

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE JUSTICE
J.R. HENDERSON**

) **WEDNESDAY, THE 14th DAY OF
OCTOBER, 2009**

B E T W E E N:

ELLEN SMITH

Plaintiff
(Moving Party)

- and -

INCO LIMITED

Defendant
(Responding Party)

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

THIS MOTION, brought by the Plaintiff, for judgment on certain common issues certified by the Court of Appeal for Ontario on November 18, 2005 (the “Certification Order”), was heard this day at 102 Main Street, in Welland, Ontario.

UPON HEARING the submissions of counsel for the Plaintiff, counsel for the Defendant and upon reading the motion records of the Plaintiff and Defendant,

1. **THIS COURT ORDERS** that Common Issues 6(a) and 6(b) of the Certification Order are amended on consent of the parties as follows:

- (A) Is Inco the source of the vast majority of elevated levels of nickel found on class members' lands?
- (B) Did the vast majority of nickel contamination (from atmospheric deposition or fill) in the Rodney Street Area originate from Inco?

2. **THIS COURT ORDERS AND ADJUDGES** that on the consent of the parties the answer to Common Issue 6(a), as amended above in paragraph 1, is “yes”.
3. **THIS COURT ORDERS AND ADJUDGES** that on the consent of the parties the answer to Common Issue 6(b), as amended above in paragraph 1, is “yes”.
4. **THIS COURT ORDERS** that the costs of this motion shall be spoken to by the parties at a later date, and are to be determined by Justice J.R. Henderson, costs reserved until that time.



Entered at Welland
Inscrit à Welland
in Book No. 09
dans le Livre n. _____
as Document No. 2225
comme Document n. _____
on Dec 8, 2009
le _____, 20____
by JD
par _____

ELLEN SMITH
Plaintiff

and

INCO LIMITED et al
Defendants

Court File No: 12023/01

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **WELLAND**

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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