Date: 20081217

Docket: T-745-04

Citation: 2008 FC 1390

Ottawa, Ontario, December 17, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

**PEMBINA COUNTY WATER RESOURCE DISTRICT,
CITY OF PEMBINA, NORTH DAKOTA,
TOWNSHIP OF PEMBINA, NORTH DAKOTA,
TOWNSHIP OF WALHALLA, NORTH DAKOTA,
CITY OF NECHE, NORTH DAKOTA,
TOWNSHIP OF NECHE, NORTH DAKOTA, AND
TOWNSHIP OF FELSON, NORTH DAKOTA**

Plaintiffs

and

**GOVERNMENT OF MANITOBA,
RURAL MUNICIPALITY OF RHINELAND,
RURAL MUNICIPALITY OF MONTCALM,
RURAL MUNICIPALITY OF STANLEY, and
TOWN OF EMERSON, MANITOBA**

Defendants

REASONS FOR ORDER AND ORDER

THE MOTION

[1] This is a motion pursuant to Rules 51 and 359 of the *Federal Courts Rules, 1998* for an order setting aside paragraph 3 of the order of Prothonotary Lafrenière dated May 22, 2008 which dismissed the Plaintiffs' motion for leave to amend their Statement of Claim.

[2] The Plaintiffs want the Court to allow them to amend their Statement of Claim to plead the tort of interference with economic relations and to add a claim in negligence for damages stemming from an alleged loss of tax revenue. The loss of tax revenue is the result of the decrease in value of lands owned by third parties that were flooded as a result of the Defendants' alleged negligence. It is a claim for pure economic loss.

[3] The Plaintiffs submit that the proposed amendments arise form substantially the same set of facts already pleaded in their Statement of Claim.

[4] The Defendants seek to resist the proposed amendments on the grounds that it is plain and obvious that a claim for interference with economic relations cannot succeed. They also say that the damages for loss of tax revenue are a claim for pure economic loss that should not be recognized in this case.

BACKGROUND

[5] Various towns and cities in North Dakota joined together and commenced an action against the Defendants on April 8, 2004. The Plaintiffs allege in their Statement of Claim that the Government of Manitoba and four municipalities are liable for flooding damage caused by the construction, maintenance, and operation of a dike near the international border running along the 49th parallel between North Dakota and Manitoba. The dike is immediately inside the Canadian side of the border and extends for approximately 30 miles west from a point just west of where the Red

River crosses the border. Historical records indicate that the construction of part of the present day dike took place in the early 1940s and, since that time, the dike has been improved and lengthened to its present state.

[6] The Plaintiffs allege that the dike blocks water flowing in natural watercourses in the State of North Dakota from flowing into the Province of Manitoba, in violation of the *International Boundary Waters Treaty Act*, R.S., 1985, c. I-17 (IBWTA). They further allege that flooding and consequential damage is caused by the operation of the dike, resulting in damage to works and undertakings they operate or control. In their prayer for relief, the Plaintiffs request the removal of the dike, re-establishment of the land upon which the dike has been constructed to prairie grade, as well as damages. The Defendants filed statements of defence in March 2005 denying both liability and damages.

[7] Before embarking on examinations for discovery, the Plaintiffs are now seeking leave to amend their Statement of Claim by adding the underlined wording in the following paragraphs:

> 1. The plaintiffs claim:
>
> …
>
> e) <u>damages in the excess of $50,000 caused to the plaintiffs, or any of them, related to the loss of tax revenue from the damage to property, works or undertakings caused directly or indirectly from the intentional and/or negligent acts and/or nuisance of the defendants as hereinafter pleaded;</u>
>
> 8. Each of the plaintiffs owns or controls property, works or undertakings <u>and/or is dependent for its revenues upon the taxes levied upon those persons that own or control property, works or undertakings</u> in the United States that are located close to the International Boundary in the Township<u>s</u> of Pembina, Neche, Felson, St. Joseph, Walhalla, Joliette, Lincoln and Drayton in Pembina County in the State of

