

Report on **Business**

Port Colborne, Ont., residents awarded \$36-million in suit against Inco

The residents, in a class action, claimed elevated levels of nickel negatively affected the values of their properties

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Residents of Port Colborne, Ont., whose properties were contaminated by emissions from a nickel refinery, have won a lawsuit against Inco.

An Ontario Superior Court justice released a decision Tuesday in Welland, Ont., awarding about 7,000 households a total of \$36-million.

The residents, in a class action, claimed the elevated levels of nickel negatively affected the values of their properties.

The claim was for the decrease, or lack of increase, in the values of properties from September 2000 to date.

Inco acknowledged that its Port Colborne refinery, which ceased nickel emissions in 1984, was the source of the vast majority of the elevated levels of nickel found in the area.

The company argued the limitation period to make a claim had expired, but Justice J.R. Henderson ruled that the extent of contamination wasn't generally known until early 2000.

"Extremely pleased and almost in shock," is how lawyer Eric Gillespie, who represented the homeowners, described his clients following the decision.

Mr. Gillespie said households in the area closest to the refinery were each awarded \$23,000.

"That's a very significant award for any family to receive in a claim of this nature," he said.

Judge Henderson did not award any punitive damages in the case.

"Inco's conduct in this case does not justify an award of punitive damages," he wrote.

"Clearly, Inco's conduct was wrong in law and has caused widespread damage that has affected several thousand people," he added. "However, Inco's conduct has not been so malicious or oppressive that it offends the court's sense of decency."

The Inco refinery started operations in Port Colborne, a city of about 18,000 located on the north shore of Lake Erie, in 1918.

Its primary business for many years was nickel refining, but that part of Inco's operations ceased in 1984.

Since that time, Inco has continued to operate in Port Colborne, but no nickel refining has been done.

Judge Henderson's decision noted that throughout its history, Inco has generally complied with environmental regulations.

Inco reduced emissions of nickel from its refinery over time, and eventually ceased nickel emissions altogether in 1984.

After the September 2000 disclosure of nickel contamination, Inco participated in, and paid for, studies and the remediation of 24 properties.

Mr. Gillespie noted that Inco can appeal the decision.