less than honourable conduct - despite some suggestions raised by some objectors' counsel. The affidavit of Mr. Bouchard of Gowling described the iterative process of negotiations with Canada's counsel over several months which required compromises between the parties to end up with the Settlement.

(6) Communication with Class Members

[115] Despite criticism from some objectors that Class Counsel had not visited all of the more than 600 First Nation communities as well as all Inuit and Metis communities to consult, the record established that teams of Class Counsel made extensive efforts to communicate with Class Members. The affidavits of Messrs. Bouchard and Shoemaker of Gowling speak to those efforts.

[116] Those efforts appear to have been largely successful as evidenced by the expressions of support and even some of the objections.

C. *Expressions of Support and Objections*

(1) Support

[117] The details of support have already been discussed. It is quantitatively and qualitatively significant. It comes from individuals and Indigenous organizations, both at the national, regional and local levels. It is the support of these individual Class Members that is most important to consider.

[118] Individuals, both in written form and orally before this Court, spoke of the needs, the benefits, the certainty and the healing of the Settlement.

[119] The Court was assisted by the meaningful expressions of support. The heartfelt expression “get it done” permeated that support.

(2) Objections

[120] The meaningful expressions of objection also were of great assistance to the Court. The Court recognizes that it is not easy to come forward and express sentiments respectfully when sometimes fueled by the very injustice the Settlement is designed to address.

[121] It should be of considerable comfort to many objectors that the process of objection worked - it made meaningful change possible. The time for claiming, while well intended, was extended from one year to two and a half years through an amendment to the Settlement, unquestionably as a result of objection.

[122] Some objectors felt strongly about their position - some may have been willing to take the risk of a failed settlement. That is their right but they cannot impose their will on the Class. They have the right to opt out and take their own risks, but they cannot impose that risk on the Class as a whole if the Settlement is otherwise fair, reasonable and in the best interests of the Class.

[123] As reiterated in *Toth* at para 80:

> … The Court's role is to determine whether the proposed Settlement is "fair, reasonable and in the best interests of the class as a whole, not whether it meets the demands of a particular class member" [citation omitted].

[124] As recognized in the case law, the opt-out right is the relief valve for individual concerns. If the threshold of opt-out is met, this Settlement is terminated and the Approval Order is vacated unless Canada waives this condition. As stated in *Parsons v Canadian Red Cross Society*, 1999 CarswellOnt 2932 at para 79, 91 ACWS (3d) 351 (Sup Ct J):

> … The fact that a settlement is less than ideal for any particular class member is not a bar to approval for the class as a whole. The *CPA* mandates that class members retain, for a certain time, the right to opt out of a class proceeding. This ensures an element of control by allowing a claimant to proceed individually with a view to obtaining a settlement or judgement that is tailored more to the individual's circumstances. …

[125] In a case involving so many over such a long period, over such a vast area, objection is to be expected. Settlements are not perfect; compromise is not easy. Objections may be reasonable but may be reasonably counterbalanced by other elements of the Settlement.

[126] As often said, it is not for the Court to send the parties back to fashion the agreement that the Court thinks best. What is required is that the Settlement taken as a whole in its context falls within that zone of reasonableness previously discussed.

[127] To round out this section, the Court comments on some of the areas of objection earlier identified. The fact that an issue is not discussed here is not an indication that it was ignored or misunderstood.

[128] Timing of claims process: This objection to the one-year claim filing requirement was one of the most consistent issues of objection. It was a major impediment to be addressed. As seen by the amendments to the Settlement, it was revised in a reasonable fashion to two and a half years.

[129] Release: There was concern expressed that the proposed release affected collective Aboriginal, treaty or other rights. The Release, as admitted publicly by both parties, does not touch any such rights. It is a tort based claim related to the release of individual claims arising from Survivor Class Members' experiences in Indian Day Schools.

[130] Jurisdiction/Quebec Code: These issues were raised by a counsel on behalf of one or two objectors. The question of this Court's jurisdiction is well-settled as seen in this Court's approval of a number of settlements of tort-based claims against the Crown in cases such as *Ross, Roy, and Satalic v Her Majesty the Queen*, Federal Court Action Number T-370-17, *Merlo* and *Riddle*. The objection starts from a fundamental misapprehension of this case. The Court's role is to approve a settlement between the parties, not to impose terms. It is the parties' agreement. The argument made that the Settlement somehow infringes Quebec law was not briefed or made out. For those who do not or cannot accept the Settlement, they have the right to opt out.

[131] Language: This is in reality a multi-language case; two of the representative plaintiffs are trilingual. Translation services have been available and documents were available in the official languages and some of the Indigenous languages. Translation is an ongoing exercise as documents are approved. Any errors in translation have been corrected if possible. Gowling has available at the very least bilingual personnel in the official languages.

[132] Claims complexity: The process is intended to be easy and, as detailed earlier, claimants are to benefit from all reasonable and favourable inferences and doubt is to be resolved in favour of the claimants. If the complexity of the claim form proves to be a meaningful problem, Class Counsel advised the Court that it can come back to the Court to address any issues. The Court, by retaining jurisdiction, is in a position to assist.

[133] Differences from the IRSS: Several objectors wished that the Settlement more closely followed the IRSS model in a number of respects. However, this Settlement attempted a new model learning from the negative experiences of the IRSS. What some have seen as the benefits of the IRSS are seen in a negative light by others.

[134] The departures from the IRSS model cannot be said to be unreasonable. It would have been unreasonable to perpetuate some of its acknowledged abuses and difficulties. Even such organizations as the Assembly of First Nations have recognized a number of issues with the IRSS model. The Indian Day School model takes a different approach.

[135] Legal Counsel: This issue was a recurring theme particularly from objectors who supported or were inspired by legal counsel and who argued that they should be able to choose their own counsel. The role of Class Counsel (indeed counsel generally) is not to provide psychological help. This is left to other health and cultural resources identified in the affidavits of Chief Roger Augustine and Chief Norman Yakelaya.

[136] The Settlement attempted to avoid the problems of the Independent Assessment Process in IRSS and its trial-like proceeding. This is intended to avoid over lawyering of the claims process.

[137] Again, what is seen as a problem in having Class Counsel assume the post-settlement role is seen by many as a benefit. Free legal assistance is on balance a positive thing. Class Counsel will be able to help with document collection and other processing which was of concern to some objectors.

[138] Gowling is a large multi-jurisdictional firm. The Settlement can be said to put under one firm that which would have been done under the consortium model of several smaller firms usually present in this type of litigation. Gowling also has contacted and developed a list of six firms that can act as allied counsel in other parts of the country where it may need assistance. The plea by some of the law firms who are themselves excluded from the settlement process that they should be paid to help individuals apply for compensation or otherwise be Gowling's representative is untenable and not within the Court's jurisdiction.

[139] In the course of the hearing and the pleadings filed, issues arose with respect to some of the "excluded law firms" and their efforts to have Class Members sign retainers. There were issues as well as to whether some of the misinformation which seemed present for some Class Members may have emanated by erroneous communications from these firms.

[140] The Court record (Canada's motion record) contains correspondence with the profession's provincial regulators. It is not for this Court to deal with these issues but the Court file is public and is available to the regulators if deemed by them necessary.

[141] Relevant to this Court's function is that, contrary to some opposition, Class Members can have their own counsel. However, they are likely to have to pay for that which is free from Gowling. The necessity of Court approval before retaining other counsel is designed not to limit choice but to ensure that some of the past problems with such retainers do not occur again.

[142] Emotional and other support: There seemed to be some misunderstanding as to these issues. Long-term emotional support and the ability for Class Members to "truth-tell" are matters intended to be dealt with under the Legacy Fund. The Fund and the operation of the corporation will be directed by Indigenous survivors and family members for Class Members. In addition, the affidavits of Chief Augustine and Chief Yakelaya spoke to the immediate health and wellness support available to Class Members through helplines, counselling services through the Non-Insured Health Benefits Program, friendship centres in urban settings, and health workers in many Indigenous communities.

[143] Many of the points raised in the objections have been addressed - many of the points made were because of a lack of understanding of the operation of the Settlement. This is hardly surprising given its complexity.

[144] Moreover, not all objectors will be satisfied and it will be for them to decide whether to participate in the process or opt out.

VI. Conclusion

[145] For all these reasons, this Settlement, which is fair and reasonable and in the best interests of the Class as a whole, will be approved in the form of Order issued with these Reasons.

[146] The Court retains jurisdiction over this case and specifically over the Order and Settlement. The Order specifies the retention of jurisdiction, the initial reporting requirements and may be amended as circumstances dictate.

"Michael L. Phelan"
Judge

Ottawa, Ontario
August 19, 2019

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2169-16
STYLE OF CAUSE:	GARRY LESLIE MCLEAN, ROGER AUGUSTINE,, CLAUDETTE COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON, MARGARET ANNE SWAN and MARIETTE LUCILLE BUCKSHOT v HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	MAY 13, 14 AND 15, 2019
REASONS FOR APPROVAL ORDER:	PHELAN J.
DATED:	AUGUST 19, 2019

APPEARANCES:

Mary Thomson Robert Winogron John Wilson Guy Régimbald Brian Crane, QC David Klein Angela Bespflug	FOR THE PLAINTIFFS
Catharine Moore Travis Henderson Sarah-Dawn Norris	FOR THE DEFENDANT
W.A. Derry Millar	COURT APPOINTED *AMICUS CURIAE*

SOLICITORS OF RECORD:

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Klein Lawyers Barristers and Solicitors Vancouver, British Columbia	
Attorney General of Canada Ottawa, Ontario	FOR THE DEFENDANT
WeirFoulds LLP Barristers and Solicitors Toronto, Ontario	COURT APPOINTED *AMICUS CURIAE*

TAB 15

Federal Court Cour fédérale

Date: 20230810

Docket: T-2169-16

Citation: 2023 FC 1093

Ottawa, Ontario, August 10, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

GARY LESLIE MCLEAN, ROGER AUGUSTINE, CLAUDETTE COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON, MARGARET ANNE SWAN AND MARIETTE LUCILLE BUCKSHOT

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

and

AUDREY HILL AND SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL

Moving Parties

ORDER AND REASONS

[1] A class action was instituted on behalf of survivors of Indian Day Schools. Canada and representatives of the survivors entered into an agreement to settle the class action. Pursuant to the settlement agreement, survivors could claim compensation.

[2] In the initial version of the settlement agreement, survivors had only one year to file their claims. Many survivors expressed the opinion that this period was too short. In response to this criticism, Canada and the representative plaintiffs agreed to extend that period to two and a half years. This Court then approved the settlement agreement. As a result, survivors had until July 13, 2022 to claim compensation.

[3] The Moving Parties, Audrey Hill and the Six Nations of the Grand River Elected Council, are asking this Court to extend this deadline to December 31, 2025. They say that insufficient efforts were made to inform survivors about the details of the claims process. They criticize the lack of support for survivors who wish to file a claim. They argue that the COVID-19 pandemic compounded these difficulties and prevented many survivors from making a claim.

[4] The Court dismisses the motion and refuses to extend the deadline.

[5] The Court rejects the Moving Parties' contention that the settlement agreement gives the Court a general power to extend the deadline. The agreement only provides for extensions in individual cases for a maximum of six months. The intention of the parties was that the claims process would then be closed.

[6] The Court also declines to exercise its supervisory jurisdiction to extend the deadline for filing claims. Supervisory jurisdiction can only be used in exceptional circumstances where the settlement agreement is not being implemented. It cannot be used to change the agreement. The Court carefully reviewed the evidence brought by the Moving Parties and found that the measures provided by the agreement with respect to notice and class member assistance were implemented. While additional forms of assistance could have been provided to survivors who wish to make a claim, this was not required by the agreement. The Moving Parties' contention that large numbers of survivors have been prevented from filing a claim is not supported by the evidence. Rather, approximately 185,000 survivors have made a claim within the deadline or the six-month extension period.

I. Background

[7] The present motion arises in the context of the settlement of a class action aimed at providing compensation to survivors of "Indian Day Schools."

[8] The Moving Parties are Audrey Hill and the Six Nations of the Grand River Elected Council [Six Nations or the Council]. Ms. Hill is herself a day school survivor and a member of the class. She also provided assistance to other persons in her community who wished to submit a claim for compensation pursuant to the settlement. Six Nations is the largest on-reserve First Nation community in Canada and the one with the most day schools. Its Council has provided assistance to community members who wished to submit a claim.

[9] The deadline to submit a claim was July 13, 2022. Class members could individually ask for an extension for special reasons until January 13, 2023. The Moving Parties are now seeking an order extending the deadline until December 31, 2025 for all class members, as well as an order for an independent assessment of the size of the class and the take-up rate. The plaintiffs and defendant oppose this motion.

[10] To provide the context in which this motion is brought, I will briefly summarize the settlement of residential schools class actions and explain in what respects the settlement of the present action differs. I will then outline how certain events during the implementation of the settlement of this action led the Moving Parties to bring this motion.

A. *Residential Schools and Day Schools*

[11] As the Supreme Court of Canada once said, "we cannot recount with much pride the treatment accorded to the [Indigenous] people of this country": *R v Sparrow*, [1990] 1 SCR 1075 at 1103. Residential schools are one of the darkest chapters of Canada's history. One of the aims of the residential school system was to encourage the assimilation of Indigenous children into non-Indigenous society. To this end, it was thought necessary to separate Indigenous children from their parents, families and communities. As the Court explained in *Canada (Attorney General) v Fontaine*, 2017 SCC 47 at paragraph 1, [2017] 2 SCR 205 [*Fontaine*]:

> From the 1860s to the 1990s, more than 150,000 First Nations, Inuit, and Métis children were required to attend Indian Residential Schools operated by religious organizations and funded by the Government of Canada. As Canada has acknowledged, this system was intended to "remove and isolate children from the influence of their homes, families, traditions and culture" ("Statement of Apology to former students of Indian Residential Schools" of the

> Right Honourable Stephen Harper on behalf of Canada, June 11, 2008 (online)). Thousands of these children were abused physically, emotionally, and sexually while at residential schools.

[12] A number of class actions were initiated on behalf of survivors of the residential schools. In 2006, many of these class actions were settled through the Indian Residential Schools Settlement Agreement [IRSSA]. One component of the IRSSA is the Independent Assessment Process [IAP], aimed at offering compensation to survivors who were victims of physical or sexual abuse at the residential schools. Survivors had five years to make a claim. They had to describe the abuse they suffered at an in-person hearing before an adjudicator.

[13] The IRSSA, however, did not address all wrongs committed by Canada with respect to the education of Indigenous children. It did not cover day schools operated by Canada in Indigenous communities. These schools were different from residential schools in that the students returned home every night and were not separated from their parents, families and communities. Nevertheless, day schools, like residential schools, were the backdrop of egregious cases of physical and sexual abuse. As Chief Hill of Six Nations states in his affidavit, day schools were

> . . . devastating for Indigenous individuals, families, and communities. Students were regularly subject to horrifying physical and sexual abuse, and were systematically punished and humiliated for nothing more than being who they were: Indigenous children. The negative effects of attending an IDS [Indian Day School] were profound and caused lasting damage [to] our people's self worth, mental and physical health, and their ability to lead safe and happy lives.

B. *The Present Class Action and Its Settlement*

[14] The plaintiffs began a class action on behalf of former day school students. The class action was certified on consent. Canada and the plaintiffs then negotiated a settlement, known as the Indian Day Schools Settlement Agreement [IDSSA or Agreement].

[15] The Agreement provides a basic amount of compensation to all former day school students. This is known as "Level 1" compensation and amounts to $10,000 per person. Canada provides an initial amount of $1.27 billion to fund Level 1 compensation, which can be increased to $1.4 billion if needed. Moreover, former students who were victims of physical or sexual abuse may receive compensation ranging from $50,000 to $200,000 (these are Levels 2–5). There is no upper limit to the total amount of compensation paid for claims at Levels 2–5. The claims process is entirely in writing. Contrary to the process under the IRSSA, there are no oral hearings. In this regard, section 9.03 of the Agreement states that the claims process is intended to be expeditious, cost-effective, user-friendly and culturally sensitive and aims at "mitigat[ing] any likelihood of retraumatization." Moreover, section 6.04 of the Agreement provides that class members will receive notice of the settlement in accordance with a notice plan appended to the Agreement. (Unfortunately, I must draw the attention to the low quality of the French version of several documents in this matter, in particular the notice plan.)

[16] In the initial version of the Agreement, one feature of the claims process was that class members had to file their claims within one year of the Implementation Date, defined as either

the end of the opt-out period or the exhaustion of any appeal process regarding the approval order.

[17] Canada and the plaintiffs sought approval of the Agreement pursuant to rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106. Many class members filed notices of opposition. One frequently mentioned ground was that the claims period was too short. Before the hearing of the motion for approval, Canada and the plaintiffs addressed this issue by amending the Agreement to extend the claims period to two and a half years. This was accomplished by amending the definition of "Claims Deadline," in section 1.01, to mean two years and six months (instead of one year) after the Implementation Date.

[18] In the context of the motion for approval, the parties submitted to the Court the expert report of Peter Gorham, who calculated that the best estimate of the number of persons who attended day schools from 1920 to 1994 was 190,000, and the best estimate of the number of such persons who were still alive in 2017 was 127,000. The latter figure appears to be the basis for the $1.27 billion fund appropriated for the payment of Level 1 claims and is described in certain documents as an estimate of the class size. However, the class is somewhat larger because the 127,000 figure does not include persons who passed away between 2007 and 2017, whose estates are entitled to make claims.

[19] My colleague Justice Michael Phelan approved the Agreement: *McLean v Canada*, 2019 FC 1075. He found that the Agreement, despite the objections and its alleged shortcomings, was fair and reasonable. He noted that the claims process was designed to avoid a number of issues

that arose in the administration of the IRSSA, in particular the traumatizing effects of oral hearings and the need for class members to retain lawyers. With respect to the claims deadline, he stated, at paragraphs 121 and 128:

> It should be of considerable comfort to many objectors that the process of objection worked – it made meaningful change possible. The time for claiming, while well intended, was extended from one year to two and a half years through an amendment to the Settlement, unquestionably as a result of objection.
>
> . . .
>
> Timing of claims process: This objection to the one-year claim filing requirement was one of the most consistent issues of objection. It was a major impediment to be addressed. As seen by the amendments to the Settlement, it was revised in a reasonable fashion to two and a half years.

[20] A motion by an objector for leave to appeal Justice Phelan's approval order was dismissed: *Ottawa v McLean*, 2019 FCA 309. Moreover, the Federal Court of Appeal dismissed appeals from Justice Phelan's refusal to grant Indigenous representative organisations leave to intervene at the approval hearing, largely because the concerns put forward by these organizations were already addressed by other opponents: *Nunavut Tunngavik Incorporated v McLean*, 2019 FCA 186; *Whapmagoostui First Nation v McLean*, 2019 FCA 187.

C. *Implementation of the Settlement Agreement*

[21] The Agreement's Implementation Date was January 13, 2020 and class members could then start to file their claims.

[22] Barely two months later, the COVID-19 pandemic forced all levels of government in Canada to implement drastic measures to fight the spread of the virus. Restrictions on indoor gatherings and travel were in place, with varying degrees of intensity, for a good portion of the following two years.

[23] The impacts of the pandemic were felt particularly strongly in Indigenous communities. COVID-19 risk factors are more prevalent in Indigenous communities. Many of these communities face challenges in accessing basic services, such as running water, affordable food or health services. High-speed Internet, which was critical in mitigating the impact of restrictions on gatherings, is often difficult to access in Indigenous communities.

[24] In July 2020, the Court approved an amendment to the notice plan. Argyle Public Relationships [Argyle], a communications firm that assists in the delivery of the plan, was to offer community support sessions in about 60 Indigenous communities. Because of the pandemic, these sessions did not start before January 2021.

[25] Meanwhile, the Moving Parties undertook to assist class members in the Six Nations community in various ways. In addition to filing her own claim, Ms. Hill assisted 23 persons in this process. In his affidavit, Chief Hill describes the Council's efforts to raise awareness about the Agreement and the claims process among the members of Six Nations and to provide assistance to those members who wished to file a claim. For more than a year, an employee of the Council was assigned full-time to assist Six Nations members who wished to file a claim, even though the Council had no obligation to do so and received no funding. This employee, Ms.

Martin, filed an affidavit in support of the present motion. In the weeks before the Claims Deadline, the demand for assistance grew considerably. The Council had to assign additional employees to assist community members.

[26] I pause here to commend the Moving Parties for having provided assistance to members of their community, while being under no obligation to do so. I am certain that many other persons or organizations across the country acted similarly, and they are to be commended as well.

[27] As a result of the knowledge and experience acquired while providing assistance to community members, the Moving Parties have raised a number of issues with respect to the Agreement or its implementation, which can be briefly summarized as follows:

- The class size estimate is unreliable, which makes it impossible to calculate the take-up rate;

- The notice plan does not include any form of in-person outreach to community members;

- The dissemination of information regarding the Agreement was hampered by the COVID-19 pandemic;

- There was a lack of personalized assistance for class members;

- Assistance provided by telephone is inappropriate given the nature of the harms at stake;

- These difficulties were compounded by the lack of Internet access, language barriers and low level of literacy in many Indigenous communities.

[28] According to the Moving Parties, given these shortcomings, a number of class members never made a claim, because they were not ready to do so before the Claims Deadline or were not even made aware of the claims process.

[29] As the Claims Deadline approached, a number of Indigenous representative organizations called on the parties to the Agreement to provide more time for former day schools students to file their claims. In particular, in December 2021, the Assembly of First Nations adopted a resolution calling on the parties to the Agreement to extend the Claims Deadline by one year. The shortcomings mentioned above were frequently relied on to justify the requests. However, the parties did not change the Claims Deadline.

[30] According to the data provided at the hearing, there are about 185,000 persons who filed a claim, about 7,300 of whom asked for an extension during the six months following the Claims Deadline. The parties to the Agreement have relied on the large number of claims filed to explain why they have not agreed to extend the Claims Deadline.

[31] In December 2022, the Moving Parties brought the present motion, seeking an extension of the Claims Deadline until December 31, 2025 and an independent determination of the take-up rate.

[32] I should also note that other class members have brought a motion seeking relief in respect of the issue of progressive disclosure, that is, where a class member files a Level 1 claim and later recovers memory of events justifying a claim at a higher level. Justice Phelan dismissed this motion, noting that the Agreement does not allow a class member to file more than one claim: *McLean v Canada (Attorney General)*, 2021 FC 987 [*Waldron*]. The Federal Court of Appeal recently heard an appeal from this decision, but has not yet rendered judgment.

II. Analysis

[33] To explain why I am dismissing this motion, I proceed in six parts. I first give an overview of the applicable legal framework. I then explain why I grant standing to the Moving Parties. Next, I analyze the interpretation of the Agreement put forward by the Moving Parties. In a fourth part, I review the Moving Parties' claim that the class members have been deprived of the benefits of the Agreement. The fifth and sixth parts pertain to the existence of a gap in the Agreement and to the Moving Parties' request for an assessment of the take-up rate.

A. *Legal Framework*

[34] The legal framework governing the resolution of this matter must first be explained. After recalling certain basic principles regarding class actions, I describe the circumstances in which the Court's supervisory jurisdiction may be invoked.

(1) Class Actions

[35] A class action is a procedural vehicle that allows a representative plaintiff to bring an action on behalf of members of a class, without the latter's explicit consent. Proceeding collectively promotes a more efficient use of judicial resources, enables the pursuit of claims that would otherwise be uneconomical and deters potential tortfeasors: *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at paragraphs 27–29, [2001] 2 SCR 534. The class action has become an essential tool to improve access to justice. A class action is often the only realistic way to pursue a claim and to obtain compensation.

[36] Because the representative plaintiff acts on behalf of the class members without their consent, class action legislation (in this case, the *Federal Court Rules*) provides safeguards aimed at ensuring that the actions of the representative plaintiff are in the interests of class members. To that end, the Court's approval is needed for certain crucial steps in the action.

[37] Most class actions, like most lawsuits, end in a negotiated settlement. By nature, a settlement involves mutual concessions between the parties. Because the concessions made by the representative plaintiff bind class members, rule 334.29 provides that a settlement must be

approved by the Court. The test for approving a settlement is not perfection; it is whether the settlement is fair and reasonable: see, for example, *Merlo v Canada*, 2017 FC 533 at paragraphs 16–18. Moreover, when approving a settlement, the Court cannot amend the agreement of the parties; it must approve it as is or reject it. Were it otherwise, parties would be discouraged from settling the matter, as their bargain could be upended by the Court.

[38] These principles remain relevant in spite of this case's historical and political ramifications. The plaintiffs have chosen to frame their claims in private law terms and to pursue them with the tools afforded by civil procedure. The Supreme Court of Canada twice considered the IRSSA. In *Fontaine*, at paragraph 35, it remarked that the IRSSA "is at root a contract, the meaning of which depends on the objective intentions of the parties." See also *JW v Canada (Attorney General)*, 2019 SCC 20 at paragraph 102, [2019] 2 SCR 224 [*JW*]. This also applies to the Agreement at issue in the present case.

(2) Supervisory Jurisdiction

[39] The Moving Parties are relying on the Court's supervisory jurisdiction over class actions. At every step of a class action, even after settlement, the Court retains jurisdiction to address unforeseen issues. This is a corollary of the Court's role of protecting unrepresented class members: *Fantl v Transamerica Life Canada*, 2009 ONCA 377 at paragraph 39. Depending on the circumstances, supervisory jurisdiction may flow from class action legislation, from the order approving a settlement or from the provisions of the settlement agreement itself: *Fontaine*, at paragraph 32; *JW*, at paragraph 114. In this case, the approval order makes it explicit that the Court retains jurisdiction.

[40] Supervisory jurisdiction "is limited and shaped by the terms of the agreement, once it is approved and determined to be fair, reasonable and in the best interests of the class": *JW*, at paragraph 120. In other words, courts cannot rely on their supervisory jurisdiction to amend a settlement agreement: *Fontaine*, at paragraph 59. Quite the opposite, when courts have exercised their supervisory jurisdiction, they made it clear that they were giving effect to the settlement agreement instead of amending it.

[41] For this reason, the circumstances in which courts may intervene have usually been described in terms of a breach of the settlement agreement. However, there does not appear to be any generally accepted formulation of a test for the exercise of supervisory jurisdiction. The cases that the parties brought to my attention can be roughly classified in three categories.

[42] First, as in *Fontaine*, the court may be asked to solve a dispute regarding the interpretation of a provision of the settlement agreement. This, of course, assumes that the matter does not fall within the exclusive jurisdiction of the adjudication processes created by the agreement.

[43] Second, courts may intervene in cases of serious failures to implement the settlement agreement. After reviewing the case law arising under the IRSSA, Justice Côté in *JW* found that this would apply only in very narrow circumstances, described as a "failure by the IAP adjudicator to apply the terms of the IAP Model, which amounts to failure to enforce the IRSSA": *JW*, at paragraph 140. Justice Abella, for her part, stated, at paragraph 35:

> Judges, in short, have an ongoing duty to supervise the administration and implementation of the Agreement, including the

> IAP. In exercising this supervisory role in the Requests for Directions context, judges can intervene if there has been a failure to apply and implement the terms of the Agreement. In determining whether this failure exists, Supervising Judges will focus on the words of the Agreement, so that the benefits promised to the class members are delivered.

[44] Third, courts may intervene to fill gaps in the settlement agreement. As Justice Côté noted in *JW*, at paragraph 141, "circumstances will inevitably arise that were not foreseen by the parties and are therefore not provided for in their agreement." She found that the Chief Administrator's lack of power to order the reopening of a case that was manifestly wrongly decided constituted a gap. She also relied on *NN v Canada (Attorney General)*, 2018 BCCA 105 [*NN*], where claims were reopened further to the discovery of new evidence. Likewise, Justice Abella recognized the presence of a gap as sufficient grounds for judicial intervention: *JW*, at paragraph 27.

[45] Of course, courts may also intervene where this is expressly contemplated by the settlement agreement, as exemplified by *Heyder v Canada (Attorney General)*, 2023 FC 28. The settlement agreement in that case contained a provision allowing the claims administrator to grant extensions of time of no more than 60 days, and the Court to grant an extension of time beyond 60 days. In contrast, the Agreement in this case does not provide the Court with any power to grant extensions of time beyond a set period.

B. *Standing*

[46] Before applying the foregoing principles to the case at hand, I must address the Moving Parties' standing to bring the present motion.

[47] Ms. Hill seeks leave to participate pursuant to rule 334.23(1), which reads as follows:

334.23 (1) To ensure the fair and adequate representation of the interests of a class or any subclass, the Court may, at any time, permit one or more class members to participate in the class proceeding.	**334.23 (1)** Afin que les intérêts du groupe ou d'un sous-groupe soient représentés de façon équitable et adéquate, la Cour peut, en tout temps, autoriser un ou plusieurs membres du groupe à participer au recours collectif.

[48] Six Nations, on its part, seeks public interest standing. The test for public interest standing comprises three prongs: "whether the case raises a serious justiciable issue, whether the party bringing the action has a real stake or a genuine interest in its outcome and whether, having regard to a number of factors, the proposed suit is a reasonable and effective means to bring the case to court": *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paragraph 2, [2012] 2 SCR 524 [*Downtown Eastside*]. These three factors are not "hard and fast requirements," but must be "assessed and weighed cumulatively" and "applied in a flexible and generous manner": *Downtown Eastside*, at paragraph 20.

[49] Given the conclusions I reach on the merits of the motion, the issue of standing is not determinative. I will therefore state only briefly the reasons why I grant standing to the Moving Parties.

[50] I will analyze the standing of Ms. Hill and Six Nations together. There is little case law regarding rule 334.23 or its equivalent in the class action legislation of other Canadian jurisdictions. Given the grounds put forward by Ms. Hill for her intervention, the *Downtown*

Eastside test, while not directly applicable, provides useful guidance as to what factors may be considered relevant.

[51] The first prong of the *Downtown Eastside* test does not translate into a full review of the merits; rather, the aim is to ensure that the matter may be decided according to legal rules: *Downtown Eastside*, at paragraph 42. Here, the Moving Parties argue that the impacts of the COVID-19 pandemic have resulted in a failure to deliver the benefits promised by the Agreement. They assert that their claims fall in the categories of circumstances that, according to *Fontaine* and *JW*, justify the exercise of the Court's supervisory jurisdiction. They say that they are not seeking an amendment to the Agreement. Whether their claim really amounts to this is a matter for the merits. To the extent described below, their claim is justiciable and not frivolous.

[52] Ms. Hill did not cease to be a class member when her claim was paid. She therefore falls within the ambit of rule 334.23. Moreover, both Moving Parties have the genuine interest required by the second prong of the *Downtown Eastside* test. Such a genuine interest is not the same as a legal right; otherwise there would be no need for public interest standing. Both Ms. Hill and Six Nations have devoted considerable time, energy and resources to helping class members. They have "engaged with the issues they raise" and have "sought unsuccessfully to have the issue determined by other means": *Downtown Eastside*, at paragraph 43. Moreover, the fact that Six Nations is an Indigenous governing body is an additional factor weighing in the balance on this prong of the test: see, by way of analogy, *Fontaine v Canada (Attorney General)*, 2014 BCSC 2531.

[53] I am also satisfied that there is no other practical and effective means of bringing the issue before the Court, given the position taken by the Plaintiffs. To the extent that the Moving Parties' case hinges upon the effects of the COVID-19 pandemic, the issue could not have been raised at the settlement approval hearing, which took place in 2019.

[54] To the extent that rule 334.23 requires Ms. Hill to prove that she is able to represent the class, I am satisfied that she has done so, given the quality of the evidence and submissions she provided.

[55] Lastly, reconciliation between the Crown and Indigenous Peoples is an additional factor that warrants granting standing to the Moving Parties. A significant number of Indigenous representative organizations, including the Assembly of First Nations, have expressed concerns with the claims process set out in the Agreement. Reconciliation requires that the merits of these concerns be analyzed, within the bounds of the Court's role.

C. *Interpretation of the Late Claims Provision*

[56] The Moving Parties first argue that the Court's intervention is necessary to give effect to the Agreement as they interpret it. According to them, the Agreement should be interpreted in a manner that gives the Court discretion to extend the Claims Deadline, without any precise limit. This interpretation is based on schedule B of the Agreement, which sets out the details of the claims process. Section 29 of schedule B reads as follows:

> 29. It is recognized that in some extraordinary cases, a Claimant may be entitled to relief from strict application of the Claims

> Deadline; however, in no event may the Claims Deadline be extended by more than six (6) months.

[57] The Moving Parties seek to read this section as providing two independent rights: an *extension* of the Claims Deadline by no more than six months; and a more general right to *relief from strict application* of the Claims Deadline, which would not be subject to the six-month limitation.

[58] This interpretation is untenable. Rather, there is every indication that section 29 creates only one right, namely, for an individual to apply for an extension of no more than six months. This is buttressed by the recognized methods of legal interpretation: ordinary meaning, context and purpose.

[59] In its ordinary meaning, a sentence composed of two parts separated by the conjunction "however" pertains to a single subject and the second part is a qualifier or restriction on the first part. The first part of section 29 gives individuals the right to apply for an extension of time. A logical reading of the second part is that is restricts the scope of the first part, that is to say, that an individual may apply for an extension for no more than six months. If the intention was to provide two separate rights, one wonders why the second part begins with "however" and is framed in negative terms. In addition, the fact that section 29 provides a right to "a claimant" seems to foreclose the class-wide extension requested by the Moving Parties.

[60] The immediate context also belies the interpretation put forward by the Moving Parties. Section 29 forms part of a section of schedule B called "deadline extension." Section 30 sets out

the process for requesting an extension, provides that such a request must be made within six months of the Claims Deadline and gives examples of grounds for making such a request. Section 31 provides that requests for extensions are decided by the Claims Administrator or, in certain cases, by the Exceptions Committee, and that their decisions are final. This immediate context does not support the idea that section 29 creates two distinct entitlements, as there is a single process. It is implausible that the parties to the Agreement would have created an entitlement without a process. Moreover, this context reinforces the idea that section 29 is concerned only with individual requests, not class-wide extensions, and that this Court has no role to play in implementing section 29.

[61] An additional indication that there is only one extension process and that it is limited to a six-month period is found in section 1 of the Agreement, which defines "Request for Deadline Extension" as

> . . . a request for an extension of the Claim Deadline made by a Survivor Class Member in accordance with Schedule I; however, no requests may be made more than six (6) months after the Claims Deadline . . .

[62] There is, however, no definition of the "request for relief" that the Moving Parties suggest is a distinct entitlement.

[63] The Moving Parties assert that the presumption of consistent expression and the presumption against surplusage require the Court to adopt their proposed interpretation. I disagree. While some care was obviously taken in the drafting of the Agreement, it has not gone through the rigorous drafting process typical of statutes. At the hearing of this motion, counsel

for the Moving Parties acknowledged that it was poorly drafted. It is plausible that the parties have used synonyms to refer to the same concept and that they repeated certain things to emphasize them. Therefore, I attach little weight to the use of two different expressions, "relief from strict application" and "extension," in section 29 of schedule B. In addition, the structure of section 29 closely parallels that of the definition of "Request for Deadline Extension," yet the latter uses the concept of extension instead of that of relief in the former. Likewise, the reference to "extraordinary cases" in section 29 does not appear to differ in substance from the somewhat more elaborate description of the relevant criteria in section 30. It is also obvious that parts of sections 28–31 are intended to be redundant and merely to repeat concepts or rules already set forth in the Agreement itself.

[64] Regard may also be had to the purpose of the provision. In this regard, the Moving Parties relied on the preamble to the Agreement, which states, in its relevant portion, that the parties "intend there to be a fair, comprehensive and lasting settlement of claims related to Indian Day Schools, and further desire the promotion of healing, education, commemoration, and reconciliation."

[65] While this is the overall purpose of the Agreement, one must also pay attention to the purpose of the specific provision at issue: *R v Safarzadeh-Markhali*, 2016 SCC 14 at paragraphs 27–28, [2016] 1 SCR 180. Sections 28–31 of schedule B aim at bringing closure to the claims process, with a limited additional window for class members who show valid reasons for not being able to meet the initial deadline. See, by way of comparison, *Lavier v MyTravel Canada Holidays Inc*, 2011 ONSC 3149 at paragraphs 35–36; *Myers v Canada (Attorney General)*, 2015

BCCA 95 [*Myers*] (dealing with the IRSSA). While such closure benefits Canada, class members received other benefits in exchange. Thus, section 29 should be given an interpretation that favours this purpose, instead of thwarting it. Yet, the interpretation put forward by the Moving Parties would effectively deprive Canada of the benefit of the Claims Deadline, as there would never be any closure to the claims process.

[66] Designing a claims process with a fixed deadline does not offend the more general purpose of reconciliation. I echo the words of Chief Justice Bauman of the British Columbia Court of Appeal in *Myers*, at paragraph 25:

> I acknowledge the profound importance of these objectives and the need to encourage their attainment. Still, the IRSSA is a settlement of massive litigation. The parties to it gained many advantages and made many compromises in consideration therefor. In particular, the respondents sought the certainty of a bright-line deadline for IAP claims. Granting an extension to these four appellants could potentially open the door to many more IAP claims. One must appreciate the holistic nature of the settlement agreement, and the give and take evidenced in it, before ignoring the clear terms of the document and sacrificing the certainty won by the respondents by acceding to this Request for Direction. That would take from the respondents a concession they won for a price in the agreement; it could also potentially compromise the equities struck between the parties in the overall negotiation process that led to and, forms the basis of, the IRSSA.

[67] To summarize, the Moving Parties' contention that section 29 of schedule B to the Agreement creates two distinct processes for extending the Claims Deadline is devoid of merit. Section 29 creates a single process and it is subject to an ultimate time limit of six months after the Claims Deadline. Therefore, the Moving Parties cannot rely on the provisions of the Agreement to justify the relief they are seeking in this motion.

D. *Failure to Deliver Benefits*

[68] Because the Agreement does not contain any provision allowing a class-wide extension of time beyond the six-month extension period, the Moving Parties can only succeed if they bring themselves within the parameters recognized by the case law for the exercise of the Court's supervisory jurisdiction. As explained above, the main ground for doing so has been described in a variety of ways, including the failure to deliver the benefits afforded by the settlement agreement. I will use the latter terminology.

[69] To demonstrate that there has not been a failure to deliver the benefits afforded by the Agreement in the present case, I will proceed in three steps. I will first describe the barriers to access to justice that inevitably arise in claims of this kind. I will then describe the measures contemplated by the Agreement to mitigate these barriers; in other words, I will attempt to delineate what was promised. Third, I will review the implementation of the Agreement to determine if these promises were kept or these benefits were delivered.

