

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE COURT OF THE DRAINAGE REFEREE

IN THE MATTER of the *Drainage Act*, R.S.O. 1990, Chapter D. 17

AND IN THE MATTER OF an application by the Corporation of the Municipality of Chatham-Kent for certain orders of the Drainage Referee with respect to construction of the Shaw Branch of the East Branch Facey Drain and By-law No. 93-2021;

B E T W E E N:

CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

Applicant

- and -

CANADIAN PACIFIC RAILWAY COMPANY

Respondent

APPLICATION pursuant to Section 106 of the *Drainage Act*, R.S.O. 1990, c. D.17

**REPLY AFFIDAVIT OF BLAISE CHEVALIER TO AFFIDAVIT OF INTERVENOR
CANADIAN NATIONAL RAILWAY COMPANY**

I, *Blaise Chevalier*, of the County of Essex, MAKE OATH AND SAY:

1. I am a Drainage Superintendent employed by the Corporation of the Municipality of Chatham-Kent (the "Municipality"), responsible for the geographic area of the Community of Zone, Municipality of Chatham-Kent, including the area of the East Branch of the Facey Drain and the proposed Shaw Branch of the Facey Drain. As such, I have knowledge of the matters to which I hereinafter depose, save and except where I have indicated that I have obtained facts from other sources, in which case, I state the source of the information and I verily believe those facts to be true.

2. On a review of the Affidavit of Trevor Evans, many examples of construction, maintenance, and proper drainage techniques of railroad right-of-ways are described as being constructed and undertaken by CNR. However, what is not explained, at least in regards to the Province of Ontario, is that, except for those outlets that outlet directly into a watercourse or body of water, this infrastructure is primarily outletting into Municipal Drains.
3. The Drainage Act and appointed Drainage Superintendents ensure safe and stable operation, construction, and maintenance of these drainage systems to protect and mitigate flooding to all properties, including railroad right-of-ways, within their respective drainage watersheds.
4. Historically, the railroads have worked cooperatively with municipalities to leverage municipal drainage infrastructure to protect and drain their lands. Some of these drainage activities under the Drainage Act include beaver trapping, obstruction and sediment removal, brushing, and pumping which benefit the users of the Municipal Drains, including the railway right-of-ways.
5. For example, in Chatham-Kent, during the local state of emergency declared in February 2019 caused by an ice jam on the Thames River, the Municipality worked closely with the railroad for the VIA/CN railbed west of Chatham to address flooding caused by breaches in the dike system. This involved leveraging of the outlet afforded by the Municipal Drains in order for drainage structures within the railway right-of-way to function and remove water from the rail bed.

6. This example is consistent with my knowledge and experience that water being removed from railway right-of-ways in Chatham-Kent generally relies on Municipal Drains as outlet and that, absent the outlet provided by properly functioning Municipal Drains, railway right-of ways experience saturated rail ballasts and flooding.
7. On review of the “Examples of Drainage Issues” provided in CNR’s Affidavit, I note there are no examples of a single failure in the Province of Ontario.
8. In Ontario, the Drainage Act empowers municipalities to maintain Municipal Drains to the benefit of all, regardless of location of areas of concern and to manage these systems to prevent degradation and failure of existing systems but also to improve existing drains and construct new drains. That process utilizes a Drainage Engineer and a rigorous review system including input from all affected landowners, roads, and railways.
9. Beginning at paragraph 44, it is stated that there are circumstances where drainage can cause slope instability which disrupt train services and create safety risk, and where maintenance operations deepen ditches which can cause instabilities to embankment side slopes. Under the *Drainage Act*, if drainage work is to be carried out on railway lands, the process mandates that the operator of the railway will receive notice of the proposed drainage work. In practice, all work plans and specifications are reviewed by the railway operator and its engineers and the specifications are prepared to meet railway operational and safety requirements, including to address any concerns regarding impacts to stability, operations and safety.
10. For example, in the case of the subject Facey Drain Project, I estimate that the project would take approximately four days with work being subsurface such that trains can continue to cross through the work area. This workplan was reviewed and discussed with CP to accommodate CP’s operations, technical, and safety concerns.

11. In Section F, Paragraph 67 of CNR's Affidavit, the example of "pipe crossing agreement" referenced appears to be for maintenance or repair of an existing Municipal Drain as the agreement identifies work being performed in accordance with a Drainage Report prepared in 1987 (the timing of the agreement is in 2009). As the full body of the 1987 Drainage Report was not included, it is unclear as to how costs were to be assessed per the governing By-law.

12. I make this Affidavit for no improper purpose.

SWORN REMOTELY at the)
City of Chatham, in the)
Municipality of Chatham-Kent)
this the 28th day of March, 2025, in accordance)
with O. Reg. 431/20, Administering Oath or)
Declaration Remotely)
)

Commissioner for Taking Affidavits

BLAISE CHEVALIER

Linda Marie Kalp, a Commissioner, etc.
Province of Ontario, for the Corporation
Of the Municipality of Chatham-Kent
Expires August 31, 2026.

CORPORATION OF MUNICIPALITY OF CHATHAM-KENT

Applicant

-and-

COURT FILE NO. CV-23-00001165-0000 (Chatham)

CANADIAN PACIFIC RAILWAY COMPANY

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COURT OF DRAINAGE REFEREE

PROCEEDING COMMENCED AT
CHATHAM, ONTARIO

REPLY AFFIDAVIT OF BLAISE CHEVALIER TO THE
AFFIDAVIT OF CANADIAN NATIONAL RAILWAY COMPANY

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