaintiffs for the Class, and appointed Fraser Milner Casgrain LLP as Class Counsel.

The Order identifies one common issue requiring adjudication for all Class Members. Following the Court's adjudication of the initial common issue, other issues may remain to be addressed including the question of whether money or benefits are owed to the Plaintiffs and the Class. There is no guarantee that Class Members will receive any money or benefits.

### **COSTS TO THE CLASS IF THE ACTION IS SUCCESSFUL OR IN THE EVENT OF SETTLEMENT**

Class Counsel has entered into an agreement with the representative plaintiffs with respect to legal fees and disbursements. The agreement provides that if the Class receives a monetary judgment or settlement and/or receives an award of costs from the Court, the outstanding fees of Class Counsel will be paid out of such funds prior to the distribution of any settlement or award to Class Members.

The Class Action is also partly funded by the Class Proceedings Fund. If the Class Members receive a monetary judgment or settlement, the Fund will reclaim its financial support along with a levy of 10 percent of any monetary judgment or settlement prior to the payment distribution of any funds to Class Members.

### **PARTICIPATION IN THE CLASS ACTION**

Class Members who want to participate in the Class Action are automatically included and need not do anything at this time. The *Class Proceedings Act*



**SCHEDULE "C"**

**List of Newspapers for Publication of Notice**

Ottawa Citizen  
Pembroke Observer  
Renfrew Mercury  
Eganville Leader

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*

**ORDER APPROVING  
NOTICE TO CLASS**

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

**K. Scott McLean**  
LSUC No. 16455G  
Tel: 613-783-9665 (direct)  
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email: james.wishart@fmc-law.com  
Fax: 613-783-9690  
Lawyers for the Plaintiffs