[70] It is often said that the supervising judge does not have the power to amend or vary the Agreement. Likewise, the exercise of supervisory jurisdiction does not amount to an appeal or a reconsideration of the settlement approval order. These constraints are reflected in the analysis that follows. The focus is on the benefits promised by the Agreement and whether these benefits were provided: *JW*, at paragraph 35. While additional measures can always be proposed to further improve access to the claims process, the Court cannot order them if the benefits of the Agreement have in substance been delivered.

(1) Barriers to Access to Justice

[71] In a class action like the present one, class members are likely to face important barriers to access to justice. Even when the class action is managed collectively, the individual issues are such that claims must be made individually and some sort of evidence is required. The barriers that arise in this context can be roughly classified in two categories: barriers related to the specific nature of the harm resulting from sexual abuse or serious physical abuse and barriers related to the specific circumstances of Indigenous communities.

[72] It is increasingly acknowledged that sexual assault causes insidious and long-lasting forms of trauma, including what is called post-traumatic stress disorder. In many cases, the memory of the events is repressed. Survivors may not fully appreciate the link between their psychological condition and the abuse. Realizing the situation is often accompanied by feelings of guilt and shame. Serious physical assaults may also give rise to some of these specific harms. Overcoming these barriers and disclosing the abuse takes time and, quite often, professional help. The law has gradually adapted to these realities. For example, the legislation of most provinces has been amended to remove limitation periods for claims based on sexual assault. Increasing attention is also being paid to the fact that the legal process may retraumatize survivors, for example by requiring them to describe the abuse they suffered or subjecting them to cross-examination.

[73] The circumstances of Indigenous communities give rise to another set of barriers. Indigenous persons may not be fluent in English or French and may have low levels of schooling

and literacy. Written materials may not be the best way of reaching out to an Indigenous audience. Word of mouth or the community radio may be much more effective. There may be little trust of, familiarity with or understanding of bureaucratic processes and the legal system. Many communities lack reliable access to high-speed Internet. For these reasons, providing meaningful notice to class members residing in Indigenous communities presents specific challenges, and communications strategies used with non-Indigenous Canadians may be entirely inappropriate. In saying this, I do not wish to minimize the capacity and agency of Indigenous persons; nevertheless, these issues are statistically more prevalent in Indigenous communities.

[74] The evidence brought forward by the Moving Parties bears witness to these barriers. In particular, Ms. Hill's own journey towards making her claim took more than a year. She initially thought that she was only eligible for a Level 1 claim. However, while trying to fill out her claim form, she experienced a feeling of mental block, which she recognized as a sign that there was something more. After she underwent traditional healing, she began remembering traumatic events that happened at day school. Recovering these memories caused her significant anxiety. She also experienced difficulty finding records and obtaining letters corroborating her story.

(2) What Was the Promised Benefit?

[75] A clear understanding of the benefits that the Agreement promised to class members in relation to these barriers is crucial to assess the Moving Parties' contention that these benefits were not delivered.

[76] There is every indication that the parties to the Agreement were fully aware of the barriers described above. Some of them arose conspicuously in the implementation of the IRSSA, despite efforts made to design a claims process adapted to the realities of the survivors.

[77] However, this does not mean that the Agreement promised the complete elimination of these barriers. This would be impossible. Rather, the parties bargained for a precise set of measures aimed at mitigating the impacts of these barriers on class members. These measures included a paper-based claims process that would not require survivors to testify before an adjudicator and the provision of free legal assistance by class counsel. On the other side of the bargain was a claims period shorter than in the IRSSA. The nature and sufficiency of these measures were discussed in the context of the settlement approval process. As we saw above, this resulted in the lengthening of the claims period from one year to two years and a half.

[78] As Justice Phelan noted when approving the Agreement, these measures are not perfect. In other words, they are not expected to completely overcome the barriers described above. It was certainly not expected that all class members would file a claim. What was promised was a reasonable process that included certain defined features aimed at mitigating the impact of these barriers. Thus, when assessing whether the benefits promised by the Agreement were delivered, the focus should be on whether the agreed upon measures were implemented. The fact that some of these barriers persist does not, without more, warrant the Court’s intervention.

[79] I will thus review the provisions of the Agreement regarding notice to class members and the provision of in-person assistance.

(a) *Notice Plan*

[80] Rule 334.34 provides that the representative plaintiff must give notice of any proposed settlement and of the Court's approval of a settlement, in a form approved by the Court. Section 6.04 of the Agreement provides that the parties will seek approval of the Court for a notice plan substantially similar to that appended as schedule F. Pursuant to section 6.05, Canada will fund the implementation of the notice plan. Justice Phelan approved the notice plan as part of the settlement approval order: 2019 FC 1074.

[81] The notice plan is divided in two phases. Phase one was intended to notify class members that a settlement had been reached and that the approval of the Court would be sought. After the settlement was approved, phase two aimed at informing class members of the claims process and the possibility of opting out of the settlement. The notice plan approved by the Court differs somewhat from schedule F to the Agreement and is more focused on phase two. Under the heading of "Effective Notice," the following excerpts aptly summarize what the plaintiffs undertook to do:

> The goal of Notice is to reach as many class members as is practicable in a clear, easily understandable manner, taking into account any special concerns about the education level or language needs of the class members. The notice must include: (1) contact information for Class Counsel to answer questions; (2) the address for the website, maintained by the Claims Administrator or Class Counsel and that provides links to the Settlement Agreement as amended, Notices of Certification and of Settlement Approval, motion materials for Settlement Approval and for Approval of Class Counsel Fees as well as other important documents in the case. The Notice of Settlement Approval must state all deadline dates, including those for the 90-day Opt Out period, the Implementation Date [to be updated as developments provide] and, if available, the period [start date/end date] within which claims

> forms will be available and will be accepted by the Claims Administrator.
>
> *Methods of Communication*
>
> Given the importance of unrepresented class members understanding and preserving their legal rights through either the claims process or the opt-out process, notice to all class members must be robust. As with the first phase notice, information regarding i) Settlement Approval including a summary of the Court's Decision, ii) Opt-Out process and date deadlines, and iii) anticipated Implementation Date will be communicated by email, telephone, facsimiles, community messaging; by television and radio; by social media as well as digital/internet advertising; and by letter mailing where required and practical. The goal of Notice is to reach as many anticipated class members as is practicable.
>
> *Language of Communication*
>
> […]
>
> Notice materials and Opt-Out forms will be made available in English, French, Cree, Ojibwe, Dene, Inuktitut and Mi'kmaq.

[82] Moreover, the notice plan contains a distribution of responsibilities between Class Counsel and Argyle. Class Counsel must send information to class members who have registered on Class Counsel's web site (numbering approximately 80,000 as of the date of approval) and to a broad range of Indigenous governing bodies and representative organizations. It must also continue "visits to local communities as Class Counsel may be invited to attend." Argyle, on its part, must maintain the web site, Facebook page and Twitter account and must develop content for a wide variety of media. Thus, beyond Class Counsel's duty to offer information sessions in Indigenous communities when invited, the notice plan does not require that individual, in-person notice be given to class members.

(b) *Class Member Assistance*

[83] Two measures were intended to provide class members with assistance in the claims process.

[84] First, with respect to legal advice, section 13.03(1) of the Agreement reads as follows:

> Class Counsel agrees that it will provide legal advice to Survivor Class Members on the implementation of this Settlement Agreement, including with respect to the payment of compensation, for a period of four (4) years after the Implementation Date.

[85] Section 13.03(2) states that this service will be provided at no cost to class members. This is also reflected in the short-form notice of settlement, which states that "Class Counsel will be available to assist you in the completion of Claims Forms at no cost."

[86] The second measure derives from an amendment to the notice plan in July 2020. The parties undertook to propose improvements to the notice plan after a few weeks of implementation. The amendment also reflected the demand for in-person assistance and the anticipated barriers resulting from the COVID-19 pandemic. According to this amendment, Argyle was to develop a Claimant Assistance Plan, pursuant to which 45-minute one-on-one, in-person assistance sessions were to be provided to class members in selected Indigenous communities over multi-day events. It was anticipated that approximately 11,000 class members could benefit from these sessions.

(3) Was the Benefit Delivered?

[87] This brings us to the crux of the case. Were class members deprived of the benefit of the agreement, either because of the COVID-19 pandemic or for other reasons?

[88] Like anyone seeking relief from the courts, the Moving Parties bear the burden of proof. It must be emphasized that the Moving Parties are not seeking any form of individual relief. It is true that, at the hearing, they insisted on an alternative form of relief that would direct the Claims Administrator to accept all individual claims beyond the Claims Deadline. While an individual decision would be made in each case, the Claims Administrator would be directed to presume that certain circumstances common to all class members, such as the COVID-19 pandemic, warrant an extension in every case. There is little practical difference between this and an order extending the Claims Deadline. In both cases, the relief sought is class-wide.

[89] It follows that the evidence justifying such relief must be class-wide as well. In other words, the Moving Parties cannot rely merely on evidence that a discrete number of class members were individually deprived of the benefit of the Agreement, as in the *JW* and *NN* cases. Rather, to justify a class-wide extension, they must show that the class was deprived of the benefit of the Agreement because a substantial proportion of its members were prevented from filing a claim. In other words, the evidence must be commensurate with the relief sought, and there is "a high bar for judicial intervention": *JW*, at paragraph 28. I will now turn to a review of the evidence in this regard.

(a) *Evidence Regarding Individual Cases*

[90] The first category of evidence consists of the personal observations of the Moving Parties' affiants. In their affidavits, Ms. Hill and Ms. Martin state that they believe that many class members have not been able to file a claim because they were unaware of the settlement or because of the barriers described above. They have met people who missed the deadline or who initially sought assistance and then did not come back. According to Ms. Martin, this may affect disproportionately those who are experiencing homelessness, who struggle with addiction, are incarcerated or reside outside Canada.

[91] While I do not doubt the sincerity of Ms. Hill's and Ms. Martin's assertions, they do not allow me to draw class-wide conclusions regarding the inability of a substantial portion of the class to file claims. For example, Ms. Martin states that Six Nations assisted approximately 600 class members in preparing their claims. While she expresses the belief that many other class members did not submit a claim, she does not provide any estimate of their number nor any information that would allow me to assess the magnitude of the problem.

[92] Undoubtedly, some class members were not able to file their claims before the deadline. Without more, however, this does not constitute a breakdown of the Agreement or a failure to provide the benefits promised by the Agreement. One must acknowledge that in a settlement of this kind, there will be a certain number of class members who will never make a claim. Perfection is not required and the benefits the settlement affords to the class as a whole must be

balanced against some members' inability to make a claim: *Fontaine*, at paragraph 62. In particular, where there is a deadline, it is inevitable that some members will miss it.

[93] On the basis of the observations of Ms. Hill and Ms. Martin, I cannot conclude that a significant proportion of class members were unable to file claims before the Claims Deadline or that there has been a class-wide failure to provide the benefits promised by the Agreement.

[94] The Plaintiffs argue that a negative inference should be drawn from the fact that the Moving Parties did not bring evidence from a single class member who was not properly notified about this action or was unable to file a claim before the Claims Deadline. I decline to do so. It should be obvious that class members who lack knowledge of this action or are not ready to file their claim are unlikely to identify themselves to the Moving Parties. Even if such persons were known to the Moving Parties, it is unlikely that they would be willing to provide evidence in a public proceeding. Confidentiality would be lost. Moreover, if a class member has not yet recovered memory of their abuse in day schools, by definition this is not susceptible of being put in evidence. Realistically, the Moving Parties cannot be expected to offer direct evidence from class members who have been unable to file a claim. They are, however, required to offer some evidence demonstrating the scope of the problem.

(b) *Take-Up Rate*

[95] In a class action, the take-up rate is the proportion of class members who actually file a claim and receive compensation. The take-up rate is often considered a measure of the success of

the claims process: Catherine Piché, *L'action collective: ses succès et ses défis* (Montreal: Thémis, 2019) at 137.

[96] The fact that approximately 185,000 claims were filed while the class size was estimated at 127,000 may be viewed as a sign of tremendous success. It may also mean that the class size estimate was flawed. Indeed, the Moving Parties filed the expert report of Dr. Nathan Taback, who alleges that Mr. Gorham's class size estimate suffers from a number of methodological flaws. Therefore, the Moving Parties ask me to give no weight to Mr. Gorham's estimate and to assume that the class is actually much larger than the 185,000 persons who have filed claims. They also ask me to order a study that, using a methodology put forward by Dr. Taback, would produce a more accurate estimate of the class size. The Plaintiffs and Defendant, on their part, argue that the actual number of claims is within the range identified by Mr. Gorham and that there is no cause for concern.

[97] In my view, while class size was likely underestimated, this alone does not warrant any inference regarding the actual class size nor a finding that a substantial proportion of class members were unable to file a claim.

[98] Let us begin with the degree to which the class size was likely underestimated. At the outset, it must be emphasized that the finding of underestimation flows entirely from the discrepancy between Mr. Gorham's estimate and the actual number of claims filed. Mr. Gorham concluded that there were from 120,000 to 140,000 class members who were alive in 2017, with a "best estimate" at 127,000. However, two adjustments must be made to enable a proper

comparison with the number of claims actually filed. The Agreement defines the class as including former students who were alive in 2007, not 2017. Thus, former students who died between 2007 and 2017 should be added to the estimate. The evidence contains statements to the effect that about 1,800 to 2,000 class members pass away every year, which would suggest an upwards adjustment of 18,000 to 20,000. This is compatible with the information given by the parties at the hearing that about 10% of the claims are made by estates. The other adjustment pertains to the fact that a proportion of the claims are rejected. At present, this proportion is very small, but the defendant suggested that it might increase because the claims that are still in process are more likely to be rejected for lack of proper documentation. Although the latter component remains speculative at this stage, I accept that the gap between the high bound of the estimate and the number of claims is smaller than it appears and might possibly be less than 20,000. Even then, it remains that the class size was most likely underestimated.

[99] This finding, however, does not assist the Moving Parties. The fact that the number of persons who filed a claim is larger than Mr. Gorham's estimate merely shows that the estimate is unreliable. It says nothing about persons who did not file a claim. It does not prove the actual size of the class. It does not show that there remains a large number of class members who were unable to file claims. Thus, it does not support a finding that the class has been deprived of the benefits of the Agreement.

[100] Nor is Dr. Taback's evidence useful in this regard. While Dr. Taback criticizes certain aspects of Mr. Gorham's methodology, he never asserts that the alleged shortcomings result in an overestimation or an underestimation. At most, Dr. Taback suggests that not enough is known

about the provenance of the data used by Mr. Gorham and that the latter should have given a more fulsome justification for the assumptions he made when data was missing. Moreover, Dr. Taback's criticism appears trivial in certain respects, for example when he concludes that 20% of the data is flawed, based mainly on a discrepancy of 705 pupils in 1957–1958, or when he highlights what amounts to a discrepancy of at most 3% for the years 1922–1929 and 1938–1944. Dr. Taback, however, does not put forward his own estimate of the size of the class, nor does he try to estimate the magnitude of the error caused by the alleged methodological flaws in Mr. Gorham's estimate. Quite simply, the Moving Parties have not brought any positive evidence of the size of the class.

[101] In the end, the Moving Parties' assertion that the class could be much larger than the 185,000 persons who filed a claim is based on mere speculation. For example, at the hearing, counsel relied on 2016 census figures regarding the Indigenous population in Canada to hypothesize that the class could be as large as 400,000 persons. There is absolutely no basis in the evidence for such speculation. As mentioned above, Dr. Taback does not offer any estimate of the size of the class and nothing in his report supports a figure three times higher than Mr. Gorham's estimate. Moreover, it is well known that there has been a substantial increase in the Indigenous population over the last 30 years, because of both natural increase and successive reforms to the registration provisions of the *Indian Act*. Yet the last day schools closed about 30 years ago. Therefore, speculation based on today's figures is bound to be misleading.

[102] What, then, is the significance of the fact that 185,000 claims were filed? In my view, this shows that a very significant number of class members were either unaffected by the barriers

described above or were able to overcome them before the Claims Deadline. Even though I am unable to calculate the size of the class or the take-up rate, the large number of claims filed is a relevant factor when assessing the Moving Parties' submissions regarding insufficiency of notice and support. This is not a situation where only a small proportion of the estimated class filed claims.

(c) *Insufficiency of Notice*

[103] The Moving Parties rely on the expert report of Todd Hilsee, a well-known class action notification expert, for the proposition that the notice plan was deficient and that the COVID-19 pandemic only made things worse. In my view, however, Mr. Hilsee's evidence is directed mainly at the sufficiency of the notice plan approved by the Court, which is not grounds for the Court's intervention at this late stage.

[104] Mr. Hilsee oversaw the notice plan for the IRSSA. In his affidavit, he indicates that this plan included an individualized in-person component, which saw a team of 15 persons "fan out across Canada" to hold information sessions in more than 600 communities. He states that more than 26,000 class members were reached in this manner. However, the Agreement in the present case does not provide for any form of in-person, individualized notice. In his opinion, this is a shortcoming that justifies an extension of the Claims Deadline.

[105] Mr. Hilsee's opinion, however, overlooks the fact that Justice Phelan approved the notice plan in spite of the lack of an individualized, in-person component. The Court can only exercise its supervisory jurisdiction if there has been a failure to deliver the benefits contemplated by the

Agreement, including the notice plan. Criticizing the notice plan that was approved does not show that it was not implemented or that its benefits were not delivered.

[106] Likewise, Mr. Hilsee's criticism of the use of "free media tactics" to raise awareness about the settlement misses the mark. This was contemplated by the notice plan. Any criticism should have been made at the settlement approval hearing. Moreover, such methods were used alongside other methods of notice, which, contrary to "free media tactics," include the Court-approved notice of settlement.

[107] Mr. Hilsee does not assert that there was a failure to implement any component of the notice plan as approved. Nor does he provide evidence that a substantial number of class members ignored the existence of the settlement. He does not attempt to measure the real-world effectiveness of the notice plan. While he mentions the COVID-19 pandemic, he does not explain its impact on the notice plan, which did not include an in-person component. Quite simply, there is no evidence that the notice plan was not implemented as promised or was ineffective.

[108] Beyond Mr. Hilsee's evidence, the Moving Parties made a number of assertions regarding the inadequacy of the notice plan. Ms. Hill commented that she found presentations made by class counsel to be confusing, in particular because they could have encouraged class members to make their claims at Level 1 instead of the higher levels. However, this criticism appears to be directed mainly at the existence of incentives to claim at Level 1 rather than the presentations themselves. To the extent that this relates to the phenomenon of progressive

disclosure, this was addressed in the *Waldron* matter. In the absence of more precise evidence regarding the contents of the presentations, this falls short of proving a systemic failure to provide adequate notice to class members.

[109] Chief Hill stated that the COVID-19 pandemic restricted "word of mouth" communication, which is so important in Indigenous communities. Yet, interpersonal communications were not entirely shut out during the pandemic, and constitute only one of several means by which class members were to be reached.

[110] Rather, the fact that 185,000 persons filed claims strongly suggests that the notice plan was effective, in spite of the criticisms brought forward by Chief Hill, Ms. Hill and Mr. Hilsee. To this obvious inference, Mr. Hilsee simply replies, "something must be wrong, either with the settling parties' estimate of the class size and/or whether the claims received truly reflect the harms suffered by Class members." But one cannot brush aside an inconvenient fact so easily. Even though the class size was likely underestimated, the filing of claims by 185,000 persons makes it very difficult to find that there has been a failure to provide the benefits of the Agreement in relation to the notice plan.

(d) *Lack of Individualized Assistance*

[111] The main theme of the Moving Parties' submissions is that class members needed individualized in-person assistance to complete the claim form and that the unavailability of such assistance prevented many of them from filing a claim. Once again, this submission must be

assessed not against a standard of perfection, but in light of what was promised in the Agreement.

[112] With respect to individualized assistance, the Agreement promised two main things. First, class counsel undertook to provide legal assistance to class members for a four-year period after the implementation date. Second, as a result of the amendment approved by Justice Phelan in July 2020, Argyle was to hold community support sessions in approximately 60 Indigenous communities and large urban centres. During these sessions, a team of support workers were to offer class members 45-minute, one-to-one sessions in order to help them with the claims process.

[113] There is no serious issue that these benefits were delivered. Class counsel's quarterly reports describe, albeit in summary form, the legal advice provided to individual class members. While Ms. Hill recounts an unsatisfactory experience with calling class counsel, the evidence before me does not show that, on a class-wide basis, class counsel failed to provide the services promised or that these services were inadequate.

[114] Likewise, while the community support sessions were suspended with the beginning of the COVID-19 pandemic, they resumed in January 2021. The list found in appendix B to Chief Hill's affidavit shows that 29 sessions were held in January-March 2020 and 62 more sessions were held after January 2021. There is no evidence that these sessions were inadequate in any way. One such session took place at Six Nations on November 7-8, 2021. Other than to say that the event was organized on short notice and that the turnout was "fairly low," Ms. Hill provides

little evidence that this session did not fulfil the promise made in the Agreement and its July 2020 amendment.

[115] Rather, the Moving Parties's submissions are tantamount to taking their efforts to help Six Nations members as a benchmark for what the Agreement should have provided. This is illustrated by Ms. Hill's description of the steps she takes when assisting a class member:

> When people asked me for help, I began by inviting them over, offering them a tea, and talking with them until they felt comfortable. I helped survivors identify their support network before we began to talk about their memories. I made sure they had at least three places to turn, and I always offered myself to be one of those supports. They had my phone number so that they could call me when they needed. It was common for the survivors I assisted to have difficult emotional reactions to their memories, the same way I did. They needed to know that they had a relationship with me, and that I would be available whenever they needed to talk, even in the middle of the night.
>
> To understand their narrative, I would start by asking them about their first year at the IDS – usually kindergarten or grade 1—and then go through each grade. I would ask them questions about more mundane things like taking the bus, what they had for lunch, what games they played. People remembered much more, and were able to organize and process their memories more, when they were able to focus on their school experiences this way. Often, survivors glossed over the traumatic aspects of their experience. I would gently direct them to the places where I could identify that they left something out. I would take notes and help them write out their narrative.
>
> It was often difficult and tiring for survivors to discuss their memories of the day schools, and they would require a break from the process before we were finished. It could be difficult and tiring for me as well. The first meeting between myself and the survivor could last anywhere between one to three hours, depending on the person. Then we would stop, and I would let them decide when to come back and continue. Sometimes, it could take a person months before they were ready to resume completing their claim.

[116] It would be ideal if all class members could benefit from such a level of assistance. As I mentioned above, Ms. Hill should be commended for having volunteered her time to provide such assistance to a number of survivors.

[117] There is, however, nothing in the Agreement that requires that individualized assistance of this nature be afforded to class members. It is true that section 9.03 of the Agreement states that the intent of the claims process is "to minimize the burden on the Claimants . . . and to mitigate any likelihood of retraumatization." However, such a statement of intent cannot form the basis for requiring an individualized class member assistance program that goes far beyond what the parties to the Agreement contemplated.

[118] The evidence does not show that the COVID-19 pandemic impacted class member assistance to a point that the benefits of the Agreement were not delivered. While the pandemic delayed the resumption of the community support sessions, in-person sessions were held in 2021 and 2022 in 62 communities. Moreover, Ms. Hill and Ms. Martin were able to assist many class members in person despite the pandemic. Even when Six Nations' administrative office was closed, Ms. Martin was able to arrange for one-on-one in-person meetings.

[119] In sum, the evidence does not show, on a class-wide basis, that class members were deprived of the assistance promised in the Agreement. While more intensive forms of assistance could undoubtedly have been provided, these would exceed the promise of the Agreement.

E. *Gap in the Agreement*

[120] As we have seen above, the Court's supervisory jurisdiction may be invoked where there is a gap in the settlement agreement to deal with unforeseen circumstances. The Moving Parties argue that the COVID-19 pandemic is an unforeseen circumstance and that the Agreement is silent as to the consequences of such an event on the claims process. In essence, the Moving Parties are asking me to imply a term in the Agreement allowing for an extension of the Claims Deadline where the claims process is affected by a significant public health crisis.

[121] I cannot agree with this submission. The lack of a specific provision allowing for an extension of the Claims Deadline in cases of unforeseen circumstances does not constitute a gap in the Agreement. It simply means that the parties did not intend to provide extensions beyond the six-month limit set forth in sections 28–31 of schedule B. These provisions allow for extensions in individual cases, in particular in "exceptional circumstances," which may include the impacts of the COVID-19 pandemic on a class member.

[122] Moreover, it is far from clear that the COVID-19 pandemic had the degree of impact on the claims process that the Moving Parties assert. As explained above, the notice plan did not depend on in-person activities. More than 60 in-person community support sessions took place during the pandemic. While I accept that the pandemic may have slowed down a wide variety of processes, it remains that class members had two years and a half (plus a six-month extension) to file their claims, and that close to 185,000 of them did so before the ultimate deadline. The facts do not support the assertion that the pandemic amounts to *force majeure* justifying a class-wide

extension. In saying this, I do not wish to prevent individual class members from asserting personal circumstances related to the COVID-19 pandemic to support a request for deadline extension for no more than six months.

F. *Independent Review of Take-Up Rate*

[123] The Moving Parties also ask the Court to order an independent assessment of the take-up rate or, perhaps more accurately, a new estimate of the class size, according to the method suggested by Dr. Taback. They state that Mr. Gorham's estimate is unreliable and that, as a result, the Court can have no confidence that the take-up rate is acceptable. If the independent assessment reveals that it is not, then this could form the basis for a request for further measures.

[124] This request is based on a misconception of the supervisory role of the Court. It is not for the Court to undertake its own investigation of the claims process. The parties obtained an estimate of the class size to assess their potential liability and to help set the financial parameters of the settlement. The Agreement does not set any minimum take-up rate nor does it provide for any particular measures if a specific level is not achieved. The Moving Parties have refrained from stating what, in their view, would be an acceptable take-up rate. The Court cannot, without amending the agreement, add a process whereby the claims deadline is indefinitely extended until an unspecified target is met.

[125] In addition, I am far from convinced that the method proposed by Dr. Taback would provide accurate figures in a reasonable time. The entirety of Dr. Taback's description of this method is found in the following few lines:

> Another approach to estimating the take up rate is to survey areas, such as reserves, of Canada where people that attended Federal Day Schools are known have lived. One strategy for a reserve with a land membership office is as follows:
>
> a. Use data from land membership office to estimate the total number of status members that attended federal day schools.
>
> b. Develop an outreach strategy to encourage community members that attended federal day schools to consent to an interview with the reserve.
>
> c. Encourage community members to reach out to other community members who might be part of the class.
>
> d. Record relevant data from these interviews (e.g., name of school, dates attended, has a claim been filed, if yes when was it accepted? If no, why not?).
>
> This prospective approach for surveillance of take-up using community partners is one way to reach former Federal Day School students that are unlikely to be reached by traditional outreach strategies that rely on traditional media. This method of sampling is called Snowball Sampling and is often used to recruit members of a group that are difficult to locate (e.g., homeless people, people incarcerated).

[126] Such a short description does not show much awareness of the hurdles that would face the proposed investigation. Dr. Taback's curriculum vitae does not mention any experience working with Indigenous communities. The use of the concept of "land membership office" suggests a lack of familiarity with these communities. Dr. Taback does not provide any realistic assessment of the availability of reliable data from the sources he has in mind. He does not explain how data derived from snowball sampling can generate quantitative findings nor how many communities would need to be surveyed to produce accurate results. It is purely speculative to assert that his proposed method would produce a better estimate of the class size than Mr. Gorham's.

III. Disposition

[127] For the foregoing reasons, while the Moving Parties are granted leave to participate in this action, their motion is dismissed. Contrary to the interpretation they put forward, the Agreement does not allow for an indefinite extension of the time limit to make claims. The evidence they brought does not show that there was, on a class-wide basis, a failure to provide notice or class member assistance as promised by the Agreement. The fact that the Agreement does not provide for an extension of time beyond the six-month extension period does not constitute a gap. Lastly, there are no grounds to order an independent review of the take-up rate.

[128] In closing, it bears emphasizing that this decision should not be taken as a dismissal of the concerns put forward by the Moving Parties. Nor is it an exhaustive assessment of the degree to which the Agreement was successful in mitigating the barriers to access to justice described above. Rather, the Court's task was to decide whether the evidence brought by the Moving Parties satisfied the high threshold for the exercise of the Court's supervisory jurisdiction, especially given the nature of the relief sought. Once the Court finds that the Moving Parties failed to meet this threshold, it is not its role to comment further. Others are in a better position to conduct a more fulsome assessment of the claims process. The Court can only express the hope that the experience gained in this proceeding, whether positive or negative, will be useful in the design of future class action settlements.

ORDER in T-2169-16

THIS COURT ORDERS that

1. Audrey Hill is granted leave to participate in the present action for the purposes of bringing the present motion.

2. Six Nations of the Grand River Elected Council is granted public interest standing for the purposes of bringing the present motion.

3. The motion is dismissed.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2169-16
STYLE OF CAUSE:	GARY LESLIE MCLEAN, ROGER AUGUSTINE, CLAUDETTE COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON, MARGARET ANNE SWAN AND MARIETTE LUCILLE BUCKSHOT v HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA AND AUDREY HILL AND SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 12-13, 2023
ORDER AND REASONS:	GRAMMOND J.
DATED:	AUGUST 10, 2023

APPEARANCES:

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Travis Henderson Sarah-Dawn Norris	FOR THE DEFENDANT
Richard Macklin Yolanda Song	FOR THE MOVING PARTY SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL
Louis Sokolov	FOR THE MOVING PARTY AUDREY HILL

SOLICITORS OF RECORD:

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Sotos LLP Toronto, Ontario	FOR THE MOVING PARTY AUDREY HILL

TAB 16

Federal Court Cour fédérale

Date: 20230810

Docket: T-2169-16

Citation: 2023 FC 1093

Ottawa, Ontario, August 10, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

GARY LESLIE MCLEAN, ROGER AUGUSTINE, CLAUDETTE COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON, MARGARET ANNE SWAN AND MARIETTE LUCILLE BUCKSHOT

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

and

AUDREY HILL AND SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL

Moving Parties

ORDER AND REASONS

[1] A class action was instituted on behalf of survivors of Indian Day Schools. Canada and representatives of the survivors entered into an agreement to settle the class action. Pursuant to the settlement agreement, survivors could claim compensation.

[2] In the initial version of the settlement agreement, survivors had only one year to file their claims. Many survivors expressed the opinion that this period was too short. In response to this criticism, Canada and the representative plaintiffs agreed to extend that period to two and a half years. This Court then approved the settlement agreement. As a result, survivors had until July 13, 2022 to claim compensation.

[3] The Moving Parties, Audrey Hill and the Six Nations of the Grand River Elected Council, are asking this Court to extend this deadline to December 31, 2025. They say that insufficient efforts were made to inform survivors about the details of the claims process. They criticize the lack of support for survivors who wish to file a claim. They argue that the COVID-19 pandemic compounded these difficulties and prevented many survivors from making a claim.

[4] The Court dismisses the motion and refuses to extend the deadline.

[5] The Court rejects the Moving Parties' contention that the settlement agreement gives the Court a general power to extend the deadline. The agreement only provides for extensions in individual cases for a maximum of six months. The intention of the parties was that the claims process would then be closed.

[6] The Court also declines to exercise its supervisory jurisdiction to extend the deadline for filing claims. Supervisory jurisdiction can only be used in exceptional circumstances where the settlement agreement is not being implemented. It cannot be used to change the agreement. The Court carefully reviewed the evidence brought by the Moving Parties and found that the measures provided by the agreement with respect to notice and class member assistance were implemented. While additional forms of assistance could have been provided to survivors who wish to make a claim, this was not required by the agreement. The Moving Parties' contention that large numbers of survivors have been prevented from filing a claim is not supported by the evidence. Rather, approximately 185,000 survivors have made a claim within the deadline or the six-month extension period.

I. Background

[7] The present motion arises in the context of the settlement of a class action aimed at providing compensation to survivors of "Indian Day Schools."

[8] The Moving Parties are Audrey Hill and the Six Nations of the Grand River Elected Council [Six Nations or the Council]. Ms. Hill is herself a day school survivor and a member of the class. She also provided assistance to other persons in her community who wished to submit a claim for compensation pursuant to the settlement. Six Nations is the largest on-reserve First Nation community in Canada and the one with the most day schools. Its Council has provided assistance to community members who wished to submit a claim.

[9] The deadline to submit a claim was July 13, 2022. Class members could individually ask for an extension for special reasons until January 13, 2023. The Moving Parties are now seeking an order extending the deadline until December 31, 2025 for all class members, as well as an order for an independent assessment of the size of the class and the take-up rate. The plaintiffs and defendant oppose this motion.

[10] To provide the context in which this motion is brought, I will briefly summarize the settlement of residential schools class actions and explain in what respects the settlement of the present action differs. I will then outline how certain events during the implementation of the settlement of this action led the Moving Parties to bring this motion.

A. *Residential Schools and Day Schools*

[11] As the Supreme Court of Canada once said, "we cannot recount with much pride the treatment accorded to the [Indigenous] people of this country": *R v Sparrow*, [1990] 1 SCR 1075 at 1103. Residential schools are one of the darkest chapters of Canada's history. One of the aims of the residential school system was to encourage the assimilation of Indigenous children into non-Indigenous society. To this end, it was thought necessary to separate Indigenous children from their parents, families and communities. As the Court explained in *Canada (Attorney General) v Fontaine*, 2017 SCC 47 at paragraph 1, [2017] 2 SCR 205 [*Fontaine*]:

> From the 1860s to the 1990s, more than 150,000 First Nations, Inuit, and Métis children were required to attend Indian Residential Schools operated by religious organizations and funded by the Government of Canada. As Canada has acknowledged, this system was intended to "remove and isolate children from the influence of their homes, families, traditions and culture" ("Statement of Apology to former students of Indian Residential Schools" of the

> Right Honourable Stephen Harper on behalf of Canada, June 11, 2008 (online)). Thousands of these children were abused physically, emotionally, and sexually while at residential schools.

[12] A number of class actions were initiated on behalf of survivors of the residential schools. In 2006, many of these class actions were settled through the Indian Residential Schools Settlement Agreement [IRSSA]. One component of the IRSSA is the Independent Assessment Process [IAP], aimed at offering compensation to survivors who were victims of physical or sexual abuse at the residential schools. Survivors had five years to make a claim. They had to describe the abuse they suffered at an in-person hearing before an adjudicator.

[13] The IRSSA, however, did not address all wrongs committed by Canada with respect to the education of Indigenous children. It did not cover day schools operated by Canada in Indigenous communities. These schools were different from residential schools in that the students returned home every night and were not separated from their parents, families and communities. Nevertheless, day schools, like residential schools, were the backdrop of egregious cases of physical and sexual abuse. As Chief Hill of Six Nations states in his affidavit, day schools were

> . . . devastating for Indigenous individuals, families, and communities. Students were regularly subject to horrifying physical and sexual abuse, and were systematically punished and humiliated for nothing more than being who they were: Indigenous children. The negative effects of attending an IDS [Indian Day School] were profound and caused lasting damage [to] our people's self worth, mental and physical health, and their ability to lead safe and happy lives.

B. *The Present Class Action and Its Settlement*

[14] The plaintiffs began a class action on behalf of former day school students. The class action was certified on consent. Canada and the plaintiffs then negotiated a settlement, known as the Indian Day Schools Settlement Agreement [IDSSA or Agreement].

[15] The Agreement provides a basic amount of compensation to all former day school students. This is known as "Level 1" compensation and amounts to $10,000 per person. Canada provides an initial amount of $1.27 billion to fund Level 1 compensation, which can be increased to $1.4 billion if needed. Moreover, former students who were victims of physical or sexual abuse may receive compensation ranging from $50,000 to $200,000 (these are Levels 2–5). There is no upper limit to the total amount of compensation paid for claims at Levels 2–5. The claims process is entirely in writing. Contrary to the process under the IRSSA, there are no oral hearings. In this regard, section 9.03 of the Agreement states that the claims process is intended to be expeditious, cost-effective, user-friendly and culturally sensitive and aims at "mitigat[ing] any likelihood of retraumatization." Moreover, section 6.04 of the Agreement provides that class members will receive notice of the settlement in accordance with a notice plan appended to the Agreement. (Unfortunately, I must draw the attention to the low quality of the French version of several documents in this matter, in particular the notice plan.)

[16] In the initial version of the Agreement, one feature of the claims process was that class members had to file their claims within one year of the Implementation Date, defined as either

the end of the opt-out period or the exhaustion of any appeal process regarding the approval order.

[17] Canada and the plaintiffs sought approval of the Agreement pursuant to rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106. Many class members filed notices of opposition. One frequently mentioned ground was that the claims period was too short. Before the hearing of the motion for approval, Canada and the plaintiffs addressed this issue by amending the Agreement to extend the claims period to two and a half years. This was accomplished by amending the definition of "Claims Deadline," in section 1.01, to mean two years and six months (instead of one year) after the Implementation Date.

[18] In the context of the motion for approval, the parties submitted to the Court the expert report of Peter Gorham, who calculated that the best estimate of the number of persons who attended day schools from 1920 to 1994 was 190,000, and the best estimate of the number of such persons who were still alive in 2017 was 127,000. The latter figure appears to be the basis for the $1.27 billion fund appropriated for the payment of Level 1 claims and is described in certain documents as an estimate of the class size. However, the class is somewhat larger because the 127,000 figure does not include persons who passed away between 2007 and 2017, whose estates are entitled to make claims.

[19] My colleague Justice Michael Phelan approved the Agreement: *McLean v Canada*, 2019 FC 1075. He found that the Agreement, despite the objections and its alleged shortcomings, was fair and reasonable. He noted that the claims process was designed to avoid a number of issues

that arose in the administration of the IRSSA, in particular the traumatizing effects of oral hearings and the need for class members to retain lawyers. With respect to the claims deadline, he stated, at paragraphs 121 and 128:

> It should be of considerable comfort to many objectors that the process of objection worked – it made meaningful change possible. The time for claiming, while well intended, was extended from one year to two and a half years through an amendment to the Settlement, unquestionably as a result of objection.
>
> . . .
>
> Timing of claims process: This objection to the one-year claim filing requirement was one of the most consistent issues of objection. It was a major impediment to be addressed. As seen by the amendments to the Settlement, it was revised in a reasonable fashion to two and a half years.

