

File No. 2021 101 H0070

IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

BETWEEN:

RICHARD DEWEY

APPELLANT

AND:

CORNER BROOK PULP AND PAPER LIMITED

FIRST RESPONDENT

AND:

THE TOWN OF DEER LAKE

SECOND RESPONDENT

ORDER

Before: F.P. O'BRIEN, W.H. GOODRIDGE & F.J. KNICKLE, JJ.A.:

Whereas:

- An Application was made by the Appellant for an order certifying the action as a class action under the *Class Actions Act*, S.N.L. 2001, c. C-18.1 (the "Act") in cause number 2015 04G 0120 CP of the Supreme Court. General Division;
- By decision rendered September 20, 2021, and Order issued November 1, 2021, the Application was dismissed;
- A Notice of Appeal and Notice of Application for Leave to Appeal were filed by the Appellant on November 12, 2021;
- The appeal was heard on January 16, 2024:

FPIB.

- The Court heard submissions from Peter McVey, K.C., counsel for the Appellant, F. Richard Gosse, counsel for the First Respondent, and Stephen F. Penney, counsel for the Second Respondent;
- The judgment of the Court was given with written reasons on March 6, 2025 in *Dewey v. Corner Brook Pulp and Paper Limited*, 2025 NLCA 8.

**Accordingly, it is ordered that:**

1. Leave to appeal is granted to the Appellant.
2. The appeal is allowed.
3. The action bearing ordinal number 2015 04G 0120 CCP is hereby certified as a class action under the *Class Actions Act*, S.N.L. 2001, c. C-18.1.
4. The certified Class is defined as all persons (other than the Defendants and their parent companies, affiliates or subsidiaries) who were either Owner or Non-Owner Class Members on May 22, 2015, such subclasses defined as:
  - a) Owner Class Members: all persons who own or owned real property on that date within the Class Boundary depicted in Schedule "A" to the Order certifying this action as a class proceeding;
  - b) Non-Owner Class Members: all persons who reside or have resided in, but did not own, real property on that date within the Class Boundary depicted in Schedule "A" to the Order certifying this action as a class proceeding.
5. Richard Dewey (c/o Wagners Law Firm, 1869 Upper Water Street, Suite PH301, Pontac House, Halifax, NS, B3J 1S9) is appointed as the Representative Plaintiff of the Class.
6. The nature of the claims asserted on behalf of the Class are:
  - a. As against the Defendant, Corner Brook Pulp and Paper Limited, nuisance and negligence; and

- b. As against the Defendant, the Town of Deer Lake, negligence, regarding flooding and water seepage issues within the Class Boundary depicted in Schedule "A" to this Order, alleged to be caused by the Water Control System, which includes Grand Lake Reservoir and a series of dams, dykes and the man-made Humber Canal.
7. The relief sought by the Class includes an injunction against the nuisance alleged to be caused by the Water Control System; general damages including damages for interference with property rights resulting from the material physical damage caused by the Defendants; special damages; aggravated damages; pre-judgment interest; costs; and such further and other relief, as may be ordered against either or both Defendants.
8. Relative to the flooding, seepage and water issues in the Class Boundary depicted in Schedule "A" to this Order, the following questions are certified as common issues:
1. What duty of care does the Defendant, Corner Brook Pulp and Paper Limited, owe with respect to the Class Members' interests as owners or occupiers of properties within the Class Boundary?
  2. What duty of care does the Defendant, Town of Deer Lake, owe with respect to the Class Members' interests as owners or occupiers of properties within the Class Boundary?
  3. Did the Defendant, Corner Brook Pulp and Paper Limited, breach the duty of care?
  4. Did the Defendant, Town of Deer Lake, breach the duty of care?
  5. Was harm to the Class Members' properties within the Class Boundary a reasonably foreseeable consequence:
    - a. of the Defendant, Corner Brook Pulp and Paper Limited's breach of the duty of care?

