

2011 01G 0013CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

**BETWEEN:**

**HUGH GEORGE and BEN BELLOWS**

**PLAINTIFFS**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR**

**DEFENDANT**

BROUGHT UNDER THE *CLASS ACTIONS ACT*  
BEFORE THE HONOURABLE MR. JUSTICE RICHARD LEBLANC,  
CASE MANAGEMENT JUDGE

**AFFIDAVIT OF JESSICA A. DELLOW**

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**SUMMARY OF CURRENT DOCUMENT**

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Court File Number:	2011 01G 0013 CP
Date of Filing of Document:	February 16 <sup>th</sup> , 2011
Name of Filing Party or Person:	Plaintiffs
Application to which Document being filed relates:	Application of Plaintiffs for an order certifying the action as a Class Action
Statement of purpose in filing:	Affidavit.

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I, Jessica A. Dellow, of the City of St. John's, in the Province of Newfoundland and Labrador, MAKE OATH AND SAY:

1. I am a lawyer with the firm of Ches Crosbie Barristers, counsel for the Plaintiffs in this action, and as such have knowledge of the facts to which I hereinafter depose except where stated to be on information and belief. I verily believe those facts are true.
2. I make this Affidavit in support of the Plaintiffs' application for class certification dated February 16, 2011.

3. I have read and understand the foregoing application. I have personal knowledge of the facts contained therein and they are true to the best of my knowledge, information and belief.
4. To the best of my knowledge, I know of no other class or representative proceeding in this or another jurisdiction relating to all or part of the action to be certified.
5. Since commencing this action on behalf of Mr. George and Mr. Bellows, our firm has been contacted by 33 individuals who filled out intake forms or spoke with us and left contact information, inquiring as to whether they may qualify for this class action. If this action is certified, we will forward notice of class certification to these individuals so that they can participate in this proceeding.
6. We have prepared a proposed Litigation Plan for the efficient conduct of this class action. The Litigation Plan is attached hereto as Exhibit "A".
7. The proposed class definition excludes moose-vehicle collisions which occur within the boundaries of Gros Morne or Terra Nova National Parks. I am informed by my review of a news report published on the internet by CTV and do believe that Parks Canada officials have decided to conduct a substantial reduction of moose densities in Gros Morne National Park. Now shown to me and marked as Exhibit "B" is a copy of the CTV news report.

**SWORN TO** before me at the City of St. John's, in the Province of Newfoundland and Labrador, this 16<sup>th</sup> day of February, 2011.

  
\_\_\_\_\_  
**JESSICA A. DELLOW**

  
\_\_\_\_\_

**SHERI GEEHAN**  
A Commissioner for Oaths in and for  
the Province of Newfoundland and Labrador.  
My commission expires on December 31, 2016.

This is Exhibit A referred to in the Affidavit  
of JESSICA A. DELLOW

sworn or affirmed before me this  
**PLAINTIFFS' LITIGATION PLAN** <sup>16<sup>th</sup></sup> day of FEBRUARY, 2011.

S. Geehan

## OVERVIEW

1. The *Class Actions Act* (“CAA”) requires a workable plan to be put into place as part of the certification process. In particular, section 5(1)(e)(ii) of the CAA requires production of “plan for the action that sets out a workable method of advancing the action on behalf of the class and of notifying class members of the action”. The solicitors for the Plaintiffs (“Class Counsel”) propose that the final plan involve input by the solicitors for the Defendant and this Honourable Court.

## NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

2. Notice to the class of certification of this action shall be given pursuant to section 19 of the CAA as approved by the Court. The parties will seek to settle the form of the notice, with the Court’s approval, following class certification.

3. The Plaintiffs propose that notice to the class be distributed in the following manner:

- (a) The Plaintiffs shall send a copy of the notice to every class member who has contacted the Plaintiffs’ counsel for the purpose of receiving notice;
- (b) Notice shall be published in newspapers as approved by the Court; and
- (c) The Plaintiffs shall publish a copy of the notice on a website maintained by Class Counsel.

4. The Plaintiffs propose that it is reasonable in the circumstances of this case for the Defendant to bear the costs of notice pursuant to section 24 of the CAA.

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5. The Plaintiffs propose that the Court should specify that class members may opt out of this class action by sending a written election by mail to Class Counsel before a date to be fixed by the Court. The Plaintiffs propose that the deadline for class members to opt out should be 90 days following the first publication of the notice.

6. Once the deadline for opt outs has expired, Class Counsel shall provide the Court and the Defendant with a list of the names of those persons who have opted out of this proceeding.

## **LITIGATION STEPS PRIOR TO THE DETERMINATION OF THE COMMON ISSUES**

### **PLEADINGS**

7. If not provided in advance of certification, the Defendant shall provide a Statement of Defence no later than 30 days following the date in which the Court renders a decision with respect to the certification hearing.

