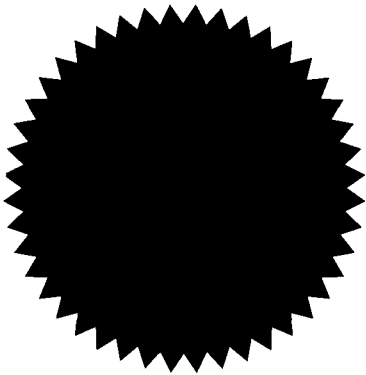


Court File No.: 16-1325CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



PETER MACDONNELL BURGESS

Plaintiff

and

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO, as
represented by the MINISTER OF NATURAL RESOURCES AND FORESTRY FOR
THE PROVINCE OF ONTARIO**

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDING ACT, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$25,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date SEP 14 2016

Issued by



Registrar

Address of court office:

75 Mulcaster Street
Barrie, ON L4M 3P2

TO: Her Majesty the Queen in Right of the Province of Ontario represented by the Minister of Natural Resources and Forestry for the Province of Ontario
McMurtry-Scott Building
11th Floor
720 Bay Street
Toronto, ON M7A 2S9

CLAIM

1. The proposed representative plaintiff, Peter Macdonnell Burgess, on behalf of the Class as described herein, claims:

- (a) damages in the amount of \$900,000,000.00;
- (b) an Order under section 5(1) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff;
- (c) a declaration that Her Majesty the Queen in Right of the Province of Ontario, as represented by the Minister of Natural Resources and Forestry for the Province of Ontario comply with the terms and provisions outlined in the Muskoka River Water Management Plan.
- (d) pre-judgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (e) the costs of this action on a substantial indemnity basis;
- (f) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes thereon; and
- (g) such further relief as this Honourable Court may permit.

OVERVIEW

2. This action arises as a result of the defendant's failure to adequately manage and lower the water levels of Lake Joseph, Lake Muskoka and Lake Rosseau (the "Muskoka Lakes"), which resulted in significant property damage to the Plaintiff. The Muskoka Lakes are part of the Muskoka watershed.

THE PARTIES

3. The proposed representative plaintiff, Peter Macdonnell Burgess (the "Plaintiff"), is an individual who resides in the Municipality of Toronto, in the Province of Ontario. The Plaintiff owns property in the community of Port Carling, which is located on the shoreline of Lake Rosseau at the municipal address of Number 7 - 1645 Juddhaven Road. Mr. Burgess has suffered damages as hereinafter described.

4. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, on behalf of the following proposed class (the "Class"):

The Class includes all individuals, corporations, partnerships or other legal entities that owned real property and/or had an ownership interest in real property situated on the shoreline of the Muskoka Lakes who suffered damages, as a result of high water levels, flooding and/or floating ice in March or April 2016.

5. As set out in detail below, the Class Members were part of a discrete and identifiable segment of the population who would foreseeably be harmed by the failure of the Defendant to effectively manage the water levels of the Muskoka Lakes.

6. The Defendant, Her Majesty the Queen in Right of the Province of Ontario, as represented by the Minister of Natural Resources and Forestry for the Province of Ontario ("Ontario"), is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990 c. P.27, and the amendments thereto.

7. Ontario, through and with its agents, servants, and employees, was at all material times responsible for, *inter alia*, the prevention of flooding on the Muskoka Lakes, through the management of the water levels through the development, implementation, enforcement and operation of the Muskoka River Water Management Plan (the "Plan"), the relevant version of which was implemented in 2006.

THE PLAN

8. One of the purposes of the Plan is to control flooding in the Muskoka watershed. The Plan defines a "flood situation" as "*a specific elevation, beyond which, some level of damage (to persons, property or infrastructure) is known to occur.*" The term "High Water Zone" is used to describe either the "lake level" or river "flow level" beyond which damage may start to occur.

9. The Plan establishes standards by which water levels must be managed. The Plan includes "Zones" which stipulate the High Water Zone, Upper Operating Zone, Normal Operating Zone, Lower Operating Zone and Low Water Zone and the range in which water levels are to be maintained. The Plan also stipulates the Target Operating Level, which is the optimal water level.

10. Pursuant to the terms of the Plan, a Plan Implementation Team comprised of staff from Ontario manages the day-to-day operations required to achieve the flows and water levels set out in the Plan.

11. Pursuant to the terms of the Plan, the Target Operating Level is the standard against which the water levels of the Muskoka Lakes are to be maintained.

THE INCIDENT

12. At all material times, Ontario owned and/or controlled the operation of all dams, dykes, riparian structures and all other water control works throughout the Province of Ontario, including, but not limited to, those in the Muskoka watershed, and specifically those affecting the Muskoka Lakes.

13. At all material times, Ontario was responsible for both predicting water levels through the use of instruments and data collection and for drawing down the water level in anticipation of the annual spring freshet.

14. In early 2016, Ontario failed to follow the standards established by the Plan by allowing both the Normal Operating Range and High Water Level to be exceeded on the Muskoka Lakes. Ontario's failure to draw down the water levels and/or effectively manage the water levels resulted in abnormally high water levels and flood situations on the Muskoka Lakes in March and April 2016.