- b. of the Defendant, Town of Deer Lake's breach of the duty of care?
  6. Did the Defendant, Corner Brook Pulp and Paper Limited, cause or materially contribute to the flooding within the Class Boundary?
  7. Did the Defendant, Town of Deer Lake, cause or materially contribute to the flooding within the Class Boundary?
  8. If the answers to Common Issues 6 and 7 are "Yes", and it is determined that both of the Defendants caused or materially contributed to the flooding within the Class Boundary, is it possible to establish the percentage or respective degrees of fault between the Defendants?
9. Notice of certification, the opt-in and opt-out deadline, and means of opting in or out will be provided via "Notice of Certification" in the form set out in Schedule "B" to this Order. The Notice of Certification will be distributed to the Class by the following means, as also set out in the Plaintiff's Litigation Plan attached as Schedule "C" to this Order, which will constitute the "Notice Plan":
1. Direct notice:
    - a. Within thirty business (30) days of the filing of this Order certifying this action as a class proceeding, counsel for the Town of Deer Lake shall provide Class Counsel with an electronic list of all civic addresses and the current addressees located at that civic address within the Class Boundary. As a condition of receiving the Civic Address List, Class Counsel and the Plaintiff undertake to maintain the confidentiality of the Civic Address List and to use it for no purpose other than contacting Class Members in connection with this class action.
    - b. Within 15 business days of Class Counsel receiving the list of civic addresses from the Town of Deer Lake, Class Counsel will send Notice of Certification directly to all civic addresses located within the Class Boundary by regular mail, as well as any other individuals in Class Counsel's database.


2. Indirect notice:

Within 15 business days of Class Counsel receiving the list of civic addresses from the Town of Deer Lake, Class Counsel will give notice to the Class as follows:

- 1) post Notice of Certification and the Opt-In and Opt-Out Forms on its website ([www.wagners.co](http://www.wagners.co));
  - 2) issue a press release describing the contents of the Notice of Certification;
  - 3) post Notice of Certification and the Opt-In and Opt-Out Forms on the Private Class Member Facebook Group entitled "Deer Lake Residents Tired of Seepage Issues";  
and
  - 4) provide Notice of Certification upon request.
10. The out-of-pocket costs associated with distributing Notice of Certification (i.e. printing and posting) shall be paid for by the Defendants.
11. The Notice Plan and Notice of Certification satisfy the requirements of s. 19(6) of the Act and are deemed to be adequate notice to Class Members.
12. The Appellant's Litigation Plan, attached hereto as Schedule "C" is approved as a workable method of advancing the action on behalf of the Class, subject to clarification and amendment if required now or as the action progresses.
13. A Class Member may opt out of the class action or, if not a resident of the Province, opt in, by sending an Opt Out or Opt In Form, attached hereto as Schedule "D", to Class Counsel on or before the Opt Out/Opt In Deadline stipulated in the form, which shall be sixty (60) calendar days after the date of implementation of the Notice Plan.
14. Within thirty (30) business days of the close of the Opt In/Out Period, Class Counsel will provide to the Defendants via letter the number of all those who elected to opt out or opt in to the within action.
15. The Defendants shall each deliver their Statement of Defence no later than forty-five (45) business days following the issuance of this Order.

16. No costs are awarded in relation to the Application or the Appeal.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 11 day of April, 2025.

  
Registrar

File.

# SCHEDULE "A"



## SCHEDULE "B"

### NOTICE OF CERTIFICATION OF THE DEER LAKE CLASS ACTION DEWEY V. CORNER BROOK PULP & PAPER LTD AND THE TOWN OF DEER LAKE

#### WHAT IS THE CLASS ACTION ABOUT?

Class Members are advised of certification of a class action regarding flooding and water seepage issues in defined areas of the Town of Deer Lake caused by the Water Control System, which includes Grand Lake Reservoir and a series of dams, dykes and the Humber Canal. The claim is brought against Corner Brook Pulp and Paper Limited and The Town of Deer Lake.

The class action seeks compensation for damage to, and substantial interference with the enjoyment of, the properties in the Town of Deer Lake located within the Class Boundary. The damage is alleged to have been caused by the Water Control System, and the Defendants' actions or omissions. The claim alleges nuisance and negligence.

#### WHO IS INCLUDED?

All persons (other than the Defendants and their parent companies, affiliates or subsidiaries) who were either Owner or Non-Owner Class Members on May 22, 2015, defined as:

a) Owner Class Members: all persons who own or owned real property on that date within the Class Boundary depicted in Schedule "A" to the Order certifying this action as a class proceeding;

b) Non-Owner Class Members: all persons who reside or have resided in, but did not own, real property on that date within the Class Boundary depicted in Schedule "A" to the Order certifying this action as a class proceeding.

#### REPRESENTATIVE PLAINTIFF:

Richard Dewey (c o Wagners).