### **PRODUCTION OF DOCUMENTS**

8. The Plaintiffs will ask the Court to fix a date for the delivery of Affidavits of Documents. The Plaintiffs may seek the agreement of the Defendant that documents be produced electronically, and failing such agreement, may seek an order requiring same.

### **EXAMINATIONS FOR DISCOVERY**

9. The Plaintiffs will ask the Court to fix dates for examination for discovery. The Plaintiffs may require more than one representative of the Defendant to be examined, and may seek an order as appropriate.

**EXCHANGE OF EXPERT OPINIONS**

10. The Plaintiffs will ask the Court to fix a date for the delivery of expert reports, and for any examinations on these reports. The Plaintiffs have currently retained Dr. Anthony Clevenger, a wildlife scientist, to provide evidence for the class certification application.

**ADDITIONAL COMMON ISSUES CONFIRMED OR REFINED BY STATEMENT OF DEFENCE OR DISCOVERIES**

11. The Defendant has not yet delivered its Statement of Defence. It may be, upon delivery of its Statement of Defence, that a number of common legal and factual defences that it intends to assert against class members will be confirmed. As well, matters may arise following the exchange of expert opinions and the completion of examinations for discovery of the Defendant, which may reveal further or more refined common issues. If necessary, the Plaintiffs may attend before the Court to seek amendment of the certification order to include these additional or further refined common issues as revealed by the Defendant.

**CASE MANAGEMENT CONFERENCES/ INTERLOCUTORY APPLICATIONS**

12. There will be case management conferences before the appointed judge as required by the parties and the Court, and the Court will specify dates for steps in this litigation in accordance with this Litigation Plan and as necessary.

**DISPUTE RESOLUTION**

13. The Plaintiffs are willing to participate in mediation or non-binding alternative dispute resolution if the Defendant is prepared to do so.

## **TRIAL OF THE COMMON ISSUES**

14. The Plaintiffs will ask the court to set a date for a trial of the common issues following completion of discoveries.

## **ASSUMING THE COMMON ISSUES ARE DETERMINED IN FAVOUR OF THE CLASS MEMBERS, THE FOLLOWING SHOULD TAKE PLACE**

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

15. The Court should settle the particulars of a notice programme giving class members notice of resolution of the common issues, and specifying steps that individual class members may take to pursue resolution of remaining individual issues.

### **INDIVIDUAL ISSUES RESOLUTION**

16. If any or all of the common issues are resolved in favour of the Class, or some portion thereof, and judgment is pronounced for the Plaintiffs, the Plaintiffs propose that a case management hearing be held as soon as possible following judgment. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining individual issues pursuant to section 27 of the CAA. Potential methods include mini-trials, references, the use of independent experts, mediation, arbitration or other means approved by the Court.

17. It is anticipated that there may be a number of individual issues remaining, following successful resolution of the common issues, particularly with regards to damages. Depending on the nature of the individualized claims asserted by class members, evidence may be necessary from them, from their medical and other records, from their treating physicians, and from experts and others.

18. That said, there may be a number of ways to categorize the individual claims of class members so as to streamline the process of individual issues resolution. This may be done first by grouping the individual claims of class members by the quantum of their individual damage claims, and second, by the nature of those claims.

19. The most appropriate means of assessing individual damages may be by means of individual mini-trials or references as discussed above. The procedural and substantive rules for such individual mini-trials or references should generally be analogous to the procedural rules applicable to other civil lawsuits, providing the parties with the usual procedural and substantive rights, with the exception that the common issues in the proceeding will already have been resolved in favour of the Class, and subject also to the Court's ability to provide necessary direction for such proceedings, and to dispense with procedural steps, or to authorize special procedural steps as it considers appropriate.

20. With respect to the nature of the claims of class members, the Plaintiffs are working to gather information about the various types of injuries reported by class members, and this is an ongoing process. The Plaintiffs anticipate that these injuries may ultimately lend themselves to rough categorization into a number of a groups, based on the types of injuries reported by class members.

21. Grouping class members in this way may provide efficiencies for any individualized hearings or references. It may allow particular referees or independent experts to focus on resolving the individual issues of particular categories of claimants related to their own particular area of expertise. It may also allow for the parties to make presentation of generalized medical opinion evidence regarding accepted treatment options and prognoses that may be broadly applicable to certain groups of class members. In short, while individual issues may remain following the common issues trial, such individual issues may be capable of some standardization to speed their resolution.