15. As a result of Ontario's failure to draw down the water levels in 2016, the Plaintiff sustained significant property damage beginning in April 2016, when his property was damaged by a combination of high water levels and floating ice.

16. The Plaintiff's property at Number 7 - 1645 Juddhaven Road is located on the southern shoreline of Lake Rosseau. There are four buildings on the Plaintiff's property, including two boathouses. Due to the combination of high water levels and floating ice, the westerly walls of both boathouses were severely damaged, compromising the structural integrity of both structures and causing significant damage to the interior and exterior of the buildings, as well as damage to other personal property in the boathouses.

17. The Class Members suffered significant property damage when their properties were similarly damaged by high water levels and floating ice in spring 2016. The issue of the defendant's negligence is an issue common to all Class Members.

NEGLIGENCE OF ONTARIO

18. The Plaintiff states that, at all material times, Ontario owed a duty of care to the Plaintiff to:

- a. protect the Plaintiff's property from flooding;
- b. properly design, construct, inspect, repair, maintain, operate and supervise water control works which it owned, operated and/or controlled;
- c. have in place adequate and appropriate flood control systems and structures to prevent or otherwise minimize flooding to properties and businesses at or around the Muskoka Lakes;
- d. provide accurate, timely and appropriate forecasting and warning of potential flooding;
- e. take reasonable steps to prevent, or alternatively, to minimize flooding resulting from Ontario's operation of its water control works;
- f. avoid interference with the Plaintiff's exercise of his rights of use and occupation of his property;
- g. assist the Plaintiff in a timely manner so as to restore and to allow a prompt return to his property; and
- h. adequately compensate the Plaintiff, and in a timely manner, so as to allow the Plaintiff to restore his real and/or personal property or interest therein and allow a prompt return to his property.

19. Ontario failed to properly operate the water control works controlling the water levels on the Muskoka Lakes, constituting a breach of its statutory duty. Ontario breached its duty and was negligent in that:

- a. it failed to follow the standards set out in the Plan;
- b. it failed to collect, calculate, analyze or inspect data properly, or in a timely manner, to estimate water levels in the Muskoka Lakes in the winter of 2015 through to the spring of 2016;
- c. it failed to inspect and maintain its water control works;
- d. it failed to operate its water control works in a proper and adequate manner, or at all, to avoid or to minimize high water levels and flooding around the Muskoka Lakes;
- e. it failed to warn the Plaintiff of the high water levels or flooding in a timely manner;
- f. it failed to take adequate measures to protect the Plaintiff and his property from the flooding caused by high water levels;
- g. it failed to assist the Plaintiff in a timely manner so as to restore and to allow a prompt return to, his property; and
- h. it failed to compensate the Plaintiff, adequately or at all, and in a timely manner, so as to allow the Plaintiff to restore his real and/or personal property or interest therein and allow a prompt return to his property.

20. Ontario is vicariously liable for the negligent acts and/or omissions of its servants, agents and employees.

21. The Plaintiff pleads and relies on the following:

- a. *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- b. *Negligence Act*, R.S.O. 1990, c. N.1, as amended;
- c. *Occupiers' Liability Act*, R.S.O. 1990, c. O.2, as amended;
- d. *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended;
- e. *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended;
- f. *Ministry of Natural Resources Act*, R.S.O. 1990, c. M.31, as amended;
and
- g. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.

DAMAGES

22. As a result of Ontario's negligence, the Plaintiff has suffered significant damages, including, but not limited to:

- a. out-of-pocket expenses;
- b. evacuation and relocation expenses;
- c. past and future costs of repairs and/or replacement of personal property;
- d. past and future costs of restoration of real property;

- e. diminution in value and/or loss of real property;
- f. loss of use and enjoyment of properties and businesses;
- g. loss of amenities of life and loss of community; and,
- h. mental, emotional, psychological damage and loss of enjoyment of life.

23. Further particulars of the Class Members' damages will be provided in advance of either:

- a. the trial of the common issues; or
- b. the determination of the individual issues.

THE TRIAL

24. The Plaintiff proposes that this action be tried at the City of Barrie, in the Province of Ontario.

DATED: September 14, 2016

OATLEY VIGMOND
Personal Injury Lawyers LLP
151 Ferris Lane, Suite 200
Barrie, Ontario, L4M 6C1

Roger G. Oatley
Troy H. Lehman

Tel: (705) 726-9021
Fax: (705) 726-2132

Lawyers for the Plaintiffs

BURGESS - and - HER MAJESTY THE QUEEN

(Short Title of Proceedings)

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at BARRIE

STATEMENT OF CLAIM

OATLEY VIGMOND
Personal Injury Lawyers LLP
200 -151 Ferris Lane
Barrie, ON L4M 6C1

Roger G. Oatley (LSUC#13063P)
Troy Lehman (LSUC #43817Q)

Tel: 705-726-9021
Fax: 705-726-2132

Lawyers for the Plaintiff(s)