[20] A motion by an objector for leave to appeal Justice Phelan's approval order was dismissed: *Ottawa v McLean*, 2019 FCA 309. Moreover, the Federal Court of Appeal dismissed appeals from Justice Phelan's refusal to grant Indigenous representative organisations leave to intervene at the approval hearing, largely because the concerns put forward by these organizations were already addressed by other opponents: *Nunavut Tunngavik Incorporated v McLean*, 2019 FCA 186; *Whapmagoostui First Nation v McLean*, 2019 FCA 187.

C. *Implementation of the Settlement Agreement*

[21] The Agreement's Implementation Date was January 13, 2020 and class members could then start to file their claims.

[22] Barely two months later, the COVID-19 pandemic forced all levels of government in Canada to implement drastic measures to fight the spread of the virus. Restrictions on indoor gatherings and travel were in place, with varying degrees of intensity, for a good portion of the following two years.

[23] The impacts of the pandemic were felt particularly strongly in Indigenous communities. COVID-19 risk factors are more prevalent in Indigenous communities. Many of these communities face challenges in accessing basic services, such as running water, affordable food or health services. High-speed Internet, which was critical in mitigating the impact of restrictions on gatherings, is often difficult to access in Indigenous communities.

[24] In July 2020, the Court approved an amendment to the notice plan. Argyle Public Relationships [Argyle], a communications firm that assists in the delivery of the plan, was to offer community support sessions in about 60 Indigenous communities. Because of the pandemic, these sessions did not start before January 2021.

[25] Meanwhile, the Moving Parties undertook to assist class members in the Six Nations community in various ways. In addition to filing her own claim, Ms. Hill assisted 23 persons in this process. In his affidavit, Chief Hill describes the Council's efforts to raise awareness about the Agreement and the claims process among the members of Six Nations and to provide assistance to those members who wished to file a claim. For more than a year, an employee of the Council was assigned full-time to assist Six Nations members who wished to file a claim, even though the Council had no obligation to do so and received no funding. This employee, Ms.

Martin, filed an affidavit in support of the present motion. In the weeks before the Claims Deadline, the demand for assistance grew considerably. The Council had to assign additional employees to assist community members.

[26] I pause here to commend the Moving Parties for having provided assistance to members of their community, while being under no obligation to do so. I am certain that many other persons or organizations across the country acted similarly, and they are to be commended as well.

[27] As a result of the knowledge and experience acquired while providing assistance to community members, the Moving Parties have raised a number of issues with respect to the Agreement or its implementation, which can be briefly summarized as follows:

- The class size estimate is unreliable, which makes it impossible to calculate the take-up rate;

- The notice plan does not include any form of in-person outreach to community members;

- The dissemination of information regarding the Agreement was hampered by the COVID-19 pandemic;

- There was a lack of personalized assistance for class members;

- Assistance provided by telephone is inappropriate given the nature of the harms at stake;

- These difficulties were compounded by the lack of Internet access, language barriers and low level of literacy in many Indigenous communities.

[28] According to the Moving Parties, given these shortcomings, a number of class members never made a claim, because they were not ready to do so before the Claims Deadline or were not even made aware of the claims process.

[29] As the Claims Deadline approached, a number of Indigenous representative organizations called on the parties to the Agreement to provide more time for former day schools students to file their claims. In particular, in December 2021, the Assembly of First Nations adopted a resolution calling on the parties to the Agreement to extend the Claims Deadline by one year. The shortcomings mentioned above were frequently relied on to justify the requests. However, the parties did not change the Claims Deadline.

[30] According to the data provided at the hearing, there are about 185,000 persons who filed a claim, about 7,300 of whom asked for an extension during the six months following the Claims Deadline. The parties to the Agreement have relied on the large number of claims filed to explain why they have not agreed to extend the Claims Deadline.

[31] In December 2022, the Moving Parties brought the present motion, seeking an extension of the Claims Deadline until December 31, 2025 and an independent determination of the take-up rate.

[32] I should also note that other class members have brought a motion seeking relief in respect of the issue of progressive disclosure, that is, where a class member files a Level 1 claim and later recovers memory of events justifying a claim at a higher level. Justice Phelan dismissed this motion, noting that the Agreement does not allow a class member to file more than one claim: *McLean v Canada (Attorney General)*, 2021 FC 987 [*Waldron*]. The Federal Court of Appeal recently heard an appeal from this decision, but has not yet rendered judgment.

II. Analysis

[33] To explain why I am dismissing this motion, I proceed in six parts. I first give an overview of the applicable legal framework. I then explain why I grant standing to the Moving Parties. Next, I analyze the interpretation of the Agreement put forward by the Moving Parties. In a fourth part, I review the Moving Parties' claim that the class members have been deprived of the benefits of the Agreement. The fifth and sixth parts pertain to the existence of a gap in the Agreement and to the Moving Parties' request for an assessment of the take-up rate.

A. *Legal Framework*

[34] The legal framework governing the resolution of this matter must first be explained. After recalling certain basic principles regarding class actions, I describe the circumstances in which the Court's supervisory jurisdiction may be invoked.

(1) Class Actions

[35] A class action is a procedural vehicle that allows a representative plaintiff to bring an action on behalf of members of a class, without the latter's explicit consent. Proceeding collectively promotes a more efficient use of judicial resources, enables the pursuit of claims that would otherwise be uneconomical and deters potential tortfeasors: *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at paragraphs 27–29, [2001] 2 SCR 534. The class action has become an essential tool to improve access to justice. A class action is often the only realistic way to pursue a claim and to obtain compensation.

[36] Because the representative plaintiff acts on behalf of the class members without their consent, class action legislation (in this case, the *Federal Court Rules*) provides safeguards aimed at ensuring that the actions of the representative plaintiff are in the interests of class members. To that end, the Court's approval is needed for certain crucial steps in the action.

[37] Most class actions, like most lawsuits, end in a negotiated settlement. By nature, a settlement involves mutual concessions between the parties. Because the concessions made by the representative plaintiff bind class members, rule 334.29 provides that a settlement must be

approved by the Court. The test for approving a settlement is not perfection; it is whether the settlement is fair and reasonable: see, for example, *Merlo v Canada*, 2017 FC 533 at paragraphs 16–18. Moreover, when approving a settlement, the Court cannot amend the agreement of the parties; it must approve it as is or reject it. Were it otherwise, parties would be discouraged from settling the matter, as their bargain could be upended by the Court.

[38] These principles remain relevant in spite of this case's historical and political ramifications. The plaintiffs have chosen to frame their claims in private law terms and to pursue them with the tools afforded by civil procedure. The Supreme Court of Canada twice considered the IRSSA. In *Fontaine*, at paragraph 35, it remarked that the IRSSA "is at root a contract, the meaning of which depends on the objective intentions of the parties." See also *JW v Canada (Attorney General)*, 2019 SCC 20 at paragraph 102, [2019] 2 SCR 224 [*JW*]. This also applies to the Agreement at issue in the present case.

(2) Supervisory Jurisdiction

[39] The Moving Parties are relying on the Court's supervisory jurisdiction over class actions. At every step of a class action, even after settlement, the Court retains jurisdiction to address unforeseen issues. This is a corollary of the Court's role of protecting unrepresented class members: *Fantl v Transamerica Life Canada*, 2009 ONCA 377 at paragraph 39. Depending on the circumstances, supervisory jurisdiction may flow from class action legislation, from the order approving a settlement or from the provisions of the settlement agreement itself: *Fontaine*, at paragraph 32; *JW*, at paragraph 114. In this case, the approval order makes it explicit that the Court retains jurisdiction.

[40] Supervisory jurisdiction "is limited and shaped by the terms of the agreement, once it is approved and determined to be fair, reasonable and in the best interests of the class": *JW*, at paragraph 120. In other words, courts cannot rely on their supervisory jurisdiction to amend a settlement agreement: *Fontaine*, at paragraph 59. Quite the opposite, when courts have exercised their supervisory jurisdiction, they made it clear that they were giving effect to the settlement agreement instead of amending it.

[41] For this reason, the circumstances in which courts may intervene have usually been described in terms of a breach of the settlement agreement. However, there does not appear to be any generally accepted formulation of a test for the exercise of supervisory jurisdiction. The cases that the parties brought to my attention can be roughly classified in three categories.

[42] First, as in *Fontaine*, the court may be asked to solve a dispute regarding the interpretation of a provision of the settlement agreement. This, of course, assumes that the matter does not fall within the exclusive jurisdiction of the adjudication processes created by the agreement.

[43] Second, courts may intervene in cases of serious failures to implement the settlement agreement. After reviewing the case law arising under the IRSSA, Justice Côté in *JW* found that this would apply only in very narrow circumstances, described as a "failure by the IAP adjudicator to apply the terms of the IAP Model, which amounts to failure to enforce the IRSSA": *JW*, at paragraph 140. Justice Abella, for her part, stated, at paragraph 35:

> Judges, in short, have an ongoing duty to supervise the administration and implementation of the Agreement, including the

> IAP. In exercising this supervisory role in the Requests for Directions context, judges can intervene if there has been a failure to apply and implement the terms of the Agreement. In determining whether this failure exists, Supervising Judges will focus on the words of the Agreement, so that the benefits promised to the class members are delivered.

[44] Third, courts may intervene to fill gaps in the settlement agreement. As Justice Côté noted in *JW*, at paragraph 141, "circumstances will inevitably arise that were not foreseen by the parties and are therefore not provided for in their agreement." She found that the Chief Administrator's lack of power to order the reopening of a case that was manifestly wrongly decided constituted a gap. She also relied on *NN v Canada (Attorney General)*, 2018 BCCA 105 [*NN*], where claims were reopened further to the discovery of new evidence. Likewise, Justice Abella recognized the presence of a gap as sufficient grounds for judicial intervention: *JW*, at paragraph 27.

[45] Of course, courts may also intervene where this is expressly contemplated by the settlement agreement, as exemplified by *Heyder v Canada (Attorney General)*, 2023 FC 28. The settlement agreement in that case contained a provision allowing the claims administrator to grant extensions of time of no more than 60 days, and the Court to grant an extension of time beyond 60 days. In contrast, the Agreement in this case does not provide the Court with any power to grant extensions of time beyond a set period.

B. *Standing*

[46] Before applying the foregoing principles to the case at hand, I must address the Moving Parties' standing to bring the present motion.

[47] Ms. Hill seeks leave to participate pursuant to rule 334.23(1), which reads as follows:

334.23 (1) To ensure the fair and adequate representation of the interests of a class or any subclass, the Court may, at any time, permit one or more class members to participate in the class proceeding.	**334.23 (1)** Afin que les intérêts du groupe ou d'un sous-groupe soient représentés de façon équitable et adéquate, la Cour peut, en tout temps, autoriser un ou plusieurs membres du groupe à participer au recours collectif.

[48] Six Nations, on its part, seeks public interest standing. The test for public interest standing comprises three prongs: "whether the case raises a serious justiciable issue, whether the party bringing the action has a real stake or a genuine interest in its outcome and whether, having regard to a number of factors, the proposed suit is a reasonable and effective means to bring the case to court": *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paragraph 2, [2012] 2 SCR 524 [*Downtown Eastside*]. These three factors are not "hard and fast requirements," but must be "assessed and weighed cumulatively" and "applied in a flexible and generous manner": *Downtown Eastside*, at paragraph 20.

[49] Given the conclusions I reach on the merits of the motion, the issue of standing is not determinative. I will therefore state only briefly the reasons why I grant standing to the Moving Parties.

[50] I will analyze the standing of Ms. Hill and Six Nations together. There is little case law regarding rule 334.23 or its equivalent in the class action legislation of other Canadian jurisdictions. Given the grounds put forward by Ms. Hill for her intervention, the *Downtown*

Eastside test, while not directly applicable, provides useful guidance as to what factors may be considered relevant.

[51] The first prong of the *Downtown Eastside* test does not translate into a full review of the merits; rather, the aim is to ensure that the matter may be decided according to legal rules: *Downtown Eastside*, at paragraph 42. Here, the Moving Parties argue that the impacts of the COVID-19 pandemic have resulted in a failure to deliver the benefits promised by the Agreement. They assert that their claims fall in the categories of circumstances that, according to *Fontaine* and *JW*, justify the exercise of the Court's supervisory jurisdiction. They say that they are not seeking an amendment to the Agreement. Whether their claim really amounts to this is a matter for the merits. To the extent described below, their claim is justiciable and not frivolous.

[52] Ms. Hill did not cease to be a class member when her claim was paid. She therefore falls within the ambit of rule 334.23. Moreover, both Moving Parties have the genuine interest required by the second prong of the *Downtown Eastside* test. Such a genuine interest is not the same as a legal right; otherwise there would be no need for public interest standing. Both Ms. Hill and Six Nations have devoted considerable time, energy and resources to helping class members. They have "engaged with the issues they raise" and have "sought unsuccessfully to have the issue determined by other means": *Downtown Eastside*, at paragraph 43. Moreover, the fact that Six Nations is an Indigenous governing body is an additional factor weighing in the balance on this prong of the test: see, by way of analogy, *Fontaine v Canada (Attorney General)*, 2014 BCSC 2531.

[53] I am also satisfied that there is no other practical and effective means of bringing the issue before the Court, given the position taken by the Plaintiffs. To the extent that the Moving Parties' case hinges upon the effects of the COVID-19 pandemic, the issue could not have been raised at the settlement approval hearing, which took place in 2019.

[54] To the extent that rule 334.23 requires Ms. Hill to prove that she is able to represent the class, I am satisfied that she has done so, given the quality of the evidence and submissions she provided.

[55] Lastly, reconciliation between the Crown and Indigenous Peoples is an additional factor that warrants granting standing to the Moving Parties. A significant number of Indigenous representative organizations, including the Assembly of First Nations, have expressed concerns with the claims process set out in the Agreement. Reconciliation requires that the merits of these concerns be analyzed, within the bounds of the Court's role.

C. *Interpretation of the Late Claims Provision*

[56] The Moving Parties first argue that the Court's intervention is necessary to give effect to the Agreement as they interpret it. According to them, the Agreement should be interpreted in a manner that gives the Court discretion to extend the Claims Deadline, without any precise limit. This interpretation is based on schedule B of the Agreement, which sets out the details of the claims process. Section 29 of schedule B reads as follows:

> 29. It is recognized that in some extraordinary cases, a Claimant may be entitled to relief from strict application of the Claims

> Deadline; however, in no event may the Claims Deadline be extended by more than six (6) months.

[57] The Moving Parties seek to read this section as providing two independent rights: an *extension* of the Claims Deadline by no more than six months; and a more general right to *relief from strict application* of the Claims Deadline, which would not be subject to the six-month limitation.

[58] This interpretation is untenable. Rather, there is every indication that section 29 creates only one right, namely, for an individual to apply for an extension of no more than six months. This is buttressed by the recognized methods of legal interpretation: ordinary meaning, context and purpose.

[59] In its ordinary meaning, a sentence composed of two parts separated by the conjunction "however" pertains to a single subject and the second part is a qualifier or restriction on the first part. The first part of section 29 gives individuals the right to apply for an extension of time. A logical reading of the second part is that is restricts the scope of the first part, that is to say, that an individual may apply for an extension for no more than six months. If the intention was to provide two separate rights, one wonders why the second part begins with "however" and is framed in negative terms. In addition, the fact that section 29 provides a right to "a claimant" seems to foreclose the class-wide extension requested by the Moving Parties.

[60] The immediate context also belies the interpretation put forward by the Moving Parties. Section 29 forms part of a section of schedule B called "deadline extension." Section 30 sets out

the process for requesting an extension, provides that such a request must be made within six months of the Claims Deadline and gives examples of grounds for making such a request. Section 31 provides that requests for extensions are decided by the Claims Administrator or, in certain cases, by the Exceptions Committee, and that their decisions are final. This immediate context does not support the idea that section 29 creates two distinct entitlements, as there is a single process. It is implausible that the parties to the Agreement would have created an entitlement without a process. Moreover, this context reinforces the idea that section 29 is concerned only with individual requests, not class-wide extensions, and that this Court has no role to play in implementing section 29.

[61] An additional indication that there is only one extension process and that it is limited to a six-month period is found in section 1 of the Agreement, which defines "Request for Deadline Extension" as

> . . . a request for an extension of the Claim Deadline made by a Survivor Class Member in accordance with Schedule I; however, no requests may be made more than six (6) months after the Claims Deadline . . .

[62] There is, however, no definition of the "request for relief" that the Moving Parties suggest is a distinct entitlement.

[63] The Moving Parties assert that the presumption of consistent expression and the presumption against surplusage require the Court to adopt their proposed interpretation. I disagree. While some care was obviously taken in the drafting of the Agreement, it has not gone through the rigorous drafting process typical of statutes. At the hearing of this motion, counsel

for the Moving Parties acknowledged that it was poorly drafted. It is plausible that the parties have used synonyms to refer to the same concept and that they repeated certain things to emphasize them. Therefore, I attach little weight to the use of two different expressions, "relief from strict application" and "extension," in section 29 of schedule B. In addition, the structure of section 29 closely parallels that of the definition of "Request for Deadline Extension," yet the latter uses the concept of extension instead of that of relief in the former. Likewise, the reference to "extraordinary cases" in section 29 does not appear to differ in substance from the somewhat more elaborate description of the relevant criteria in section 30. It is also obvious that parts of sections 28–31 are intended to be redundant and merely to repeat concepts or rules already set forth in the Agreement itself.

[64] Regard may also be had to the purpose of the provision. In this regard, the Moving Parties relied on the preamble to the Agreement, which states, in its relevant portion, that the parties "intend there to be a fair, comprehensive and lasting settlement of claims related to Indian Day Schools, and further desire the promotion of healing, education, commemoration, and reconciliation."

[65] While this is the overall purpose of the Agreement, one must also pay attention to the purpose of the specific provision at issue: *R v Safarzadeh-Markhali*, 2016 SCC 14 at paragraphs 27–28, [2016] 1 SCR 180. Sections 28–31 of schedule B aim at bringing closure to the claims process, with a limited additional window for class members who show valid reasons for not being able to meet the initial deadline. See, by way of comparison, *Lavier v MyTravel Canada Holidays Inc*, 2011 ONSC 3149 at paragraphs 35–36; *Myers v Canada (Attorney General)*, 2015

BCCA 95 [*Myers*] (dealing with the IRSSA). While such closure benefits Canada, class members received other benefits in exchange. Thus, section 29 should be given an interpretation that favours this purpose, instead of thwarting it. Yet, the interpretation put forward by the Moving Parties would effectively deprive Canada of the benefit of the Claims Deadline, as there would never be any closure to the claims process.

[66] Designing a claims process with a fixed deadline does not offend the more general purpose of reconciliation. I echo the words of Chief Justice Bauman of the British Columbia Court of Appeal in *Myers*, at paragraph 25:

> I acknowledge the profound importance of these objectives and the need to encourage their attainment. Still, the IRSSA is a settlement of massive litigation. The parties to it gained many advantages and made many compromises in consideration therefor. In particular, the respondents sought the certainty of a bright-line deadline for IAP claims. Granting an extension to these four appellants could potentially open the door to many more IAP claims. One must appreciate the holistic nature of the settlement agreement, and the give and take evidenced in it, before ignoring the clear terms of the document and sacrificing the certainty won by the respondents by acceding to this Request for Direction. That would take from the respondents a concession they won for a price in the agreement; it could also potentially compromise the equities struck between the parties in the overall negotiation process that led to and, forms the basis of, the IRSSA.

[67] To summarize, the Moving Parties' contention that section 29 of schedule B to the Agreement creates two distinct processes for extending the Claims Deadline is devoid of merit. Section 29 creates a single process and it is subject to an ultimate time limit of six months after the Claims Deadline. Therefore, the Moving Parties cannot rely on the provisions of the Agreement to justify the relief they are seeking in this motion.

D. *Failure to Deliver Benefits*

[68] Because the Agreement does not contain any provision allowing a class-wide extension of time beyond the six-month extension period, the Moving Parties can only succeed if they bring themselves within the parameters recognized by the case law for the exercise of the Court's supervisory jurisdiction. As explained above, the main ground for doing so has been described in a variety of ways, including the failure to deliver the benefits afforded by the settlement agreement. I will use the latter terminology.

[69] To demonstrate that there has not been a failure to deliver the benefits afforded by the Agreement in the present case, I will proceed in three steps. I will first describe the barriers to access to justice that inevitably arise in claims of this kind. I will then describe the measures contemplated by the Agreement to mitigate these barriers; in other words, I will attempt to delineate what was promised. Third, I will review the implementation of the Agreement to determine if these promises were kept or these benefits were delivered.

[70] It is often said that the supervising judge does not have the power to amend or vary the Agreement. Likewise, the exercise of supervisory jurisdiction does not amount to an appeal or a reconsideration of the settlement approval order. These constraints are reflected in the analysis that follows. The focus is on the benefits promised by the Agreement and whether these benefits were provided: *JW*, at paragraph 35. While additional measures can always be proposed to further improve access to the claims process, the Court cannot order them if the benefits of the Agreement have in substance been delivered.

(1) Barriers to Access to Justice

[71] In a class action like the present one, class members are likely to face important barriers to access to justice. Even when the class action is managed collectively, the individual issues are such that claims must be made individually and some sort of evidence is required. The barriers that arise in this context can be roughly classified in two categories: barriers related to the specific nature of the harm resulting from sexual abuse or serious physical abuse and barriers related to the specific circumstances of Indigenous communities.

[72] It is increasingly acknowledged that sexual assault causes insidious and long-lasting forms of trauma, including what is called post-traumatic stress disorder. In many cases, the memory of the events is repressed. Survivors may not fully appreciate the link between their psychological condition and the abuse. Realizing the situation is often accompanied by feelings of guilt and shame. Serious physical assaults may also give rise to some of these specific harms. Overcoming these barriers and disclosing the abuse takes time and, quite often, professional help. The law has gradually adapted to these realities. For example, the legislation of most provinces has been amended to remove limitation periods for claims based on sexual assault. Increasing attention is also being paid to the fact that the legal process may retraumatize survivors, for example by requiring them to describe the abuse they suffered or subjecting them to cross-examination.

[73] The circumstances of Indigenous communities give rise to another set of barriers. Indigenous persons may not be fluent in English or French and may have low levels of schooling

and literacy. Written materials may not be the best way of reaching out to an Indigenous audience. Word of mouth or the community radio may be much more effective. There may be little trust of, familiarity with or understanding of bureaucratic processes and the legal system. Many communities lack reliable access to high-speed Internet. For these reasons, providing meaningful notice to class members residing in Indigenous communities presents specific challenges, and communications strategies used with non-Indigenous Canadians may be entirely inappropriate. In saying this, I do not wish to minimize the capacity and agency of Indigenous persons; nevertheless, these issues are statistically more prevalent in Indigenous communities.

[74] The evidence brought forward by the Moving Parties bears witness to these barriers. In particular, Ms. Hill's own journey towards making her claim took more than a year. She initially thought that she was only eligible for a Level 1 claim. However, while trying to fill out her claim form, she experienced a feeling of mental block, which she recognized as a sign that there was something more. After she underwent traditional healing, she began remembering traumatic events that happened at day school. Recovering these memories caused her significant anxiety. She also experienced difficulty finding records and obtaining letters corroborating her story.

(2) What Was the Promised Benefit?

[75] A clear understanding of the benefits that the Agreement promised to class members in relation to these barriers is crucial to assess the Moving Parties' contention that these benefits were not delivered.

[76] There is every indication that the parties to the Agreement were fully aware of the barriers described above. Some of them arose conspicuously in the implementation of the IRSSA, despite efforts made to design a claims process adapted to the realities of the survivors.

[77] However, this does not mean that the Agreement promised the complete elimination of these barriers. This would be impossible. Rather, the parties bargained for a precise set of measures aimed at mitigating the impacts of these barriers on class members. These measures included a paper-based claims process that would not require survivors to testify before an adjudicator and the provision of free legal assistance by class counsel. On the other side of the bargain was a claims period shorter than in the IRSSA. The nature and sufficiency of these measures were discussed in the context of the settlement approval process. As we saw above, this resulted in the lengthening of the claims period from one year to two years and a half.

[78] As Justice Phelan noted when approving the Agreement, these measures are not perfect. In other words, they are not expected to completely overcome the barriers described above. It was certainly not expected that all class members would file a claim. What was promised was a reasonable process that included certain defined features aimed at mitigating the impact of these barriers. Thus, when assessing whether the benefits promised by the Agreement were delivered, the focus should be on whether the agreed upon measures were implemented. The fact that some of these barriers persist does not, without more, warrant the Court’s intervention.

[79] I will thus review the provisions of the Agreement regarding notice to class members and the provision of in-person assistance.

(a) *Notice Plan*

[80] Rule 334.34 provides that the representative plaintiff must give notice of any proposed settlement and of the Court's approval of a settlement, in a form approved by the Court. Section 6.04 of the Agreement provides that the parties will seek approval of the Court for a notice plan substantially similar to that appended as schedule F. Pursuant to section 6.05, Canada will fund the implementation of the notice plan. Justice Phelan approved the notice plan as part of the settlement approval order: 2019 FC 1074.

[81] The notice plan is divided in two phases. Phase one was intended to notify class members that a settlement had been reached and that the approval of the Court would be sought. After the settlement was approved, phase two aimed at informing class members of the claims process and the possibility of opting out of the settlement. The notice plan approved by the Court differs somewhat from schedule F to the Agreement and is more focused on phase two. Under the heading of "Effective Notice," the following excerpts aptly summarize what the plaintiffs undertook to do:

> The goal of Notice is to reach as many class members as is practicable in a clear, easily understandable manner, taking into account any special concerns about the education level or language needs of the class members. The notice must include: (1) contact information for Class Counsel to answer questions; (2) the address for the website, maintained by the Claims Administrator or Class Counsel and that provides links to the Settlement Agreement as amended, Notices of Certification and of Settlement Approval, motion materials for Settlement Approval and for Approval of Class Counsel Fees as well as other important documents in the case. The Notice of Settlement Approval must state all deadline dates, including those for the 90-day Opt Out period, the Implementation Date [to be updated as developments provide] and, if available, the period [start date/end date] within which claims

> forms will be available and will be accepted by the Claims Administrator.
>
> *Methods of Communication*
>
> Given the importance of unrepresented class members understanding and preserving their legal rights through either the claims process or the opt-out process, notice to all class members must be robust. As with the first phase notice, information regarding i) Settlement Approval including a summary of the Court's Decision, ii) Opt-Out process and date deadlines, and iii) anticipated Implementation Date will be communicated by email, telephone, facsimiles, community messaging; by television and radio; by social media as well as digital/internet advertising; and by letter mailing where required and practical. The goal of Notice is to reach as many anticipated class members as is practicable.
>
> *Language of Communication*
>
> […]
>
> Notice materials and Opt-Out forms will be made available in English, French, Cree, Ojibwe, Dene, Inuktitut and Mi'kmaq.

[82] Moreover, the notice plan contains a distribution of responsibilities between Class Counsel and Argyle. Class Counsel must send information to class members who have registered on Class Counsel's web site (numbering approximately 80,000 as of the date of approval) and to a broad range of Indigenous governing bodies and representative organizations. It must also continue "visits to local communities as Class Counsel may be invited to attend." Argyle, on its part, must maintain the web site, Facebook page and Twitter account and must develop content for a wide variety of media. Thus, beyond Class Counsel's duty to offer information sessions in Indigenous communities when invited, the notice plan does not require that individual, in-person notice be given to class members.

(b) *Class Member Assistance*

[83] Two measures were intended to provide class members with assistance in the claims process.

[84] First, with respect to legal advice, section 13.03(1) of the Agreement reads as follows:

> Class Counsel agrees that it will provide legal advice to Survivor Class Members on the implementation of this Settlement Agreement, including with respect to the payment of compensation, for a period of four (4) years after the Implementation Date.

[85] Section 13.03(2) states that this service will be provided at no cost to class members. This is also reflected in the short-form notice of settlement, which states that "Class Counsel will be available to assist you in the completion of Claims Forms at no cost."

[86] The second measure derives from an amendment to the notice plan in July 2020. The parties undertook to propose improvements to the notice plan after a few weeks of implementation. The amendment also reflected the demand for in-person assistance and the anticipated barriers resulting from the COVID-19 pandemic. According to this amendment, Argyle was to develop a Claimant Assistance Plan, pursuant to which 45-minute one-on-one, in-person assistance sessions were to be provided to class members in selected Indigenous communities over multi-day events. It was anticipated that approximately 11,000 class members could benefit from these sessions.

(3) Was the Benefit Delivered?

[87] This brings us to the crux of the case. Were class members deprived of the benefit of the agreement, either because of the COVID-19 pandemic or for other reasons?

[88] Like anyone seeking relief from the courts, the Moving Parties bear the burden of proof. It must be emphasized that the Moving Parties are not seeking any form of individual relief. It is true that, at the hearing, they insisted on an alternative form of relief that would direct the Claims Administrator to accept all individual claims beyond the Claims Deadline. While an individual decision would be made in each case, the Claims Administrator would be directed to presume that certain circumstances common to all class members, such as the COVID-19 pandemic, warrant an extension in every case. There is little practical difference between this and an order extending the Claims Deadline. In both cases, the relief sought is class-wide.

[89] It follows that the evidence justifying such relief must be class-wide as well. In other words, the Moving Parties cannot rely merely on evidence that a discrete number of class members were individually deprived of the benefit of the Agreement, as in the *JW* and *NN* cases. Rather, to justify a class-wide extension, they must show that the class was deprived of the benefit of the Agreement because a substantial proportion of its members were prevented from filing a claim. In other words, the evidence must be commensurate with the relief sought, and there is "a high bar for judicial intervention": *JW*, at paragraph 28. I will now turn to a review of the evidence in this regard.

(a) *Evidence Regarding Individual Cases*

[90] The first category of evidence consists of the personal observations of the Moving Parties' affiants. In their affidavits, Ms. Hill and Ms. Martin state that they believe that many class members have not been able to file a claim because they were unaware of the settlement or because of the barriers described above. They have met people who missed the deadline or who initially sought assistance and then did not come back. According to Ms. Martin, this may affect disproportionately those who are experiencing homelessness, who struggle with addiction, are incarcerated or reside outside Canada.

[91] While I do not doubt the sincerity of Ms. Hill's and Ms. Martin's assertions, they do not allow me to draw class-wide conclusions regarding the inability of a substantial portion of the class to file claims. For example, Ms. Martin states that Six Nations assisted approximately 600 class members in preparing their claims. While she expresses the belief that many other class members did not submit a claim, she does not provide any estimate of their number nor any information that would allow me to assess the magnitude of the problem.

[92] Undoubtedly, some class members were not able to file their claims before the deadline. Without more, however, this does not constitute a breakdown of the Agreement or a failure to provide the benefits promised by the Agreement. One must acknowledge that in a settlement of this kind, there will be a certain number of class members who will never make a claim. Perfection is not required and the benefits the settlement affords to the class as a whole must be

balanced against some members' inability to make a claim: *Fontaine*, at paragraph 62. In particular, where there is a deadline, it is inevitable that some members will miss it.

[93] On the basis of the observations of Ms. Hill and Ms. Martin, I cannot conclude that a significant proportion of class members were unable to file claims before the Claims Deadline or that there has been a class-wide failure to provide the benefits promised by the Agreement.

[94] The Plaintiffs argue that a negative inference should be drawn from the fact that the Moving Parties did not bring evidence from a single class member who was not properly notified about this action or was unable to file a claim before the Claims Deadline. I decline to do so. It should be obvious that class members who lack knowledge of this action or are not ready to file their claim are unlikely to identify themselves to the Moving Parties. Even if such persons were known to the Moving Parties, it is unlikely that they would be willing to provide evidence in a public proceeding. Confidentiality would be lost. Moreover, if a class member has not yet recovered memory of their abuse in day schools, by definition this is not susceptible of being put in evidence. Realistically, the Moving Parties cannot be expected to offer direct evidence from class members who have been unable to file a claim. They are, however, required to offer some evidence demonstrating the scope of the problem.

(b) *Take-Up Rate*

[95] In a class action, the take-up rate is the proportion of class members who actually file a claim and receive compensation. The take-up rate is often considered a measure of the success of

the claims process: Catherine Piché, *L'action collective: ses succès et ses défis* (Montreal: Thémis, 2019) at 137.

[96] The fact that approximately 185,000 claims were filed while the class size was estimated at 127,000 may be viewed as a sign of tremendous success. It may also mean that the class size estimate was flawed. Indeed, the Moving Parties filed the expert report of Dr. Nathan Taback, who alleges that Mr. Gorham's class size estimate suffers from a number of methodological flaws. Therefore, the Moving Parties ask me to give no weight to Mr. Gorham's estimate and to assume that the class is actually much larger than the 185,000 persons who have filed claims. They also ask me to order a study that, using a methodology put forward by Dr. Taback, would produce a more accurate estimate of the class size. The Plaintiffs and Defendant, on their part, argue that the actual number of claims is within the range identified by Mr. Gorham and that there is no cause for concern.

[97] In my view, while class size was likely underestimated, this alone does not warrant any inference regarding the actual class size nor a finding that a substantial proportion of class members were unable to file a claim.

[98] Let us begin with the degree to which the class size was likely underestimated. At the outset, it must be emphasized that the finding of underestimation flows entirely from the discrepancy between Mr. Gorham's estimate and the actual number of claims filed. Mr. Gorham concluded that there were from 120,000 to 140,000 class members who were alive in 2017, with a "best estimate" at 127,000. However, two adjustments must be made to enable a proper

comparison with the number of claims actually filed. The Agreement defines the class as including former students who were alive in 2007, not 2017. Thus, former students who died between 2007 and 2017 should be added to the estimate. The evidence contains statements to the effect that about 1,800 to 2,000 class members pass away every year, which would suggest an upwards adjustment of 18,000 to 20,000. This is compatible with the information given by the parties at the hearing that about 10% of the claims are made by estates. The other adjustment pertains to the fact that a proportion of the claims are rejected. At present, this proportion is very small, but the defendant suggested that it might increase because the claims that are still in process are more likely to be rejected for lack of proper documentation. Although the latter component remains speculative at this stage, I accept that the gap between the high bound of the estimate and the number of claims is smaller than it appears and might possibly be less than 20,000. Even then, it remains that the class size was most likely underestimated.

[99] This finding, however, does not assist the Moving Parties. The fact that the number of persons who filed a claim is larger than Mr. Gorham's estimate merely shows that the estimate is unreliable. It says nothing about persons who did not file a claim. It does not prove the actual size of the class. It does not show that there remains a large number of class members who were unable to file claims. Thus, it does not support a finding that the class has been deprived of the benefits of the Agreement.

[100] Nor is Dr. Taback's evidence useful in this regard. While Dr. Taback criticizes certain aspects of Mr. Gorham's methodology, he never asserts that the alleged shortcomings result in an overestimation or an underestimation. At most, Dr. Taback suggests that not enough is known

about the provenance of the data used by Mr. Gorham and that the latter should have given a more fulsome justification for the assumptions he made when data was missing. Moreover, Dr. Taback's criticism appears trivial in certain respects, for example when he concludes that 20% of the data is flawed, based mainly on a discrepancy of 705 pupils in 1957–1958, or when he highlights what amounts to a discrepancy of at most 3% for the years 1922–1929 and 1938–1944. Dr. Taback, however, does not put forward his own estimate of the size of the class, nor does he try to estimate the magnitude of the error caused by the alleged methodological flaws in Mr. Gorham's estimate. Quite simply, the Moving Parties have not brought any positive evidence of the size of the class.

[101] In the end, the Moving Parties' assertion that the class could be much larger than the 185,000 persons who filed a claim is based on mere speculation. For example, at the hearing, counsel relied on 2016 census figures regarding the Indigenous population in Canada to hypothesize that the class could be as large as 400,000 persons. There is absolutely no basis in the evidence for such speculation. As mentioned above, Dr. Taback does not offer any estimate of the size of the class and nothing in his report supports a figure three times higher than Mr. Gorham's estimate. Moreover, it is well known that there has been a substantial increase in the Indigenous population over the last 30 years, because of both natural increase and successive reforms to the registration provisions of the *Indian Act*. Yet the last day schools closed about 30 years ago. Therefore, speculation based on today's figures is bound to be misleading.

[102] What, then, is the significance of the fact that 185,000 claims were filed? In my view, this shows that a very significant number of class members were either unaffected by the barriers

described above or were able to overcome them before the Claims Deadline. Even though I am unable to calculate the size of the class or the take-up rate, the large number of claims filed is a relevant factor when assessing the Moving Parties' submissions regarding insufficiency of notice and support. This is not a situation where only a small proportion of the estimated class filed claims.

(c) *Insufficiency of Notice*

[103] The Moving Parties rely on the expert report of Todd Hilsee, a well-known class action notification expert, for the proposition that the notice plan was deficient and that the COVID-19 pandemic only made things worse. In my view, however, Mr. Hilsee's evidence is directed mainly at the sufficiency of the notice plan approved by the Court, which is not grounds for the Court's intervention at this late stage.

[104] Mr. Hilsee oversaw the notice plan for the IRSSA. In his affidavit, he indicates that this plan included an individualized in-person component, which saw a team of 15 persons "fan out across Canada" to hold information sessions in more than 600 communities. He states that more than 26,000 class members were reached in this manner. However, the Agreement in the present case does not provide for any form of in-person, individualized notice. In his opinion, this is a shortcoming that justifies an extension of the Claims Deadline.

[105] Mr. Hilsee's opinion, however, overlooks the fact that Justice Phelan approved the notice plan in spite of the lack of an individualized, in-person component. The Court can only exercise its supervisory jurisdiction if there has been a failure to deliver the benefits contemplated by the

Agreement, including the notice plan. Criticizing the notice plan that was approved does not show that it was not implemented or that its benefits were not delivered.

[106] Likewise, Mr. Hilsee's criticism of the use of "free media tactics" to raise awareness about the settlement misses the mark. This was contemplated by the notice plan. Any criticism should have been made at the settlement approval hearing. Moreover, such methods were used alongside other methods of notice, which, contrary to "free media tactics," include the Court-approved notice of settlement.

[107] Mr. Hilsee does not assert that there was a failure to implement any component of the notice plan as approved. Nor does he provide evidence that a substantial number of class members ignored the existence of the settlement. He does not attempt to measure the real-world effectiveness of the notice plan. While he mentions the COVID-19 pandemic, he does not explain its impact on the notice plan, which did not include an in-person component. Quite simply, there is no evidence that the notice plan was not implemented as promised or was ineffective.

[108] Beyond Mr. Hilsee's evidence, the Moving Parties made a number of assertions regarding the inadequacy of the notice plan. Ms. Hill commented that she found presentations made by class counsel to be confusing, in particular because they could have encouraged class members to make their claims at Level 1 instead of the higher levels. However, this criticism appears to be directed mainly at the existence of incentives to claim at Level 1 rather than the presentations themselves. To the extent that this relates to the phenomenon of progressive

disclosure, this was addressed in the *Waldron* matter. In the absence of more precise evidence regarding the contents of the presentations, this falls short of proving a systemic failure to provide adequate notice to class members.

