

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** MacQueen v. Sydney Steel Corporation, 2011 NSSC 484

**Date:** 20100624 and 20110706

**Docket:** Hfx No. 218010

**Registry:** Halifax

**Between:**

Neila Catherine MacQueen, Joseph M. Pettipas,  
Ann Marie Ross, and Kathleen Iris Crawford

Plaintiffs

v.

Sydney Steel Corporation, a body corporate; The Attorney General of Nova Scotia representing  
Her Majesty the Queen in right of the Province of Nova Scotia; and the Attorney General of  
Canada representing Her Majesty the Queen in right of Canada

Defendants

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice John D. Murphy

**Heard:** December 7, 8, 9; 15, 16, 17, 18, 2009  
January 20, 21; April 22, 23; June 21, 22, 23, 24; September 21;  
October 18; 27; December 15; July 6, 2010 in Halifax, Nova Scotia

**Final Written  
Submissions:** February 11, 2011

**Written Decision:** January 19, 2012  
*{Decisions rendered orally June 24, 2010 and July 6, 2011.}*

**Subject:** Subject: Class Action—Certification

**Summary:** Plaintiffs, property owners and residents of Sydney, sought to have a claim against the governments of Canada and Nova Scotia as operators of steel mill and coke oven facilities certified as a class action. Plaintiffs claim that the defendants' facilities emitted products which contaminated their properties and posed risks to health. They allege breach of fiduciary duty and multiple torts, and seek remedies including damages for loss and use of enjoyment and remediation of property, compensation for exposure to pollutants, and funding of a medical-monitoring process.

**Issue:** Whether the claim met the criteria for certification prescribed by section 7 of the *Class Proceedings Act* ("CPA")

**Result:** Claim was certified as a class proceeding.

Motion was heard in two stages. At the conclusion of the first hearing the parties were advised that a class action was deemed to be the preferable procedure for at least some aspects of the case, subject to plaintiffs amending their motion, as permitted by section 8(1) of the “CPA”, to reduce the sizes of the proposed classes and modify the litigation plan. Following the continuation hearing for the amended motion, certification of a class proceeding for property owner class and residential class plaintiffs was ordered. Determinations made included the following:

- The pleadings disclosed allegations of fact in support of each cause of action advanced;
- The claim of the class members raised common issues warranting certification. This case is distinguishable from other “pollution” or “contamination” situations in which certification was denied, because matters in dispute included the source, extent and nature of contamination allegedly emitted by defendants, the defendants’ knowledge, duty and conduct, and the type of remedies, including medical monitoring, potentially available to class members. The common issues for which the plaintiffs sought certification were rationally connected to the proposed class members and their resolution will advance the lawsuit;
- A class action was found to be the preferable procedure for the fair and efficient resolution of the dispute, with questions of fact and law common to class members predominating over individual member issues;
- The representative plaintiffs demonstrated a willingness and suitability to fairly and adequately represent the interests of the class, were not in conflict of interest, and had produced a workable litigation plan;
- It would be premature to address limitation periods at the certification stage in this proceeding, as the plaintiffs have pleaded suspension of limitation based on discoverability and equitable fraud, and the defendants have not yet filed a pleading;
- The geographic class boundaries proposed by the plaintiffs for three Sydney neighbourhoods were approved because they were supported by evidence indicating they were most likely to have been affected by defendants’ activities, and described a manageable class. Two other proposed areas were not included because testimony from representative plaintiffs and scientific experts did not meet the evidentiary threshold to establish likelihood of contamination caused by the defendants;
- A seven-year habitation requirement for residential class plaintiffs was approved;
- The proposed litigation plan provided a reasonable approach to advance resolution of the claim; its format and content were approved in principle as satisfying the requirements of the CPA, subject to refinement which could be addressed through case management.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***