

# SYDNEY CLASS ACTION UPDATE

February 2006  
Volume 1, Issue 2

## Introduction

This is the second Sydney Class Action Newsletter. The purpose of this Newsletter is to keep you, the members of the class, informed about the progress of your lawsuit and the issues that relate to your lawsuit. You will recall from the first Newsletter that this action was commenced on your behalf to hold the Defendants accountable for years of toxic pollution and contamination.

Since the last Newsletter of May, 2004, much work has been done on your behalf to further your interests in this lawsuit. Given that this contamination continued over many decades, the research and investigation into this matter is a substantial undertaking.

From the beginning, we have anticipated that massive numbers of documents must be exchanged by the parties as part of the mandatory "discovery", or fact finding, process. We have worked with counsel for the Defendants to agree upon a document management system that will allow documents to be stored and exchanged electronically.

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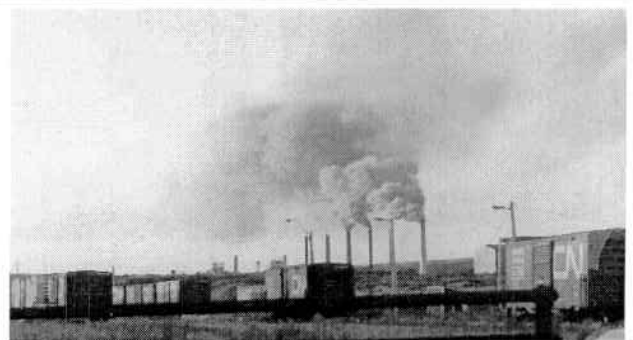
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Electronic document control is vitally important because of the large volume of documents in the hands of the governments relating to the Steel Plant and Coke Ovens operations over many years including the many studies that the Federal and Provincial governments have conducted to evaluate the effects of the contamination of Sydney. We anticipate that the exchange of documents between the parties will commence shortly. Once received we plan to have these documents carefully reviewed and analyzed on your behalf.

We continue to consult with experts retained on your behalf. These experts will be an essential part of successfully prosecuting this lawsuit.



*Christmas Parade with stacks billowing smoke in background*



*Photo showing emissions*

## Case Management

On July 6, 2005, Justice A. David MacAdam was appointed to preside over the case management of this action. Given the complexity of this case, it was important that one Judge be responsible for hearing all motions in the lead-up to the Certification Motion. Justice MacAdam will not only hear these preliminary Motions and deal with timetables, but he may also be the Judge to hear the Motion to Certify this action as a Class Proceeding.

The first Case Management meeting took place in September of 2005. At that time, Justice MacAdam set January 9<sup>th</sup> and 10<sup>th</sup>, 2006 for the next Case Conference meeting in Halifax and we appeared on your behalf at the case conference. The Defendants have so far responded to our Statement of Claim by issuing hundreds of Demands for Particulars asking us to tell them such things as where the Steel Plant, Coke Ovens and Tar Ponds are located.

We spent considerable time and effort in responding to the Demands for Particulars, notwithstanding that it was our position that most, if not all, of the demands were unnecessary and frivolous.

At the two day hearing to consider which of the Demands for Particulars needed to be answered, Justice MacAdam appreciated that most of the information about the operation of the Steel Plant and Coke Ovens is in the hands of the Defendant operators.

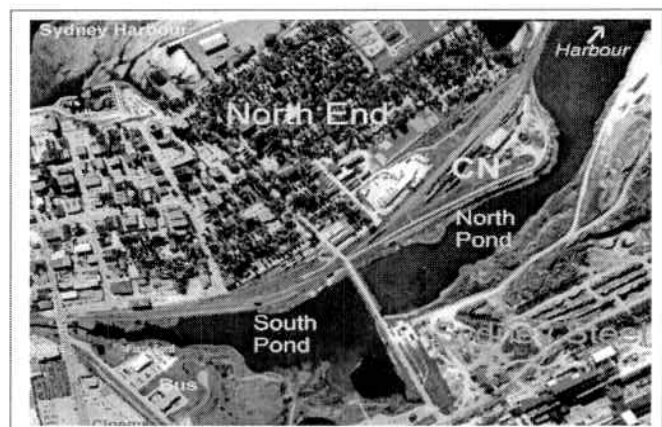
Justice MacAdam has required that the Statement of Claim be amended in certain respects to insure that we restrict our pleadings to information that we presently possess, appreciating that the claim may be further amended as additional information comes to our attention.

To the extent that information uniquely in the hands of the Defendants is required for us to plead we may obtain court approval to question representatives of the Defendants prior to completion of the pleadings. This possibility was discussed with the Judge.

We have committed to providing our Amended Statement of Claim by the end of January, 2006. The Defendants, if they wish to do so, can demand further particulars of the Amended Statement of Claim.

If required, a further appearance before Justice MacAdam has been scheduled for April 4<sup>th</sup> and 5<sup>th</sup>, 2006 to finally resolve the issue of particulars.