[109] Chief Hill stated that the COVID-19 pandemic restricted "word of mouth" communication, which is so important in Indigenous communities. Yet, interpersonal communications were not entirely shut out during the pandemic, and constitute only one of several means by which class members were to be reached.

[110] Rather, the fact that 185,000 persons filed claims strongly suggests that the notice plan was effective, in spite of the criticisms brought forward by Chief Hill, Ms. Hill and Mr. Hilsee. To this obvious inference, Mr. Hilsee simply replies, "something must be wrong, either with the settling parties' estimate of the class size and/or whether the claims received truly reflect the harms suffered by Class members." But one cannot brush aside an inconvenient fact so easily. Even though the class size was likely underestimated, the filing of claims by 185,000 persons makes it very difficult to find that there has been a failure to provide the benefits of the Agreement in relation to the notice plan.

(d) *Lack of Individualized Assistance*

[111] The main theme of the Moving Parties' submissions is that class members needed individualized in-person assistance to complete the claim form and that the unavailability of such assistance prevented many of them from filing a claim. Once again, this submission must be

assessed not against a standard of perfection, but in light of what was promised in the Agreement.

[112] With respect to individualized assistance, the Agreement promised two main things. First, class counsel undertook to provide legal assistance to class members for a four-year period after the implementation date. Second, as a result of the amendment approved by Justice Phelan in July 2020, Argyle was to hold community support sessions in approximately 60 Indigenous communities and large urban centres. During these sessions, a team of support workers were to offer class members 45-minute, one-to-one sessions in order to help them with the claims process.

[113] There is no serious issue that these benefits were delivered. Class counsel's quarterly reports describe, albeit in summary form, the legal advice provided to individual class members. While Ms. Hill recounts an unsatisfactory experience with calling class counsel, the evidence before me does not show that, on a class-wide basis, class counsel failed to provide the services promised or that these services were inadequate.

[114] Likewise, while the community support sessions were suspended with the beginning of the COVID-19 pandemic, they resumed in January 2021. The list found in appendix B to Chief Hill's affidavit shows that 29 sessions were held in January-March 2020 and 62 more sessions were held after January 2021. There is no evidence that these sessions were inadequate in any way. One such session took place at Six Nations on November 7-8, 2021. Other than to say that the event was organized on short notice and that the turnout was "fairly low," Ms. Hill provides

little evidence that this session did not fulfil the promise made in the Agreement and its July 2020 amendment.

[115] Rather, the Moving Parties's submissions are tantamount to taking their efforts to help Six Nations members as a benchmark for what the Agreement should have provided. This is illustrated by Ms. Hill's description of the steps she takes when assisting a class member:

> When people asked me for help, I began by inviting them over, offering them a tea, and talking with them until they felt comfortable. I helped survivors identify their support network before we began to talk about their memories. I made sure they had at least three places to turn, and I always offered myself to be one of those supports. They had my phone number so that they could call me when they needed. It was common for the survivors I assisted to have difficult emotional reactions to their memories, the same way I did. They needed to know that they had a relationship with me, and that I would be available whenever they needed to talk, even in the middle of the night.
>
> To understand their narrative, I would start by asking them about their first year at the IDS – usually kindergarten or grade 1—and then go through each grade. I would ask them questions about more mundane things like taking the bus, what they had for lunch, what games they played. People remembered much more, and were able to organize and process their memories more, when they were able to focus on their school experiences this way. Often, survivors glossed over the traumatic aspects of their experience. I would gently direct them to the places where I could identify that they left something out. I would take notes and help them write out their narrative.
>
> It was often difficult and tiring for survivors to discuss their memories of the day schools, and they would require a break from the process before we were finished. It could be difficult and tiring for me as well. The first meeting between myself and the survivor could last anywhere between one to three hours, depending on the person. Then we would stop, and I would let them decide when to come back and continue. Sometimes, it could take a person months before they were ready to resume completing their claim.

[116] It would be ideal if all class members could benefit from such a level of assistance. As I mentioned above, Ms. Hill should be commended for having volunteered her time to provide such assistance to a number of survivors.

[117] There is, however, nothing in the Agreement that requires that individualized assistance of this nature be afforded to class members. It is true that section 9.03 of the Agreement states that the intent of the claims process is "to minimize the burden on the Claimants . . . and to mitigate any likelihood of retraumatization." However, such a statement of intent cannot form the basis for requiring an individualized class member assistance program that goes far beyond what the parties to the Agreement contemplated.

[118] The evidence does not show that the COVID-19 pandemic impacted class member assistance to a point that the benefits of the Agreement were not delivered. While the pandemic delayed the resumption of the community support sessions, in-person sessions were held in 2021 and 2022 in 62 communities. Moreover, Ms. Hill and Ms. Martin were able to assist many class members in person despite the pandemic. Even when Six Nations' administrative office was closed, Ms. Martin was able to arrange for one-on-one in-person meetings.

[119] In sum, the evidence does not show, on a class-wide basis, that class members were deprived of the assistance promised in the Agreement. While more intensive forms of assistance could undoubtedly have been provided, these would exceed the promise of the Agreement.

E. *Gap in the Agreement*

[120] As we have seen above, the Court's supervisory jurisdiction may be invoked where there is a gap in the settlement agreement to deal with unforeseen circumstances. The Moving Parties argue that the COVID-19 pandemic is an unforeseen circumstance and that the Agreement is silent as to the consequences of such an event on the claims process. In essence, the Moving Parties are asking me to imply a term in the Agreement allowing for an extension of the Claims Deadline where the claims process is affected by a significant public health crisis.

[121] I cannot agree with this submission. The lack of a specific provision allowing for an extension of the Claims Deadline in cases of unforeseen circumstances does not constitute a gap in the Agreement. It simply means that the parties did not intend to provide extensions beyond the six-month limit set forth in sections 28–31 of schedule B. These provisions allow for extensions in individual cases, in particular in "exceptional circumstances," which may include the impacts of the COVID-19 pandemic on a class member.

[122] Moreover, it is far from clear that the COVID-19 pandemic had the degree of impact on the claims process that the Moving Parties assert. As explained above, the notice plan did not depend on in-person activities. More than 60 in-person community support sessions took place during the pandemic. While I accept that the pandemic may have slowed down a wide variety of processes, it remains that class members had two years and a half (plus a six-month extension) to file their claims, and that close to 185,000 of them did so before the ultimate deadline. The facts do not support the assertion that the pandemic amounts to *force majeure* justifying a class-wide

extension. In saying this, I do not wish to prevent individual class members from asserting personal circumstances related to the COVID-19 pandemic to support a request for deadline extension for no more than six months.

F. *Independent Review of Take-Up Rate*

[123] The Moving Parties also ask the Court to order an independent assessment of the take-up rate or, perhaps more accurately, a new estimate of the class size, according to the method suggested by Dr. Taback. They state that Mr. Gorham's estimate is unreliable and that, as a result, the Court can have no confidence that the take-up rate is acceptable. If the independent assessment reveals that it is not, then this could form the basis for a request for further measures.

[124] This request is based on a misconception of the supervisory role of the Court. It is not for the Court to undertake its own investigation of the claims process. The parties obtained an estimate of the class size to assess their potential liability and to help set the financial parameters of the settlement. The Agreement does not set any minimum take-up rate nor does it provide for any particular measures if a specific level is not achieved. The Moving Parties have refrained from stating what, in their view, would be an acceptable take-up rate. The Court cannot, without amending the agreement, add a process whereby the claims deadline is indefinitely extended until an unspecified target is met.

[125] In addition, I am far from convinced that the method proposed by Dr. Taback would provide accurate figures in a reasonable time. The entirety of Dr. Taback's description of this method is found in the following few lines:

> Another approach to estimating the take up rate is to survey areas, such as reserves, of Canada where people that attended Federal Day Schools are known have lived. One strategy for a reserve with a land membership office is as follows:
>
> a. Use data from land membership office to estimate the total number of status members that attended federal day schools.
>
> b. Develop an outreach strategy to encourage community members that attended federal day schools to consent to an interview with the reserve.
>
> c. Encourage community members to reach out to other community members who might be part of the class.
>
> d. Record relevant data from these interviews (e.g., name of school, dates attended, has a claim been filed, if yes when was it accepted? If no, why not?).
>
> This prospective approach for surveillance of take-up using community partners is one way to reach former Federal Day School students that are unlikely to be reached by traditional outreach strategies that rely on traditional media. This method of sampling is called Snowball Sampling and is often used to recruit members of a group that are difficult to locate (e.g., homeless people, people incarcerated).

[126] Such a short description does not show much awareness of the hurdles that would face the proposed investigation. Dr. Taback's curriculum vitae does not mention any experience working with Indigenous communities. The use of the concept of "land membership office" suggests a lack of familiarity with these communities. Dr. Taback does not provide any realistic assessment of the availability of reliable data from the sources he has in mind. He does not explain how data derived from snowball sampling can generate quantitative findings nor how many communities would need to be surveyed to produce accurate results. It is purely speculative to assert that his proposed method would produce a better estimate of the class size than Mr. Gorham's.

III. Disposition

[127] For the foregoing reasons, while the Moving Parties are granted leave to participate in this action, their motion is dismissed. Contrary to the interpretation they put forward, the Agreement does not allow for an indefinite extension of the time limit to make claims. The evidence they brought does not show that there was, on a class-wide basis, a failure to provide notice or class member assistance as promised by the Agreement. The fact that the Agreement does not provide for an extension of time beyond the six-month extension period does not constitute a gap. Lastly, there are no grounds to order an independent review of the take-up rate.

[128] In closing, it bears emphasizing that this decision should not be taken as a dismissal of the concerns put forward by the Moving Parties. Nor is it an exhaustive assessment of the degree to which the Agreement was successful in mitigating the barriers to access to justice described above. Rather, the Court's task was to decide whether the evidence brought by the Moving Parties satisfied the high threshold for the exercise of the Court's supervisory jurisdiction, especially given the nature of the relief sought. Once the Court finds that the Moving Parties failed to meet this threshold, it is not its role to comment further. Others are in a better position to conduct a more fulsome assessment of the claims process. The Court can only express the hope that the experience gained in this proceeding, whether positive or negative, will be useful in the design of future class action settlements.

ORDER in T-2169-16

THIS COURT ORDERS that

1. Audrey Hill is granted leave to participate in the present action for the purposes of bringing the present motion.

2. Six Nations of the Grand River Elected Council is granted public interest standing for the purposes of bringing the present motion.

3. The motion is dismissed.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2169-16
STYLE OF CAUSE:	GARY LESLIE MCLEAN, ROGER AUGUSTINE, CLAUDETTE COMMANDA, ANGELA ELIZABETH SIMONE SAMPSON, MARGARET ANNE SWAN AND MARIETTE LUCILLE BUCKSHOT v HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA AND AUDREY HILL AND SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 12-13, 2023
ORDER AND REASONS:	GRAMMOND J.
DATED:	AUGUST 10, 2023

APPEARANCES:

Graham Ragan John J. Wilson	FOR THE PLAINTIFFS
Travis Henderson Sarah-Dawn Norris	FOR THE DEFENDANT
Richard Macklin Yolanda Song	FOR THE MOVING PARTY SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL
Louis Sokolov	FOR THE MOVING PARTY AUDREY HILL

SOLICITORS OF RECORD:

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Attorney General of Canada	FOR THE DEFENDANT

Ottawa, Ontario

Stevenson Whelton LLP Toronto, Ontario	FOR THE MOVING PARTY SIX NATIONS OF THE GRAND RIVER ELECTED COUNCIL
Sotos LLP Toronto, Ontario	FOR THE MOVING PARTY AUDREY HILL

TAB 17

Federal Court Cour fédérale

Date: 20231120

Dockets: T-402-19
T-141-20
T-1120-21

Citation: 2023 FC 1533

Ottawa, Ontario, November 20, 2023

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

T-402-19

BETWEEN:

XAVIER MOUSHOOM, JEREMY MEAWASIGE (BY HIS LITIGATION GUARDIAN, JONAON JOSEPH MEAWASIGE) AND JONAVON JOSEPH MEAWASIGE

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

T-141-20

BETWEEN:

ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON (BY HIS LITIGATION GUARDIAN, CAROLYN BUFFALO), CAROLYN BUFFALO AND

DICK EUGENE JACKSON ALSO KNOWN AS RICHARD JACKSON

Plaintiffs

and

HIS MAJESTY THE KING AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

T-1120-21

BETWEEN:

ASSEMBLY OF FIRST NATIONS AND ZACHEUS JOSEPH TROUT

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

REASONS FOR SETTLEMENT APPROVAL ORDER

[1] This settlement is the culmination of a 15-year-long proceeding before the Canadian Human Rights Tribunal and three class actions concerning Canada's chronically underfunded and discriminatory First Nations Child and Family Services [FNCFS] program on reserves and in the Yukon, and Canada's failure to provide non-discriminatory access to essential health and social

services. This $23.34 billion, First Nations-led settlement represents a monumental step towards reconciliation and will provide life-changing relief to hundreds of thousands of marginalized First Nations youths and families.

[2] The Plaintiffs brought a motion, on consent and pursuant to Rule 334.29 of the *Federal Courts Rule*s, SOR/98-106 [*Rules*], for an order approving the final settlement agreement executed by the Plaintiffs and the Defendant on April 19, 2023 and as amended by way of Addendum dated October 10, 2023 [Final Settlement Agreement] and approving an honorarium for the representative plaintiffs.

[3] At the hearing of the motion on October 24, 2023, I advised the parties that I would be issuing an order approving the Final Settlement Agreement and granting the requested honoraria, with reasons to follow. My Order was issued on November 3, 2023 and I am now providing herein my reasons for doing so.

I. Background

A. *Nature of the claim and history of the litigation*

[4] In the underlying proceedings, the Plaintiffs advanced claims for two related categories of discriminatory conduct:

> A. Canada chronically underfunded the FNCFS program on reserves and in the Yukon, and operated it in a discriminatory manner, which systemically incentivized the removal of First Nations children from their families, communities and cultures; and

B. Canada failed to provide non-discriminatory access to essential health and social services, in breach of section 15 of the *Canadian Charter of Rights and Freedoms* and Jordan's Principle.

[5] In relation to the first category (the removed child claims), the Plaintiffs state that, for decades, Canada underfunded child and family services for First Nations children living on reserve and in the Yukon. In particular, Canada underfunded supportive prevention services that would allow First Nations children to remain in their homes. At the same time, Canada funded the removal of those children from their families and communities, which created a perverse incentive – namely, children had to be removed from their homes to receive public services that were available to children off reserve.

[6] The removal of children from their home causes severe and often permanent trauma. As such, it is typically only employed as a measure of last resort. However, in the case of First Nations children on reserve and in the Yukon, it became a measure of first resort due to the underfunding of services, resulting in the staggering overrepresentation of First Nations children in state care.

[7] The Plaintiffs state that this underfunding persisted despite: (a) the heightened need for such services on reserve due to the inter-generational trauma inflicted on First Nations people by the legacy of the Indian residential schools and the Sixties Scoop; and (b) Canada's knowledge of the deficiencies in the FNCFS program based on numerous governmental and independent reports detailing these significant deficiencies, the inequities in the FNCFS program and their harmful impacts on First Nations people.

[8] The Plaintiffs state that the incentive to remove First Nations children from their homes has caused traumatic and enduring consequences for First Nations children (including the Representative Plaintiffs), many of whom already suffer the effects of trauma inflicted by Canada on their parents, grandparents and ancestors by Indian residential schools and the Sixties Scoop.

[9] In relation to the second category (the essential services claims), the Plaintiffs state that Canada failed to provide First Nations children with adequate and non-discriminatory access to essential health and social services and products, contrary to Jordan's Principle. Jordan's Principle, named after Jordan River Anderson (a First Nations child born with complex illnesses), is a legal obligation requiring that the government department first presented with a request for essential services by a First Nations child must pay for those services before arguing over which level of government or which department should pay. The Plaintiffs state that, notwithstanding that Canada has acknowledged its legal obligation to comply with Jordan's Principle, Canada ignored this obligation for decades and denied crucial health and social services and products to many First Nations children.

[10] On March 4, 2019, Xavier Moushoom commenced a proposed class action proceeding (Court file no. T-402-19) seeking compensation for children who had suffered discrimination related to the FNCFS program since April 1, 1991 and the discriminatory delivery of essential services and non-compliance with Jordan's Principle since April 1, 1991 [Moushoom Class Action]. Jeremy Meawasige, by his litigation guardian, Jonavon Joseph Meawasige (and prior to him, their late mother Maurina Beadle) and Jonavon Joseph Meawasige were subsequently joined as representative plaintiffs.

[11] On January 28, 2020, the Assembly of First Nations [AFN] and a number of proposed representative plaintiffs commenced a second proposed class action proceeding (Court file no. T-141-20) [AFN Class Action], which overlapped with the Moushoom Class Action. The representative plaintiffs in the AFN Class Action are Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson (by his litigation guardian, Carolyn Buffalo), Carolyn Buffalo and Dick Eugene Jackson (also known as Richard Jackson).

[12] On July 7, 2021, the Moushoom Class Action and the AFN Class Action were consolidated [Consolidated Action], on consent. However, the parties agreed to remove from the consolidated action claims relating to delays, denials or gaps in the provision of essential services before December 11, 2007 and that such claims would be addressed in a separate proceeding to be commenced by Zacheus Trout and the AFN. At that point in time, Canada took the position that Jordan's Principle did not exist prior to December 12, 2007 (when the House of Commons passed a motion in support of Jordan's Principle) and therefore opposed the certification of any claims before December 12, 2007.

[13] On July 16, 2021, Mr. Trout and the AFN commenced a proposed class action (Court file no. T-1120-21) dealing with the claims previously advanced in the Moushoom Class Action relating to delays, denials and gaps in the provision of essential services between April 1, 1991 and December 11, 2007 [Trout Class Action]. The Trout Child Class is named in memory of Mr. Trout's two late children, Sanaye and Jacob Trout.

[14] On November 26, 2021, the Consolidated Action was certified as a class proceeding on consent.

[15] Canada subsequently abandoned its opposition to the pre-December 12, 2007 claims and on February 11, 2022, the Trout Class Action was also certified as a class proceeding on consent.

B. *Relationship between these actions and the proceedings before the Canadian Human Rights Tribunal*

[16] In 2007, the AFN and the First Nations Child and Family Caring Society of Canada [Caring Society] filed a complaint with the Canadian Human Rights Commission [Commission] against Canada. On October 14, 2008, the Commission referred the complaint to the Canadian Human Rights Tribunal [Tribunal].

[17] The allegations in the Consolidated Action duplicated, in part, allegations first made before the Tribunal on behalf of: (a) First Nations children removed and placed off-reserve between 2006 and 2022; (b) First Nations children who faced a denial, delay or gap in the provision of essential services (breaches of Jordan's Principle) between 2007 and 2017; and (c) some caregiving parents and grandparents of those children.

[18] After a 70-day hearing with 25 witnesses and 500 documentary exhibits, on January 26, 2016, the Tribunal found that Canada violated section 5 of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [*CHRA*] in two ways: (i) the FNCFS program discriminated against First Nations children and families on reserve and in the Yukon, resulting in inadequate fixed funding that

hindered the delivery of culturally appropriate child welfare services, created incentives for its agencies to take First Nations children into care, and failed to consider the unique needs of First Nations children and families; and (ii) Canada discriminated by taking an overly narrow approach to Jordan's Principle, which resulted in service gaps, delays, and denials [Merit Decision]. The Merit Decision recognized that Canada's discriminatory funding practices caused First Nations children and families living on reserves and in the Yukon to suffer.

[19] The Tribunal ordered that Canada immediately cease its discriminatory practices and engage in any reforms needed to bring itself into compliance with the Merit Decision, and immediately implement Jordan's Principle's full meaning and scope. Finally, the Tribunal sought submissions from the parties regarding remedies.

[20] Neither Canada nor the complainants sought judicial review of the Merits Decision, which became final on March 2, 2016.

[21] In March 2019, the CHRT returned to the question of remedy. Canada made submissions opposing entitlement to individual compensation on the basis that the Tribunal lacked jurisdiction. In September 2019, the Tribunal rejected Canada's arguments and ordered Canada to provide compensation in the amount of $40,000.00 plus interest to those children and their caregiving parents and grandparents who were affected by Canada's discriminatory underfunding of family and child services or by its narrow application of Jordan's Principle (as provided in the Merits Decision) [Compensation Decision].

[22] Canada sought judicial review of the Compensation Decision. In September 2021, the Federal Court dismissed Canada's application for judicial review of the Compensation Decision. In its decision, this Court urged the parties to work towards achieving a fair and just settlement. Canada appealed this Court's judicial review decision. Canada agreed to withdraw it appeal on approval of the Final Settlement Agreement.

C. *Settlement Negotiations*

[23] Starting in 2019, the parties to the class action proceedings engaged in various forms of settlement negotiations.

[24] From November 2020 to September 2021, the parties to the Consolidated Action engaged in mediation before Justice Leonard Mandamin. The negotiations covered not only compensation for certain classes in the Consolidated Action but also long-term reform. During this time, Canada refused to engage in negotiations regarding the Trout Class Action. The parties were unable to reach an agreement and Class Counsel sought to advance the litigation.

[25] In November of 2021, the parties to the Consolidated Action agreed to enter into further negotiations facilitated by the Honourable Murray Sinclair. Toward the end of these negotiations, Canada agreed to include the Trout Class Action in the settlement discussions.

[26] On December 31, 2021, the Plaintiffs and Canada reached an agreement in principle, which set out the principal terms of their agreement to settle all of the class actions. Canada made agreement on compensation conditional on the Tribunal parties concurrently reaching an

agreement on long-term reform of the federal First Nations child welfare system. A separate agreement in principle was concluded on long-term reform, which does not form part of the settlement before the Court on this motion.

[27] After several months of negotiations, the parties executed a final settlement agreement dated June 30, 2022 [First Agreement], which provided for a total settlement amount, excluding legal and administrative fees, of $20 billion. The First Agreement was conditional on the Tribunal confirming that the First Agreement satisfied the Compensation Decision and related compensation orders.

[28] On July 22, 2022, the AFN and Canada brought a joint motion to the Tribunal for confirmation that the First Agreement satisfied the Compensation Decision and related compensation orders. The Caring Society and the Commission opposed the joint motion.

[29] On October 24, 2022, the Tribunal issued a letter decision dismissing the joint motion, with full reasons following on December 20, 2022. In its full reasons, the Tribunal found that, while the First Agreement substantially satisfied the Tribunal's Compensation Decision and related compensation orders, it did not fully satisfy them in four material respects:

A. First Nation children ordinarily living on a reserve who were voluntarily sent by their caregivers to stay with non-family off-reserve (the parties have now named this group "Kith") were entitled to compensation.

B. The estates of deceased parents and grandparents of affected children were entitled to compensation.

C. While affected children were limited to the Tribunal's damages cap of $40,000.00, certain parents and grandparents who had more than one child affected were entitled

to that amount for each child—meaning that if, for example, a father had four children removed from his care, he should be entitled to $160,000.00.

D. The Tribunal needed more certainty and clarity on the parties' approach to Jordan's Principle and a longer opt-out period.

[30] After further rounds of negotiation between January and April 2023, the parties and the Caring Society reached an updated agreement on April 19, 2023 that was ultimately formalized in the Final Settlement Agreement. The Final Settlement Agreement addressed the four issues raised by the Tribunal and added $3.34 billion (for a total of $23.34 billion) in compensation to cover the additional requirements.

[31] On June 30, 2023, the AFN and Canada brought a fresh joint motion before the Tribunal for an order that the Final Settlement Agreement satisfied the Compensation Decision and related compensation orders, which order was granted.

D. *Key provisions of the FSA*

[32] Under the terms of the Final Settlement Agreement, Canada will pay $23,343,940,000 to settle the claims of the Class in the Consolidated Action and the Trout Class Action, which the parties advise is the largest class action settlement in Canadian history.

[33] The Final Settlement Agreement provides for nine classes with a combined estimated membership total of over 300,000 individuals, with the following simplified definitions:

A. "Removed Child Class" means all First Nations individuals who (i) while under the age of majority, and (ii) while they, or at least one of their caregivers were ordinarily resident on reserve or living in the Yukon, (iii) were removed from their home by child

welfare authorities or voluntarily placed into care between April 1, 1991 and March 31, 2022, and (iv) whose placement was funded by Indigenous Services Canada.

B. "Removed Child Family Class" means all brothers, sisters, mothers, fathers, grandmothers and grandfathers of a member of the Removed Child Class at the time of removal.

C. "Essential Service Class" means all First Nations individuals who, between December 12, 2007 and November 2, 2017, did not receive from Canada an essential service (whether by denial or service gap) relating to a confirmed need, or whose receipt of an essential service relating to a confirmed need was delayed by Canada on grounds including a lack of funding or jurisdiction, or as a result of a service gap or jurisdictional dispute.

D. "Jordan's Principle Class" means all members of the Essential Service Class who experienced the highest level of impact (including pain, suffering or harm of the worst kind).

E. "Jordan's Principle Family Class" means all brothers, sisters, mothers, fathers, grandmothers or grandfathers of a member of the Jordan's Principle Class at the time of the delay, denial or service gap.

F. "Trout Child Class" means all First Nations individuals who, between April 1, 1991 and December 11, 2007, did not receive from Canada an essential service (whether by denial or service gap) relating to a confirmed need, or whose receipt of an essential service relating to a confirmed need was delayed by Canada on grounds such as a lack of funding or jurisdiction, or a result of a service gap or jurisdictional dispute.

G. "Trout Family Class" means the brothers, sisters, mothers, fathers, grandmothers or grandfathers of a member of the Trout Child Class at the time of the delay, denial or service gap.

H. "Kith Child Class" means First Nations Children placed with an unpaid non-family caregiver off-reserve during the Removed Child Class Period at a time when a child welfare authority was involved in the First Nations Child's case.

I. "Kith Family Class" means the caregiving parents or, in the absence of caregiving parents, the caregiving grandparents of an Approved Kith Child Class Member who was in a placement between January 1, 2006 and March 31, 2022.

[34] The Final Settlement Agreement sets out the criteria for entitlement to a payout for each Class and the principles for determining the amount that each Class Member may receive. In

general, the Final Settlement Agreement contemplates payment of a base compensation amount, plus the possibility of an enhanced payment for those individuals that were most impacted by Canada's discriminatory conduct.

[35] Removed Child Class Members will receive a base compensation of $40,000.00, together with interest, a time value enhancement (to create parity amongst Remove Child Class Members accessing payouts over the course of a claims process expected to last 20 years) and a possible enhancement payment. The Plaintiffs and experts have identified objective factors that aggravated the harm suffered so as to entitle a Class Member to an enhanced payment, including the age at which they were removed for the first time, the total number of years spent in care, the age at which they exited the child welfare system, whether they were removed to receive an essential service relating to a confirmed need, whether they were removed from a northern or remote community, and the number of spells in care or the number of out-of-home placements applicable to a Removed Child Class Member who spent more than one year in care. Based on Class Counsel's initial approach to the calculation of enhancement payments (which is subject to further consultation with experts and approval of the Settlement Implementation Committee), Removed Child Class Members who meet the criteria for multiple enhancement factors may receive total payouts of approximately $230,000.00.

[36] A budget of $7.25 billion has been allocated to the Removed Child Class based on a class size estimate of 116,000, which was arrived at with the assistance of experts.

[37] Removed Child Family Class Members will receive a base compensation of $40,000.00 (in some cases, multiplied by the number of affected children), with no enhancement payment available. Compensation is available for up to two caregiving parents or grandparents per child, with conflicts among purported caregivers to be resolved based on a pre-defined priority list. Caregivers who have committed sexual or serious physical abuse related to the Removed Child Class Member's removal are not eligible for compensation in relation to that child. A budget of $5.75 billion has been allocated to the Removed Child Family Class, with a further budget of $997 million for any multiplication of the base compensation.

[38] Members of the Essential Service Class, Jordan's Principle Class and Trout Child Class will be eligible for compensation if they had a confirmed need for an essential service and (i) they requested the essential service and it was denied; (ii) they requested an essential service and faced an unreasonable delay; or (iii) there was a service gap such that the essential service was not available, even if the essential service was not requested. Claimants will be required to provide supporting documentation that the essential service was recommended by a professional at the relevant time.

[39] The Final Settlement Agreement is structured so that those who suffered greater harms (Jordan's Principle Class) receive at least $40,000.00, whereas those who suffered lesser harms (Essential Service Class) receive at most $40,000.00. Funds will be distributed first to those who suffered greater harms, with the balance to be distributed *pro rata* to those who suffered lesser harms. A budget of $3 billion has been allocated to the Essential Service Class and Jordan's

Principle Class, based on an estimate of 65,000 Jordan's Principle Class Members, arrived at with the assistance of experts.

[40] Compensation for the Trout Child Class Members will be made using the same guiding principle, with those who suffered greater harms receiving at least $20,000.00 and those who suffered lesser harms receiving at most $20,000.00. The compensation differential between the Trout Child Class Members and the Essential Service Class and Jordan's Principle Class Members is rooted in the heightened litigation risk for the Trout Class Action, which advanced novel essential service claims, had no overlap with the Tribunal's Compensation Decision and pre-dated Jordan's Principle. A budget of $2 billion has been allocated to the Trout Child Class, based on an estimate of 104,000 Trout Child Class Members, arrived at with the assistance of experts.

[41] Only caregiving parents or grandparents of an approved Jordan's Principle Class Member may be entitled to compensation if they themselves suffered the highest level of impact, in which case they will receive a base compensation of $40,000.00, assessed using objective factors developed in consultation with experts. Similarly, only caregiving parents or grandparents of an approved Trout Class Member may be entitled to compensation if they themselves suffered the highest level of impact, although no set amount of compensation is prescribed in the agreement. Rather, the amount of compensation will be determined by the Settlement Implementation Committee with the assistance of an actuary. All other Jordan's Principle Family Class Members and Trout Family Class Members will not receive direct compensation, but are intended to benefit from the *cy-près* fund (addressed below). A budget of $2 billion has been allocated to the Jordan's Principle Family Class and the Trout Family Class.

[42] The base compensation entitlement of an approved Kith Child Class Member will be $40,000.00, with no available enhancement payments. Compensation entitlement for Kith Child Family Class Members follows a similar method to that applicable to certain Removed Child Family Class Members (with some nuances) and provides a base compensation of $40,000.00. A budget of $600 million has been allocated to the Kith Child Class (based on an estimated class size of 15,000) and a budget of $702 million has been allocated to the Kith Family Class (based on an estimated class size of 17,550).

[43] With respect to the claims period, individuals who have reached the age of majority are entitled to file claims for up to three years following the implementation of the claims process. For those who are still minors, the claims period will remain open for three years following the date on which they reach the age of majority. The Final Settlement Agreement contains certain exceptions that permit the filing and payment of a claim before a child reaches the age of majority, and for extending the claim deadline if necessary.

[44] The Final Settlement Agreement also establishes a First Nations-led *cy-près* fund endowed with:

A. $50 million for supports to Class Members who did not receive direct compensation, funded by the interest earned on the settlement funds. These supports include: (i) family and community unification, reunification, connection and reconnection for youth in care and formerly in care; (ii) reducing the costs associated with travel and accommodations to visit community and family, including for First Nations youth in care and formerly in care, support person(s) or family members; and (iii) facilitating access to culture-based, community-based and healing-based programs, services and activities to Class Members and children of First Nations parents who experienced a delay, denial or service gap in the receipt of an essential service; and

B. $90 million for post-majority supports for high needs Jordan's Principle Class Members until the age of 26 to ensure their personal dignity and well-being, funded by allocated settlement funds.

[45] The Final Settlement Agreement contains a number of other key provisions and design features, including the following:

A. Detailed provisions are included regarding deceased Class Members and the eligibility of their estates for payouts under the settlement.

B. The implementation will be fully First Nations-led.

C. The claims process will be trauma-informed and culturally sensitive, and has been approved after extensive consultations with First Nations stakeholders. Class Members will not need to submit to an interview or examination, which will minimize the risk of re-traumatization.

D. Class Members will be provided with fully-funded supports to help them navigate the claims process and to address mental health, cultural, administrative, legal and financial needs throughout the claims process.

E. Measures have been included to protect Class Members against predatory practices of non-class counsel, who have attempted in this proceeding and in other First Nations class action settlements to take advantage of Class Members' lack of sophistication in navigating the claims process.

F. There will be no encroachment on the settlement funds. Canada has committed to pay the costs of notice to the Class, Class Counsel fees, health and wellness supports, claims process supports, and all administration and implementation costs, over and above the $23.34 billion settlement fund.

G. Canada has committed to make best efforts to ensure that: (i) payouts received under the Final Settlement Agreement will not impact any social benefits or assistance that Class Members would otherwise receive from Canada or from a province or territory; and (ii) compensation paid through the claims process will not be considered income for tax purposes.

H. A substantial amount of the settlement funds will be invested (in accordance with the guidance of an Investment Committee) given the length of time over which the settlement will be administered. The interest and income earned on the principal investment is anticipated to be substantial (billions of dollars) and will be directed entirely to Class Members.

I. Canada will propose to the Office of the Prime Minister that the Prime Minister make a public apology for the discriminatory conduct underlying the Class Members' claims and the past and ongoing harm it has caused.

E. ***Notice to the Class and to Opt-outs***

[46] The notice plan for the first phase of notice related to certification, opt-out and the settlement approval hearing was approved by the Court on August 11, 2022 and implementation of the notice plan began on August 19, 2022. The dissemination of notice in accordance with the notice plan continued uninterrupted until August 16, 2023, when the Court approved revised notices providing details of the settlement approval hearing held on October 23-24, 2023.

[47] This class action has had an opt-out period of 14 months, with an extended opt-out period for the Kith Child and Kith Family Classes. However, not a single Class Member has opted out of the Class. Sixteen completed opt-out forms were received, but upon inquiries by the Administrator and/or Class Counsel, it was determined that each form was submitted in error, with the Class Members thinking they needed to complete the form in order to receive compensation.

F. ***Settlement Approval Motion***

[48] The settlement approval motion was heard on October 23-24, 2023. Extensive evidence was filed by the Plaintiffs in the form of the following affidavits:

A. The affidavit of Robert Kugler sworn October 16, 2023;

B. The affidavit of Joelle Gott sworn October 12, 2023;

C. The affidavit of Dean Janvier sworn October 12, 2023;

D. The affidavit of Kim Blanchette sworn October 16, 2023;

E. The affidavit of Janice Ciavaglia sworn September 6, 2022;

F. The affidavit of Amber Potts sworn October 16, 2023;

G. The affidavits of Dr. Lucyna M. Lach sworn September 6, 2022 and September 19, 2023;

H. The affidavit of William Colish affirmed September 2, 2022;

I. The affidavits of Jonavon Joseph Meawasige sworn September 1, 2022 and September 25, 2023;

J. The affidavit of Karen Osachoff affirmed September 5, 2022;

K. The affidavit of Ashley Dawn Louise Bach affirmed September 6, 2022;

L. The affidavit of Melissa Walterson affirmed September 6, 2022;

M. The affidavit of Zacheus Joseph Trout sworn September 2, 2022;

N. The affidavit of Xavier Moushoom affirmed August 23, 2022;

O. The affidavit of Carolyn Buffalo affirmed September 6, 2022; and

P. The affidavit of Richard Jackson affirmed September 7, 2022.

[49] Canada also filed the affidavit of Valerie Gideon affirmed October 16, 2023, in support of the motion.

[50] Class Members were on notice of the settlement approval motion hearing, and given an opportunity to express an intention to object to the Final Settlement Agreement in writing or in person at the hearing. No Class Member raised any objections with the Administrator in advance of the hearing and no Class Members objected to the settlement at the hearing of the motion.

[51] All of the Representative Plaintiffs support the approval of the Final Settlement Agreement. In addition to their affidavits, a number of the Representative Plaintiffs also gave statements in support of the settlement at the hearing and one Class Member provided a written statement in support of the settlement that was read aloud at the hearing.

II. Analysis

[52] The two issues before the Court on this motion are as follows:

A. Whether the Final Settlement Agreement should be approved as fair, reasonable and in the best interests of the Class as a whole; and

B. Whether honoraria should be paid to the representative plaintiffs.

A. *Approval of the Final Settlement Agreement*

[53] Subsection 334.29(1) of the *Rules* provides that a class proceeding may be settled only with the approval of a judge. Once approved, the settlement binds every class or subclass member who has not opted out of or been excluded from the class proceeding.

[54] The legal test to be applied in approving a class action settlement is whether the settlement is "fair, reasonable and in the best interests of the class as a whole." The test for settlement is not perfection [see *Wenham v Canada*, 2020 FC 588 at para 51, aff'd 2020 FCA 186, leave to appeal ref'd [2021] SCCA No 2; *McLean v Canada (Attorney General)*, 2019 FC 1075 at para 76; *Merlo v Canada*, 2017 FC 533 at para 18].

[55] In assessing whether a settlement meets this standard, this Court may take into account a number of factors, the weighing of which will vary depending on the circumstances. The non-exhaustive list of factors to consider includes: (a) the terms and conditions of the settlement; (b) the likelihood of success/recovery; (c) the amount and nature of pre-trial activities, including investigation, assessment of evidence, production and discovery; (d) the arm's length bargaining and information regarding dynamics of negotiations; (e) the recommendation of class counsel; (f) the communications with class members; (g) any expression of support and objections; (h) the presence of good faith and absence of collusion; (i) the future expense and likely duration of litigation; and (j) any other relevant factor or circumstance [see *Tk'emlúps te Secwépemc First Nation v Canada*, 2023 FC 327 at para 49; *Wenham*, supra at para 50; *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 64; *Lin v Airbnb, Inc*, 2021 FC 1260 at para 22; *McLean v Canada (Attorney General)*, 2019 FC 1075 at para 66].

[56] Settlements must be looked at as a whole. It is not open for this Court to rewrite the substantive terms of a settlement or assess the interests of the individual class members in isolation from the whole class. Settlements involve some "give and take"—even where it is difficult for the injured parties to see why any concessions should be made [see *Tataskweyak Cree Nation*, supra at para 63; *McLean v Canada (Attorney General)*, 2019 FC 1075 at para 68].