**RULE 7A.07**

22. Rule 7A.07 of the *Rules of the Supreme Court* specifies the content of the litigation plan as follows:

(a) statement of issues of fact and law involved in this proceeding:

The details of the claims made are contained in the Statement of Claim;

(b) statement of any legal difficulties or complications the proceeding may encounter:

Resolution of common issues may resolve liability entirely. The individual issues are those of quantifying damages in serious personal injury claims. The legal difficulties and complications are similar to those encountered in other class proceedings involving serious personal injury.

(c) statement of the methods of discovery and of obtaining other information relevant to the proceeding:

See paragraphs 8 to 10 of the Litigation Plan;

(d) statement of the potential difficulties and complications in resolving individual claims once common issues have been decided:

Causation and damages may require individual assessment: see paragraphs 16 to 21 of the Litigation Plan;

(e) the method of notifying members of the class or sub-class of the proceeding:

See paragraphs 2 to 6 and 15 of the Litigation Plan;

(f) how funds that may result from the proceeding will be able to be distributed:

Class members may recover monetary damages based on the individualized resolution of their claims: see paragraphs 16 to 21 of the Litigation Plan;

(g) a statement of the proposed timing of the various stages of the proceeding:

The action will proceed in accordance with a timetable set pursuant to this Honourable Court's on-going case management: see paragraph 12; and

(h) a proposal as to how any counterclaims and third party proceedings are to be dealt with:

The Plaintiffs are not aware of any counterclaims or third party proceedings.

## **REVIEW OF THE PLAN**

23. This Plan may be reconsidered and revised as necessary, under the continuing case management authority of this Honourable Court.



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Home: Canada Parks Canada plans moose cull in two N.L. parks

# Parks Canada plans moose cull in two N.L. parks



A moose runs in front of a car as it crosses the road in Gros Morne National Park in NL Tuesday, August 14, 2007. (CP PHOTO/Jonathan Hayward)

Font-size: Share Print

The Canadian Press  
Date: Tuesday Jan. 12, 2010 7:05 AM ET

ST. JOHN'S, N.L. — There are too many moose in Newfoundland's two national parks and a cull is needed because the big animals are eating too many young trees, Parks Canada says.

The federal agency says plans for the province's first cull of moose inside Gros Morne National Park and Terra Nova National Park will be drafted in the spring.

There are about 150,000 moose on the island of Newfoundland, where moose sightings are a common occurrence.

In Gros Morne, on the west side of the island, there are about 4,500 to 5,000 moose, said Peter Deering, the manager of resource management at the park.

A cull of about 3,500 to 4,000 would be needed in Gros Morne to keep the moose population under control, Deering said.

"High populations of moose are consuming the forest faster than it can grow," Deering said.

A much smaller cull of about 20 to 30 would be needed in Terra Nova, where there are about 120 to 150 moose, he said.

Throughout the island, the animals are so plentiful they have been known to occasionally wander through the streets of downtown St. John's.

The island's moose are believed to be descended from only four animals that were introduced to the western side of island in 1904 to supplement the dwindling caribou herd.

Today, the density of the population in some areas is the highest in the world.

Lucy Stoyles, a city councillor in Mount Pearl, says she would like to see the cull extended, mainly because collisions with moose represent a hazard on Newfoundland's highways.

"I think that it's great they're doing that cull," she said. "But they have to look at more than just the parks."

There were 700 moose-vehicle collisions last year in Newfoundland and Labrador. In Gros Morne alone, there were 311 collisions between 1991 and 2003.

On average, two people are killed every year in moose-vehicle crashes.

Stoyles's 34-year-old daughter, Marie, was badly injured in October when her car hit a moose as she drove at dusk south of St. John's. The long-legged animal came through the car's windshield, striking the woman in the head.

She was in a coma for nine days. Her skull was cracked, bones in her face were broken and her eyes were damaged by flying windshield glass.

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This is Exhibit B referred to in the Affidavit of JESSICA A. DELLOW

sworn or affirmed before me this 16<sup>th</sup> day of FEBRUARY, 2011.

**SHERI GEEHAN**  
A Commissioner for Oaths in and for the Province of Newfoundland and Labrador. My commission expires on December 31, 2016.

"If she was a bit taller, she would have had her neck broke," Stoyles said, adding that it will take her daughter up to a year to fully recover.

Meanwhile, Stoyles brought forward a motion at city council last month that called on the provincial government to do something about the "nuisance moose" that sometimes loiter near highways, particularly in the winter when road salt attracts the big ruminants.

She wants the province to increase the number of hunting licences from 8,000 to about 15,000 and make it easier for hunters to move around the province.

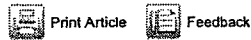
"The cull should be extended to high-risk areas where there have been a lot of accidents," Stoyles said.

A large moose can weight up to 450 kilograms and, with the exception of hunting outside the parks, the animals have no significant predators on the island.

Culls are sometimes conducted at other national parks to control deer and elk populations, for instance, Deering said.

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