#### CLASS COUNSEL COMPENSATION:

The Representative Plaintiff has entered into a Contingency Fee Agreement with Wagners. Wagners will apply to the Court at the conclusion of the case to have its legal fees approved. Wagners will pay for all case expenses incurred in advancing the case and if the case is successful, Wagners will apply to the court to be reimbursed for these case expenses. If the case is not successfully settled or tried, Wagners will not be paid or be reimbursed for any expenses.

#### WILL IT COST ME TO PARTICIPATE?

You do not have to pay anything out of pocket to participate in the class action, and you will not be liable for any legal costs of the Defendants should the trial be unsuccessful. Class Members are encouraged to contact Wagners for further explanation of costs.

#### WHAT OPTIONS DO CLASS MEMBERS HAVE?

If you are a Class Member and, as of [insert date of issuance of Certification Order], resided in Newfoundland and Labrador, you do not need to do anything at this point to benefit from any ruling on the common issues. A judgment on the common issues, favourable or not, will bind all resident Class Members who do not opt-out.

If the common issues are resolved in favour of the Class, Class Members will need to advance an individual claim, and any remaining individual issues will need to be addressed in a manner to be determined by the Court

If you are a **resident of Newfoundland and Labrador** and wish to be **excluded from** the Class you must **opt-out** of the class action by sending an **Opt-Out Form** to Wagners on or before [insert Opt-Out In Deadline sixty (60) calendar days after the date of implementation of the Notice Plan]. By opting out you will exclude yourself from the benefit of any settlement or trial.

If you are a Class Member and as [insert date of issuance of Certification Order] **reside outside of Newfoundland and Labrador**, and wish to **participate in** the class action, you must **opt in** to the class action by delivering a completed **Opt-In Form** to Wagners on or before [insert Opt-Out In Deadline: sixty (60) calendar days after the date of implementation of the Notice Plan].

To access an Opt-Out or Opt-In Form, or to obtain further information, visit <http://www.wagners.co> or contact Wagners at:

#### WAGNERS

1869 Upper Water Street  
Suite PH 301, Pontac House  
Historic Properties  
Halifax NS B3J 1S9  
Toll Free: 1-800-465-8794  
Email: [classaction@wagners.co](mailto:classaction@wagners.co)

## SCHEDULE "C"

### PLAINTIFF'S LITIGATION PLAN

#### DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan (the "Plan") have the meanings as particularized in the Statement of Claim, as it may be further amended from time to time.

#### CLASS COUNSEL

2. The Plaintiff has retained Wagners ("Class Counsel") to advance this class action. Class Counsel has the requisite knowledge, skill, experience, personnel and financial resources to advance the action to resolution. Class Counsel may, if determined to be appropriate from time to time, collaborate with other counsel in advancing the class action.

#### THE COMPOSITION OF THE CLASS

3. The "Class" and "Class Members" are defined as all persons (other than the Defendants and their parent companies, affiliates or subsidiaries) who were either Owner or Non-Owner Class Members on May 22, 2015, such subclasses defined as:
  - a) Owner Class Members: all persons who owned real property on that date within the Class Boundary depicted in Schedule "A" to the Order certifying this action as a class proceeding:
  - b) Non-Owner Class Members: all persons who resided in, but did not own, real property on that date within the Class Boundary depicted in Schedule "A" to the Order certifying this action as a class proceeding.

#### NOTICE OF CERTIFICATION, NOTICE PLAN AND THE OPT-IN/OPT-OUT PROCEDURE

4. The Plaintiff proposes that notification of certification, the opt-in and opt-out deadline, and means of opting in or out be provided via "Notice of Certification" in the form set out in Schedule "B" to the Order certifying this action as a class proceeding. Subject to approval of the Court, Notice of Certification will be distributed to the Class by the

following means (referred to collectively as the "Notice Plan"):

1. Direct notice:

- a. Within thirty (30) business days of the filing of this Order certifying this action as a class proceeding, counsel for the Town of Deer Lake shall provide Class Counsel with an electronic list of all civic addresses and the current addressees located at that civic address within the Class Boundary. As a condition of receiving the Civic Address List, Class Counsel and the Plaintiff undertake to maintain the confidentiality of the Civic Address List and to use it for no purpose other than contacting Class Members in connection with this class action.
- b. Within 15 business days of Class Counsel receiving the list of civic addresses from the Town of Deer Lake, Class Counsel will send Notice of Certification directly to all civic addresses located within the Class Boundary by regular mail, as well as any other individuals in Class Counsel's database.