[57] Ultimately, when approving a settlement, this Court cannot modify or alter the agreement of the parties—it must approve it as is, or reject it. Were it otherwise, the parties may be discouraged from settling the matter because their bargain might be upended by the Court [see *McLean v Canada (Attorney General)*, 2023 FC 1093 at para 37; *Tataskweyak Cree Nation*, supra at para 62].

[58] Settlements need not be perfect, as long as they fall in the "zone of reasonableness." To reject a settlement, this Court must conclude that the settlement does not fall within the range of reasonable outcomes. The zone of reasonable outcomes reflects the fact that settlements rarely give all of the parties exactly what they want, and are instead the result of compromise [see *Tataskweyak Cree Nation*, supra at para 63; *McLean v Canada*, 2019 FC 1075 at para 76].

[59] I will now consider each of the factors in relation to the Final Settlement Agreement.

1) Terms and conditions of the settlement

[60] A summary of the key terms and conditions of the Final Settlement Agreement is outlined earlier in these Reasons.

[61] Some of the salient features of the Final Settlement Agreement which I find underpin its fairness and reasonableness and demonstrate that it is in the best interests of the Class are the following:

A. The Final Settlement Agreement provides for a historic level of compensation at $23.34 billion, ensures proportionality of compensation based on objective proxies for harm and favours those children who have suffered the greatest harms.

B. The scope of the settlement is vast, providing significant amounts of compensation to an estimated Class of over 300,000 First Nations individuals.

C. The Final Settlement Agreement was drafted to ensure that all settlement funds are available for the benefit of Class Members, with all Class Counsel fees and administrative and support costs paid separately by Canada.

D. The Final Settlement Agreement contains a number of safeguards to ensure that compensation is paid in a manner that minimizes re-traumatization (such as by avoiding the need for an interview or examination of Class Members in order for them to advance a claim), and includes free supports to the Class Members throughout the claims process that are both culturally sensitive and trauma-informed.

E. The parties have gone to extensive lengths to ensure that claimants can navigate the claims process without the need for assistance from non-class counsel, so as to ensure that Class Members receive the full value of their compensation without the deduction of any legal fees. The Final Settlement Agreement also contemplates a non-class counsel protocol aimed to ensure that vulnerable Class Members are not victimized by predatory legal professionals seeking a percentage of their recovery.

F. The Final Settlement Agreement provides for a sizeable *cy-près* fund that will enable Class Members who are not eligible for direct payments to indirectly benefit from the settlement and to provide additional relief to high needs Jordan's Principle Class Members who are beyond the age of majority.

G. The entirety of the interest earned on the settlement funds (which is expected to be in the billions of dollars) will be distributed to the Class Members.

[62] I am satisfied that the terms and conditions of the Final Settlement Agreement provide significant advantages to the Class Members, many of which would not have been achieved with the continuation of the litigation.

2) Likelihood of recovery/success at trial

[63] A consideration of this issue requires a fragmentation of the claims advanced by the Plaintiffs.

[64] For those claims that are also covered by the Tribunal's Merit Decision and Compensation Decision, the likelihood of recovery in the litigation was far greater, even with a pending appeal to the Federal Court of Appeal of the dismissal of Canada's application for judicial review of the Compensation Decision.

[65] For those claims not covered by the Tribunal's Merit Decision and Compensation Decision, the likelihood of recovery in the litigation was uncertain. The Trout Class Action is based on Canada's discrimination prior to the recognition of Jordan's Principle in 2007. Similarly, members of the Removed Child Class and the Removed Child Family Class for the period from 1991 to 2005 and those who were apprehended from their families but placed within their communities were excluded from the Tribunal proceeding and therefore could not benefit from the liability findings made by the Tribunal.

[66] Even if both groups of claims were ultimately successful at trial, there would remain uncertainty as to whether the Class Members would be entitled to recover damages in the range of $23.34 billion. Moreover, the additional benefits associated with the Final Settlement Agreement (such as a trauma-informed, culturally sensitive and First Nations-led claims process, extensive fully-funded supports to help Class Members navigate the claims process and to address mental

health, cultural, administrative, legal and financial needs, the *cy-près* fund and the formal request for a public apology from the Office of the Prime Minister) would not be recoverable at trial.

3) Amount and nature of pre-trial activities

[67] Neither the Consolidated Action nor the Trout Class Action proceeded past the certification stage. However, I am satisfied that the work that was done in the context of the Tribunal proceedings enabled the success of the negotiations. As acknowledged by the Plaintiffs in their written representations, the Tribunal proceedings provided a "wealth of knowledge about the case." I am therefore satisfied that Class Counsel had a sufficient evidentiary basis upon which to undertake the negotiations.

[68] Moreover, there would be a significant amount of pre-trial activities required absent a settlement, which is a factor that supports the approval of the settlement.

4) Presence of arm's length bargaining and information regarding the dynamics of the negotiations

[69] The lengthy negotiations that led to the First Agreement and then the Final Settlement Agreement were arm's length and adversarial in nature, involving well-respected First Nations jurists as mediators. The negotiations also benefited from extensive consultation with First Nations leadership and communities, as well as third party review, comment and criticism.

5) Class Counsel recommendation

[70] Class Counsel assert that the Final Settlement Agreement is fair, reasonable and in the best interests of the Class Members. The various counsel comprising Class Counsel have extensive class action litigation experience and, importantly, extensive experience representing First Nations individuals. Collectively, they are alert to the unique challenges that arise in relation to mega-settlements of this nature, including the prospects for re-traumatization. Accordingly, I give their recommendation substantial weight in the approval process.

6) Communications with Class Members

[71] The evidence before the Court is that the communications with Class Members regarding the Final Settlement Agreement and the hearing of the settlement approval motion has been ongoing, broad in reach and in compliance with the notice plan approved by the Court. In relation to the initial settlement approval hearing notice and the revised September 2023 notice, this included:

A. Social media advertisements – over 14 million impressions, 173,456 clicks, 3,986 base comments and 15,356 post shares.

B. Engagements with the First Nations Child and Family Services and Jordan's Principle Class Action Facebook page – 4,233 followers, 275 engagements, 218 shares of posts and 105 comments.

C. 2,902 calls to the information line.

D. 525,0000 estimated impressions from Indigenous media placement, both digital and print.

[72] The evidence further demonstrates that the AFN has provided ongoing updates to First Nations leadership on negotiations, the structure of the settlement and the substance of what would

be included in the Final Settlement Agreement, including approximately 50 briefings to the AFN Executive, AFN Regional Chiefs and Chiefs' Assemblies.

7) Expression of support and objections

[73] All of the representative plaintiffs support the Final Settlement Agreement and not a single Class Member or third party has come forward to raise any objections to the settlement. Similarly, not a single Class Member has opted out of the class proceedings. Moreover, the evidence before the Court demonstrates that First Nations leadership unanimously and unequivocally supports the Final Settlement Agreement.

8) Presence of good faith and absence of collusion

[74] I am satisfied that all parties negotiated in good faith and there is no evidence whatsoever before the Court of any collusion on the part of any of the parties or their counsel.

9) Future expense and likely duration of litigation

[75] Absent a settlement, I am satisfied that continued litigation would be long, complex and expensive, as the litigation had not yet progressed beyond the certification stage. Moreover, I find that the prolonged uncertainty of the litigation would be traumatizing to Class Members. Eliminating such trauma by avoiding expensive and lengthy litigation is yet another tangible and important benefit of the settlement.

[76] Accordingly, I find that all of the aforementioned factors favour the approval of the Final Settlement Agreement as fair, reasonable and in the best interests of the Class as a whole.

B. ***Payment of honoraria***

[77] Class Counsel request that an honorarium of $15,000.00 be awarded to each representative plaintiff to be paid out of Class Counsel's legal fees (which will be addressed on a separate motion), with the exception of Ms. Osachoff, who has advised that she wishes to decline any honorarium awarded to her.

[78] There is no specific provision in the *Rules* that governs the payment of honoraria, although this Court has repeatedly acknowledged that it has the discretion to award honoraria to Representative Plaintiffs [see *Lin v Airbnb Inc*, 2021 FC 1260 at paras 118-119; *McLean v Canada*, 2019 FC 1077 at para 57-60; *Wenham v Canada (Attorney General)*, 2020 FC 588 at paras 90-95; *Condon v Canada*, 2018 FC 522 at paras 114-120].

[79] Honoraria are not to be awarded as a routine matter but rather as recognition that a representative plaintiff meaningfully contributed to the Class Members' pursuit of access to justice by contributing more than the normal effort of such a position – for example, by forfeiting their privacy in a high profile class action and participating in extensive community outreach [see *Merlo v Canada*, 2017 FC 533 at paras 68-74]. Honoraria to representative plaintiffs are to be awarded sparingly, as representative plaintiffs are not to benefit from the class proceeding more than other class members [see *Eidoo v Infineon Technologies AG*, 2015 ONSC 2675 at paras 13-22].

[80] I agree with the request of Class Counsel that honoraria should be paid to the representative plaintiffs in this case and I will respect Ms. Osachoff's choice to decline an honorarium. The representative plaintiffs have each given their name and face to very high profile litigation that raised traumatic and painful issues, thereby foregoing their privacy for the benefit of the Class Members and exposing themselves to pain and suffering. This was particularly apparent at the hearing of the settlement approval motion. In addition, they have participated in extensive community outreach in order to raise awareness of the litigation with Class Members, including by speaking directly with Class Members in their communities and across the country, by speaking with the media and by speaking at the AFN's Annual General Assembly in support of the settlement. They have also travelled extensively to fulfill their roles as representative plaintiffs, including to attend mediations and settlement meetings.

[81] I find that the efforts of the representative plaintiffs have been extraordinary and are most certainly deserving of an honorarium.

III. Conclusion

[82] For all of these reasons, I am satisfied that the Final Settlement Agreement is fair, reasonable and in the best interests of the Class as a whole. Moreover, I am also satisfied that honoraria should be paid as requested by Class Counsel.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-402-19
STYLE OF CAUSE:	XAVIER MOUSHOOM, JEREMY MEAWASIGE (by his litigation guardian, Jonavon Joseph Meawasige), JONAVON JOSEPH MEAWASIGE v THE ATTORNEY GENERAL OF CANADA]
AND DOCKET	T-141-20
STYLE OF CAUSE	ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON by his Litigation Guardian, Carolyn Buffalo, CAROLYN BUFFALO and DICK EUGENE JACKSON also known as RICHARD JACKSON v THE ATTORNEY GENERAL OF CANADA
AND DOCKET	T-1120-21
STYLE OF CAUSE	ASSEMBLY OF FIRST NATIONS and ZACHEUS JOSEPH TROUT v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 23, 2023, OCTOBER 24, 2023
REASONS FOR SETTLEMENT APPROVAL ORDER:	AYLEN J.
DATED:	NOVEMBER 20, 2023

APPEARANCES:

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Alexandre Paquette Dénommé Joelle Walker	MEAWASIGE), JONAVON JOSEPH MEAWASIGE, AND ZACHEUS JOSEPH TROUT
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NAHWEGAHBOW, CORBIERE Rama, ON FASKEN MARTINEAU DUMOULIN Ottawa, ON	FOR THE PLAINTIFFS ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN LOUISE BACH, KAREN OSACHOFF, MELISSA WALTERSON, NOAH BUFFALO-JACKSON BY HIS LITIGATION GUARDIAN, CARLOLYN BUFFALO, CAROLYN BUFFALO, AND DICK EUGENE JACKSON ALSO KNOWN AS RICHARD JACKSON
Attorney General of Canada Ottawa, ON	FOR THE DEFENDANT THE ATTORNEY GENERAL OF CANADA

TAB 18

T-2212-16

2018 FC 641

Jessica Riddle, Wendy Lee White and **Catriona Charlie** (*Plaintiffs*)

v.

Her Majesty the Queen (*Defendant*)

INDEXED AS: RIDDLE V. CANADA

Federal Court, Shore J.—Ottawa, May 10, 11 and June 21, 2018.

Crown — Torts — Motion for order inter alia certifying action as class proceeding for settlement purposes, approving Settlement Agreement reached in November 2017 between parties (Settlement Agreement) — Loss of culture, language, identity led to loss of personal, collective essence for vulnerable children who were "scooped" from 1951 to 1991 — Foundation proposed in Settlement Agreement to ensure claim of cultural identity bringing about living entity for all Indigenous peoples in Canada, including Métis — Twenty-three class proceedings across Canada existing at different stages in respect of Sixties Scoop —Federal Court, provincial court jurisdictions seized of subject matter — Actions seeking damages for harm caused by alleged breaches of fiduciary, common law duty on part of Federal Crown — Federal Government initiating mediation regarding Sixties Scoop litigation across country — Class counsel, representative plaintiffs recommending that Settlement, Foundation be approved as fair, reasonable, in best interests of class members — Whether Settlement Agreement should be approved in accordance with Federal Courts Rules, r. 334.29 — Legal test to be applied for approval of Settlement is whether settlement fair, reasonable, in best interests of class as whole — Settlement Agreement providing non-monetary benefits that would allow survivors to heal, obtain education, reconcile, commemorate — Foundation would be implemented ensuring that all survivors of Sixties Scoop would benefit from it, including Métis, non-status Indians — Regarding fiduciary duty, common-law duties of care of Canada, Supreme Court of Canada previously holding that more difficult to prove breach of fiduciary duty against government than against private actor — As to legal fees sought, those fees fair, reasonable — Regarding compensation range, proposed sums were meaningful amounts of money as per the evidence — As to capped Settlement Fund, compensation was symbolic payment, not one that could, with any sum, recompense suffering for loss of persona, family, nation, thus identity — While Settlement Agreement only applying to status Indians according to Indian Act and to Inuit, Settlement Agreement fair — Action certified as class proceeding, Settlement approved with modifications as ordered — Motion granted, action against defendant dismissed.

Practice — Class Proceedings — In motion for order certifying action as class proceeding for settlement purposes, for order approving settlement agreement reached in November 2017 between parties, Court having to determine whether Settlement Agreement should be approved in accordance with Federal Courts Rules, r. 334.29; whether legal fees sought fair, reasonable, in accordance with Federal Courts Rules, r. 334.4 — Terms of Settlement Agreement, compensation fund, simple paper-based claims process, non-monetary benefits all compelling factors proving that legal fees fair, reasonable in case at bar — Regarding individual compensation range of $25 000 to $50 000, considering that claimants would not be required to prove harm or loss to receive compensation, proposed sums meaningful amounts of money as per evidence — As to capped Settlement Fund, compensation here symbolic payment, not one that could, with any sum, recompense suffering for the loss of cultural identity — While Settlement Agreement only applying to status Indians according to Indian Act, to Inuit, Settlement Agreement fair — Action certified as class

proceeding, Settlement approved with modifications as ordered.

This was a motion for an order *inter alia* certifying the action as a class proceeding for settlement purposes and approving the Settlement Agreement reached on November 30, 2017 between the parties (Settlement Agreement or Settlement). Subsequent to the conclusion of settlement discussions and the proposed Foundation, Prime Minister Justin Trudeau, while at the United Nations headquarters in September 2017 apologized for Canada's most shameful abuse perpetrated towards the Indigenous population. Loss of culture, language and identity led to a loss of personal and collective essence for vulnerable children who were "scooped" from 1951 to 1991. A Foundation was proposed in the Settlement Agreement reached by the class representatives and the Federal Government. The Foundation, by which reconciliation was proposed, was to ensure the claim of cultural identity brings about a living entity for all Indigenous peoples in Canada, including the Métis, by which to claim a return in particular to Indigenous languages, cultures and spiritual traditions.

At the time, twenty-three class proceedings across Canada were at different stages in respect of the Sixties Scoop. The Federal Court and provincial court jurisdictions were seized of the subject matter. These actions sought damages for the harm that was caused not by the court orders but by the alleged breaches of fiduciary and common law duty on the part of the Federal Crown. On February 1, 2017, the Federal Government announced its intention to initiate mediation in regard to the Sixties Scoop litigation across the country. During the mediation, a wide, all-encompassing range of comprehensive topics were discussed and negotiated.

Class counsel and the representative plaintiffs recommended that the Settlement and the Foundation be approved as fair, reasonable and in the best interests of the class members.

The main issue was whether the Settlement should be approved in accordance with rule 334.29 of the *Federal Courts Rules*.

Held, the motion should be granted and the action against the defendant dismissed.

The legal test to be applied for the approval of the Settlement was whether the settlement was fair and reasonable and in the best interests of the class as a whole. In order to approve the Settlement, the Court was guided by several factors in the evaluation of the proposed Settlement, including the likelihood of success or recovery with continued litigation; the amount and nature of discovery evidence or investigation; and the settlement terms and conditions. The evidence showed undeniably that bringing closure was critical for the survivors of the Sixties Scoop. It was acknowledged that without a settlement agreement, there lied the uncertainty of further litigation and appeals. The Settlement Agreement at issue provides non-monetary benefits that will allow survivors to heal, to obtain education, to reconcile and to commemorate. In order to do so, a Foundation would be implemented and will ensure that all survivors of the Sixties Scoop will benefit from it, including Métis and non-status Indians. With regard to the fiduciary duty and common-law duties of care of Canada, the Supreme Court of Canada has held that it is more difficult to prove breach of fiduciary duty against a government than it is against a private actor (*Alberta v. Elder Advocates of Alberta Society*). Finally, the parties addressed the risks that are involved with future delays. Given the survivors' advanced ages, it became highly substantial to carefully consider this factor under the circumstances.

The Court also had to determine whether the legal fees sought were fair and reasonable in accordance with rule 334.4 of the *Federal Courts Rules*. The Court considered the fact that the fees were discussed during a judicial mediation and that "[t]here is a *prima facie* presumption of fairness when a proposed settlement is negotiated at arms-length". The fees sought represented approximately 8 percent (equivalent to $75 million) of the total value of the global Settlement Agreement, whereas evidence showed that the applicable retainer agreements mentioned

percentage rates of 20 to 33 percent of the total payment. The Court also considered the fact that the litigation was fraught with risk and that the claims in this class action referred to a loss of cultural identity. It accepted that this class proceeding had given rise to specific risks regarding the timing and the uncertainty of potential individual hearings as well as uncertain results at trial. Class counsel and the Federal Government's commitment in the inauguration of the Settlement, and its incessant efforts in negotiating it, was one of the reasons why the result achieved was successful. Class counsel and the Federal Government were able to avoid delays and expensive costs associated with individual hearings by which to compensate class members. Moreover, proof was provided to demonstrate that the results achieved were in fact exemplary. These factors included a significant compensation fund with a simple one-page claims process, as well as non-monetary benefits to the class, including reconciliation, healing and commemorative activities and services in the amount of $50 million by which to begin such work. The parties protected the privacy of the claimants throughout the settlement process. The terms of the Settlement Agreement, the compensation fund, the simple paper-based claims process, as well as the non-monetary benefits were all compelling factors proving that the legal fees were fair and reasonable in the case at bar.

Regarding the individual compensation range of $25 000 to $50 000, it was determined that given that the claimants would not be required to prove harm or loss in order to receive compensation, the proposed sums were meaningful amounts of money as per the evidence. As to the capped Settlement fund at $750 million, it was recognized that no amount of money whatsoever could compensate for a loss of cultural identity. This was a symbolic payment and, not one that could, with any sum, recompense suffering for the loss of persona, family, nation and thus identity.

While the Settlement Agreement only applied to status Indians according to the *Indian Act* and the Inuit, the Court agreed that the Settlement Agreement was fair. Other elements such as the claimants' ability to retrieve personal records, maintaining a historical archive of stories and experiences, and consultation were discussed.

For these reasons, the Court certified the action as a class proceeding and approved the Settlement with the modifications as ordered. The action against Canada was also dismissed.

STATUTES AND REGULATIONS CITED

Canada Not-for-profit Corporations Act, S.C. 2009, c. 23.

Federal Courts Act, R.S.C., 1985, c. F-7.

Federal Courts Rules, SOR/98-106, rr. 334.16, 334.21(2), 334.29, 334.4, 369, 391.

Indian Act, R.S.C., 1985, c. I-5.

Limitations Act, R.S.A. 2000, c. L-12, s. 3(1)(b).

Negligence Act, R.S.O. 1990, c. N.1.

TREATIES AND OTHER INSTRUMENTS CITED

Memorandum of Agreement Respecting Welfare Programs for Indians, effective December 1, 1965, between the Province of Ontario and INAC, 1965.

Sixties Scoop Settlement Agreement, November 2017.

CASES CITED

APPLIED:

Brown v. Canada (Attorney General), 2017 ONSC 251 (CanLII), 136 O.R. (3d) 497; *Merlo v. Canada*, 2017 FC 533, [2017] F.C.J. No. 773 (QL).

CONSIDERED:

Brown v. Canada (Attorney General), 2013 ONSC 5637 (CanLII), 5 C.C.L.T. (4th) 243; *Brown v. Canada (Attorney General)*, 2010 ONSC 3095 (CanLII), 102 O.R. (3d) 493; *Brown v. Canada (Attorney General)*, 2011 ONSC 7712 (CanLII), 114 O.R. (3d) 352; *Châteauneuf v. Canada*, 2006 FC 286, 54 C.C.P.B. 47, [2006] F.C.J. No. 363 (QL); *Dabbs v. Sun Life Assurance Co. of Canada* (1998), 40 O.R. (3d) 429, [1998] O.J. No. 2811 (QL) (Gen. Div.); *Manuge v. Canada*, 2013 FC 341, [2014] 4 F.C.R. 67; *Semple et al. v. The Attorney General of Canada et al.*, 2006 MBQB 285 (CanLII), 40 C.P.C. (6th) 314; *McKillop and Bechard v. HMQ*, 2014 ONSC 1282 (CanLII); *Quatell v. Attorney General of Canada*, 2006 BCSC 1840; *Rideout v. Health Labrador Corp.*, 2007 NLTD 150 (CanLII), 279 Nfld. & P.E.I.R. 90; *Parsons v. Canadian Red Cross Society* (2000), 49 O.R. (3d) 281, [2000] O.J. No. 2374 (QL) (Sup. Ct.); *Clegg v. HMQ Ontario*, 2016 ONSC 2662 (CanLII); *CC&L Dedicated Enterprise Fund (Trustee of) v. Fisherman*, 2002 CanLII 49647, [2002] O.J. No. 1855 (QL) (Sup. Ct.); *Anderson v. Canada (Attorney General)*, 2016 NLTD(G) 179, 2016 CanLII 76817; *Fontaine v. Canada*, 2006 NUCJ 24 (CanLII); *Abdulrahim v. Air France*, 2011 ONSC 512 (CanLII), 16 C.P.C. (7th) 289; *Griffin v. Dell Canada Inc.*, 2011 ONSC 3292 (CanLII), 38 C.P.C. (7th) 86, [2011] O.J. No. 2487 (QL) (Sup. Ct.); *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673, 83 O.R. (3d) 481 (Sup. Ct.).

REFERRED TO:

Thompson et al. v. Manitoba et al., 2016 MBQB (CanLII), 92 C.P.C. (7th) 83, affd 2017 MBCA 71 (CanLII), 5 C.P.C. (8th) 134; *Serhan v. Johnson & Johnson*, 2011 ONSC 128 (CanLII), 79 C.C.L.T. (3d) 272; *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261; *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245; *Smith Estate v. National Money Mart Co.*, 2011 ONCA 233, 106 O.R. (3d) 37; *Dolmage, McKillop and Bechard v. HMQ*, 2014 ONSC 1283 (CanLII); *Stanway v. Wyeth Canada Inc.*, 2015 BCSC 983; *Sondhi v. Deloitte Management Services LP*, 2018 ONSC 271 (CanLII), 45 C.C.E.L. (4th) 217.

AUTHORS CITED

Manitoba. Review Committee on Indian and Metis Adoptions and Placements. *No quiet place: final report to the Honourable Muriel Smith, Minister of Community Services*, Winnipeg: Manitoba Community Services, 1985.

McLachlin, Beverley, P.C. “Reconciling Unity and Diversity in the Modern Era: Tolerance and Intolerance” (Annual Pluralism Lecture 2015, delivered at the Aga Khan Museum, Toronto, Ont., May 28, 2015).

Trudeau, Justin “Address to the 72th Session of the United Nations General Assembly” delivered at the United Nations headquarters, New York, 21 September, 2017.

MOTION for an order *inter alia* certifying the action, which involved the loss of cultural identity, as a class proceeding for settlement purposes and approving the Settlement Agreement reached on November 30, 2017 between the parties. Motion granted, action against defendant dismissed.

APPEARANCES

E. F. Anthony Merchant, Q.C. and *Evatt Merchant, Q.C.* for plaintiff Jessica Riddle.

Celeste Poltak, Garth F. Myers and *Kirk M. Baert* for plaintiff Wendy Lee White.

David A. Klein and *Angela Bespflug* for plaintiff Catriona Charlie.

Catharine Moore and *Travis Henderson* for defendant.

SOLICITORS OF RECORD

Merchant Law Group LLP, Saskatoon, for plaintiff Jessica Riddle.

Koskie Minsky LLP, Saskatoon, for plaintiff Wendy Lee White.

Klein Lawyers LLP, Vancouver, for plaintiff Catriona Charlie.

Deputy Attorney General of Canada for respondent.

The following are the reasons for order and order rendered in English by

SHORE J.:

I. Overview

[1] This litigation is “historically unique” and was “inherently fraught with risk”. This Court must take into account the fact that the claims in this class action refer to a loss of cultural identity, as it is the first time that this issue has been brought forward in *Brown v. Canada (Attorney General)* in Ontario in 2009 and acknowledged as such by Justice Edward Belobaba.

> [T]his is the first case in the Western world to hold government responsible for consultation (compensation) when what is at stake is a people’s children’s cultural identity. [T]his is the largest award ever to answer the grievance of a people’s children’s loss of cultural identity.

(Affidavit of M. Brown, at paragraphs 43–44, Exhibit “113” to the Settlement approval affidavit of D. Rosenfeld, at paragraph 252, motion record (Settlement approval), Tab 6(113), page 2107.)

The precedents in *Brown v. Canada* of Justice Belobaba are historically exemplary in their understanding of cultural identity as essential to the human personality. (The certificate decision is *Brown v. Canada (Attorney General)*, 2013 ONSC 5637 (CanLII), 5 C.C.L.T. (4th) 243. The summary judgment decision establishing Canada’s legal liability in tort is *Brown v. Canada (Attorney General)*, 2017 ONSC 251 (CanLII), 136 O.R. (3d) 497.)

II. Introduction

[2] Subsequent to the conclusion of Settlement discussions and the proposed Foundation, in principle respectively, Prime Minister Justin Trudeau addressed the 72th Session of the United Nations General Assembly at the United Nations headquarters on September 21, 2017. In a historic first, the Prime Minister apologized for Canada's most shameful abuse perpetrated. The Prime Minister specified the devastating legacy of the treatment of the Indigenous population.

[3] On October 6, 2017, Crown-Indigenous Relations and Northern Affairs Minister, Carolyn Bennett, made the announcement as to the Agreement-in-Principle reached on the Settlement and proposed Foundation.

[4] The travesty of Indigenous children "scooped" from their homes, communities and families was already identified and specified in Patrick Johnson's 1983, Canadian Council on Social Development Report and also, in Justice Edwin Kimelman's 1985 report, *No Quiet Place* [*final report to the Honourable Muriel Smith, Minister of Community Services*, Winnipeg: Manitoba Community Services, 1985].

[5] The loss of cultural identity of children taken from their traditional homes led to a loss of belonging. Loss of culture, language and identity led to a loss of personal and collective essence for vulnerable children who were "scooped" from 1951 to 1991. The loss of belonging took away the reason and purpose for life of individuals who lost the direction for a life journey before it could even begin. It also led to a sense of not being able to identify, thus, a loss of persona. The attempt to commit "cultural genocide" of entire Indigenous nations, as stated by former Chief Justice Beverley McLachlin, is that which she defined as "the worst stain in Canada's human rights record".

[6] "The most glaring blemish on the Canadian historic record related to our treatment of the First Nations that lived here at the time of colonization". These words were spoken by the former Chief Justice of Canada at the fourth annual Pluralism Lecture of the Global Centre for Pluralism in 2006 ["Reconciling Unity and Diversity in the Modern Era: Tolerance and Intolerance", May 28, 2015, at page 7] (all of which took place under the auspices of the Aga Khan, spiritual leader of Ismaili Muslims, who founded the Centre together with the Federal Government). The Chief Justice continued by categorically stating that Canada had developed an "ethos of exclusion and cultural annihilation".

[7] Let us not forget that which was said by the First Prime Minister of Canada, John A. Macdonald, that it was important to solve the "Indian" problem by having "to take the Indian out of the child".

[8] The aim was to remove aboriginal, religious and social traditions; forbid children to speak their native languages, not allow them to dress traditionally and subject them, thus, to a loss of a sense of belonging.

[9] Most significant when one loses one's roots, one loses the potential for wings, to soar and fulfill dreams, hopes and aspirations.

[10] A Foundation is proposed in the Settlement Agreement [*Sixties Scoop Settlement Agreement*] reached by the class representatives and the Federal Government. On the Development Board of the Foundation, the undersigned judge is simply there to implement the terms of the Agreement for the Foundation to be transferred entirely into Indigenous hands. As the Chief Justice of the Supreme Court of Canada, Beverly McLachlin [as she then was], specified a judge is not only to render a judgment but to ensure that it is implemented. A judge is seized to ensure that a judgment is put into effect. The Foundation is to ensure the claim of cultural identity brings about a living entity for all Indigenous peoples in Canada, including the Métis, by which to claim a return to Indigenous languages, cultures, spiritual traditions, in addition to changing the paradigm in Canada in respect of all Indigenous peoples. To ensure that the suffering of the past will not be forgotten; that, every story, that can be told, will be told, to be remembered. That, all be done, for tears recalled of individuals not to be lost to the annals of history, but to be recorded to be remembered. This, for such an aberration never to take place again in that which we call, civilized Canada! Every history text book from primary, secondary, college and university must include this sordid chapter of Canadian history. It is important to recall that justice cannot exist without truth; and, truth cannot exist without compassion.

[11] Reconciliation is proposed by the creation and establishment of the proposed Foundation. Thereby, to build bridges between the generations in Indigenous families and communities; thereby, to ensure that divided generations understand what had happened. The bridges, to be constructed, between the generations in Indigenous families and communities, will then produce a climate by which to understand hidden pain and suffering that caused hurt in subsequent generations. Also, a dialogue is proposed to take place between the children of victims and the children of perpetrators to ensure truth and reconciliation are brought about for a healing of our nation. (This will include the work of health professionals.)

[12] The general population, when aware of abuse, lost its humanity. A loss of conscience was thus perpetrated in the general population aware of the perpetration. Individuals of the Indigenous nations lost their cultural identity which must be made available for a homecoming for those who lost their internal and external homes.

III. Factual Background

[13] A summary of class actions in respect of the Sixties Scoop appears below:

A. *The Class Actions*

[14] Twenty-three class proceedings across Canada are at different stages in respect of the Sixties Scoop. The Federal Court and provincial court jurisdictions are seized of the subject matter. As stated clearly and categorically by Justice Belobaba, these actions “seek damages for the harm that was caused not by the court orders but by the alleged breaches of fiduciary and common law duty on the part of the Federal Crown” (*Brown v. Canada (Attorney General)*, 2013 ONSC 5637 [cited above], at paragraph

10). The proceedings, summarized below, reflect the basis of both jurisdictions, federal and provincial, thereon:

(1) The Ontario Proceedings

[15] A proposed class action was initiated on February 9, 2009, in *Brown v. Canada (Attorney General)*. Damages were sought against the Federal Crown and the plaintiffs' motion for certification was conditionally approved by Justice Belobaba of the Ontario Superior Court of Justice, on May 26, 2010 [2010 ONSC 3095 (CanLII), 102 O.R. (3d) 493]. Leave to appeal the certification was granted and the Ontario Divisional Court allowed the appeal in December 2011 [2011 ONSC 7712 (CanLII), 114 O.R. (3d) 352].On July 15 and 16, 2013, the parties appeared before Justice Belobaba for the purpose of rehearing the motion to certify the action as a class proceeding and the Court certified that action. On February 14, 2017, the Ontario Superior Court granted a summary judgment to the plaintiff and the class. As part of the 1965 Agreement [*Memorandum of Agreement Respecting Welfare Programs for Indians*, effective December 1, 1965, between the Province of Ontario and INAC], Canada had a common law duty of care to act reasonably in order to prevent "Indian" children in Ontario from losing their aboriginal identity.

(2) The Manitoba Proceedings

[16] A proposed class action was initiated on April 20, 2009, in *Thompson et al. v. Manitoba et al.*, 2016 MBQB 169 (CanLII), 92 C.P.C. (7th) 83, by the Merchant Law Group. A second proposed class action was initiated on March 13, 2015, also by the Merchant Law Group. A proposed class action was initiated on April 20, 2016, in *Meeches et al. v. Canada* with Koskie Minsky LLP and Troniak Law. According to the Court, "[t]he selection of the Meeches action and the consortium to act as lead counsel will, in my opinion, best serve the interests of the putative class and the policy objectives of the *CPA*" (affidavit of D. Rosenfeld, at paragraphs 44–45, motion record, Tab 6, pages 190–191). On July 21, 2017, the Manitoba Court of Appeal dismissed the appeal of the carriage order [2017 MBCA 71 (CanLII), 5 C.P.C. (8th) 134]. On October 10, 2017, a National Settlement Agreement-in-Principle had been reached under the auspices of the Federal Court of Canada and the representative class parties; thus, the certification motion return dates were no longer required.

(3) The Saskatchewan Proceedings

[17] A proposed class action was then initiated on August 22, 2011, in *Thompson v. Canada* by the Merchant Law Group. Another proposed class action was initiated on December 17, 2014, in *Blue Waters v. Saskatchewan et al.* in Regina also by the Merchant Law Group. A proposed class action on October 7, 2016, in *Ash v. Attorney General of Canada* by Koskie Minsky LLP and Sunchild Law, was also initiated. In respect of a May 18, 2017 *Blue Waters* Action, notice of motion was filed to quash the *Ash* Action appeal. On September 14, 2017, Koskie Minsky LLP informed Justice Keene that the motion for carriage should be adjourned on a *sine die* basis because an Agreement-in-Principle had by then been reached with Canada on August 30, 2017.

(4) The Alberta Proceedings

[18] On August 18, 2011, an action was initiated in the Court of Queen's Bench of Alberta in *Van Name v. Alberta et al.* by the Merchant Law Group. On October 6, 2016, the Koskie Minsky LLP and Ahlstrom Wright Oliver & Cooper initiated in *Glenn v. Canada*. On September 5, 2017, due to the National Agreement-in-Principle, Koskie Minsky LLP specified to the Court that the decision under reserve was no longer needed.

(5) The British Columbia Proceedings

[19] On May 30, 2011, a proposed class action was initiated in *Russell v. Her Majesty the Queen* by the Klein Law Firm. Furthermore, on December 16, 2016, another class action proceeding, *Tanchak v. HMQ*, was initiated by the Merchant Law Group; and on March 24, 2017, a proposed class proceeding, *Jones v. HMQ*, was also brought forward by the Stephen Bronstein Professional Corporation; and, on May 19, 2017, the Klein Law Firm initiated an application in the British Columbia Supreme Court to have the *Tanchak* and *Jones* Actions stayed.

B. *The Mediation*

[20] On February 1, 2017, the Federal Government announced its intention to initiate mediation in regard to the Sixties Scoop litigation across the country (affidavit of D. Rosenfeld, at paragraphs 124–126, 128, motion record, Tab 6, page 203). The Federal Court Dispute Resolution mediation took place by order of Justice Michael Manson of the Federal Court, as dated on May 3, 2017; and then, further, by consent of all plaintiff parties, and the defendant party, the Canadian Federal Government, Justice Michel M.J. Shore, by order of Justice Manson dated May 3, 2018, presided over the motion for settlement approval in the *White* Action, the *Riddle* Action and the *Charlie* Action pursuant to rule 391 of the *Federal Courts Rules*, SOR/98-106, wherein all parties to the action consented to such with Court approval. During the mediation, a wide, all-encompassing range of comprehensive topics were discussed and negotiated:

a) confidentiality of the process;

b) carriage issues;

c) class definition;

d) class size;

e) existing programs available to status Indians;

f) the comprehensive Foundation and healing, truth-reconciliation issues;

g) the mandate of the Foundation;

h) eligibility;

i) compensation;

j) the claims process;

k) the claims of the deceased;

l) the verification process and the extent of same;

m) administration;

n) notice; and

o) settlement implementation issues.

(Affidavit of D. Rosenfeld, at paragraph 139, motion record, Tab 6, pages 205–206.)

[21] By an order dated January 4, 2018, Justice Michel M.J. Shore consolidated the *White*, *Riddle* and *Charlie* Actions.

C. *The Settlement Agreement*

[22] Class Counsel and the Representative plaintiffs have recommended that the Settlement and the Foundation be approved by this Court as fair, reasonable and in the best interests of the Class Members. The entire Settlement is found in Appendix A and the Foundation in Appendix B at the end of the reasons for judgment. The essential terms of the Settlement are as follows:

(1) The Foundation

[23] The purpose of the Foundation is to enable change and reconciliation as well as access to healing/wellness, commemoration and education activities for communities and individuals so as to ensure that the events giving rise to the Sixties Scoop are not repeated anywhere in Canada. The Foundation will provide funding for activities and services such as:

- (Reconciliation) assisting Sixties Scoop survivors to reunite with their families and communities;
- (Healing and Wellness) providing them opportunities to gather to participate in sharing and healing activities;
- (Commemoration) organizing conferences and expositions in order to raise awareness about the Sixties Scoop;
- (Education) and establishing scholarships to enable research, publication, learning and teaching in relation to the history of the Sixties Scoop.

(2) Eligible Class Members

[24] To be eligible to make a claim for compensation through the Settlement, one must:

- be a registered Indian (as defined in the *Indian Act*, R.S.C., 1985, c. I-5) or Inuit person or person eligible to be registered as an Indian or Inuit who was removed from their home in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents; and

- who was adopted or made a permanent ward and was alive on February 20, 2009.

(3) The Compensation Scheme

[25] At the outset, Canada shall transfer 500 million dollars for payment of claims to the Administrator. Depending on the number of Eligible Class Members, the Administrator will make Individual Payments to each approved claimant in the amount of either a Base Payment or an Adjusted Payment; however, Canada will not be required to pay more than 750 million dollars). Depending on the number of Approved Claimants, each Eligible Class Member who submits a claim shall receive a compensation of maximum $50 000.

(4) The Claims Process

[26] The Claims Process is intended to be simple, paper-based, cost effective, user-friendly and to minimize the burden on the applicant by a one page form. Each Eligible Class Member will receive an Individual Payment by simply submitting an Individual Payment Application to the Administrator.

