

**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 RHEAL LEMELIN  
(Affirmed June 27, 2024)**

I, Rheal Lemelin, of the City of Toronto, in the Province of Ontario, MAKE OATH

AND SAY:

**A. Overview**

1. I am the Senior Bridge Manager, Maintenance, Eastern Canada/NE USA Region for the Respondent Canadian Pacific Railway Company (“**CP**”). I have been in this role since 2021. Prior to this, I was the Bridge Manager, Toronto Region.

2. Part of my responsibility as Senior Bridge Manager is to oversee the planning, construction and maintenance of culverts installed under CP’s railway corridor. As such,

I have knowledge of the matters contained in this affidavit. Where I do not have personal knowledge, I have stated the source of my information and believe it to be true.

3. Below, I comment on some aspects of the affidavits filed by the Applicant, Chatham-Kent, in this proceeding. However, I should not be taken to agree with the Applicant's evidence simply because I have not commented on it below.

4. I first became aware of Chatham-Kent's proposal to build a new crossing under CP's railway near mile marker 47.60 of CP's Windsor Subdivision to connect with the Facey Drain (the "**Shaw Branch**") on approximately December 1, 2020, when Jack Carello copied me into correspondence with Chatham-Kent. Mr. Carello subsequently proposed a site visit to inspect the area where Chatham-Kent intended to build the proposed Shaw Branch.

5. I attended this site visit on CP's behalf on February 3, 2021. Mr. Chevalier, Brandon Widner (an engineer representing Spriet Associates), and Anne Ford (a Drainage Analyst working for Chatham-Kent) were in attendance as well.

6. During the site visit, I indicated that CP did not have a technical issue with the work as proposed, if it could be done in a way that did not interrupt CP's operations. However, contrary to the allegation at paragraph 44 of Mr. Chevalier's affidavit, I did not "confirm that the proposed project was acceptable" on behalf of CP during this meeting, nor could I have done so, as CP had not yet received an Engineer's Report with final specifications for the proposed Shaw Branch. During the meeting, I advised that hydrological and geotechnical work would not be required for the Shaw Branch if the drainage pipe was 10" or less in diameter.

7. Paragraph 12 of the affidavit of John Spriet dated March 27, 2024 states that, during this meeting, “Mr. Chevalier explained that increased cost to the project arising from the crossing work would be borne by CP under the *Drainage Act*.” However, at no time did I state that CP would agree to bear these costs.

**AFFIRMED** by Rheal Lemelin of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on June 27, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Commissioner for Taking Affidavits  
(or as may be)

**GREGORY SHEPPARD**  
**LSO #802680**

*Rheal Lemelin*

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**RHEAL LEMELIN**

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 RHEAL LEMELIN  
(Affirmed June 27, 2024)**

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