2. Indirect notice:

Within 15 business days of Class Counsel receiving the list of civic addresses from the Town of Deer Lake, Class Counsel will give notice to the Class as follows:

- 1) post Notice of Certification and the Opt-In and Opt-Out Forms on its website ([www.wagners.co](http://www.wagners.co));
  - 2) issue a press release describing the contents of the Notice of Certification;
  - 3) post Notice of Certification and the Opt-In and Opt-Out Forms on the Private Class Member Facebook Group entitled "Deer Lake Residents Tired of Seepage Issues"; and
  - 4) provide Notice of Certification upon request.
5. The Opt Out/Opt In Deadline will be sixty (60) calendar days from the date of implementation of the Notice Plan.
6. That within thirty (30) business days of the close of the Opt In/Out Period, Class Counsel

will provide to the Defendants via letter the number of all those who elected to opt out or opt in to the within action.

7. The costs of distributing Notice of Certification pursuant to the Notice Plan will be paid by the Defendants.

## **REPORTING AND COMMUNICATION**

8. Class Counsel will post current information on the status of the action on its website and this will be updated regularly. Copies of notices and other information for Class Members are and will be accessible from the website.
9. Class Counsel will inform known Class Members about material updates in the litigation via regular mail and/or electronic mail (electronic mail will be the primary method, where available).

## **CASE MANAGEMENT CONFERENCES**

10. The Plaintiff proposes that case management conferences be conducted before a case management judge as necessary and at the request of the parties, and as otherwise directed by the Court.
11. The Plaintiff proposes that a case management conference be held within forty-five (45) calendar days of the issuance of the Order for Certification, the primary purpose being to seek the direction of the Court on any outstanding issues and to determine the litigation schedule.
12. The Plaintiff proposes the following schedule for the remaining steps in the action:
  - 1) Within forty-five (45) business days after issuance of the Order for Certification, the Defendants shall deliver their Statements of Defence;
  - 2) Within four (4) months following the delivery of the Statements of Defence, the parties will exchange their Lists of Documents, which shall be restricted to the certified common issues;
  - 3) Within four (4) months following the exchange of the Lists of Documents, the

parties will complete their examinations for discovery of the parties, which shall be restricted to the certified common issues; and

- 4) Within six (6) months after all examinations for discovery of the parties have been concluded, the parties will exchange expert reports, following which discovery of experts will be completed within two (2) months.
13. The *Rules of The Supreme Court* will apply to the scheduling of any appeals brought in the action.

#### **DISCOVERY**

14. The Plaintiff proposes that counsel for the parties shall efficiently disclose documents to one another utilizing computer database software so that, as much as reasonably practicable, documents may be produced and shared between the parties and may be made available to the Court in electronic format.
15. The Plaintiff proposes that a conference of all counsel be held following the completion of the discovery stage in order to address, *inter alia*, the potential refinement of the common issues for trial (including, if necessary, the addition or removal of common issues, upon the approval of the Court as necessary) and the schedule for the common issues trial.

#### **MEDIATION**

16. The Plaintiff will participate in mediation before a mutually acceptable mediator if the Defendants are prepared to do so, whether before the common issues trial or at other stages of the litigation.

#### **INTERLOCUTORY MOTIONS**

17. Unless a particular motion is a matter of urgency, all interlocutory motions will be heard by the case management judge.
18. The scheduling of and any directions in relation to any interlocutory applications will be addressed at a case management conference. If the need for an interlocutory application should arise in a more time-sensitive manner, a request for dates and directions can be

delivered to the case management judge as need be. Unless otherwise agreed to or directed by the case management judge, the filing deadlines for any such interlocutory applications will be governed by Rule 29 of the *Rules of The Supreme Court*.

## **NOTICE OF RESOLUTION OF THE COMMON ISSUES**

19. In the event that the common issues are resolved in favour of the Plaintiff, the Court will be asked:
  - 1) to settle the form and content of the notice of resolution of the common issues (the "Notice of Resolution");
  - 2) to determine how the individual issues will be resolved; and
  - 3) to approve a form and deadline for individual claims by Class Members.
20. The Plaintiff proposes that the Notice of Resolution include the following information, to be further refined following the common issues trial:
  - 1) A description of the Class;
  - 2) A description of the common issues and their outcomes at trial;
  - 3) The nature of any class-wide remedies granted in the judgment on the common issues;
  - 4) What steps a Class Member must take to assert an individual claim and what facts a Class Member must prove to succeed on such a claim;
  - 5) How to obtain further information; and
  - 6) That Class Members' claims in relation to the matters raised in the pleadings will be deemed to have been finally adjudicated whether or not they participate in the claims stage of the proceeding.
21. The Plaintiff will ask the Court to order that the Notice of Resolution be distributed substantially in accordance with the procedure outlined above in the Notice Plan for the Notice of Certification.

