

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LEE KENNEDY and BEKALLA YUSUF

Plaintiffs

and

TORONTO HYDRO-ELECTRIC SYSTEM LTD

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**TRANSCRIBED ENDORSEMENT**

April 23, 2009

T. Charney for Plaintiffs  
R. Winsor for Defendant  
D. Dimmer for Third Party, City of Toronto  
E. Bowker for Third Party, Gonte Construction

This motion for certification is on consent of the defendant, and of the Third Party Gonte Construction Limited and is not opposed by the Third Party, City of Toronto. I am satisfied that the requirements for certification in S. 5(1) have been met. The statement of claim discloses causes of action in negligence, nuisance and trespass. There is an identifiable class of residents, owners and others who on July 20, 2008 were affected by the fire and explosion at 2 Secord Avenue. The class is defined by objective criteria and there is a rational relationship between the class and the common issues. I initially expressed some reservations about certifying a common issue on aggregate damages but I am satisfied that there is a reasonable likelihood that the damages can be determined in part, in this manner. This is of course for the trial judge to determine with the amendments discussed with counsel in court today. I approve the common issues. Certification of this action will achieve the three goals of the *Class Proceedings Act* and is the preferable procedure for advancing the claims of class members. The proposed representative plaintiffs are suitable and the litigation plan is acceptable.

Lax, J.