

COMPENSATION PLAN FORWARD

Since the settlement of the Caledonia Class Action there has been a great deal of confusion regarding who is eligible for compensation and the procedure for making a claim. After months of collaboration and fine tuning among Class Counsel, the Administrator and the Province of Ontario, the Caledonia Compensation Plan (the "Plan") has been finalized and approved by the Court. All of the pertinent documents can now be found on the Caledonia Class Action website (www.caledoniaclassaction.com). There is a new page "Compensation Plan and Applications" which has posted on it a copy of the Plan and the three application forms, the Business Class Application (which is used for both the Caledonia Business Class and the Highway 6 Class), the Contractors Application and the Property Occupiers Application.

It is important to review the history of the litigation. This action was commenced in June of 2006. It was originally brought on behalf of the businesses in Caledonia, but was soon amended to include claims on behalf of property owners. In June of 2007 the Province of Ontario brought a motion to have the action dismissed as disclosing no cause of action. This motion was dismissed by Order of Justice David Crane, the presiding class proceeding judge, which allowed the action to proceed to the certification stage. However, Justice Crane held that the property owners would not be able to claim for the loss of their property values and limited the property claim to nuisance damages to those who occupied the property. In February of 2010 the action was certified. The certification order set out the definition of the four classes: (1) the Caledonia Business Class, (2) the Highway 6 Class, (3) the Contractors Class and (4) the Property Occupiers Class. Notice of this order, including detailed definitions of the classes, was published in the *Globe and Mail*, the *Hamilton Spectator*, the *Regional News*, the *Grand River Sagem* and the *Simcoe Reformer* in May of 2010. It was also posted on the websites for Haldimand County, the Caledonia District Chamber of Commerce, the Ministry of Aboriginal Affairs and the OPP. Potential members were given a time limited opportunity to "opt out" of the class. If they did so, they would not be bound by any subsequent settlement of the action, nor would they be able to benefit from it. A number of people did "opt out". There was no appeal of the order. All of the documents relating to the Crown's motion to dismiss the action, the certification motion and order and the notice of certification can be found on the "Case Developments" page of the Caledonia Class Action website – www.caledoniaclassaction.com.

In June of 2011 a settlement was reached with the Province of Ontario that was incorporated into Minutes of Settlement. On July 8, 2011 the Minutes of Settlement were approved and incorporated into a Judgment that provided for a settlement in the amount of \$20 million for all of the classes. The settlement funds are to be distributed in accordance with the Caledonia Compensation Plan. The most recent form of the Caledonia Compensation Plan was approved by Justice Crane on September 28, 2011.

An administrator has been retained and authorized by the Court to receive and consider applications for compensation, determine the compensation to which the applicants are entitled, and to manage the distribution of the payments. The administrator is Global Resolutions Inc., a firm that has extensive experience in providing arbitration and administrative services to the legal community.

It is important to point out that the process of taking applications and determining compensation is a quasi-legal process. The determination of whether or not an applicant qualifies as a class member is determined by whether or not they fall within the definition of a class as that class is defined in the certification order. Those definitions have been incorporated into the Caledonia Compensation Plan. Both the determination of entitlement and the quantum of compensation will be determined by the Administrator based upon the information provided by the applicant in the application forms. Subject to a very limited appeal process, which is set out in the Caledonia Compensation Plan, these decisions as to entitlement and quantum will be final and binding.

The Plan has attached to it certain lists, specifically a list of Caledonia Business Class members (Schedule "A"), a list of Highway 6 Class members (Schedule "B") and a list of Contractors (Schedule "C"). There is also a list of municipal addresses included in the Property Occupiers Class (Schedule "D").

Many of you have expressed concern that your business has not been included in the schedules. It is important to point that if you are a member of the Caledonia Business Class, the Highway 6 Class or the Contractors Class and are not listed in the schedules it does not preclude you from making an application. The Caledonia Compensation Plan simply requires the Administrator to contact those listed in the schedules and provide them with application packages. It does not preclude you from making an application and the Administrator will receive and consider applications from those who are not included in the schedules. If the Administrator determines that you fall within the definition of a class member, as set out in the Caledonia Compensation Plan, then you will be entitled to make a claim for compensation.