(5) Releases

[27] The class members agree to release Canada from any and all claims that have been pleaded or could have been pleaded with respect to their placement in foster care, Crown wardship or permanent wardship, and/or adoption.

(6) Opt-outs

[28] Should 2 000 class members opt out, Canada, in its sole discretion, may decide not to proceed with the Settlement Agreement and shall have no further obligations in this regard.

(7) Legal Fees

[29] Canada had agreed to compensate the counsel representative parties to this Agreement in respect of their legal fees and disbursements to significantly lower fees than originally put forward by counsel, through a payment equal to 15 percent of the designated amount plus applicable taxes. Class counsel further agrees to perform any additional work required on behalf of class members at no additional charge. The

payment of Class counsel is from a separate Fund, created by the Federal Government, not from the class members.

(8) Settlement Approval

[30] The Parties agree that the Settlement per approval in *Brown v. Canada (Attorney General)* in the Ontario Superior Court of Justice and in the action constituted in the Federal Court be consistent with the terms of the Settlement Agreement.

IV. Analysis

A. *Law on Settlement Approval and Analysis*

[31] In this present application, the Court must determine whether the Settlement should be approved in accordance with rule 334.29 of the *Federal Courts Rules*. The legal test to be applied for the approval of the Settlement "is whether the settlement is fair and reasonable and in the best interests of the class as a whole" (*Merlo v. Canada*, 2017 FC 533, [2017] F.C.J. No. 773 (QL) (*Merlo*), at paragraph 16). In order to approve the Settlement, this Court acknowledges that it is guided by the following factors in the evaluation of the proposed Settlement (*Châteauneuf v. Canada*, 2006 FC 286, 54 C.C.P.B. 47, [2006] F.C.J. No. 363 (QL) (*Châteauneuf*), at paragraph 5):

(a) the likelihood of success or recovery with continued litigation;

(b) the amount and nature of discovery evidence or investigation;

(c) settlement terms and conditions;

(d) recommendations and experience of counsel involved;

(e) future expense and likely duration of contested litigation;

(f) the number and nature of any objections;

(g) the presence of good faith and the absence of collusion;

(h) the dynamics of, and positions taken during, the negotiations;

(i) the risks of not unconditionally approving the settlement.

[32] The parties argue that the Settlement is fair, reasonable and in the best interests of those affected by it. The parties submit that "[t]he Court with a class action settlement before it does not expect perfection, but rather that the settlement be reasonable, a good compromise between the two parties" (*Châteauneuf*, above, at paragraph 7). "[A] less than perfect settlement may be in the best interests of those affected by it when compared to the alternative of the risks and costs of litigation" (*Dabbs v. Sun Life Assurance Co. of Canada* (1998), 40 O.R. (3d) 429, [1998] O.J. No. 2811 (QL) (Gen. Div.), at paragraph 30). The parties remind the approving Court that it is not its role to

differ from the terms of the Agreement “or to impose its own terms upon them” (*Manuge v. Canada*, 2013 FC 341, [2014] 4 F.C.R. 67 (*Manuge*), at paragraph 19). The Court must also refrain from considering the interests of certain class members over the comprehensive interests of the whole class (*Manuge*, above, at paragraph 5).

[33] It is recognized that the Settlement is presumed to be fair as it is recommended by reputable counsel with expertise (*Serhan v. Johnson & Johnson*, 2011 ONSC 128 (CanLII), 79 C.C.L.T. (3d) 272, at paragraph 55). In cases such as this, “a Court must ask itself whether it is worth risking the unravelling of the agreement and leaving nearly 80 000 Aboriginal people and their families to pursue the remedies available to them prior to the agreement being signed” (*Semple et al. v. The Attorney General of Canada et al.*, 2006 MBQB 285 (CanLII), 40 C.P.C. (6th) 314, at paragraph 3). According to the evidence, it is undeniable that “bringing closure is critical” for the survivors of the Sixties Scoop (affidavit of Maggie Blue Waters, at paragraphs 67, 92, motion record, Tab 4, pages 101, 109). Other risks may also be involved in cases such as this, where this type of settlement agreement would not be at the heart of this process:

> (a) a national certification order may not be granted;
>
> (b) a fiduciary duty may be found not to be owed, as in Ontario;
>
> (c) liability might not be established;
>
> (d) statutory limitation periods could bar many or all of the class’ claims;
>
> (e) an aggregate award of damages could be denied by the court forcing class members through lengthy and protracted individual assessment;
>
> (f) proven damages could be similar to or far less than the settlement amounts;
>
> (g) ordering reconciliation, commemorative or healing initiatives, of the nature the Foundation is tasked with, would have been outside the jurisdiction or purview of any court to order.

(Memorandum of fact and law of the plaintiffs (Settlement Approval), at paragraph 110.)

[34] Consequently, the Court acknowledges that without a settlement agreement, there lies the uncertainty of “further litigation and appeals” (affidavit of J. Wilson (filed under separate cover)). “There is no assurance that at the end of this process [class members] will receive any more than they will get under these Settlement Agreements” (*McKillop and Bechard v. HMQ*, 2014 ONSC 1282 (CanLII) (*McKillop*), at paragraph 28).

[35] The parties also submit that the features of the Settlement are reasonable and “multi-dimensional” as they reflect the historical and sensitive nature of these proceedings, as well as the unique circumstances of class members:

> (a) there are both monetary and non-monetary benefits to the class;
>
> (b) the claims process is simple and paper-based which avoids class members having to

re-live their experiences in the same way a trial or examination would require;

(c) the claims process does not require proof of “harm” or “loss”;

(d) certain historical and unprecedented initiatives, to be overseen and implemented by the Foundation, will form part of the settlement, initiatives for the benefit of generations of indigenous persons across Canada;

(e) assurances to be sought from provincial governments that there shall be no social assistance governmental claw-backs on settlement funds received; and

(f) no class member will be required to pay counsel to assist with the claims process, meaning any compensation determination shall not be subject to a legal fee deduction.

(Memorandum of fact and law of the plaintiffs (Settlement Approval), at paragraph 116.)

[36] As mentioned above, the Settlement presents a paper-based claims process. The most important feature of the Settlement allows class members to complete their forms confidentially without fear of having to testify or appear in a court in lengthy procedures. The evidence reveals that class members are often disinclined to share their tragic experiences publicly to avoid any embarrassment and humiliation (affidavit of D. Rosenfeld, at paragraphs 170–172, motion record, Tab 6, page 212).

[37] Another particular aspect of the Settlement concerns the eligibility of class members for compensation. The Settlement Agreement established an Exceptions Committee to ensure payment in compensation to Eligible Class Members, particularly, for long-term placement with non-Indigenous families resulting in cultural loss identity (affidavit of D. Rosenfeld, at paragraphs 185–186, motion record, Tab 6, pages 214–215). Evidence on this motion further explains why the provision in the Settlement solves an important issue in respect of the harm experienced by class members:

[T]he settlement is sensitive to the nuance of child welfare law that some indigenous children, who were neither adopted nor made crown or permanent wards, still experience long-term placement in non-indigenous homes, thereby suffering the same harm. There is an ‘exceptional circumstances’ provision within the settlement that answers these persons’ needs.

(Affidavit of Kenneth Richard, at paragraph 5, exhibit “114” to the affidavit of D. Rosenfeld, at paragraph 258, motion record, Tab 6(114), page 2117.)

[38] The parties submit that although “no court has yet recognized the loss of language and culture as a recoverable tort” (*Quatell v. Attorney General of Canada*, 2006 BCSC 1840 (*Quatell*), at paragraph 9), compensation should also involve damages for loss of language and culture due to identity loss. It is noteworthy that class members may not, however, obtain a similar benefit through contested litigation. On the basis of a limitations period, the Settlement also intends to avoid injustice by including class members, who were alive as of February 20, 2009; and, their estates can submit claims for compensation in the event that individuals have since passed away. In fact, the parties submit that there is a possibility that the “ultimate limitation” period in each province would legally forbid claims from being heard. For instance, the ultimate

statutory limitation period in Alberta is 10 years pursuant to its *Limitations Act*, R.S.A. 2000, c. L-12, paragraph 3(1)(b). The parties, therefore, reiterate the unprecedented element of this negotiated class definition that claims include events, experiences which occurred between 1951 and 1991. Lastly, the parties submit that class members will receive compensation for their pain and suffering in respect of the culture identity loss; and, it is important to mention that the payment will be considered as non-taxable income.

[39] As previously stated, the Settlement Agreement provides non-monetary benefits that will allow survivors to heal, to obtain education, to reconcile and to commemorate. In order to do so, a Foundation will be implemented in accordance with the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23 (Final Settlement Agreement, Preamble, section 3.01(2)). The Foundation shall ensure that all survivors of the Sixties Scoop will benefit from it, including Métis and non-status Indians. The purpose of the Foundation is to continue to assist survivors, as well as all Indigenous communities and individuals, on their journey of change, healing and reconciliation (Final Settlement Agreement, Preamble, section 3.01(3) [*Sixties Scoop Settlement Agreement*, November 2017]). "If the matter proceeds to trial, the non-monetary issues would be outside the jurisdiction of the Court" to grant (*Rideout v. Health Labrador Corp.*, 2007 NLTD 150 (CanLII), 279 Nfld. & P.E.I.R. 90, at paragraph 70). The Foundation provides "an invaluable opportunity for Canada-at-large, and especially indigenous people, … by ensuring that those harms are not ever repeated" (affidavit of Dr. R. Sinclair, at paragraphs 7–9, Exhibit "115" to the affidavit of D. Rosenfeld, motion record, Tab 6(115), page 2177).

[40] With regard to the fiduciary duty and common-law duties of care of Canada, the Supreme Court of Canada has held that it is more difficult to prove breach of fiduciary duty against a government than it is against a private actor (*Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261, at paragraph 62). In fact, in a trial context, the plaintiffs would have had to demonstrate that either (i) the fiduciary duty arose as a result of Canada's assumption of discretionary control over a specific Aboriginal interest, or (ii) that there had been an undertaking by Canada to act in the best interests of the class members (*Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245, at paragraphs 80 and 85). Bearing this in mind, in *Brown v. Canada (Attorney General)*, 2017 ONSC 251 [cited above] [at paragraph 1], at paragraph 68, Justice Belobaba concluded in the same vein on the notion of fiduciary duty:

> In my view, a fiduciary duty under the first category cannot be established in this case. The aboriginal interest in question is not an interest in land and the action herein is not being advanced as a communal claim but as a class action seeking individualized redress.

[41] Finally, the parties address the risks that are involved with future delays. Given the survivors' advanced ages, it becomes highly substantial to carefully consider this factor under the circumstances (*McKillop*, above, at paragraph 28). "[I]t is apparent that the time and resources committed to the negotiations by the class counsel meant that the risk was increasing rather than decreasing as the negotiations continued" (*Parsons v. Canadian Red Cross Society* (2000), 49 O.R. (3d) 281, [2000] O.J. No. 2374 (QL)

(Sup. Ct.), at paragraphs 37–38). The parties submit that their recommendations ought to be approved, because “the closer that class counsel is to trial, the more credible are their assertions about risk and reward. The closer the trial, the more likely that the class action settlement is fair and reasonable and in the best interests of the class” (*Clegg v. HMQ Ontario*, 2016 ONSC 2662 (CanLII), at paragraphs 34–35).

B. *Legal Framework on the Fees and Analysis*

[42] In order for this Court to determine whether the legal fees sought are fair and reasonable, in accordance with rule 334.4 of the *Federal Courts Rules* (*Manuge*, above, at paragraph 28), the following factors are to be taken into account by the Court (*Smith Estate v. National Money Mart Co.*, 2011 ONCA 233, 106 O.R. (3d) 37, at paragraph 80):

(a) the legal and factual complexities of the action;

(b) the risks undertaken, including that the action might not be certified;

(c) the degree of responsibility assumed by Class Counsel;

(d) the monetary value of the matters at issue;

(e) skill and competence demonstrated by Class Counsel;

(f) the results achieved;

(g) ability of the class to pay and the class expectations of fees;

(h) the opportunity cost to Class Counsel in the expenditure of time in pursuit of the litigation.

[43] The Court has considered the fact that the fees were discussed during a judicial mediation and that “[t]here is a *prima facie* presumption of fairness when a proposed settlement is negotiated at arms-length” (*CC&L Dedicated Enterprise Fund (Trustee of) v. Fisherman*, 2002 CanLII 49647, [2002] O.J. No. 1855 (QL) (Sup. Ct.), at paragraph 18).

[44] Firstly, the parties submit the total legal fee amount represents less than 10 percent of the overall global payment of the defendant (affidavit of J. Wilson, at paragraph 79, page 15 (filed under separate cover)). The fees sought represent approximately 8 percent (equivalent to $75 million) of the total value of the global Settlement Agreement, whereas evidence shows that the applicable Retainer Agreements mention percentage rates of 20 percent to 33 percent of the total payment (affidavit of D. Rosenfeld, at paragraph 107, motion record (Fee Approval), Tab 6, page 114). The “use of a percentage [for Class Counsel Fees] appears to be preferred because it tends to reward success and to promote early settlement” (*Manuge*, above, at paragraph 47). This Court did consider previously approved percentages by different Courts in other cases, namely in *Dolmage, McKillop and Bechard v. HMQ*, 2014 ONSC

1283 (CanLII), with an approval of 20.68 percent and in *Stanway v. Wyeth Canada Inc.*, 2015 BCSC 983, with 33.33 percent.

[45] Secondly, the Court acknowledges the parties' insistence on the importance of providing free legal assistance to any claimant in need of assistance throughout the claims process. The parties have agreed to respect the provision (section 11.02) contained in the Settlement Agreement in this regard. Without the prior approval of the Federal Court, this provision is intended to ensure "that individual class members will get to keep the full amount of the compensation awarded to them under the settlement" (affidavit of C. Charlie, at paragraph 12, motion record (Fee Approval), Tab 2, page 11). By providing claimants with an assistance of counsel at no charge, Counsel will need to be at their disposal for the next 12 to 18 months until the enactment of the Settlement in order to assist class members with claim forms and to communicate with them in case they have questions (Fee Approval Affidavit of D. Rosenfeld, at paragraph 59, motion record (Fee Approval), Tab 6, pages 103–104).

[46] Thirdly, this litigation is "historically unique" and was "inherently fraught with risk". This Court must take into account the fact that the claims in this class action refer to a loss of cultural identity, as it is the first time that this issue has been brought forward in *Brown v. Canada (Attorney General)* in Ontario in 2009 and acknowledged as such by Justice Belobaba.

> [T]his is the first case in the Western world to hold government responsible for consultation when what is at stake is a people's children's cultural identity. [T]his is the largest award ever to answer the grievance of a people's children's loss of cultural identity.

(Affidavit of M. Brown, at paragraphs 43–44, Exhibit "113" to the Settlement Approval affidavit of D. Rosenfeld, at paragraph 252, motion record (Settlement Approval), Tab 6(113), page 2107.)

[47] The Court accepts that these cases, never presented in front of a Court before, undoubtedly pose a significant litigation risk to be assumed by Class counsel (*Manuge v. Canada*, 2014 FC 341 [cited above], at paragraph 34).

[48] The Court also accepts the "risk of continued and perpetual delay in obtaining relief". Class members can benefit from the proposed settlement on which Class Counsel had worked. "Given the advanced age of class members and the historical nature of this litigation, the benefits of an immediate and certain settlement cannot be overstated" (*McKillop*, above, at paragraph 28). This class action implicates a historical event that began in 1951 and "inherent delays would result in additional prejudice to the aging class members, and accordingly, a denial of access to justice" (*Anderson v. Canada (Attorney General)*, 2016 NLTD(G) 179, at paragraph 53). The Court accepts that this class proceeding has given rise to specific risks with regard to the timing and the uncertainty of potential individual hearings, as well as uncertain results at trial. Class counsel and the Federal Government's commitment in the inauguration of this Settlement, as well as its incessant efforts in negotiating the Settlement, is one of the reasons why the result achieved was successful. Class Counsel and the Federal

Government were able to avoid delays and expensive costs associated with individual hearings by which to compensate class members.

[49] Class Counsel provided proof to this Court in order to demonstrate that the results achieved are in fact exemplary. These factors include a significant compensation fund with a simple one-page claims process, as well as non-monetary benefits to the class, including reconciliation, healing and commemorative activities and services in the amount of $50 million by which to begin such work. The parties protected the privacy of the claimants throughout the settlement process (*Merlo*, above, at paragraph 27). The terms of the Settlement Agreement, the compensation fund, the simple paper-based claims process, as well as the non-monetary benefits are all compelling factors which prove that the legal fees are fair and reasonable in the case at bar:

> [N]o legal victory in a courtroom could ever hope to do this. This Court is not equipped to address the holistic healing perspectives of the individual, his or her family and the community.

(*Fontaine v. Canada*, 2006 NUCJ 24 (CanLII) (*Fontaine*), at paragraph 61.)

[50] Lastly, the legal fees are intended to "encourage counsel to take on difficult and risky class action litigation" (*Abdulrahim v. Air France*, 2011 ONSC 512 (CanLII), 16 C.P.C. (7th) 289, at paragraph 9). It was also concluded in *Griffin v. Dell Canada Inc.*, 2011 ONSC 3292 (CanLII), 38 C.P.C. (7th) 86, [2011] O.J. No. 2487 (QL) (Sup. Ct.), at paragraph 53 that "class actions simply will not be undertaken by first rate lawyers … unless they are assured of receiving fair — and … 'generous' — compensation in appropriate cases".

C. *Opposition to the Settlement*

(1) The right to opt-out

[51] Class members, as individuals, may opt out assuming that they are not in agreement with the proposed Settlement. "If they do so, they must then accept all of the risks and disadvantages associated with pursuit of this litigation in the courts" (*Fontaine*, above, at paragraph 59). Bearing in mind that settlements are compromises that intend to resolve contested claims, it is not uncommon that the parties involved will not be satisfied with every element inherent in the settlement (*Quatell*, above, at paragraphs 5–7). Class members may therefore become objectors if they oppose to the Settlement. The parties reminded this Court that it must determine whether the Settlement is fair, reasonable, and in the best interests of the class as a whole. It is therefore important that this Court carefully analyzes the benefits that the proposed Settlement will bring to the class as a whole.

(2) Individual compensation range of $25 000 to $50 000

[52] Some object to the individual damages ranging between $25 000 and $50 000. The parties submit that the quantum of compensation is fair and reasonable. As per the evidence on this motion, even with the approval of the Settlement by Justice Belobaba

in the *Brown* action in Ontario, “Justice Belobaba was indicating amounts in the $10,000 to $25,000 range … and that the average paid on the common experience payment regarding Indian Residential Schools was $22,000” (affidavit of M. Blue Waters, at paragraph 112, Motion Record (Settlement Approval), Tab 4, page 112). Considering that the claimants would not be required to prove harm or loss in order to receive compensation, the proposed sums are “meaningful amounts of money”, as per the evidence.

(3) Capped Settlement Fund at $750 Million

[53] Certain objectors disagree with the capped Settlement Fund. The parties submit that it is appropriate to cap the Settlement fund at such a high amount of $750 million as it will allow every eligible class member to receive no less than $25 000. In fact, caps on settlement funds offer benefits (i.e. interests accruing from the capped settlement fund) to class members in such a way that they receive a sum of money in excess of $25 000, and up to $50 000. The parties also submit that it is reasonable to cap the Settlement fund in this case as the feature has allowed them to establish a simple, non-complex, claims process which would otherwise not have been available in uncapped settlements. It is recognized by this Court that no amount of money whatsoever can compensate for a loss of cultural identity. This is a symbolic payment and, not one that could, with any sum, recompense suffering for the loss of persona, family, nation and thus identity.

(4) Exclusion of Métis and Non-Status Individuals

[54] Certain individuals have raised the objection that the Métis and non-status Indians are not included in the Settlement. The Settlement Agreement only applies to status Indians, according to the *Indian Act*, and the Inuit. The parties submit that the Settlement Agreement is fair for the following reasons with which the Court agrees due to that reflected below:

i. The Settlement contains a Foundation that has been implemented in Canada to serve for the benefit of every survivor of the Sixties Scoop, including Métis and non-status Indians. As per the evidence states, the purpose of the Foundation is to allow healing and reconciliation for all survivors of the Sixties Scoop;

ii. Some federal-provincial child welfare agreements do not apply to Métis and non-status Indians since the provinces do not provide child welfare services to Indians without reserve status. In *Brown v. Canada (Attorney General)*, Justice Belobaba also concluded that Ontario agreed to fund the development of the provincial welfare services only to “Indians with reserve status” (*Brown v. Canada (Attorney General)*, 2013 ONSC 5637 [cited above], at paragraphs 63–71);

iii. Currently, there is no way of determining whether Métis and non-status Indians would be allowed to receive compensation;

iv. The Settlement Agreement does not affect the claims of Métis and non-status Indians against Canada. The evidence clearly states that “[n]othing in this Settlement

bars a claim by Métis against the federal government, or a claim against the provincial authorities by those physically or sexually abused when adopted in state wardship" (affidavit of M. Brown, at paragraph 42, Exhibit "113" to the affidavit of D. Rosenfeld, at paragraph 257, motion record, Tab 6(113), pages 2106–2107).

(5) Release of Claims for Physical and Sexual Abuse While in Care

[55] Some objectors have criticized Canada for the release of the physical and sexual abuse claims. The Court agrees that "the compensation offered by Canada in exchange for the release of all claims is fair and reasonable" (responding memorandum of fact and law of the plaintiffs, at paragraph 35). It is explained that Canada is not to be held liable for the physical and sexual assault experienced by the Sixties Scoop survivors as it would not be in accordance with the federal-provincial agreements. The arrangements that were set forth between the federal Crown and the provinces require only that the provinces inaugurate welfare programs available to all Indians (*Brown v. Canada (Attorney General)*, 2010 ONSC 3095 [cited above], at paragraph 31). Canada, on the other hand, is responsible to provide the provinces with the necessary funding and is not to be held accountable for breach of common law duty of care.

[56] The first Sixties Scoop class action in Ontario, *Brown v. Canada*, also did not implicate allegations of physical and sexual abuse while class members were in care. Evidence shows that "[Class Counsel] chose not to expand it to include a law suit for damages for abuse. … Our claim in Ontario was limited to a loss of cultural identity and did not include the element of abuse as part of the assertion of federal liability" (affidavit of M. Brown, at paragraphs 31 and 42, Exhibit "113" to the affidavit of D. Rosenfeld, motion record (Settlement Approval), Tab 6(113), pages 2103 and 2107). Consequently, class members can still present such claims against the provinces, not Canada, in order to receive compensation for the physical and sexual abuse suffered.

(6) Claimants' Choice of Counsel through Claims Process

[57] Certain individuals have raised the objection that they are entitled to choose their own lawyers for these class proceedings, and that these lawyers should be paid from the compensation granted to claimants. According to section 11.03 of the Settlement Agreement, "[n]o fee may be charged to Class Members in relation to claims under this Agreement by counsel not listed on Schedule 'K' without prior approval of the Federal Court". As a result, pursuant to rule 369 of the *Federal Court Rules*, leave from the Court is required if legal fees are to be paid from claimants' individual compensation. The parties submit that the purpose of section 11.03 is to protect the claimants from lawyers' misconduct and to prevent the overcharging of legal fees which had arisen from the Indian Residential Schools Settlement claims process. The evidence on this motion clearly indicates that "[t]he structure of the proposed settlement is such that an amount for legal fees will be paid up front by Canada, with no counsel being permitted to charge further legal fees against individual payments, without prior authorization from the court" (affidavit of M. Reiher, at paragraph 33, motion record (Settlement Approval), Tab 5, page 156).

[58] According to the evidence on this motion, “the court will be called on to approve fees that are proposed to be charged so that amounts are reasonable and claimants are not surprised by dramatically reduced pay outs” (affidavit of M. Reiher, at paragraph 35, motion record (Settlement Approval), Tab 5, page 156). Class counsel from all across Canada made a commitment to assist, free of charge, every class member in the understanding of the Settlement Agreement, as well as in the completion of the claim forms. Class members will also have access to free legal services provided by 12 Indigenous Liaison Officers in each province and territory (Plan of Administration, Exhibit “A” to the Affidavit of L. Seto, Supplemental Motion Record (Settlement Approval), Tab 6(A), page 53).

(7) Legal Fees to Class Counsel

[59] Some object to the quantum of legal fees. The Court agrees that the fees sought are fair and reasonable, mainly because class counsel will remain available to the claimants following the approval of the Settlement and because the requested fees are less than 10 percent of the overall global payment. All of which the Court accepted, recognizing that no legal fees whatsoever would be permitted against individual payments without prior authorization of this Court.

(8) Class Definition and Cut-Off Date for the Deceased

[60] Some individuals object to the cut-off date of February 20, 2009, because they claim that persons (or their estates) who were deceased prior to this date should also be considered as eligible claimants. It is accepted by the Court that one of the reasons why the parties chose the cut-off date to be February 20, 2009 is due to the *Brown* action which was commenced on that same date in Ontario. Moreover, in *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673, 83 O.R. (3d) 481 (Sup. Ct.), at paragraphs 82–84, Justice Winkler addressed a similar objection such as the one at bar:

> …. The proposed settlement would exclude the estates of such persons from making claims under the CEP program or the IAP…. While it is not uncommon, or necessarily objectionable, to draw distinctions between class members for the purposes of distributing compensation from a global fund, in those cases where a distinction is drawn, compensation is usually paid to claimants on both sides of the divide albeit in reduced amounts on one side.

[61] Therefore, the definition of “Eligible Class Member”, as found in the Settlement, allows estates to make claims, whereas, without the inclusion of such date, they would not have been eligible to receive any funds.

(9) Claimants’ Ability to Retrieve Personal Records

[62] Certain objectors are concerned about the difficulty and the complexity in retrieving personal records in order to make their claim for compensation. These records are held with Canada, the provinces and the provincial Children’s Aid Society. The parties did acknowledge this hardship and took the necessary actions in order to

accommodate the class members. “[W]ith the Settlement’s provision [the] burden to obtain records is not upon the Class member, rather, it is upon the governments” (affidavit of K. Richard, at paragraph 7, Exhibit “A” to the affidavit of J. Riddle, motion record (Settlement Approval), Tab 7(A), page 2198). Said otherwise, the evidence clearly states that survivors of the Sixties Scoop will not be encumbered by the task of requesting their official records in order to establish the fact of permanent wardship or adoption (affidavit of Dr. Raven Sinclair, at paragraph 12(e), Exhibit “115” to the affidavit of D. Rosenfeld, at paragraph 254, motion record (Settlement Approval), Tab 6(115), page 2178). Further steps, it is agreed by the Court, have also been taken in such a way that the process for verification of class members will be streamlined. By shifting the burden of proof onto the governments, it is recognized that “if [class members] have no record, [it] creates a process that assures me no indigenous person who lost their spirit and being will be denied recognition because of no record” (affidavit of M. Brown, at paragraph 40(i), Exhibit “113” to the affidavit of D. Rosenfeld, at paragraph 257, motion record (Settlement Approval), Tab 6(113), pages 2106–2107).

(10) Maintaining a Historical Archive of Stories and Experiences

[63] Certain individuals are concerned with the loss of personal stories and experiences present in the historical record. One of the main and key, primary objectives of the Foundation is to encourage survivors of the Sixties Scoop to share their stories for the purposes of commemoration and healing. Past jurisprudence demonstrates that none of the Foundation’s initiatives would have been available to class members through contested litigation (*Rideout v. Health Labrador Corp.*, 2007 NLTD 150 [cited above], at paragraph 70). The importance and value of the Foundation were also described by a class member, stating that “the work of the Foundation, the Agreement which is only the beginning of reconciliation, is part of taking us home — to be ourselves — to reclaim our languages, to reclaim our culture — the wrongs (sic) to continue to grow our essence” (affidavit of M. Blue Waters, at paragraph 96, motion record (Settlement Approval), Tab 4, page 110).

(11) Mediator as Settlement Approval Judge

[64] Certain individuals were dissatisfied that the undersigned, Justice Michel M.J. Shore, was not only the mediator for the proposed Settlement, but was also the presiding judge at the Settlement approval hearing. With respect to rule 391 of the *Federal Court Rules*, all parties (Class Counsel and the respondents) to the action had given their consent prior to the hearing for Settlement approval. An order, confirming the parties’ consent, had been signed and approved by Justice Manson. The evidence also demonstrates that Justice Shore, through an order of the Court, on May 3, 2017, was designated to conduct the Dispute Resolution Conference by Justice Manson prior to sitting on the approval of the Settlement by order of May 3, 2018, exactly one year later.

(12) Consultation

[65] Certain objectors stated their discontent for not being formally consulted about the Settlement Agreement. According to jurisprudence in class actions, such legal duty

is non-existent for such proceedings (*Sondhi v. Deloitte Management Services LP*, 2018 ONSC 271 (CanLII), 45 C.C.E.L. (4th) 217, at paragraph 78); however, class members were given the opportunity to be heard by the Court, as solely to objections to the Settlement. Moreover, survivors of the Sixties Scoop will continue to be consulted for the inauguration of the Foundation as some of them are also members of the Development Board. The Foundation intends to “provid[e] survivors of the Sixties Scoop and their families with ‘Telling Our Stories’ platforms that promote their own healing and that serve as a gift to future generations”. This is to ensure that each and every story that can be told, will be told; and, kept in the annals of Canadian history. By the recounting of the stories, suffering will, at least, have meaning, by a duty to keep the stories alive for those whose stories can be told, as voices of witnesses to history that will thereby remain alive, through narratives to be kept; and, suffering never to be forgotten.

[66] For all the reasons specified above, this Court certifies this action as a class proceeding, approves the Settlement with modification as per the order of the undersigned of May 11, 2018, in respect of dissemination of information of the Settlement to every part of Canada where Indigenous individuals reside, or can be found, in addition to meticulous oversight in respect of funds to be distributed, to ensure that each and every eligible person as per the Settlement receives the payment allotted for such. The Court also dismisses the action against Canada on a without costs basis.

ORDER in T-2212-16 rendered on May 11, 2018

WHEREAS by order of Justice Michael D. Manson of this Court, dated May 3, 2018 and by consent of the parties before the Court, the mediator, Justice Michel M.J. Shore, shall preside over the motion for settlement approval in this action in accordance with rule 391 of the *Federal Courts Rules*;

AND WHEREAS the plaintiffs and the defendant have entered into the Settlement Agreement in respect of the plaintiffs' claims against the defendant;

AND WHEREAS this Court approved the form of notice and plan for distribution of the notice of this motion by order dated January 11, 2018 (the Notice Order);

UPON HEARING the motion made by the plaintiffs, on consent, for an order: (a) certifying this action as a class proceeding for settlement purposes; (b) approving the settlement agreement dated November 30, 2017 between the parties (the Settlement Agreement or Settlement); and (c) approving the notice of this settlement, the opt out and claims period and other ancillary orders to facilitate the Settlement;

AND UPON READING the joint motion records of the parties and the *facta* of the parties;

AND UPON BEING ADVISED of the defendant's consent to the form of this order;

AND WITHOUT ADMISSION OF LIABILITY on the part of the defendant;

AND UPON HEARING the oral submissions of counsel for the plaintiffs, counsel for the defendant, all interested parties, including objections, written and oral.

IT IS ADJUDGED THAT:

(1) For the purposes of this order, the following definitions shall apply:

(i) "Approval Date" means the date that this Court approved the Settlement Agreement;

(ii) "Approval Orders" means this order and the order approving the Settlement Agreement in *Brown v. Canada* (Court File No. CV09-00372025-00CP);

(iii) "Brown Class Members" means members of the class proceeding in the Ontario Superior Court of Justice, *Brown v. Canada* (Court File No. CV-09-00372025- 00CP) who did not opt out of that proceeding;

(iv) "Canada" means the defendant, the Government of Canada, as represented in this proceeding by Her Majesty the Queen;

(v) "Class Actions" mean:

(a) *Wendy Lee White v. The Attorney General of Canada* (Court File No. T-294-17);

(b) *Jessica Riddle v. Her Majesty the Queen* (Court File No. T-2212-16);

(c) *Catriona Charlie v. Her Majesty the Queen* (Court File No. T-421-17);

(d) *Meeches et al. v. The Attorney General of Canada* (Court File No. CI 16-01-01540);

(e) *Maggie Blue Waters v. Her Majesty the Queen in Right of Canada et al.* (Court File No. QBG 2635/14);

(f) *David Chartrand, Lynn Thompson, and Laurie-Anne O'Cheek v. Her Majesty the Queen et al.* (Court File No. CI 15-01-94427);

(g) *Pelletier v. Attorney General of Canada* (Court File No. QGB 631/17);

(h) *Simon Ash v. Attorney General of Canada* (Court File No. QBC 2487/16);

(i) *Ashlyne Hunt v. Her Majesty the Queen in Right of Alberta* (Court File No. 1101-11452);

(j) *Sarah Glenn v. Attorney General of Canada* (Court File No. 1601-13286);

(k) *Skogamhallait also known as Sharon Russell v. The Attorney General of Canada* (Court File No. VLC-S-S113566);

(l) *Linda Lou Flewin v. Attorney General of Canada et al.* (Court File No. Hfx 458720);

(m) *Sarah Tanchak v. Attorney General of Canada et al.* (Court File No. 186178 Victoria);

(n) *Mary-Ann Ward v. The Attorney General of Canada et al.* (Court File No. 500-08-000829-164 Montreal); and

(o) *Catherine Morriseau v. Her Majesty the Queen in Right of Ontario and Attorney General of Canada* (Court File No. CV-16-565598-00CP).

(vi) "Class" or "Class Members" means all Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. The Attorney General of Canada* (Court File Number CV-09-00372025CP);

(vii) "Implementation Date" means the latest of:

(a) thirty days following the expiry of the Opt Out Period;

(b) the date following the last day on which a Class Member may appeal or seek leave to appeal either of the Approval Orders;

(c) the date of a final determination of any appeal brought in relation to the Approval Orders.

(viii) "Opt Out Period" or "Opt Out Deadline" means the period commencing on the Approval Date and ending 90 days after the Approval Date, during which a Class Member may opt out of this class proceeding, without leave of this Court;

(ix) "Releasees" means individually and collectively, Canada, and each of the past, present and future Ministers of the federal government, its Departments and Agencies, employees, agents, officers, officials, subrogees, representatives, volunteers, administrators and assigns;

(x) "Settlement Agreement" means the Settlement Agreement dated November 30, 2017, attached as Schedule A to this order; and

(xi) "Settlement Fund" means the settlement fund established pursuant to section 4.01 of the Settlement Agreement.

(2) All applicable parties have adhered to and acted in accordance with the notice order and the procedures provided in the notice order have constituted good and sufficient notice of the hearing of this motion.

CERTIFICATION

(3) This action is hereby certified as a class proceeding for the purposes of settlement pursuant to subsection 334.16(1) of the *Federal Courts Rules*.

(4) The Class is defined as:

> All Indian (as defined in the *Indian Act*) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or

adoptive parents excluding any members of the class action in the Ontario Superior Court of Justice styled as *Brown v. The Attorney General of Canada* (Court File Number CV-09-00372025CP).

(5) The representative plaintiffs hereby appointed are Wendy White, Jessica Riddle, and Catriona Charlie who constitute adequate representative plaintiffs of the Class.

(6) Klein Lawyers LLP, Koskie Minsky LLP and Merchant Law Group LLP are appointed as Class Counsel.

(7) The claims asserted on behalf of the Class against the defendant are: (a) negligence; and (b) breach of fiduciary duty.

(8) For the purposes of settlement, this proceeding is certified on the basis of the following common issue:

Did the defendant have a fiduciary or common law duty of care to take reasonable steps to protect the Indigenous identity of the Class Members?

(9) The certification of this action is conditional on the approval of the Settlement Agreement in Ontario in accordance with section 12.01 of the Settlement Agreement. Should the Settlement Agreement be set aside, all materials filed, submissions made or positions taken by any party are without prejudice to any future positions taken by any party on a certification motion.

SETTLEMENT APPROVAL

(10) The Settlement Agreement is fair, reasonable and in the best interests of the plaintiffs and the Class Members.

(11) The Settlement Agreement, which is expressly incorporated by reference into this order, shall be and hereby is approved and shall be implemented in accordance with this order and further orders of this Court.

(12) The claims of the Class Members and the Class as a whole, shall be discontinued against the defendant and are released against the Releasees in accordance with section 10.01 of the Settlement Agreement, in particular as follows:

(i) Each Class Member and his/her Estate Executor and heirs (hereinafter “Releasors”) has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Releasor ever had, now has, or may hereafter have, directly or

indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the Sixties Scoop and this release includes any such claim made or that could have been made in any proceeding including the Class Actions whether asserted directly by the Releasor or by any other person, group or legal entity on behalf of or as representative for the Releasor.

(ii) This Agreement does not preclude claims against any third party that are restricted to whatever such third party may be directly liable for, and that do not include whatever such third party can be jointly liable for together with Canada, such that the third party has no basis to seek contribution, indemnity or relief over by way of equitable subrogation, declaratory relief or otherwise against Canada.

(iii) For greater certainty, the Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to the Sixties Scoop, including any claim against provinces or territories or other entities for abuse while in care; then, the Releasors will expressly limit their claims to exclude any portion of Canada's responsibility.

(iv) Canada's obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in this Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Releasors are limited to the benefits provided and compensation payable pursuant to this Agreement, in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

(13) This Settlement Agreement does not compromise any claims that Class Members have against any Province, Territory or any other entity, other than as expressly stated herein.

(14) This Agreement does not affect the rights of:

(i) Class Members who opt out of any class action that is certified pursuant to this Settlement Agreement; or

(ii) Individuals who are not Class Members.

(15) This order, including the releases referred to in paragraph 12 above, and the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.

(16) The claims of the Class Members are dismissed against the defendant, without costs and with prejudice and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

(17) This Court, without in any way affecting the finality of this order, reserves exclusive and continuing jurisdiction over this action, the plaintiffs, all of the Class Members, and the defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this order.

(18) Save as set out above, leave is granted to discontinue this action against the defendant without costs and with prejudice, and that such discontinuance shall be an absolute bar to any subsequent actions against the defendant in respect of the subject matter hereof.

(19) Collectiva Class Action Services Inc. shall be and hereby is appointed as Claims Administrator pursuant to the Settlement Agreement. A complete, significant, and detailed review must take place in regard to the Administrator for all eventual work pertaining to the Administrator's responsibilities, to ensure accurate and effective, wide dissemination of meaningful and pertinent information to the attention of all those who have gone through the "Sixties Scoop" and heirs to those who have been subjected to the "Sixties Scoop" as specified in the Settlement; and, in addition, to supervise and monitor all future work that must be carried out by the Administrator as it pertains to individual payments to Class Members, heirs and others as respectfully specified in the Settlement who will be part of the Exceptions category. The fees, disbursements and applicable taxes of the Claims Administrator shall be paid by the defendant in accordance with section 6.06 of the Settlement Agreement.