> North Dakota. The Townships of Pembina, Neche, Felson, St. Joseph and Walhalla have a northern boundary that extends to the International Boundary.
>
> 19. The plaintiffs, either directly or indirectly, have for years informed the Province of Manitoba that the said dike was the cause of, and continues to be the cause of, extensive flooding within the Townships of Pembina, Neche, Felson, St. Joseph, Walhalla, Joliette, Lincoln and Drayton, and within the cities of Pembina, Neche, Walhalla and Drayton, in the State of North Dakota, with resulting property damage, loss of income, loss of opportunities, loss of enjoyment of land and property, endangerment of health of persons and livestock and reduction in the quality of the land.
>
> 19.1 The plaintiffs say that the defendants committed the tort of intentional interference with economic interests. The defendants' conduct as herein plead, was directed towards the plaintiffs with knowledge of its consequences. The defendants' illegal and/or unlawful conduct has caused ongoing and continuing damage to property, works or undertakings within the tax base of the plaintiffs so that the property has devalued thereby decreasing the tax base and taxes levied by the plaintiffs with the result that the defendants have caused economic loss to the plaintiffs in amounts to be proven at the trial of this action.
>
> 19.2 Furthermore, the plaintiffs say that the defendants, by their intentional and/or negligent actions and/or nuisance in constructing and maintaining the dike as aforesaid, have caused foreseeable, ongoing and continuing damage to property, works, or undertakings within the tax base of the plaintiffs with the result that the property has devalued, thereby decreasing the tax base and taxes levied by the plaintiffs in amounts to be proven at the trial of this action.

THE ORDER OF PROTHONOTARY LAFRENIÈRE

[8] Prothonotary Lafrenière concluded in his order that the facts pleaded in the proposed amendments did not meet the requirements of the tort of interference with economic relations. He further concluded that legal authority and policy considerations excluded liability upon the Defendants for the economic loss referred to in the proposed amendments:

> 19. In summary, it is not sufficient that the damage suffered by the plaintiff is merely a consequence of the defendant's actions; negligent interference with the plaintiff's interests does not

amount to intentional interference: *Lineal Group Inc. v. Atlantis Canadian Distributors, above*. Given that unlawful interference is an *intentional* tort, the conduct of the defendant must be *aimed or directed* at the party who suffers damage.

20. In some instances, the tort of economic interference may be justified as a means to extending remedies to parties who have suffered damage as a result of another party's unlawful act and have no other recourse. However, in the case at bar, the Plaintiffs' claim cannot succeed as the requisite intention has not been pleaded. There is no allegation that the construction or maintenance of the dikes by the Defendants was done with the deliberate intention of targeting the Plaintiffs with flood damage so as to reduce their tax revenues. While the decrease in the value of the tax base may have been a consequence of flooding caused by dikes, the quality of intention necessary to satisfy the first element of the test of the tort of interference with economic relations is completely lacking.

21. The proposed amendments are simply not capable of supporting an allegation of intentional economic interference, as the essential elements of the tort are not alleged. In the circumstances, I conclude that the proposed amendments contain a radical defect and should not be allowed.

Policy considerations

22. The courts have typically been very reluctant to allow claims for pure economic loss for a number of public policy reasons, including the view that economic interests are less compelling of protection than bodily security or proprietary interests, that such losses are often seen as ordinary and expected business risks, and that allowing the recovery of economic loss encourages a multiplicity of inappropriate lawsuits: *D'Amato v. Badger*, [1996] 2 S.C.R. 1071 (*D'Amato*) at paras. 17-20.

…

24. There would be broad ramifications in permitting tax authorities to claim against any defendant who causes a decrease in the value of a taxpayer's asset. The effect of recognizing such a claim would be to create indeterminate liability to a tax authority anytime the value of a third party's property was decreased due to the act or omission of a defendant. In my opinion, this is precisely the type of liability of "an indeterminate amount for an indeterminate time to an

> indeterminate class" that the Supreme Court has explicitly warned against.
>
> 25. For all the above reasons, I conclude that the allegations made in the proposed amendments are doomed to fail.

STANDARD OF REVIEW

[9] This is an appeal of the order of a Prothonotary under Rule 51. All parties are in agreement that, because the questions raised on the Plaintiffs' motion for leave to amend their Statement of Claim are vital to the final issue in the case, Prothonotary Lafrenière's order should be reviewed *de novo* by the Court: *Merck & Co., Inc. v. Apotex Inc.*, [2004] 2 F.C.R. 459 (F.C.A.).

[10] The Court agrees. The amendments sought by the Plaintiffs raise new causes of action in tort. They seek to add a claim for pure economic loss and a claim for interference with economic relations. In this regard, the amendments are vital to the proceedings.

