

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**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 Facey East 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

**AFFIDAVIT OF JACK CARELLO  
(Affirmed March 28, 2025)**

I, Jack Carello, of the City of Toronto, in the Province of Ontario, AFFIRM:

**A. Overview**

1. I previously affirmed an affidavit on behalf of CP dated July 4, 2024, in this matter. I affirm this affidavit in response to the affidavit of Lindsay Jones dated February 21, 2025 (the “**Jones Affidavit**”) filed by the intervener, the Rural Ontario Municipal Association (“**ROMA**”). Defined terms in this affidavit have the same meaning as in my first affidavit.

2. While my affidavit comments on aspects of ROMA's evidence, I do not address each assertion contained in the affidavits filed by ROMA or the Ontario Federation of Agriculture. My silence on an issue does not mean that I agree with the evidence filed by ROMA or the Ontario Federation of Agriculture.

**B. Scope of CP's challenge to the *Drainage Act***

3. Contrary to paragraph 12 of the Jones Affidavit, CP's position has never been that it would not cover "its share" of municipal drainage costs. As I explained in my initial affidavit, where an applicant seeks to build a utility crossing of CP's railway, it can seek to enter into a Crossing Agreement with CP to facilitate the construction. The applicant seeking a utility crossing is typically responsible for paying all costs associated with the construction, although in certain circumstances CP may provide in-kind services for the construction or waive certain costs that it would otherwise seek to recover. If CP and the applicant are unable to agree on a Crossing Agreement, the Canada Transportation Agency has the power to authorize the construction of suitable utility crossings of railway lines, specify who shall maintain the crossing, and apportion costs for constructing or maintaining the utility crossing. CP's position is not that it will never contribute any costs to such crossings; rather, CP's position is that, failing agreement with the municipality, it is the Canada Transportation Agency that determines the allocation of such costs.

**C. Crossings mentioned in Jones Affidavit**

4. The Jones Affidavit describes alleged active drainage projects involving federal railways. At paragraph 16(h), the Jones Affidavit states that federal railways owe twelve Ontario municipalities, in aggregate, \$870,676.10 for capital construction costs and

\$327,722.40 for maintenance costs purportedly assessed under the Ontario *Drainage Act*. The Jones Affidavit does not specify which railways or which municipal drains are involved in these purported cost assessments. At no point does the Jones Affidavit specify any amounts purportedly owing by CP.

5. At paragraph 16(j), the Jones Affidavit gives five examples involving four municipalities of drainage construction and maintenance projects which it claims were paused because of a lack of cooperation by railways on cost-sharing. Again, the Jones Affidavit does not specify which railways are involved in these projects or provide details or precise locations for the relevant drainage works. As a result, it is difficult to comment on the alleged examples Ms. Jones provides, although I note that CP does not operate its railway in the municipalities of Plympton-Wyoming or Perth South (the examples described in paragraphs 16(j)(i), (ii) and (iii) of the Jones Affidavit). In any case, at no point does Ms. Jones specify any lack of cooperation by CP.


**AFFIRMED** by Jack Carello of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on March 28, 2025, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Commissioner for Taking Affidavits  
(or as may be)

**ANDREW IRWIN**  
**LSO #879100**



JACK CARELLO, CIVIL ENG TECH, SR/WA  
MANAGER UTILITIES – EASTERN/WESTERN CANADA

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**JACK CARELLO**

CORPORATION OF THE -and- CANADIAN PACIFIC RAILWAY  
MUNICIPALITY OF CHATHAM- COMPANY  
KENT  
Applicant Respondent

Court File No. CV-23-00001165-0000

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Proceeding commenced at Chatham

**AFFIDAVIT OF JACK CARELLO  
(Affirmed March 28, 2025)**

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