(20) No person may bring any action or take any proceeding against the Administrator, the Foundation Table, the Exceptions Committee or the members of such bodies, the adjudicators, or any employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the Settlement Agreement, the administration of the Settlement Agreement or the implementation of this judgment, except with leave of this Court on notice to all affected parties.

(21) In the event that the number of persons who appear to be eligible for compensation under the Settlement Agreement who opt out of this class proceeding and the Ontario Action exceeds 2 000, the Settlement Agreement will be void and this judgment will be set aside in its entirety, subject only to the right of Canada, at its sole discretion, to waive compliance with section 5.09 of the Settlement Agreement.

(22) Subsection 334.21(2) [of the *Federal Courts Rules*] does not apply to the plaintiffs in the Class Actions, and those plaintiffs are not excluded from this

proceeding despite not having discontinued their parallel Class Actions prior to the Opt Out Deadline.

(23) The fees payable to Class Counsel are hereby set at $37 500 000 ($37.5 million) in respect of legal fees plus applicable taxes, inclusive of disbursements, payable as follows:

(i) $12 500 000 to Klein Lawyers LLP;

(ii) $12 500 000 to Koskie Minsky LLP; and

(iii) $12 500 000 to Merchant Law Group LLP.

(24) The amounts set out in paragraph 23 shall be paid by the defendant to Class Counsel on the Implementation Date in accordance with the Settlement Agreement. The amounts set out in paragraph 23 shall be in addition to the funding in section 4.01 of the Settlement Agreement.

(25) No counsel or law firm listed in Schedule “K” to the Settlement Agreement or who accepts a payment for legal fees from Canada will charge any Class Member any fees or disbursements in respect of an Individual Payment. Each counsel listed in Schedule “K” to the Settlement Agreement undertakes to make no further charge for legal work for any Class Member with respect to claims under this Agreement.

(26) Notice in the manner attached hereto as Schedule “B” shall be given of this judgment, the approval of the Settlement Agreement, the opt out period and the claims period by the commencement of the Notice Plan attached here to Schedule “C”, at the expense of Canada.

(27) This Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this order.

(28) Class Counsel shall report back to the Court on the administration of the Settlement Agreement at reasonable intervals not less than semi-annually, as requested by the Court and upon the completion of the administration of the Settlement Agreement.

(29) The representative plaintiffs Wendy White, Jessica Riddle, and Catriona Charlie shall each receive the sum of $10 000 as an honorarium to be paid by the defendant out of the settlement fund.

(30) The proposed representative plaintiffs in the Provincial Class Actions shall each receive the sum of $10 000 as an honorarium to be paid by the defendant out of the settlement fund.

(31) This order will be rendered null and void in the event that the Settlement Agreement is not approved in substantially the same terms by way of order of the Ontario Superior Court of Justice.

(32) The statutory provisions of the *Federal Courts Act*, R.S.C., 1985, c. F-7 and the *Federal Courts Rules*, SOR/98-106 shall apply in their entirety to the supervision, operation, and implementation of the Settlement Agreement and this order.

TAB 19

Federal Court Cour fédérale

Date: 20220617

Docket: T-620-20

Citation: 2022 FC 913

Ottawa, Ontario, June 17, 2022

PRESENT: The Honourable Mr. Justice Phelan

CLASS PROCEEDING

BETWEEN:

CHEYENNE PAMA MUKOS STONECHILD, LORI-LYNN DAVID, AND STEVEN HICKS

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON hearing the oral submissions of the parties made at a hearing online and in-person in Vancouver, British Columbia on April 12 and 13, 2022;

AND UPON the Court reading the materials filed;

THIS COURT ORDERS that:

1. This action is certified as a class proceeding against the Defendant, Her Majesty the Queen, pursuant to Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106.

2. The primary class in this proceeding is defined as:

> All First Nations (Status and Non-Status Indians), Inuit and Métis persons who were removed from their homes in Canada between January 1, 1992 and December 31, 2019 and placed in the care of individuals who were not members of the Indigenous group, community or people to which they belong, excluding on-reserve class members in the Federal Court action styled as *Moushoom and Meawasige (by his litigation guardian, Beadle) v The Attorney General of Canada* with court file number T-402-19 (the "Primary Class" or "Primary Class Members").

3. The family class is defined as:

> The parents and grandparents of Primary Class Members (the "Family Class", collectively with the Primary Class, the "Class" or "Class Members").

4. Cheyenne Pama Mukos Stonechild and Steven Hicks are appointed as Representative Plaintiffs for the Primary Class and Lori-Lynn David is appointed as Representative Plaintiff for the Family Class, pursuant to Rule 334.17(1)(b).

5. This action concerns claims made on behalf of the Class, pursuant to Rule 334.17(1)(c), as follows:

> The claims assert systemic negligence, breaches of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, and unjust enrichment.

6. The relief claimed by the Class, pursuant to Rule 334.17(1)(d), is as follows:

   a. declarations;

   b. general damages for the Defendant's several liability;

   c. special damages;

   d. damages under the *Canadian Charter of Rights and Freedoms*;

e. restitution by the Defendant of its wrongful gains;

f. exemplary, aggravated, and punitive damages;

g. damages equal to the costs of administering notice, administration, and the plan of distribution;

h. recovery of health care costs incurred by provincial and territorial health insurers on behalf of the Plaintiffs and other Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 and comparable legislation in the other provinces and territories;

i. pre-judgment and post-judgment interest; and

j. costs.

7. The common questions of law or fact in this proceeding are certified pursuant to Rule 334.17(1)(e) as follows:

Systemic negligence questions

a. Did the Defendant owe a duty of care to the Class and, if so, what was the scope of that duty?

b. If the answer to (a) is yes, was the Defendant entitled to delegate its duty or aspects of that duty to the provinces and territories and their child welfare agencies?

c. If the answer to (b) is no or if aspects of the Defendant's duty were not delegable, what was the standard of care owed by the Defendant to the Class?

d. Did the Defendant's conduct, acts, and omissions fall below the applicable standard of care?

e. If the answer to (d) is yes, can causation of any damages incurred by Class Members be determined as a common question?

f. If the answer to common questions (a), (d) and (e) is yes, can the Court make an aggregate assessment of damages suffered by all or some Class Members and, if so, in what amount?

Charter questions

g. Did the Defendant breach the Class Members' right to life, liberty, and security of the person in a manner contrary to the interests of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*?

h. Did the Defendant breach the right of Class Members to equal protection and equal benefit of the law without discrimination based on race, religion, colour, or national or ethnic origin under section 15 of the *Canadian Charter of Rights and Freedoms*?

i. If the answer to common question (g) or (h) is yes, were the Defendant's actions saved by section 1 of the *Canadian Charter of Rights and Freedoms* and, if so, to what extent and for what time period?

j. If the answer to common question (g) or (h) is yes, and the answer to common question (i) is no, do those breaches make damages an appropriate and just remedy under section 24 of the *Canadian Charter of Rights and Freedoms* for all or some of the Class?

k. If the answer to common question (j) is yes, can the Court make an aggregate assessment of damages owed to some or all Class Members under section 24 of the *Canadian Charter of Rights and Freedoms* and, if so, in what amount?

Unjust enrichment questions

l. Was the Defendant unjustly enriched by Class Members' loss of rights and entitlements arising from Indigeneity?

m. If the answer to common question (l) is yes, can the Court make an aggregate assessment of the restitution that should be paid to Class Members or some of them on account of the Defendant's wrongful gains and, if so, what amount of restitution should be paid to Class Members?

Punitive damages questions

n. Does the Defendant's conduct justify an award of punitive damages?

o. If the answer to common question (n) is yes, what amount of punitive damages should be awarded against the Defendant?

8. Murphy Battista LLP and Gowling WLG (Canada) LLP are appointed as Class Counsel.

9. The time and manner for Class Members to opt out of the class proceeding is reserved and will be addressed through the case management process.

10. No costs are payable on this motion for certification in accordance with Rule 334.39.

"Michael L. Phelan"
Judge

TAB 20

Federal Court Cour fédérale

Date: 20220617

Docket: T-620-20

Citation: 2022 FC 914

CLASS PROCEEDING

BETWEEN:

CHEYENNE PAMA MUKOS STONECHILD, LORI-LYNN DAVID, AND STEVEN HICKS

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER

PHELAN J.

I. Introduction

[1] "At a time of truth and reconciliation, federal responsibility to Indigenous children should not be hidden behind provincial and territorial walls." This is the essential point of this litigation in the Federal Court.

[2] For reasons to follow, this Court grants certification of this single class action, thereby avoiding the necessity or prospect of thirteen provincial and territorial separate actions being pursued by one of Canada's most disadvantaged groups.

II. Nature of the Proceeding

[3] The present proceeding is a contested motion for certification of a class proceeding pursuant to Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106. The litigation seeks to hold Canada liable to off-reserve Indigenous children and families for Canada's failure to take reasonable steps to prevent injury and loss to those off-reserve Indigenous children of their identity, culture, heritage and language.

[4] The proposed class action questions and challenges Canada's role between January 1, 1992 and December 31, 2019, in allowing Indigenous children who were in state care to be placed in non-Indigenous homes and in the care of individuals who were not part of their Indigenous group, community or people [Primary Class Members]. This resulted in the loss of identity, culture, family and federal benefits. The claim also seeks relief for the parents and grandparents of Primary Class Members [Family Class].

[5] The claim is grounded in Canada's duty to protect apprehended Indigenous children and youth from harm - specifically the loss of their Aboriginal identity - as informed by the honour of the Crown, Canada's fiduciary obligations, Canada's common law duty of care and Canada's responsibility for all Indigenous peoples, whether status Indian, non-status, Métis or Inuit, and regardless of whether they reside on or off reserve land.

[6] The Plaintiffs assert that the Defendant Canada:

- unreasonably denied Indigenous peoples their inherent right to jurisdiction over child and family services;
- failed to take reasonable steps to preserve and protect the Aboriginal identity of Primary Class Members apprehended by child welfare agencies and placed in the care of individuals who were not members of their Indigenous community group or people; and
- failed to provide information about Primary Class Members' identity, Aboriginal and treaty rights and federal benefits to which Primary Class Members may have been entitled.

[7] The claim seeks declaratory relief, general and punitive damages as well as *Charter* damages and other relief.

[8] Importantly, the Defendant accepts that the Plaintiffs have a reasonable cause of action, a certifiable class and appropriate representative plaintiffs.

[9] The key issue from the Defendant's perspective is that the resolutions of the issues raised, "whether through litigation, or, more preferably, out of court settlement, requires the presence and participation of the provinces and territories". The Plaintiffs seek recovery only against the Federal Crown and only in this Court.

III. Background

A. *Action*

[10] The action has been generally described above. The time frame of January 1, 1992 to December 31, 2019 has been referred to as the "Millennium Scoop". This is to be distinguished

from what is known as the "Sixties Scoop" which was the topic of litigation in Ontario under *Brown v Canada (Attorney General)*, 2017 ONSC 251 [*Brown*] and in the Federal Court under *Riddle v Canada*, 2018 FC 641 [*Riddle*] with respect to the resulting national settlement. Both historic actions focused on loss of cultural identity, with *Brown* limited to on-reserve child apprehensions in the Province of Ontario and *Riddle* not distinguishing between on-reserve or off-reserve class members.

[11] Aside from alleging that the Defendant failed in its duty towards the Class Members, they also allege discriminatory practices which caused the Primary Class Members, their parents and grandparents to suffer loss from systemic negligence, breaches of sections 7 and 15 of the *Charter* and unjust enrichment.

[12] The Plaintiffs plead that the Defendant's duty to Indigenous children was not negated by the role of the provinces/territories in the provision of child welfare services and Canada never had the right to offload its legal obligations to Primary Class Members.

B. *Proposed Representative Plaintiffs*

[13] The proposed Representative Plaintiffs are Cheyenne Stonechild (originally in this litigation "Walters") and Steven Hicks – both for the Primary Class – and Lori-Lynn David for the Family Class.

[14] Ms. Stonechild was born in 1995 and her birth mother is a member of the Muscowpetung Saulteaux First Nation and a Sixties Scoop victim. When she was eight years old, she was moved

from her mother's care and, with the exception of one day when she was with an uncle, she was placed in a group home by the BC Ministry of Children and Family Development.

[15] By the time she turned 18, Ms. Stonechild had been placed in approximately 15 group homes in the Greater Vancouver area. Beyond the single day with her uncle, Ms. Stonechild was never placed in the care of anyone who identified as Indigenous nor was any attempt made to preserve her Cree identity, culture or language. She has suffered mentally and emotionally allegedly arising from the loss of her culture and identity. While never advised of her Indigenous rights, she has secured an Indian Status Card, become recognized by her Nation and learned about her Cree heritage. She states that she understands and is willing and able to fulfil her role and duties as a Representative Plaintiff.

[16] Mr. Hicks is Métis, born in 1995. When six months old, he and his sister were removed from their home and placed with a non-Métis family. He was adopted when he was seven but returned to the child welfare system when he was 11. For the next 18.5 years, Mr. Hicks was placed in numerous foster homes, none of them being Métis. In addition to experiencing mental and emotional difficulties, he was never made aware that he was Métis until he was 19 nor provided with information on his status, culture or federal entitlements.

[17] Mr. Hicks has begun to reconnect with his Métis community, identity and culture. Like Ms. Stonechild, he understands and accepts his role and duties as a Representative Plaintiff, and has reviewed the litigation plan and the Fee Agreement.

[18] Ms. David is an Indigenous woman who alleges that she has suffered intergenerational trauma due to being separated from her birth mother during the Sixties Scoop and adopted by non-Indigenous parents. As a result, she lost all connection with her birth mother and her culture. Following three of her children being apprehended in 1993 and 1997 (she has not seen her eldest son since 1996), Ms. David experienced depression, alcohol abuse, suicidal thoughts and homelessness.

[19] Since 2006, Ms. David has been "turning her life around". She attributes her loss of Indigenous identity and her children's cultural loss to Canada's failure to take steps to help preserve and protect their identities. She too is aware of and accepts her duties and role and understands the litigation plan and legal costs.

[20] Although the parties are in agreement that the proposed Representative Plaintiffs are appropriate, the Court must reach its own conclusion as discussed later.

The point Canada emphasizes is that each of these Representative Plaintiffs had their lives, cultures and identities harmed by officials of British Columbia, not of Canada.

[21] Canada has argued that these Plaintiffs should not be allowed to cut off the Class' claim for liability at the federal government level; that such a limitation harms other Class Members' rights and interests.

[22] However, in my view, those who find the case too limited are free to opt out. More particularly, the case does not bind the provincial/territorial governments nor restrict claims against them in their courts.

Importantly, there is nothing to suggest that the Representative Plaintiffs are not aware of the limitations or informed of the risks. In their judgment the single class action in the national court is the preferred way to proceed. It is not for this Court at this stage or for Canada at any stage to deny them the right to make that decision.

C. *Trauma/Harm*

[23] The Plaintiffs, in advancing their arguable cause of action argument, filed two expert reports.

[24] The first was from Dr. Amy Bombay of the Department of Psychiatry and School of Nursing at Dalhousie University. Her opinion related to the significant psychological and emotional impacts which occur when an Indigenous child is separated from his/her group, community or people. She further opined on the negative health and social impacts caused by cultural suppression or loss faced by those affected by residential schools and child welfare systems.

[25] The second expert was Professor Nico Trocmé of the School of Social Work at McGill University. He concluded that First Nations children and families were significantly more likely to be investigated by child welfare authorities than non-Indigenous children and families by significant degrees of difference. He further opined on the significant overrepresentation of

Indigenous children in care and the majority of such children being placed in non-Indigenous homes.

[26] The Defendant does not challenge this evidence but points to the fact that it is the provinces and territories who operate these child welfare systems.

[27] The Plaintiffs point to the federal entitlements and benefits available to off-reserve Indigenous people and the failure to inform Indigenous children, removed from their families, of these entitlements which are lost or to which access is not given. It is the Plaintiffs' position at the basis of this claim that Canada had a constitutional obligation to off-reserve Indigenous people and Canada's policy of leaving funding of social services for off-reserve Indigenous people to the provinces and territories amounts to a violation.

IV. Issues

[28] The parties agree that the overarching issue is whether this action should be certified as a class proceeding pursuant to Rule 334.16. That issue in this context underscores:

a) whether the proposed common questions are appropriate in these circumstances; and

b) whether a single class proceeding in this Court is the preferable proceeding.

[29] Rule 334.16(1) sets out a mandatory obligation on the Court to certify a proceeding as a class action if the action meets certain conditions. Subsection (2) sets out a non-exhaustive list of matters which the Court must have considered:

334.16 (1) Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

(a) the pleadings disclose a reasonable cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;

(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and

(e) there is a representative plaintiff or applicant who

(i) would fairly and adequately represent the interests of the class,

(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,

(iii) does not have, on the common questions of law

334.16 (1) Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure révèlent une cause d'action valable;

b) il existe un groupe identifiable formé d'au moins deux personnes;

c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;

d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;

e) il existe un représentant demandeur qui :

(i) représenterait de façon équitable et adéquate les intérêts du groupe,

(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,

(iii) n'a pas de conflit d'intérêts avec d'autres

or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

(2) All relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether

(2) Pour décider si le recours collectif est le meilleur moyen de régler les points de droit ou de fait communs de façon juste et efficace, tous les facteurs pertinents sont pris en compte, notamment les suivants :

(a) the questions of law or fact common to the class members predominate over any questions affecting only individual members;

a) la prédominance des points de droit ou de fait communs sur ceux qui ne concernent que certains membres;

(b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings;

b) la proportion de membres du groupe qui ont un intérêt légitime à poursuivre des instances séparées;

(c) the class proceeding would involve claims that are or have been the subject of any other proceeding;

c) le fait que le recours collectif porte ou non sur des réclamations qui ont fait ou qui font l'objet d'autres instances;

(d) other means of resolving the claims are less practical or less efficient; and

d) l'aspect pratique ou l'efficacité moindres des autres moyens de régler les réclamations;

(e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.	**e)** les difficultés accrues engendrées par la gestion du recours collectif par rapport à celles associées à la gestion d'autres mesures de redressement.

Note: Subsection (3) is not relevant at this stage of the proceedings.

A. *Certification Principles*

[30] The Plaintiffs argue that they have satisfied the "low threshold" for certification as Rule 334.16 is procedural in nature and meant to be interpreted broadly, liberally and purposively to achieve the foundational policy objectives of class action proceedings – access to justice, judicial economy and behaviour modification: see *Canada v John Doe*, 2016 FCA 191 at para 25. In this regard, the Court is generally in agreement with the Plaintiffs.

[31] The Defendant takes the position that at least with respect to judicial economy, the proposed certified action would be a false economy because there are not the proper common questions or at least insufficient commonality across the class; that this action is not the preferable way of proceeding and the matter of behaviour modification has been addressed under *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 [Act].

[32] In *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at paras 99-100, the Supreme Court confirmed that the class representative must show some basis in fact for each of the certification requirements other than that the pleadings disclose a cause of action. The certification stage is not meant to be a test of the merits of the case. The question at the

certification stage is whether there is some basis in fact which establishes each of the individual certification requirements.

[33] It is not necessary to seek a resolution to each challenge or to each issue which may or might arise in the course of litigation – either procedural or substantive. If that were the case, class action law in this country would be barren for lack of precedents because such resolution would be either premature or impossibly speculative. The overall question is not whether the action will succeed but whether the action can work as a class action.

B. *Reasonable Cause of Action (Rule 334.16(1)(a))*

[34] The action concerns the loss of Primary Class Members' Aboriginal identity after they were apprehended and placed in the care of individuals who were not members of their Indigenous community, group or people. There is nothing in the Defendant's material that suggests that these circumstances did not in fact happen.

[35] The Plaintiffs plead that the federal Crown had a duty constitutionally to protect and preserve the Aboriginal identity of apprehended Indigenous children and youth. They further plead that Canada failed in its duty from which the Class suffered loss and damage.

[36] Critical to the claim is the argument that Canada's duty was not negated because child welfare was otherwise a matter within provincial legislative competence. The analogy of a "political football" being who were "Indians" for whom Canada was responsible was alluded to both at the trial and ultimate appeal in the *Daniels* case (*Daniels v Canada (Indian Affairs and*

Northern Development), 2016 SCC 12). Jurisdictional arguments are discussed later, both in the context of common questions and preferability.

[37] At this stage of the analysis the Defendant has properly acknowledged that the pleadings disclose a reasonable cause of action. The test is whether it is "plain and obvious" that the claim is doomed to failure (*Varley v Canada (Attorney General)*, 2021 FC 589 at para 6 [*Varley*]). It is not.

[38] Given the pleadings, the Amended Notice of Motion and the arguments made, I am satisfied that the Plaintiffs have met this condition for certification.

C. *Identifiable class of two or more persons (Rule 334.16(1)(b))*

[39] The Defendant accepts, as do I, that the proposed Primary Class and Family Class meet this condition. The classes are objective and not overly broad. They are also similar to the classes in *Moushoom v Canada (Attorney General)*, 2021 FC 1225 [*Moushoom*].

D. *Common questions of law or fact (Rule 334.16(1)(c))*

(1) Jurisdictional Issues

[40] It is on this requirement and that of a class action as the preferable manner of proceeding for which the parties have the most disagreement. The Plaintiffs have filed an amended list of proposed common questions. The amended questions are largely the same as originally filed but

add in questions related to Canada's delegation of its off-reserve Indigenous child welfare duties to the provinces and territories and whether this amounted to systemic negligence.

[41] The Defendant challenges the matters of common question and preferability, while accepting the existence of a reasonable cause of action. The Defendant argues that the questions are only theoretically common and would in reality require overwhelming individual assessments based on the jurisdictional issues which may be involved. The Defendant says that the involvement of the provinces and territories takes this claim outside of a workable common issues claim.

[42] The Defendant raises what they describe as "jurisdictional issues"; however, it does not assert that this Court does not have jurisdiction over a claim against Canada alone. The Defendant's position is that the Plaintiffs should also be suing the provinces.

[43] In the course of dealing with this so-called jurisdictional issue, the Defendant refused to answer questions about Canada's delegation of its responsibilities to the provinces. The questioning was in writing; the Defendant objected on the basis that it was not proper cross-examination and was too broad.

[44] The parties have engaged in procedural skirmishes over who had the obligation to force an answer and what should be done in the face of the Defendant's refusal to answer.

[45] In my view, this procedural issue should not distract the Court from the real issue of whether the Plaintiffs' limitation of its claim to only Canada deprives the Plaintiffs of the opportunity to pursue its claim in one court with national jurisdiction as opposed to being bogged down in multiple jurisdiction litigation. The Defendant's failure to respond to questions related to jurisdiction and delegation detracts from the force of its submissions that the role of the provinces somehow makes the Plaintiffs' claim impossible or impractical to pursue in this Court.

[46] Moreover, the commonality of the questions is enhanced by the fact that there is a single defendant. The Plaintiffs have deliberately limited the scope of their claim to the federal government as they are entitled to do. As stated in *Daniels v Canada*, 2013 FC 6 at para 66:

> It is an accepted right that a plaintiff may frame the action (subject to various rules of pleading) as it wishes. It is not for the Defendants to tell the Plaintiffs what their case is or should be.

[47] It is the Plaintiffs' position that Canada has the responsibility to protect and preserve the Aboriginal identity of the Primary Class Members. The Plaintiffs are prepared to take the risk that it has only one defendant and that relief may be limited by that factor. That is the Plaintiffs' choice and their right.

[48] The Plaintiffs rely on the principle that Canada cannot delegate these responsibilities. As the Canadian Human Rights Tribunal held in *First Nations Child and Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2, and upheld in this Court (*Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969), Canada, as the sole respondent, could not

evade constitutional responsibility by the mere fact that it had delegated responsibility to provincial agencies.

[49] The ultimate question in this litigation is whether Canada complied with its constitutional obligations under s 91(24) to "Indians" which could not be delegated to provincial bodies or discharged by provincial legislation. That issue is common to all the Class Members and is the foundational question throughout – did Canada have the obligations to preserve and protect and did it fulfil those obligations?

[50] In limiting its claim to the federal government, the Plaintiffs have judicial support from this Court in *Campeau v Canada*, 2021 FC 1449 [*Campeau*], where Justice Southcott held that where a plaintiff elects to limit its claim to the several liability of Canada in regard to matters within Canada's authority and responsibility, the Court has no basis for staying an action even in the face of Canada's expressed intention to bring a claim for contribution and indemnity against a party over which the Federal Court has no jurisdiction.

[51] In this present case, both parties accept that if judgment is against Canada for its own liability, the matter of a potential third party proceeding is irrelevant.

[52] While the Court, at this stage of the litigation, need not answer these issues – it is sufficient if they are fairly arguable, the Plaintiffs argue that the question of Canada's obligation to preserve and protect has been acknowledged by Canada by its passage of the Act**.**

[53] The legislation arguably establishes what is and what should have been the duty and the standard of care which the Defendant should have had in place during the period of time covered by this class action. It addresses, at least in part, the Defendant's argument that there is a lack of commonality because each province had its own system, duties and standards.

(2) The Common Questions

[54] The following are the Amended Common Questions:

a) Did the defendant owe a duty of care to the class and, if so, what was the scope of that duty?

b) If the answer to (a) is yes, was the defendant entitled to delegate its duty or aspects of that duty to the provinces and territories and their child welfare agencies?

c) If the answer to (b) is no or if aspects of the defendant's duty were not delegable, what was the standard of care owed by the defendant to the class?

d) Did the defendant's conduct, acts, and omissions fall below the applicable standard of care?

e) If the answer to (d) is yes, can causation of any damages incurred by class members be determined as a common question?

f) Where loss of culture and identity has occurred and was materially caused by the class' engagement with the child welfare system – including loss of identity and/or loss of rights and entitlements arising from Indigeneity – is Canada *ipso facto* liable (or was Canada legally capable of off-loading that liability onto the provinces and territories)?

g) Where loss of culture and identity has occurred and was materially caused by the class' engagement with the child welfare system (and Canada was not legally capable of off-loading that liability onto the provinces and territories), can the Court make an aggregate assessment of damages suffered by all or some class members and, if so, in what amount?

h) Did the defendant breach class members' right to life, liberty, and security of the person in a manner contrary to the interests of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*?

i) Did the defendant breach the right of class members to equal protection and equal benefit of the law without discrimination based on race, religion, colour, or national or ethnic origin under section 15 of the *Canadian Charter of Rights and Freedoms*?

j) If the answer to common question (h) or (i) is yes, were the defendant's actions saved by section 1 of the *Canadian Charter of Rights and Freedoms* and, if so, to what extent and for what time period?

k) If the answer to common question (h) or (i) is yes, and the answer to common question (j) is no, do those breaches make damages an appropriate and just remedy under section 24 of the *Canadian Charter of Rights and Freedoms* for all or some of the class?

l) If the answer to common question (k) is yes, can the Court make an aggregate assessment of damages owed to some or all class members under section 24 of the *Canadian Charter of Rights and Freedoms* and, if so, in what amount?

m) Was the defendant unjustly enriched by class members' loss of rights and entitlements arising from Indigeneity?

n) If the answer to common question (m) is yes, can the Court make an aggregate assessment of the restitution that should be paid to class members or some of them on account of the defendant's wrongful gains and, if so, what amount of restitution should be paid to class members?

o) Does the defendant's conduct justify an award of punitive damages?

p) If the answer to common question (o) is yes, what amount of punitive damages should be awarded against the defendant?

[55] The Defendant did not object to the Plaintiffs submitting the Amended Common Questions which include the questions concerning the delegation to the provinces. It does object to questions (f) and (g).

[56] The Defendant's position is that the Plaintiffs' claim of systemic negligence is focused on Canada's failure to pass earlier legislation similar to the Act which came into effect on January 1, 2020. It says that the scope of any duty owed by Canada could not be assessed without simultaneous consideration of provincial/territorial duties of care and any breaches

thereof. It lists a number of questions provinces and territories would be required to answer on the topic.

[57] The Defendant argues that the same rationale applies to the *Charter* claims and the unjust enrichment claims.

[58] The Defendant takes some comfort in the *Caring Society* findings that Canada discriminated against on-reserve Indigenous children by not providing them with comparable services to those provided off-reserve in similar circumstances.

[59] Without addressing the merits or the validity of the Defendant's position as a defence, it is not clear to me that a comparison between disadvantaged people's treatment exonerates Canada from its duty to preserve and protect all Indigenous people.

[60] The Defendant emphasizes that the individual nature of the claim will make causation and damages on a systemic basis difficult and that the Plaintiffs have not indicated how that would be done. It levels the same type of criticism in respect of the claim for unjust enrichment.

[61] Both parties included in their common question submissions elements of jurisdictional issues at play and which are also addressed in the "preferability" analysis which follows. The Defendant expresses concern about the use of Rules 233 and 238 (production by a non-party/examination of a non-party) in regards to provinces/territories. This concern, addressed

later, was considered in *Campeau* at para 33 in respect of parties holding joint and several liability:

> It is not necessary for the Court to delve into the evidence surrounding Murphy Battista's responses to the Defendant's past efforts to explore the Ransomware Attack. The Defendant has advanced no arguments as to why the processes to compel evidence from a non-party under the Rules would be ineffective in providing the Defendant or the Court with the evidentiary foundation necessary to apportion liability between the Defendant and Murphy Battista (for purposes of limiting any liability imposed on the Defendant in this proceeding to its several liability). In *Gottfriedson* at paragraph 27, Justice Harrington noted that the Court may apportion fault against a person who is a non-party to a proceeding and endorsed the statement in *Taylor* that undertaking such apportionment without adding parties will mean fewer parties at trial, a shorter trial, and reduced costs. Justice Harrington also noted the availability of Rules 233 and 238 to order non-party production of documents and examination for discovery (at para 30).

[62] Justice Stratas in *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 72 [*Wenham*], outlined the Court's task at this stage of the certification process:

> Further, the task under this part of the certification determination is not to determine the common issues, especially not without a full record and full legal submissions on the issue, but rather to assess whether the resolution of the issue is necessary to the resolution of each class member's claim. Specifically, the test is as follows:
>
> > The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated vis-à-vis the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must share a

> substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significant [*sic*] of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit.
>
> (*Western Canadian Shopping Centres*, above at para. 39; see also *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3 at paras. 41 and 44-46.)

[63] Justice Gleason, in *Canada v Greenwood*, 2021 FCA 186 [*Greenwood*], in addressing cases such as this one dealing with systemic negligence claims, confirmed such cases are appropriate for certification:

> [182] Issues related to the scope of a duty of care, breach and punitive damages have frequently been certified as common issues in systemic negligence claims as the respondent rightly notes: see, i.e., *Rumley*; *Cloud v. Canada (Attorney General)*, 2004 CarswellOnt 5026, [2004] O.J. No. 4924 (CA); *Gay et al. v. Regional Health Authority 7 and Dr. Menon*, 2014 NBCA 10; *Ross v. Canada (Attorney General)*, 2018 SKCA 12; and *Francis v. Ontario*, 2021 ONCA 197, to name only a few cases where such determinations were reached or upheld by various appellate courts. The Federal Court has also frequently certified class actions for systemic negligence: see, i.e., *Merlo*; *Tiller*; *Ross*, *Paradis Honey Ltd. v. Canada*, 2017 FC 199, [2018] 1 F.C.R. 275; *McLean v. Canada (Attorney General)*, 2018 FC 642; and *Nasogaluak v. Canada (Attorney General)*, 2021 FC 656.

[64] As the Plaintiffs' claim includes allegations of systemic negligence, *Rumley v British Columbia*, 2001 SCC 69 [*Rumley*], is particularly instructive. It involved issues of abuse of residential school children who were deaf or blind. The claim was based on systemic negligence

which, at para 30, was defined as “the failure to have in place management and operations procedures that would reasonably have prevented the abuse”.

[65] In respect of the issue of commonality versus individuality, the argument in *Rumley*, as also made here, was that ultimately the action would break down into individual proceedings because the action depended on the application of the standard of care. At para 30, the Court rejected this dominance of individual assessments, on the basis that the plaintiff was entitled to restrict the grounds of negligence to systemic negligence to facilitate a class proceeding.

> 30 I cannot agree, however, that such are the circumstances here. As Mackenzie J.A. noted, the respondents’ argument is based on an allegation of “systemic” negligence – “the failure to have in place management and operations procedures that would reasonably have prevented the abuse” (pp. 8-9). The respondents assert, for example, that JHS did not have policies in place to deal with abuse, and that JHS acted negligently by placing all residential students in one dormitory in 1978. These are actions (or omissions) whose reasonability can be determined without reference to the circumstances of any individual class member. It is true that the respondents’ election to limit their allegations to systemic negligence may make the individual component of the proceedings more difficult; clearly it would be easier for any given complainant to show causation if the established breach were that JHS had failed to address her <u>own</u> complaint of abuse (an individualized breach) than it would be if, for example, the established breach were that JHS had <u>as a general matter</u> failed to respond adequately to some complaints (a “systemic” breach). As Mackenzie J.A. wrote, however, the respondents “are entitled to restrict the grounds of negligence they wish to advance to make the case more amenable to class proceedings if they choose to do so” (p. 9).

[66] The Defendant suggests that Canada’s lack of a system to address the needs of Indigenous children and youth taken from their Indigenous families is a policy decision by the federal government; presumably as such is less susceptible to court challenge. However, this

assertion is a matter of a defence, if Canada chooses to advance it, and would, because it was a general policy, suggest that there is a broad common issue of its application of the policy.

[67] In assessing the common questions with a purposive approach, both the original and Amended Common Questions can be distilled to four main issues:

1. Canada's alleged systemic negligence, its delegation to provinces and territories and the Court's ability to make an aggregate assessment of damages.
2. Canada's alleged breaches of s 7 and 15 of the *Charter* and the entitlement to s 24 *Charter* damages.
3. Canada's alleged unjust enrichment by avoiding the cost of a proper system to protect and preserve as well as the Court's ability to assess and make a restitution order.
4. Canada's liability for punitive damages.

[68] The Court is not convinced that the issues are only theoretically common. Individual provincial/territorial welfare practices would need to be considered, whether the claim is in this Court or in several courts.

[69] The specific questions posed by the Plaintiffs are not inimitable and may be amended at a later date if appropriate. However, they must be common and flow from the pleadings as they do.

[70] It would be naïve to suggest that dealing with aspects of provincial issues inherent in the common questions would be simple but it should be able to be done as discussed in paragraphs 79 and following of these Reasons.

[71] The Amended Common Questions contain rhetoric which is unnecessary and may not ultimately be helpful in resolving the core of the dispute.

[72] In addressing the Defendant's objection to some of the new questions, the Court agrees that questions (f) and (g) are more augmentory of questions (b)-(d) which more directly address the issue of delegation.

[73] Therefore, the common questions to be certified are:

Systemic negligence questions

a) Did the Defendant owe a duty of care to the class and, if so, what was the scope of that duty?

b) If the answer to (a) is yes, was the Defendant entitled to delegate its duty or aspects of that duty to the provinces and territories and their child welfare agencies?

c) If the answer to (b) is no or if aspects of the Defendant's duty were not delegable, what was the standard of care owed by the Defendant to the class?

d) Did the Defendant's conduct, acts, and omissions fall below the applicable standard of care?

e) If the answer to (d) is yes, can causation of any damages incurred by class members be determined as a common question?

f) In the answer to common questions (a), (d) and (e) is yes, can the Court make an aggregate assessment of damages suffered by all or some class members and, if so, in what amount?

Charter questions

g) Did the Defendant breach the class members' right to life, liberty, and security of the person in a manner contrary to the interests of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*?

h) Did the Defendant breach the right of class members to equal protection and equal benefit of the law without discrimination based on race, religion, colour, or national or ethnic origin under section 15 of the *Canadian Charter of Rights and Freedoms*?

i) If the answer to common question (g) or (h) is yes, were the Defendant's actions saved by section 1 of the *Canadian Charter of Rights and Freedoms* and, if so, to what extent and for what time period?

j) If the answer to common question (g) or (h) is yes, and the answer to common question (i) is no, do those breaches make damages an appropriate and just remedy under section 24 of the *Canadian Charter of Rights and Freedoms* for all or some of the class?

k) If the answer to common question (j) is yes, can the Court make an aggregate assessment of damages owed to some or all class members under section 24 of the *Canadian Charter of Rights and Freedoms* and, if so, in what amount?

Unjust enrichment questions

l) Was the Defendant unjustly enriched by class members' loss of rights and entitlements arising from Indigeneity?

m) If the answer to common question (l) is yes, can the Court make an aggregate assessment of the restitution that should be paid to class members or some of them on account of the Defendant's wrongful gains and, if so, what amount of restitution should be paid to class members?

Punitive damages questions

n) Does the Defendant's conduct justify an award of punitive damages?

o) If the answer to common question (n) is yes, what amount of punitive damages should be awarded against the Defendant?

E. *Preferability*

[74] The question is whether the single class proceeding in this Court is the preferable proceeding. The issue of preferability usually contrasts a class proceeding to some other proceeding such as a single plaintiff or representation action. This motion adds an additional layer of complexity by raising the issue of whether the class proceeding in this Court, as opposed to other and multiple courts, is to be the preferred process.

[75] In *Wenham*, Justice Stratas outlined the test for preferability procedure under Rule 334.16(1)(d):

> [77] The test, from *Hollick* at paras. 27-31, is well-summarized in Mr. Wenham's memorandum as follows:
>
> > (a) the preferability requirement has two concepts at its core:
> >
> > > (i) first, whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and
> > >
> > > (ii) second, whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members;
> >
> > (b) this determination requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole; and
> >
> > (c) the preferability requirement can be met even where there are substantial individual issues; the common issues need not predominate over individual issues.
>
> [78] The preferability of a class proceeding must be "conducted through the lens of the three principal goals of class action, namely judicial economy, behaviour modification and access to justice": *Fischer* at para. 22.

[76] In these Reasons, this Court referred to paragraph 30 of *Rumley* in respect to a plaintiff's right to restrict its claim to negligence as here. The case importantly confirms that a class action where systemic wrong is alleged is preferred even though there are aspects of individual assessments.