AMENDMENTS – RULE 221

[11] There is also no disagreement between the parties regarding the rules and principles that the Court should apply when considering the proposed amendments.

[12] The Court must consider whether the proposed amendments, if already part of the proposed pleading, would be capable of being struck under Rule 221 of the *Federal Courts Rules, 1998.*

[13] Rule 221 states, in relevant part, as follows:

221. (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	**221.** (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(*a*) discloses no reasonable cause of action or defence, as the case may be,	*a*) qu'il ne révèle aucune cause d'action ou de défense valable;
…	…
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[14] Generally speaking, so long as there is a cause of action which would not plainly and obviously be struck out as futile, the proposed amendment should be allowed : *VISX Inc. v. Nidek Co.* (1996), 209 N.R. 342, [1996] F.C.J. No. 1721 (C.A.) at paragraph 16.

[15] The test for striking a pleading on the ground that it fails to disclose a reasonable cause of action is: "assuming that the facts as stated in the Statement of Claim can be proved, is it 'plain and obvious' that the plaintiff's statement of claim discloses no reasonable cause of action?": *Hunt v. Carey Canada Inc*., [1990] 2 S.C.R. 959. The issue raised is "whether there is a question fit to be tried, regardless of the complexity, or novelty, of that question," and that issue must be decided on the basis of the pleadings as they stand or as they might be amended: *Kripps v. Touche Ross and Co.*, [1992] B.C.J. No. 1550 (B.C.C.A.).

[16] It is also well-recognized that the Court is required to take a generous approach to amendments so that, as a general rule, an amendment should be allowed at any stage of an action for the purpose of determining the real questions of controversy between the parties, provided that the proposed amendment will not result in injustice to the other party, which cannot be compensated by an award of costs: *Almecon Industries Ltd. v. Anchortek Ltd.* (1999), 85 C.P.R. (3d) 216 (F.C.T.D.).

[17] Notwithstanding the generous approach in determining whether an amendment should be allowed, the Court should consider whether the amendment, if it was already part of the proposed pleading, would be struck under Rule 221. Proposed amendments to pleadings in circumstances where no cause of action is disclosed will be refused: *VISX Inc. v. Nidek Co.* (1996), 72 C.P.R. (3d) 19 at 24 (F.C.A.)

INTERFERENCE WITH ECONOMIC RELATIONS

[18] As Prothonotary Lafrenière noted in his reasons, the tort of intentional interference with economic relations requires a plaintiff to prove:

1. An intention to injure the plaintiff;
2. Interference with another's method of gaining his or her living or business by illegal means; and
3. Economic loss caused thereby.

[19] The authority for these criteria is *Lineal Group Inc. v. Atlantic Canadian Distributors Inc.* (1998), 42 O.R. (3d) (Ont. C.A.).

[20] My review of the allegations in the Statement of Claim reveals no factual basis to support an intention by any of the Defendants to injure the Plaintiffs by causing a decrease in the land values and a consequential decrease in the tax base. The allegation is simply not pled.

[21] In my view, then, no intention to injure the Plaintiffs is shown because the alleged unlawful acts were clearly not directed against the Plaintiffs for the purpose of interfering with economic relations.

[22] The Plaintiffs are really complaining about the consequences of the alleged actions of the Defendants, which consequences were clearly not intended by the acts or omissions that are pled.

[23] As Prothonotary Lafrenière pointed out, the proposed amendments do not allege that the Defendants either constructed or maintained the dikes with the intention of targeting the Plaintiffs so as to reduce their tax revenues.

[24] The Plaintiffs seek to avoid this obvious problem by suggesting that the requisite intention can somehow be inferred and that the law is sufficiently unsettled that the Court should allow the amendment at this stage.

[25] I cannot bring the pleadings in this case within the case law relied upon by the Plaintiffs. It seems to me that Prothonotary Lafrenière was clearly correct to rely upon the decision of the Nova Scotia Court of Appeal in *Cheticamp Fisheries Co-op Ltd. v. Canada* (1995), D.L.R. (4th) 121 which has been cited and approved in subsequent decisions. See, for example *Cavendish Promotions Inc. v. Tourism Assn. of Prince Edward Island*, [1998] P.E.I.J. No. 63 (S.C.); and *HMC Group Inc. v. Nova Scotia (Attorney General)*, [2000] N.S.J. No. 335 (S.C.).