## ADJUDICATION OF REMAINING / INDIVIDUAL ISSUES

22. The parties will agree on a process for the determination of individual issues if the common issues are resolved in favour of the Class and failing agreement they may ask the Court to decide the matter.
23. The evidence necessary to succeed on an individual claim may depend on the extent of the Plaintiff's success with respect to the common issues and the evidence relied on at the common issues trial.
24. The procedural complexity of the individual issues determination should be proportionate to the value of the submitted claim. Subject to further refinement as the action progresses, Class Counsel proposes one of two claims procedures to be followed depending on the specified claim value (threshold to be determined):
  - 1) **Simplified process:** A Class Member will file affidavit evidence with the referee/evaluator, setting out the evidence relating to the individual issues remaining to be proven. If the Defendants wish, they may conduct one time-limited out-of-court cross examination of an affiant on his/her affidavit. The referee/evaluator will then produce a written decision with respect to the Class Member's claim on the basis of the affidavit and transcript evidence. The decision will be provided to all parties and will be final.
  - 2) **Comprehensive process:** Class Members submitting claims in excess of the simplified process threshold will be required to produce all relevant, non-privileged documents in relation to the claim. If the Defendants wish, they may conduct one time-limited out-of-court cross-examination. The referee/evaluator will then produce a written decision with respect to the Class Member's claim on the basis of the document production and transcript evidence. The report will be provided to all parties and will be final.
25. Any party may ask the Court to, pursuant to its jurisdiction under s. 27 of the *Class Actions Act*, give directions that result in the least expensive and most expeditious method of determining the individual issues, including dispensing with any procedural step that it considers unnecessary.

26. The Court will set a deadline (the "Claims Deadline") by which Class Members must initiate their individual claims.

**FURTHER ORDERS CONCERNING THIS PLAN**

27. This Plan may be amended from time to time by agreement of the parties, by directions provided at case management conferences, or by further order of the Court.

**SCHEDULE "D"**

**2021 101 H0070**

**IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR**

**BETWEEN:**

**RICHARD DEWEY**

**APPELLANT**

**AND:**

**CORNER BROOK PULP AND PAPER LIMITED AND THE  
TOWN OF DEER LAKE**

**RESPONDENTS**

**BROUGHT UNDER THE *CLASS ACTIONS ACT*, SNL 2001, c. C-18.1**

**OPT OUT FORM**

**DEADLINE: MUST BE POST-MARKED OR RECEIVED NO LATER THAN  
[OPT OUT DEADLINE] IN ORDER TO BE VALID**

**To be returned by mail to:  
Wagners  
1869 Upper Water Street  
PH301, Pontac House  
Halifax, NS B3J 1S9**

I, \_\_\_\_\_, hereby provide my written direction to be excluded from (opt out of) the class action against Corner Brook Pulp and Paper Limited and The Town of Deer Lake for damages caused by the Water Control System. I understand that by excluding myself from the class action, I cannot receive the benefit of any settlement or resolution of the class action.

My information is as follows:

Print Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

City/Prov./Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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TOWN OF DEER LAKE

RESPONDENTS

BROUGHT UNDER THE *CLASS ACTIONS ACT*, SNL 2001, c. C-18.1

OPT IN FORM

**DEADLINE: MUST BE POST-MARKED OR RECEIVED NO LATER THAN  
[OPT IN DEADLINE] IN ORDER TO BE VALID**

To be returned by mail to:  
Wagners  
1869 Upper Water Street  
PH301, Pontac House  
Halifax, NS B3J 1S9

I, \_\_\_\_\_, currently reside outside the Province of Newfoundland and Labrador and hereby provide my written direction to be included in (opt in to) the class action against Corner Brook Pulp and Paper Limited and The Town of Deer Lake for damages caused by the Water Control System.

My information is as follows:

Print Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

City/Prov./Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_