

DATE: 20061218
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COURT OF APPEAL FOR ONTARIO

**RE: KEITH RUSSELL, CHARLES LAWRENCE R. RUSSELL, and
RAYMOND KENNETH M. RUSSELL by their Litigation
Guardian, Donna Russell, WAYNE ARTHUR RUSSELL and
DONNA RUSSELL, personally (Appellants/Plaintiffs) v. THE
CORPORATION OF THE TOWN OF PARRY SOUND
(Respondent/Defendant)**

BEFORE: O'CONNOR A.C.J.O., SIMMONS and JURIANSZ J.J.A.

**COUNSEL: Brian Murphy
for the appellants**

**Michael Miller
for the respondent**

**HEARD &
ENDORSED: December 18, 2006**

**On appeal from the judgment of Justice Blenus Wright of the Superior Court of
Justice dated June 7, 2004.**

APPEAL BOOK ENDORSEMENT

[1] The appeal is dismissed.

[2] The appellant gained access to the railway tracks from lands owned by the School Board not the Town of Parry Sound. We agree with the trial judge that the Town did not have a duty to build a fence that would have prevented that specific access.

[3] In addition, the trial judge found that even if the Town had built the fence that the appellant argues it should have, that fence would not have prevented access to the tracks. That finding is entitled to deference.

[4] The appeal is, therefore, dismissed. Costs to the respondent in the amount of \$12,000, inclusive of GST and disbursements.