[26] In the present case, there is no allegation or factual basis to support a claim that the Defendants acts or omissions were intended to injure the Plaintiffs' tax base.

[27] Considering the issue *de novo*, I have to conclude that the necessary intention for the tort of intentional interference with economic relations is entirely lacking in this case. Failure to plead all of the essential elements of the tort means that it is plain and obvious that these proposed amendments do not disclose a reasonable cause of action within the meaning of the jurisprudence.

CLAIM IN NEGLIGENCE FOR PURE ECONOMIC LOSS

[28] The Plaintiffs advance several arguments as to why their proposed amendments related to pure economic loss should be allowed. The Plaintiffs acknowledge that, in order to succeed with this amendment, they must show that such a claim either falls within a pre-existing category in which a duty of care has been recognized, or they must establish that a duty of care exists between

the parties to this claim and should be recognized as a new category of pure economic loss that is capable of recovery.

Established Categories

[29] In *Canadian National Railway Co. v. Norsk Pacific Steamship Co.* (1992), CanLII 105 (S.C.C.), [1992] 1 S.C.R. 1021, at p. 1049, the Supreme Court of Canada identified five categories of negligence claims for which a duty of care has been found with respect to pure economic loss, each of which involved different policy considerations. See *Design Services Ltd. v. Canada*, 2008 S.C.J. No. 22 at paragraph 31.

[30] Of these five categories, the Plaintiffs say that their proposed amendments qualify under two of them: (1) The Independent Liability of Statutory Public Authorities; and (2) Relational Economic Loss.

(1) Independent Liability of Statutory Public Authorities

[31] In order to find recovery for economic loss the Plaintiffs must show that the relevant statute creates a private law duty owed to the Plaintiffs on top of the public law duty. See *Kamloops (City of) v. Nielsen*, [1984] 5 W.W.R. 1 at paragraph 91.

[32] In order to establish a private law duty in this case the Plaintiffs point out that, under section 2 of *The Water Rights Act*, c.c.s.m. c. W80 the Province of Manitoba has exclusive jurisdiction over all water in the province.

Property in water	**Propriété de l'eau**
2. Except as otherwise provided in this Act, all property in, and all rights to the use, diversion or control of, all water in the province, insofar as the legislative jurisdiction of the Legislature extends thereto, are vested in the Crown in right of Manitoba.	2. Sauf disposition contraire de la présente loi, la propriété de l'eau de la province et tous les droits se rapportant à son utilisation, à sa dérivation ou à sa régularisation sont assignés à la Couronne du chef du Manitoba, dans la mesure où la compétence législative de la Législature s'y étend.

[33] The Plaintiffs also rely upon section 286 of *The Municipal Act* c.c.s.m. c.M225 which makes it clear that the land upon which a municipal road in found is vested in the Government of Manitoba, and section 287 of the same statute also provides that municipalities have the direction, control and management of a road allowance, and this must include the municipal defendants in the present case.

[34] Most important, however, is the fact that both Manitoba and the municipalities are governed by the IBWTA which explicitly provides that international natural watercourses cannot be blocked or diverted, and that injury from any such action gives rise to “the same rights … and legal remedies”:

Interference with international waters	**Altération des eaux internationales**

4. (1) Any interference with or diversion from their natural channel of any waters in Canada, which in their natural channels would flow across the boundary between Canada and the United States or into boundary waters, as defined in the treaty, resulting in any injury on the United States side of the boundary, gives the same rights and entitles the injured parties to the same legal remedies as if the injury took place in that part of Canada where the interference or diversion occurs. (Plaintiffs' emphasis)	4. (1) Toute altération, notamment par détournement, des voies navigables du Canada, dont le cours naturel coupe la frontière entre le Canada et les États-Unis ou se jette dans des eaux limitrophes, au sens du traité, qui cause un préjudice du côté de la frontière des États-Unis, confère les mêmes droits et accorde les mêmes recours judiciaires aux parties lésées que si le préjudice avait été causé dans la partie du Canada où est survenue l'altération.
Other waters	**Autres cas**
12. (1) Except in accordance with a licence, no person shall construct or maintain, either temporarily or permanently, any remedial or protective work or any dam or other obstruction in waters flowing from boundary waters, or in downstream waters of rivers flowing across the international boundary, the effect of which is or is likely to raise in any way the natural level of waters on the other side of the international boundary.	12. (1) Nul ne peut, sauf en conformité avec une licence, établir ou maintenir de façon temporaire ou permanente, dans des eaux qui sortent des eaux limitrophes ou dans des eaux en aval de la frontière internationale des rivières transfrontalières, des ouvrages de protection ou de réfection, ou des barrages — ou autres obstacles faisant obstruction — de nature à exhausser, de quelque façon que ce soit, le niveau naturel des eaux de l'autre côté de la frontière.