However, this does not apply to the Property Occupiers Class. For anyone to make a claim under the Property Occupiers Class, your property has to be listed in Schedule "D" to enable you to qualify for compensation. This listing was established back in February of 2010 in the certification order. The list was also explicitly set out in the Notice of Certification. In order to obtain compensation you have to have occupied a municipal address listed in Schedule "D" on February 28, 2006. The amount of compensation that you will receive will depend upon what zone you are in and how long you have occupied the property.

In order to distribute the funds in an expeditious and fair manner it is necessary that certain formalities be adhered to in submitting the applications. Certified identification is required to be submitted with the application and the application has to be sworn by a notary public. This is the simplest and most cost effective way in which the Administrator can verify the identity of the applicant. In addition a signed Release is required to be submitted. The Plan requires the Administrator to hold the Release in escrow pending the determination and distribution of the compensation. It would not be practical, and it would substantially hold up distribution, if the Administrator were required to collect signed Releases at the end of the process. This is not unusual and is similar to the process that you would have to go through if you were proving a loss under an insurance policy. Almost all lawyers are notary publics and your lawyer can likely swear you application and certify your identification.

You are basically on your own in the preparation of the applications. You cannot expect assistance from Class Counsel, the Court or the Administrator. The applications have been designed to be as simple as possible, but if you feel it is necessary, you should obtain professional assistance from an accountant or a lawyer to help you with the application.

I know that several people are disappointed with the amount of compensation or the fact that they are not included as members of a class. A settlement does not satisfy everyone- particularly in the context of a class proceeding. I know that there were residents, myself included, who were adversely affected by the occupation, but were not included in the areas that obtained compensation. This was very much a function of the fact that the representative plaintiffs, throughout the process, were exposed to possible adverse cost awards. The definition of the classes and the delineation of the property occupiers' zones were carefully considered and based upon sound legal principals. There was very little financial support from the community and the plaintiffs had to be careful that they did not over-reach in their claims which could have exposed them to having to pay the legal costs of the defendants. The municipal addresses were properties that were either adjacent to property that was actually occupied or were within areas that were subject to police barricades.

Some have also expressed concern that the Caledonia Compensation Plan provides for the return of any surplus funds to the Province of Ontario. The *Class Proceedings Act* requires any settlement to provide for what would happen to surplus funds. A term of the Minutes of Settlement provides that any surplus funds would be returned to the Province. However, this will only happen if not enough applications are submitted and the funds fully compensate those who do submit applications. You will not receive any compensation unless you submit an application. I urge everyone who thinks that they may be entitled to compensation under the Caledonia Compensation Plan to submit an application. In the Business Class Application there are 3 options. Option 1 is very simple and requires no proof of loss other than proof that your business falls within the class. Under Option 1, if you establish that you are member of the class you can obtain \$5,000 in compensation, without deduction, and without further proof. Option 2 provides for rather straightforward calculation based upon loss of sales and the applicable costs of sales factor that applies to your business. An application under Option 2 will also entitle the applicant to an initial distribution. Applicants are encouraged to use either Option 1 or Option 2 as it will reduce the cost of the Administrator by reducing the number of arbitrations that will be required. It will also enable the Administrator to more accurately determine the amount of reserve required on the first distribution and allow for a greater amount to be initially distributed.

A great deal of gratitude is owed to the representative plaintiffs. There was a representative plaintiff for each of the Caledonia Business Class (Rich Peart of the Dairy Queen), the Highway 6 Class (Margaret Cook of Verrips Greenhouses) and the Contractors Class (Patrick Woolley, Surveyor). In addition, there were 7 couples that acted as representative plaintiffs in the Property Occupiers Class. All of these people were exposed to personal liability for the other side's legal costs during the course of this litigation. They assumed this personal risk to enable all of the members of the classes to obtain compensation. They acted admirably throughout the process and they should be recognized for their efforts. Without their fortitude and commitment there would not have been any compensation whatsoever.

Finally, I remind you that the final deadline for the submission of applications is **March 31, 2012**. I urge each of you who think they may be entitled to compensation to visit the website, download the applicable application and get it in at the earliest opportunity.

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