Additional hearing dates have been scheduled for May 12<sup>th</sup> and 15<sup>th</sup>, 2006 to deal with other procedural motions, as well as the ultimate scheduling of the motion for certification of the case as a class proceeding.



*Aerial View of Tar Ponds*

## Recent Decision in *Pearson v. Inco*

The Defendants in this action had made it known that they were relying on a recent decision of Mr. Justice Nordheimer of Ontario's Superior Court of Justice known as *Pearson v. Inco*. In that case, the residents of a community nearby a nickel smelting plant alleged to have polluted their property sued the plant's operator for the damage suffered. Justice Nordheimer refused to certify the case as a class action.

The Ontario Court of Appeal reversed Justice Nordheimer's decision and ordered that the case be certified as a class proceeding. While we understand that the Defendants in *Pearson v. Inco* are seeking leave to appeal to the Supreme Court of Canada on the question of certification, the Court of Appeal's decision is an important precedent in our quest for certification of this action on your behalf.

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## Mediation

While we do not yet have a scheduled date for the hearing of the application for certification, our efforts to move this case forward on your behalf continue unabated. All parties are beginning to fully appreciate the complexity and expense of proceeding through the Courts in this matter. We reported in our last Update that the Federal and Provincial Governments had committed up to \$400 million for the cleanup of the Tar Ponds themselves. It was regrettable that no commitment was made to address the claims of Class Members.

This lawsuit seeks damages for the contamination by air, water and soil, as well as to establish a medical monitoring program that would fairly address the health concerns of Class Members related to this long standing toxic pollution.

We have argued (and continue to argue) that these issues and concerns would be best addressed through mediation before one or more respected mediators. A mediation is a consensual process whereby the parties try to work out their differences with the assistance of a neutral third party. Mediation would allow for the reasonable resolution of your concerns at the same time that the remediation of the Tar Ponds was proceeding.

To date however, the Defendants have rejected mediation. They seem to prefer protracted, public and very costly litigation. Until such time as the Defendants decide that mediation would be a fair and expeditious way to deal with these issues, we will continue to litigate these matters on your behalf.

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## Environmental Assessment Hearings

In October of 2005, the Plaintiffs in the proposed class action applied for funding to participate at the environmental assessment hearings being convened to consider the proposal for the cleanup of the Tar Ponds and coke ovens site.

This is the process that will determine how the \$400,000,000 committed by the Federal and Provincial governments to clean up the Tar Ponds and Coke Ovens site will be spent.

In this process, a "Full Panel" environmental assessment will be conducted to review the process, scope, and environmental impact of the proposed cleanup of the Tar Ponds and Coke Ovens site.

Dufferin Harper, a Halifax lawyer who practices environmental law, has agreed to represent the Plaintiffs in these proceedings.

The Plaintiffs have been granted some very limited funding to participate in the environmental assessment hearings.

That process will be ongoing over the next six months. Currently, the Full Panel is expected to have completed its report to the Federal Minister of the Environment by June 2006.

## Sydney Class Action Website

Class counsel's website relating to the lawsuit is up and running. As the matter proceeds you may wish to check in to keep informed about the progress of the proposed class action. To access this website please go to <http://www.sydneyclassaction.ca>

A copy of the original Statement of Claim, the Amended Statement of Claim, other court documents filed and each newsletter will be located on this website, as will other relevant information relating to the case. We will continue to provide you with periodic updates as this matter progresses. If any of you have questions or require additional information, please call us.

## About Your Legal Team

### Wagner & Associates

Wagner & Associates are located in Halifax, Nova Scotia and was established in 1982 by Raymond F. Wagner. The firm is currently comprised of six lawyers and is one of the first dedicated Personal Injury law firms in Nova Scotia.

The firm members practice exclusively in the area of personal injury law and are dedicated solely to representing the Plaintiff exclusively in every aspect of litigation appearing before all levels of the provincial and federal courts.

Members of our firm have developed a proficiency in handling all areas of personal injury accident claims, including motor vehicle accidents, boating, snowmobile and ATV accidents, medical malpractice, slips and falls, defective products, fires and explosions, defective premises, swimming injuries as well as playground and school injuries. We have also developed an extensive practice in class actions and mass tort litigation.

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### Siskinds

Siskinds' class action team was the first to certify and settle a class action in Ontario under the 1992 *Class Proceedings Act*. Since then, Siskinds has followed up by establishing a track record that makes it a world leader in the practice of class action law.

The Siskinds class action team is comprised of a group of approximately 13 seasoned and talented litigators with a substantial record of success for their clients. Siskinds has been counsel to the class in more than 30 cases. These include cases involving breast implants, TMJ implants, diet drugs, vanishing premium insurance products, improper mortgage penalties, plastic venting for mid efficiency furnaces, improper pricing of consumer products, wrongful termination and employment benefits, retirement benefits, oil refinery emissions, fireplace design, investment schemes and the e-coli tainted water tragedy.

Based in London Ontario, with offices in Toronto, and Windsor and an affiliate office in Quebec City, Siskinds is a full service law firm of over 70 lawyers in 20 different practice areas.

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