[35] The Plaintiffs point out that they have alleged in their Statement of Claim that the road allowance was constructed as a dike by the municipal defendants or with their knowledge and consent. It is alleged that the actions were done for the sole and explicit purpose of blocking water

flowing in natural watercourses from entering Canada with the knowledge that the water would be turned back to the United States and cause damage to the Plaintiffs. It is apparent that there is specific legislation governing the issues which arise in this case. The municipal defendants have direction and control over municipal road allowances and drains. It is alleged that the Defendants, negligently, in face of the IBWTA and in face of a common law duty, constructed or acquiesced in the construction of a dike.

[36] It is also alleged in the Statement of Claim that the Province of Manitoba was informed by the Plaintiffs for many years that the dike was causing extensive flooding within the townships and cities with resulting loss. The Government of Manitoba specifically has control over and ownership of all waters within the Province. It is alleged that the inaction of the Province, in light of the municipal and/or private individuals' diversion of water without licenses is negligent.

[37] It is submitted that the private law duty of care alleged in the present case is analogous or comparable to that recognized in *Kamloops* and subsequent decisions of the Supreme Court of Canada. It is alleged that the actions or inactions of the Defendants, made in clear contravention of the federal statute, were negligent. Just as in *Kamloops*, the defendants in this case had and have the authority and power to take action to have the dike removed or altered but have not. In finding negligence in this case, the Plaintiffs say that the Court would not be substituting its view of a policy decision, but rather sanctioning the Defendants for negligence in failing to carry out mandatory policy specified in legislation.

[38] A statutory breach does not automatically give rise to a cause of action: *R. v. Saskatchewan Wheat Pool*, [1993] 1 S.C.R. 205. The Plaintiffs must show that the statute in question creates a private law duty to the Plaintiffs alongside the public law duty. In order to do this, the Plaintiffs rely heavily upon *Kamloops* for the existence of a private law duty in this case against Manitoba.

[39] In my view, however, *Kamloops* is not analogous to the present situation. In *Kamloops*, the city had made a policy decision to regulate construction and so had a duty to enforce its own by-law.

[40] The court in *Kamloops* made it clear that "economic loss will only be recoverable if as a matter of statutory interpretation it is a type of loss the statute intended to guard against." (para. 91)

[41] I cannot see that, as regards Manitoba, the private law duty of care is in any way analogous on comparable to that recognized in *Kamloops* and subsequent decisions of the Supreme Court of Canada relied upon by the Plaintiffs.

[42] In my view, the references in the Statement of Claim to section 4 of the IBWTA and section of the *Water Rights Act* do not impose a statutory obligation on Manitoba to institute effective measures to prevent the ongoing and continuing damage to the Plaintiffs. Allowing for the same rights and remedies as exist in Canada does not impose a private duty, and the pleadings do not claim otherwise.

[43] Manitoba has not, and nor do the Plaintiffs allege, interfered with or diverted water from its natural channel or constructed or maintained any remedial or protective work pursuant to subsection 4(1) and 12(1) of the IBWTA.

[44] As regards the municipal defendants, I cannot see how the provisions relied upon under the IBWTA impose the kinds of obligations that give rise to a duty of care for economic loss owed to the Plaintiffs. In the words of Justice Rothstein in *Design Services*, neither Manitoba nor the Municipal defendants in this case are "inspecting, granting, issuing or enforcing something mandated by law." (para. 32) Once again, there is no analogy with the *Kamloops* case. There is nothing in the present case to suggest that any of the Defendants owed a private law duty of care to the Plaintiffs or that the loss claimed by the Plaintiffs was the type of loss that the legislation in question was intended to guard against.

[45] For these reasons, the proposed amendments that seek to recover for pure economic loss on the basis of an independent liability of the public statutory authorities concerned are destined to fail and so should not be allowed.

(2) Relational Economic Loss

[46] As an alternative, the Plaintiffs seek to found their amendments upon relational economic loss in the sense referred to in *Design Services* at paragraph 33. Such loss occurs when "the defendant negligently causes personal injury or property damage to a third party. The plaintiffs

suffers pure economic loss by virtue of some relationship, usually contractual, it enjoys with the injured third party or the damaged property."

[47] My review of the jurisprudence leads me to the conclusion that the amendments proposed by the Plaintiffs do not fall within the established categories of relational economic loss.

[48] It is true that, in *Bow Valley Husky (Bermuda) Ltd. v. Saint John Ship Building Ltd.*, [1997] S.C.J. No. 111, the Supreme Court of Canada confirmed that the categories of relational economic loss are not closed and that new categories might be justified by policy considerations. The Supreme Court of Canada also warned, however, that "courts should not assiduously seek new categories; what is required is a clear rule predicting when recovery is available." (para. 50)

[49] In the present case, the Plaintiffs have attempted to qualify their proposed amendments for relational economic loss by likening their interest in the damaged property to that of a mortgagee or a joint venture. They also refer to a "contract-like" relationship with the land owners. There is no legal support for these comparisons and, in my view, they are clearly not tenable on the facts of this case. Also, I see no merit in the Plaintiffs' assertion that their interest is a representative one advanced on behalf of tax payers. There is nothing in the Statement of Claim to support such an assertion.

[50] I must conclude, then, that the proposed amendments fall well outside the established category of relational economic loss as that concept is presently understood by Canadian jurisprudence and would not survive a motion to strike.

New Category

[51] As a further alternative, the Plaintiffs say that the proposed amendments should be allowed on the basis of the two-part test set out in *Anns v. Merton London Borough Council*, [1977] 2 All E.R. 492 (H.L.) which requires the court to consider whether there is a *prima facie* duty of care owed by the Defendants to the Plaintiffs and, if there is such a duty of care, whether there are policy considerations outside the scope of the relationship between the parties that preclude recovery. See *1340232 Ontario Inc. (c.o.b. TNT Exercise & Leisure Outlet Inc.) v. St. Lawrence Seaway Management Corp.*, [2004] F.C.J. No. 257 at paragraphs 23 and 24.

[52] As regards the first part of the *Anns* test, the Plaintiffs have not established that foreseeability and proximity are present in this case. The Plaintiffs are seeking damages for pure economic loss arising out of the flooding of property that belongs to third parties. The situation is not all that different from the *St. Lawrence Seaway* case. I do not think there can be any duty of care on these facts.

[53] In addition, as regards policy considerations, it is difficult to see where it would all end if pure economic loss were allowed on these facts. As Prothonotary Lafrenière pointed out in his

reasons, the proposed amendments would create an indeterminate liability for the loss of tax revenues every time a third party's property was decreased in value by the acts or omissions of others. As the Supreme Court of Canada has pointed out in *D'Amato v. Badger*, [1996] 2 S.C.R. 1071 at paragraph 18, the Court should guard against allowing "liability in an indeterminate amount for an indeterminate time to an indeterminate class."

[54] Once again, I have to find that the Plaintiffs' claim for pure economic loss on this ground is doomed to fail.

ORDER

THIS COURT ORDERS AND ADJUDGES that

1. For reasons given, the motion is dismissed with costs to the Defendants.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-745-04
STYLE OF CAUSE:	**PEMBINA COUNTY WATER RESOURCE DISTRICT, CITY OF PEMBINA, NORTH DAKOTA, TOWNSHIP OF PEMBINA, NORTH DAKOTA, TOWNSHIP OF WALHALLA, NORTH DAKOTA, CITY OF NECHE, NORTH DAKOTA, TOWNSHIP OF NECHE, NORTH DAKOTA, AND TOWNSHIP OF FELSON, NORTH DAKOTA** **and** **GOVERNMENT OF MANITOBA, RURAL MUNICIPALITY OF RHINELAND, RURAL MUNICIPALITY OF MONTCALM, RURAL MUNICIPALITY OF STANLEY, and TOWN OF EMERSON, MANITOBA**
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	10-NOV-2008
REASONS FOR ORDER AND ORDER:	RUSSELL J.
DATED:	December 17, 2008

APPEARANCES:

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Dean Giles	Rural Municipality of Rhineland and Rural Municipality of Stanley

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