[77] The Court of Appeal in *Greenwood* confirmed that the type of case advanced here is frequently certified as a class action:

> [181] Moreover, as this Court recently noted at paragraph 77 of *Brake*:
>
> > [...] the result of the determination of the common issues need not be the same for all class members. In particular,
> >
> > (a) for a question to be common, success for one member of the class does not necessarily have to lead to success for all the members;
> >
> > (b) a common question can exist even if the answer given to the question might vary from one member of the class to another, and a common question may require nuanced and varied answers based on the circumstances of individual members;
> >
> > (c) the requirement of commonality does not mean that the answer for all members of the class needs to be the same or even that the answer must benefit them to the same extent as long as the questions do not give rise to a conflict of interest among the members; for example, the success of one member must not result in failure for another.
> >
> > (See *Vivendi* at paras. 44-46; *Rumley* at para. 36; *Hodge v. Neinstein*, 2017 ONCA 494, 136 O.R. (3d) 81 at para. 114.)
>
> [182] Issues related to the scope of a duty of care, breach and punitive damages have frequently been certified as common issues in systemic negligence claims as the respondent rightly notes: see, i.e., *Rumley*; *Cloud v. Canada (Attorney General)*, 2004 CarswellOnt 5026, [2004] O.J. No. 4924 (CA); *Gay et al. v. Regional Health Authority 7 and Dr. Menon*, 2014 NBCA 10; *Ross v. Canada (Attorney General)*, 2018 SKCA 12; and *Francis v. Ontario*, 2021 ONCA 197, to name only a few cases where such determinations were reached or upheld by various appellate courts. The Federal Court has also frequently certified class actions for systemic negligence: see, i.e., *Merlo*; *Tiller*; *Ross*, *Paradis Honey Ltd. v. Canada*, 2017 FC 199, [2018] 1 F.C.R. 275; *McLean v. Canada (Attorney General)*, 2018 FC 642; and *Nasogaluak v. Canada (Attorney General)*, 2021 FC 656.

[78] The Plaintiffs have addressed the non-exhaustive factors laid out in Rule 334.16(2). I conclude that a single proceeding would be particularly important to matters of judicial economy and access to justice.

[79] The Defendant has not established that a class action in this matter is not manageable nor has it established that it cannot defend its position or that a class proceeding in this single court with national coverage is not the preferred proceeding.

[80] This case, like other class actions, underscores the difficulties with class actions against the Crown due to constitutional limitations. These Plaintiffs cannot solve this class action conundrum nor should they have to await its resolution.

[81] Class actions covering persons and actions outside the specific borders of the pertinent borders raise problems as well as shown in *Option Consommateurs c Nippon Yusen Kabushiki Kaisha (NYK)*, 2022 QCCS 1338.

[82] The Defendant has raised concerns that in defending this action, it may be constrained in securing evidence from the provinces in support of its defence. However, this Court in *Tippett v Canada*, 2020 FC 714, issued production orders under Rule 233 against the Province of British Columbia (a non party to the class action). The same principled approach would presumably apply in respect to other non party provinces and territories in this class proceeding. At this stage, it cannot be said that Canada cannot adequately defend this proposed class proceeding.

[83] The Defendant has not satisfied me, nor have they advanced a case, that there is a better proceeding which can address the Plaintiffs' claim.

[84] The Defendant argues that a proceeding in a superior court could allow for provincial/territorial involvement. While this is doubtless true, the Defendant has not addressed how this could be done for a national class. The prospect that each class would only involve members from the particular province/territory invites thirteen legal actions across the country, a prospect which is truly daunting - particularly for the Plaintiffs.

[85] Such multiple litigation involving issues related to Indigenous children and youth invites making the cases "political footballs" as between Canada and the provinces/territories. The prospect offends that which was identified and to be avoided under Jordan's Principle.

[86] The suggestion made included having a provincial superior court in one province be the principal court; however, the Defendant has not shown how other provinces would or could attorn to the jurisdiction of another province in respect of the laws and actions of the first province.

[87] Although one must be cautious in drawing too much from class actions where consent to certification was part of the certification process, Canada had been prepared to accept class proceedings in this Court in many such actions. It did so in *Moushoom* where the remedy sought was similar to that asked for here. The key difference is that in the present action, the focus is on

off-reserve child welfare funding and actions while *Moushoom* dealt with on-reserve funding plus aspects of a Jordan's Principle class.

[88] The lengthy and multi-jurisdictional nature of the Sixties Scoop litigation is a cautionary tale and much simpler, one involving one court rather than a multi-jurisdictional Stonechild proceeding. Only after eight years of Ontario litigation did the national settlement materialize in *Riddle*.

[89] In both *Moushoom* and *Varley*, Canada accepted its role as a single defendant. In terms of fairness based on the pleadings in this Stonechild proceeding, Canada is in a better position to deal with provincial witnesses (to the extent necessary) than these Plaintiffs.

[90] In respect to access to jurisdiction, a single proceeding is a simpler process than multi-jurisdictional claims. Given the nature of the class, and the likelihood of them individually or in groups being able to carry an action, a class proceeding is evidently more effective and efficient. It may well be the only way this type of litigation could proceed.

[91] With regard to judicial economy, again a single national jurisdiction proceeding is more efficient. Canada says there is limited judicial economy as this proceeding is incomplete because of the absence of provinces and territories. Given this Court's conclusion on the matter of a common question and the right of the Plaintiffs to pick their target of liability, a class action in this Court offers sufficient, if not greater judicial economy, than other proceedings.

[92] In terms of behaviour modification, while Canada says that this factor has been addressed by the new Act, a class proceeding is more likely than not to help ensure that the legislation is acted upon, funded and administered as it should. The class proceeding is likely to keep Canada on course – "steady and true".

[93] Canada has repeatedly said it seeks reconciliation and resolution. Despite the lengthy period over which the offending acts occurred, that has not happened and there was no suggestion that it was likely or that a vehicle for resolution existed. The words of the former Chief Justice in *Rumley* suggest that a class action may be useful in mitigating harm and even creating a vehicle for resolution.

> 39 The final factor is "whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means": s. 4(2)(e). On this point it is necessary to emphasize the particular vulnerability of the plaintiffs in this case. The individual class members are deaf or blind or both. Litigation is always a difficult process but I am convinced that it will be extraordinarily so for the class members here. Allowing the suit to proceed as a class action may go some way toward mitigating the difficulties that will be faced by the class members. I am in full agreement, therefore, with Mackenzie J.A.'s conclusion that "[t]he communications barriers faced by the students both at the time of the assaults alleged and currently in the litigation process favour a common process to explain the significance of those barriers and to elicit relevant evidence." As he wrote, "[a] group action should assist in marshalling the expertise required to assist individual students in communicating their testimony effectively" (p. 9).

V. Conclusion

[94] For all these reasons, this action will be certified as a class proceeding on the terms of the Certification Order.

"Michael L. Phelan"
Judge

Ottawa, Ontario
June 17, 2022

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-620-20
STYLE OF CAUSE:	CHEYENNE PAMA MUKOS STONECHILD, LORI-LYNN DAVID, AND STEVEN HICKS v HER MAJESTY THE QUEEN
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA AND BY VIDEOCONFERENCCE
DATE OF HEARING:	APRIL 12 AND 13, 2022
REASONS FOR ORDER:	PHELAN J.
DATED:	JUNE 17, 2022

APPEARANCES:

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Catharine Moore Travis Henderson Stéphanie Dion	FOR THE DEFENDANT

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Attorney General of Canada Ottawa, Ontario	FOR THE DEFENDANT

TAB 21

Federal Court  Cour fédérale

Date: 20211222

Manitoba Court of Queen's Bench File No.: CI-19-01-24661

Federal Court File No.: T-1673-19

Citation: 2021 FC 1415

Ottawa, Ontario, December 22, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

Docket: CI-19-01-24661

TATASKWEYAK CREE NATION AND CHIEF DOREEN SPENCE ON HER OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF TATASKWEYAK CREE NATION

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

(Class Proceeding commenced under *The Class Proceedings Act*, CCSM c C 130)

AND BETWEEN:

Docket: T-1673-19

CURVE LAKE FIRST NATION AND CHIEF EMILY WHETUNG ON HER OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF CURVE LAKE FIRST NATION AND NESKANTAGA FIRST NATION AND CHIEF CHRISTOPHER MOONIAS ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF NESKANTAGA FIRST NATION

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

(Class Proceeding commenced under Part 5.1 of the *Federal Courts Rules*, SOR/98-106)

ORDER AND REASONS

I. Introduction

[1] This is a motion to approve the First Nations Drinking Water Settlement Agreement [Settlement Agreement or Settlement] pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106 [*Rules*] and section 35(1) of *The Class Proceedings Act*, CCSM, c C130 [*The Class Proceedings Act*]. The underlying actions are class proceedings. The Settlement Agreement compensates First Nation individuals who have lived under a drinking water advisory for a year or more. It also provides First Nations with compensation and assistance in securing safe drinking water through future infrastructure funding.

[2] Both the Federal Court and the Manitoba Court of Queen's Bench [Courts] have jurisdiction over this proceeding. On October 11, 2019, Curve Lake First Nation [Curve Lake], Chief Emily Whetung, Neskantaga First Nation [Neskantaga], and Former Chief Christopher Moonias filed a statement of claim in the Federal Court [Federal Action]. On November 20, 2019, Tataskweyak Cree Nation [Tataskweyak] and Chief Doreen Spence filed a Statement of Claim in the Manitoba Court of Queen's Bench [Manitoba Action, and together with the Federal Action, the Actions]. After the Actions were certified, the Courts appointed these individuals and First Nations as the Representative Plaintiffs. The current Chief of Neskantaga, Wayne Moonias, represents the collective interests of Neskantaga. The defendant in both Actions was the Attorney General of Canada [Defendant or Canada]. McCarthy Tétrault LLP [McCarthy Tétrault] and Olthuis Kleer Townshend [OKT] are class counsel [Class Counsel]. The parties finalized the Settlement on September 15, 2021.

[3] The Representative Plaintiffs now bring a motion for an Order:

a. that the proposed Settlement Agreement be approved and its terms given effect;
b. that the Defendant pay the funds contemplated in the proposed Settlement Agreement, and that said funds be distributed in accordance with the proposed Settlement Agreement;
c. that Class Members (defined below) be notified of the approval of the proposed Settlement Agreement as set out in Schedule M and N of the Settlement Agreement; and
d. that the Actions be discontinued on a without costs basis.

[4] The Courts jointly case managed and heard the motion for settlement approval, as contemplated by the Canadian Bar Association's "Canadian Judicial Protocol for the Management of Multi-jurisdictional Class Actions and the Provision of Class Action Notice" (2018), online: *The Canadian Bar Association* <www.cba.org>. The Courts exercised their jurisdiction to hear this motion jointly pursuant to Rules 3 and 4 of the *Rules* and section 12 of *The Class Proceedings Act*.

[5] The two Courts exercised their respective jurisdiction to jointly hear the motion for the approval of the Settlement Agreement. However, as required, each Court separately and independently addressed the governing legal test as it relates to the issue before the Courts and the Actions that were certified in their respective jurisdictions.

[6] The reasons for Settlement and Fee Approval have been released separately but concurrently by each Court. After a full analysis, the two Courts are in complete agreement with the result and the reasons therefore. Accordingly, the reasons released by each Court to a large

extent replicate the reasons of the other. This represents what the Courts wish to underscore as complete concurrence.

[7] The Settlement Agreement is historic. It is the first Settlement to tackle the problem of drinking water advisories on First Nation reserves. Additionally, this proceeding marks the first time the Federal Court and another Superior Court have sat together. Most importantly, however, the record before the Courts demonstrates that the Settlement Agreement we are being asked to approve represents what many hope will be a turning point for Canada and First Nations. Both parties acknowledge that an agreement of this nature is long overdue. Although the parties reached the Settlement in just under two years, the Courts acknowledge that Indigenous communities have been advocating for decades to ensure future generations' access to safe water. Those tireless efforts, the willingness of the government, and the expertise and focus of legal counsel have now brought the parties to this promising and hopeful turning point.

[8] For all the reasons outlined below, the Courts approve the proposed Settlement Agreement.

II. Background

A. *Drinking water advisories on First Nation reserves in Canada*

[9] Authorities issue drinking water advisories when testing indicates that the water supply is or may be unsafe. There are three types of drinking water advisories: boil before use, do not consume, and do not use. Long-term drinking water advisories are those that have been in place for more than one year. The Settlement Agreement only applies to individuals residing on First

Nations that have been subject to a long-term drinking water advisory and to those First Nation communities.

[10] The affidavit of Peter Gorham, an expert actuary jointly retained by both parties, states that from 1995-2007, there were 713 recorded long-term drinking water advisories that affected some 257 First Nations. Class Counsel submitted a January 28, 2021 report by Dr. Melanie O'Gorman, a professor of economics and scholar in water infrastructure and long-term drinking water advisories in First Nations. That report states that in comparison to municipal and private water systems, First Nations disproportionately experience long-term drinking water advisories.

[11] As discussed in more detail below, the Actions alleged that Canada is responsible for the establishment of drinking water systems on reserves and that Canada has chronically underfunded First Nations' water needs. As a result, Canada has failed to ensure that Class Members have access to potable water of adequate quality and quantity. Class Counsel pointed out that in a press conference on November 24, 2021, Minister of Indigenous Services, the Honourable Marc Miller, stated that the deficits pertaining to drinking water infrastructure on reserve are a result of systemic racism.

B. *Experiences of Representative Plaintiffs & Class Members*

[12] The Representative Plaintiffs and other Class Members filed affidavits in support of settlement approval, which outlined the status of drinking water on their respective First Nations. All of those affidavits explained the importance of safe water for the physical, spiritual, emotional, psychological, cultural, or economic health of individuals and communities. In

particular, many of the affidavits, including the affidavits of Elder Richard Allen Keeper and Anne Taylor, emphasized the role water plays in ceremony and how contaminated water results in the breakdown of knowledge transmission. Class Members also discussed the tragic relationship between poor drinking water, mental health, and youth suicide. Likewise, they noted that contaminated water has forced members to relocate, which perpetuates the history of displacement of Indigenous peoples from their lands and the separation of families. Class Member Roderick Richard Spence explains:

> Now that I live in Winnipeg, I can drink the water that comes out of my tap, just like other Canadians. But I have lost a piece of who I am. It seems like an awful trade to have to make. I certainly hope that my grandchildren get better treatment. I dream for this, pray for this, and cry for this.

[13] The frustration, stress, and loss of dignity that Class Members have experienced is palpable. As detailed in their affidavits discussed below, members of the Representative First Nations have and continue to suffer unacceptable hardships.

(a) *Curve Lake*

[14] Curve Lake is an Ojibway First Nation located 15 kilometers outside of Peterborough, Ontario. Chief Whetung was elected Chief on June 18, 2019. She is Michi Saagiig of the Anishnaabe nation. She is a 36-year old lawyer and a mother of two. Chief Whetung's affidavit explains that Curve Lake experiences 10 to 15 boil-water advisories every year, some of which have lasted for more than one year. Her affidavit and the affidavit of Shawn Williams, a member of Curve Lake, state that the water treatment plant on Curve Lake inadequately disinfects water and only services 56 of the 550 homes in the community. Canada constructed it in the early 1980s and intended it to be temporary. The remaining homes on the First Nation are not

connected to a public water system and rely on private wells. Members of the community, including Chief Whetung's entire family, have contracted E.coli due to the contaminants in their drinking water. Others have become gravely sick, suffered rashes, and more.

[15] Mr. William's affidavit explains that for decades Curve Lake has been negotiating with Indigenous Services Canada [ISC] to get a new water treatment plant. He describes the process as a "hamster wheel": "the First Nation is constantly running, working to provide proposals, obtain necessary studies, seek funding, only to be in the exact same position decades later." He explains that since Canada provides the funding, the federal government's sign off is needed at every stage of development. He attributes the delay to ISC's habit of providing "funding for studies, small projects, and other lower cost items as a means to appease First Nations while they wait for the big ticket funding to actually address their needs, if that day ever arrives."

[16] The affidavit of Katie Young-Haddlesey, the Economic Development Coordinator of Curve Lake, states that the water crisis has "strangled Curve Lake's economic development." She explains that for every business proposal, Curve Lake must consider whether "there will be enough water and whether the quality will impact the business." Proposals for businesses like laundromats, car washes, restaurants, and hotels are not feasible because there is simply not enough water in the community.

[17] Chief Whetung spoke passionately before both Courts on December 8, 2021. She explained that Curve Lake has been fighting for clean drinking water since before she was born.

For her, the Settlement not only means that the First Nation will have clean water in the near future, but that her children will be able to stay and grow up in their community.

(b) *Neskantaga*

[18] Neskantaga is an Oji-Cree remote fly-in community in northern Ontario and is situated along Lake Attawapiskat. Neskantaga is subject to the longest drinking water advisory in Canada – the First Nation has not had safe drinking water for over 26 years. Members of Neskantaga have had to evacuate their community twice in the past three years because of their water.

[19] Christopher Moonias was the Chief of Neskantaga from 2019 to 2021. He now acts as special advisor to Neskantaga and remains a Representative Plaintiff. Chief Wayne Moonias is the current Chief of Neskantaga. He took office on April 1, 2021 and continues the work of Former Chief Christopher Moonias with respect to these Actions.

[20] The affidavit of Chief Wayne Moonias describes the traumatic effect the drinking water advisory has had on both individuals and the community and emphasizes its adverse effect on community members' mental health. As explained by the Community of Neskantaga in the Joint Press Release dated July 20, 2021, "[o]ur symptoms are real, and result in kids committing suicide, getting rashes, and suffering severe eczema. The skin conditions are particularly awful. They make our people feel like they have to hide themselves, and furthers their loss of dignity, on top of already feeling like maybe they don't deserve clean water."

[21] Class Members from Neskantaga also submitted affidavits supporting the Settlement and detailing their stories. Those Class Members included Former Chief Peter Moonias, Dorothy Sakanee, Maggie Sakanee, Marcus Moonias, and Amy Moonias. Maggie Sakanee's affidavit details the skin rashes and sores that her grandchildren developed due to the water, which only cleared up after being evacuated to Thunder Bay. Amy Moonias' affidavit tells a very similar story. Due to the expense of bottled water (a 4-litre bottle of water in Neskantaga costs 16 dollars), Amy Moonias often had to choose between feeding and bathing her baby. Likewise, Dorothy Sakanee sometimes had to choose between buying bottled water and essentials like food or diapers. When she had to boil water, it came at the expense of spending time with her children. Former Chief Peter Moonias' affidavit states that he declared a State of Emergency in the early 2000s because a cancer-causing chemical was found in the water. Dorothy Sakanee's affidavit explains that her youngest daughter died in 1988 from brain cancer. She states that she suspects that the cancer was caused from the water in Neskantaga.

(c) *Tataskweyak*

[22] Tataskweyak is located in northern Manitoba and has 4000 members, 2300 of whom live on the reserve. Chief Spence is Split Lake Cree and is the Chief of Tataskweyak, where she has lived most of her life. She was elected on November 6, 2016 and is the first female Chief. She is a mother of three and a grandmother of one. In her affidavit, Chief Spence states that Tataskweyak has been under a boil water advisory for three years. She explains that the community sources its tap water from Split Lake, which has been contaminated by upstream development and recurring flooding. The affidavit of Tataskweyak member, Robert Spence,

further explains that sewage is periodically released into Split Lake. Split Lake is contaminated with E.coli and large-scale blue-green algae blooms known to cause serious illness in humans.

[23] Accordingly, in 2006 and 2019, Tataskweyak sent Canada feasibility studies for a new water intake system, which would draw from Assean Lake. Instead, Canada upgraded the filtration and UV system in the existing water plant, which left the water tasting and smelling like chemicals. Chief Spence explained that occasionally, when the water line breaks, the tap water runs brown. The affidavit of Roderick Richard Spence, another member of Tataskweyak, similarly describes the tap water as smelling like chlorine and looking like "lemonade." Even after Canada's upgrades, the water remains unsafe to drink without boiling. In May 2020, Chief Spence obtained Canada's commitment to pay for bottled water delivery and enhanced water testing. Prior to this, however, community members who could not afford bottled water had to drink tap water or haul buckets of water from Assean Lake. In comparison, residents of the City of Thompson, which is upriver from Tataskweyak, enjoy virtually unlimited potable water.

[24] Similar to Curve Lake and Neskantaga, skin rashes are the norm for members of Tataskweyak. Class Members Lydia Garson and Clara Flett detailed their children's rashes that resulted from bathing in the contaminated water. Lydia Garson's son was covered in scrapes, sores, and scabs. At one point, despite his mother's dedication, his condition got so bad that his face would bleed. Likewise, although she took special care, Clara Flett's son had to be hospitalized due to his rashes. Class Member Elizabeth Keeper similarly contracted H. pylori infection (a stomach infection) from the contaminated water in Tataskweyak. Chief Spence

explains that illnesses related to contaminated drinking water have been exacerbated by inadequate access to healthcare, overcrowded housing, and the COVID-19 pandemic.

C. *Nature of the Claims & Defences*

[25] In the Statements of Claim filed in both Actions, the Representative Plaintiffs submitted that Canada failed to provide Class Members with potable drinking water. Accordingly, they sought orders and declarations that Canada has: breached its duty of care and acted negligently; contravened the honour of the Crown; breached its fiduciary duties; violated section 36 of the *Constitution Act, 1982*; and committed violations of sections 2(1), 7, and 15 of the *Charter*, which are not saved by section 1. They submitted that as a result, Class Members are denied adequate access to clean drinking water; unable to adequately wash and care for themselves and their families; and prevented from performing traditional ceremonies and spiritual practices.

[26] The Representative Plaintiffs submitted that Canada has always taken responsibility for water systems on reserves but has never provided adequate funding. Furthermore, Canada knew that its funding was inadequate. The Representative Plaintiffs maintain that for most First Nations, federal funding is the only means of constructing and maintaining water infrastructure on reserve but Canada has tied funding to compliance with a complex system of specifications. Accordingly, Canada controls what infrastructure is built, where, how, when, and by whom.

[27] The Representative Plaintiffs in the Federal Action requested damages in the amount of 2.1 billion dollars, plus costs. Of particular note, they also sought an interim or interlocutory injunction and a permanent injunction requiring Canada to construct or approve and fund

construction of appropriate water systems to ensure Class Members have adequate access to potable water.

[28] The Defendant did not file Statements of Defence because the Settlement was reached relatively early in the proceeding. Initially, Canada opposed the relief sought by the Class stating that it had no liability to the Class. The affidavit of John P. Brown, a lawyer for Class Counsel, explains that Canada's public position "was that it funded water systems on reserves rather than manage[ing] them, and that it could not be liable for funding decisions that reflected a core policy." On December 7, 2021, during the Motion for Settlement Approval, Class Counsel explained that their team anticipated that Canada's defence would be similar to that in *Okanagan Indian Band v Attorney General of Canada*, Vancouver T-1328-19 (FC) [*Okanagan*]. *Okanagan* is an ongoing Federal Court case dealing with similar claims.

D. *Procedural History of the Action*

[29] The Manitoba Court of Queen's Bench certified the Manitoba Action on July 14, 2020. On September 16, 2020, with the consent of the Defendant, the Representative Plaintiffs in the Federal Action brought a motion for certification. The Federal Court certified the Federal Action on October 8, 2020 pursuant to Rules 334.16 and 334.17.

[30] The Courts certified the following common issues:

> (a) From November 20, 1995 to the present, did the Defendant owe a duty or an obligation to Class Members to take reasonable measures to provide them with, or ensure they were provided with, or refrain from barring, adequate access to water that is safe for human use?

> (b) If the answer to the First Stage common issue is "yes", did Canada breach its duties or obligations to members of the sub-group?
>
> (c) If the answer to common issue (a) is yes, is any breach of the *Charter* saved by s. 1 of the Charter?
>
> (d) If the answer to common issue (a) is yes, did the Defendant's breach cause a substantial and unreasonable interference with Class Members' or their First Nations' use and enjoyment of their lands?
>
> (e) If the answer to common issue (a) is "yes" and the answer to common issue (b) is "no", are damages available to members of the sub-group under s. 24(1) of the *Charter*?
>
> (f) Can the causation of any damages suffered by members of the sub-group be determined as a common issue?
>
> (g) Can the Court make an aggregate assessment of all or part of any damages suffered by members of the sub-group?
>
> (h) Does the Defendant's conduct justify an award of punitive damages, and if so, in what amount?
>
> (i) Should the Court order that the Defendant take measures to provide or ensure that members of the sub-group are provided with, or refrain from barring, adequate access to clean tap water?
>
> (j) If so, what measures should be ordered?

[31] The Courts appointed McCarthy Tétrault and OKT as Class Counsel. CA2 Inc. was appointed as administrator for the purpose of giving notice of certification. CA2 Inc. gave notice in accordance with the certification orders. Individuals were included in the Class unless they opted out. There were no opt-outs within the opt-out period, which ended on March 29, 2021. First Nations were included in the Class if they opted in.

[32] On December 30, 2020, the Representative Plaintiffs brought a motion for summary judgment on behalf of the Class. Summary judgment was set to be heard before both Courts,

sitting together, on October 4 to 7, 2021. In advance of the summary judgment motion, more than 120 First Nations opted in to the Actions. The Representative Plaintiffs summonsed witnesses and were prepared to proceed with cross-examinations. However, on June 20, 2021, the Parties reached an Agreement in Principle. The Agreement in Principle was executed on July 29, 2021 and the Settlement was finalized on September 15, 2021.

[33] On October 5, 2021, Class Counsel brought a motion to approve the Short and Long Form Notices of the Settlement Approval Hearing, as well as a plan for the distribution of these notices. By way of Order dated October 8, 2021, the notices and the plan for distribution were approved. CA2 Inc. was appointed as administrator to give notice and it did so in accordance with the Courts' orders. CA2 Inc. gave Notice of the Settlement Approval Hearing on October 16, 2021. That Notice of Settlement contemplated a 45-day late opt-out period for First Nations that first experienced long-term drinking water advisories after the Actions were certified. There were no late opt-outs.

[34] On November 17 and 18, 2021, respectively, the Courts provisionally appointed Deloitte LLP as the Administrator for the Settlement Agreement [Administrator].

E. *Settlement Agreement: Key Provisions*

(1) Basics

[35] Importantly, the Settlement Agreement contemplates and ensures both retrospective and prospective compensation. The Settlement Agreement provides First Nations and individuals resident on those First Nations with compensation for lack of regular access to safe drinking

water. The Settlement also commits Canada to work with First Nations to provide access to clean water and requires Canada to construct and fund appropriate water systems for First Nation communities. The key terms and provisions are set out below.

(a) *Class & Class Period*

[36] The Class Period runs from November 20, 1995 to present. The Class includes (a) Individual Class Members and (b) First Nation Class Members [collectively, Class Members]. Mr. Gorham's affidavit states there are approximately 142,300 Individual Class Members, of which more than 60,000 are minors, and 258 eligible First Nation Class Members.

[37] Individual Class Members include individuals, other than Excluded Persons, who are members of a band [First Nation] as defined by the *Indian Act*, RSC 1985, c, I-5 [*Indian Act*], whose lands are subject to the *Indian Act* or the *First Nations Land Management Act*, SC 1999, c 24, and whose lands were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present [Impacted First Nation]. Those individuals must not have died before November 20, 2017 and must have ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year.

[38] First Nation Class Members include Tataskweyak, Curve Lake, Neskantaga, and any other Impacted First Nation that elects to join this action in a representative capacity.

[39] "Excluded Persons" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, the Okanagan Indian Band, and Michael Darryl Isnardy. These persons are excluded from the Settlement because they have ongoing actions related to drinking water on reserves. When the Actions were initiated, these persons requested that they be excluded so that their ongoing litigation would not be affected.

(b) *Retrospective Compensation*

[40] Under the Settlement Agreement, Canada has agreed to pay individual Class Members a total of 1.438 billion dollars into a trust fund to be distributed to the Class Members, including by paying individual damages in accordance with Article 8, section 8.01(2)(a). Individual Class Members will be paid:

a. 2000 dollars per year for people in remote First Nations under long-term drinking advisories;
b. 2000 dollars per year for people in non-remote First Nations under do not use advisories;
c. 1650 dollars per year for people in non-remote First Nations under do not consume advisories; and
d. 1300 dollars per year for people in non-remote First Nations under boil water advisories.

[41] Damages for Individual Class Members will be subject to how many individuals make a claim and how many First Nations join the class action. Prorated amounts will be paid for any partial years after the first full year. Furthermore, damages for Individual Class Members are subject to a synthetic federal limitation period. This means that individuals born after 1995 can claim for all the years and portions of the years between November 20, 1995 and June 20, 2021

while they were ordinarily resident on reserve during a drinking water advisory that lasted a year or more. Individuals born before November 20, 1995 can claim for all years and portions of years between November 20, 2013 and June 20, 2021 where they were ordinarily resident on reserve during a drinking water advisory that lasted a year or more.

[42] Individuals who have suffered specified injuries because of drinking water advisories can claim additional compensation from a specified injuries compensation fund totalling 50 million dollars (Article 5). To claim damages for a specified injury a person must have been ordinarily resident on a reserve under a drinking water advisory for at least a year while the advisory was in place. Furthermore, the injury must have occurred during that time. Individuals suffering specified injuries will only be able to claim for injuries that happened or continued during drinking water advisories after November 2013. Individuals born after November 20, 1995 will be able to claim for injuries going back to that date. The person making the claim must show that they suffered the injury and that the injury was caused by using the water in accordance with the drinking water advisory or by restricted access to safe water caused by the advisory.

[43] Finally, 400 million dollars will be used to establish a First Nations Economic and Cultural Restoration Fund. From that fund, First Nation Class Members will receive a base payment of 500,000 dollars and an amount equal to 50% of the damages, not including specified injuries, paid to individual Class Members living on that First Nation’s reserve. The retrospective compensation received by First Nation Class Members reflects the harms to the community, which are different from the harms to its individual members. First Nations are free to use that money for any purpose.

(c) *Prospective Relief*

[44] In addition to compensating First Nations and their members, Canada has also agreed to provide funding to fix the problem moving forward. The stated intention of the parties is that the future never again resembles the past. Concretely, Canada has committed to taking all reasonable steps to remove long-term drinking water advisories affecting Class Members, including doing everything set out in their Long-Term Drinking Water Advisory Action Plan [Action Plan], which will be updated on an ongoing basis. Formerly a political promise, Class Counsel submits that the Action Plan becomes a legally enforceable obligation under the Settlement.

[45] Additionally, the Settlement requires Canada to take "all reasonable efforts" to ensure that Class Members have regular access to safe drinking water in their homes [the Commitment]. This water must meet either federal or provincial water quality standards, whichever is stricter. The amount of water must be enough that it allows people to use water for all the usual things people in Canada use water for, like drinking, bathing and showering, making food, washing dishes, and cleaning their home and clothes. In support of the Commitment, Canada is required to spend at least 6 billion dollars through March 31, 2030 at a rate of at least 400 million per year on water and wastewater on First Nation reserves. Class Counsel described this 6 billion as the "floor" rather than the "ceiling." Under the Settlement, Canada must use this money to fund the actual cost of construction, upgrading, operation and maintenance of water infrastructure on First Nation reserves.

[46] Further, Canada has committed to take reasonable efforts to repeal the *Safe Drinking Water for First Nations Act*, SC 2013, c 21 and replace it with legislation that is developed

through consultation with First Nations. The Settlement also requires Canada to spend 20 million dollars in funding through 2025 for a First Nations Advisory Committee on Safe Drinking Water. That Committee will work with ISC to support forward-looking policy initiatives and provide strategic advice. Additionally, Canada will provide 9 million dollars in funding through 2025 for Class Members' water governance initiatives and 50 million for the cost of administering the Settlement Agreement.

(2) Alternative dispute resolution process for Commitment disputes

[47] The Settlement Agreement and Schedule K contemplate different stages of dispute resolution. Any disputes related to the Commitment (i.e., where Canada and a First Nation cannot agree on whether Canada is meeting its Commitment under the Settlement Agreement and about proposed plans for meeting its Commitment) proceed through a specific alternative dispute resolution process [ADR Process]. Class Counsel submitted that the ADR Process integrates Indigenous Legal Traditions. It should be noted that the ADR Process promotes the use of Indigenous languages and where necessary, will occur on the First Nations' respective reserves while utilizing certain protocols such as gift giving, Elder participation, and traditional teachings. Engagement with the ADR Process entails the following steps:

1. If a First Nation determines that Canada is not meeting or has ceased meeting the Commitment, the First Nation must let Canada know (section 9.06 (1)).
2. Canada then has an obligation to consult with the First Nation to try to meet the Commitment as soon as possible. Canada must also pay the costs of any technical advice the First Nation needs to determine what Canada must do to meet the Commitment (sections 9.06(2), (3)).

3. Canada must make all reasonable efforts to reach an agreement with the First Nation that identifies the steps Canada will take to fix the issues (section 9.06(4)).
4. If Canada does not comply with the agreement or if the parties do not reach an agreement within three months, the First Nation can start the ADR Process. The ADR Process proceeds through negotiations, mediation, and, if no agreement can be reached, arbitration (section 9.07).

[48] In short, on a matter of such great and fundamental importance — the provision of safe drinking water — Canada will not be the final arbiter respecting its own efforts in relation to the Commitment outlined in the Settlement Agreement. Further, all of the phases outlined above must be completed within strict timelines.

[49] Under the Settlement, Canada will pay the reasonable costs of convening the ADR Process, together with the reasonable fees and disbursements of any mediator or arbitrator. Canada will also pay half of the reasonable costs and disbursements of a First Nation's participation in the ADR Process.

(3) Supervisory Role of the Courts

[50] Under Article 1, section 1.16 of the Settlement, the Courts maintain jurisdiction to supervise the implementation of the Agreement in accordance with its terms, including the adoption of protocols and statements of procedure and may give any directions or make any orders that are necessary for those purposes.

(4) Claims Process

(a) *First Nation Class Member Damages*

[51] To participate in the Settlement, First Nation Class Members must give notice of acceptance to the Administrator. The Parties have provided the Administrator with a list [List] identifying, to the best of the Parties' knowledge, the First Nations eligible to become First Nations Class Members. Inclusion on the List is conclusive proof that the First Nation is eligible to be a First Nation Class Member. If the First Nation is not on the List, the Administrator shall consult with the Settlement Implementation Committee before determining whether the First Nation is eligible to be a First Nation Class Member. The Administrator may request additional information or evidence before making the determination as to whether a First Nation is eligible to be a First Nation Class Member.

(b) *Individual Class Member Damages*

[52] Individual Class Members wishing to make a claim for retrospective compensation (including a claim for a specified injury) must submit a claims form. The claims form is simple and requires the following: identifying and contact information; what First Nations the claimant is a part of; dates of residence on reserves experiencing long-term drinking water advisories; representative information; declaration and consent; and details about a specified claim, if applicable.

[53] Section 17 of Schedule F of the Settlement outlines the Claim Process. Schedule F states that for those making a specified injuries claim, a claimant may submit some or all of the following to the Administrator in support of their claim:

a. Medical records of the injury and its cause;

b. Other records, including written records, photographs, and videos, of the injury and its cause;

c. A written statement; and

d. Oral testimony.

[54] Section 18 of Schedule F states, “the process of claiming compensation for Specified Injuries is intended to be non-traumatizing and section 17 of this Schedule F does not prevent a Claimant from establishing their eligibility for Specified Injuries Compensation on the basis of their Claims Form alone.” The burden of proof for establishing a specified injury is on the balance of probabilities.

[55] The claims process will commence within 60 days of settlement approval. The Administrator will promptly review each claims form, band council confirmation, and other relevant information to determine if the claimant is eligible and calculate the claimant’s entitlement. When the Administrator pays compensation to the claimant, the Administrator must also explain how the amount was calculated and that the claimant may appeal the Administrator’s decision to the Third-Party Assessor.

(c) *Third Party Assessor*

[56] When an individual or First Nation claimant wants to appeal a decision of the Administrator, the claimant must provide a written statement to the Administrator within sixty days of receiving the Administrator’s decision. That written statement must explain how the Administrator erred. The Administrator will forward the materials to the Third Party Assessor.

When considering an appeal, the Third-Party Assessor may consult the claimant, the Administrator, and the Settlement Implementation Committee. The Third-Party Assessor may also request further evidence to support the claim. The Third Party Assessor's decision is final and not subject to appeal or review.

(5) Counsel Fees

[57] Class Counsel's fees are severable from the rest of the Settlement and subject to a different Order and Reasons issued separately but concurrently by both Courts. In other words, the Courts can approve the Settlement separate from the approval of Class Counsel's fees. The Courts' refusal to approve Class Counsel's fees would have no effect on the implementation of the Settlement Agreement. Additionally, Class Counsel's fees were negotiated after the Settlement was reached and do not take money away from Class Members.

(6) Appeal Period

[58] Following the approval of the Settlement, a Class Member may appeal the Orders of the Courts within thirty days. Under Rule 334.31(2) of the *Rules* there is an additional thirty days for a Class Member to apply for leave to appeal to exercise the right of a Representative Plaintiff's right of appeal if no Representative Plaintiff commences an appeal within the first thirty days. This means that the earliest Implementation Date, as defined in the Settlement, is sixty days from the Courts' Orders. Thereafter, the Proposed Settlement Agreement will become binding on all Individual Class Members. The Proposed Settlement Agreement will become binding on First Nations as they formally accept its terms.

(7) Release

[59] Importantly, in exchange for everything discussed above and as set forth in the Settlement, Class Members agree to release Canada in respect of any liability for failing to provide, or fund the provision of safe drinking water on their reserves through the end of the Class Period.

III. Issue

[60] The sole issue on this motion is whether the Courts should approve the Settlement Agreement. Mindful of the governing law and legal test, that issue reduces to the following question: is the Settlement Agreement fair and reasonable and in the best interests of the Class?

[61] It should be noted that a separate set of reasons, also concurrently released by each Court, assesses the question of whether the Court should approve Class Counsel fees.

IV. Analysis

A. *Legal Framework*

[62] Rule 334.29 of the *Rules* and section 35(1) of *The Class Proceedings Act* state that class proceedings may only be settled with the approval of a judge. The relevant test for approving a settlement is whether the Settlement is "fair and reasonable and in the best interests of the class as a whole" (*Merlo v Canada*, 2017 FC 533 at para 16; *Toth v Canada*, 2019 FC 125 at para 37; *McLean v Canada*, 2019 FC 1075 at para 65 [*McLean*]; *Tk'emlúps te Secwépemc First Nation v Canada*, 2021 FC 988 at para 36 [*Tk'emlúps*]; *Gray v Great-West Lifeco Inc*, 2011 MBQB 13 at para 58). Recently, in *Tk'emlúps*, Justice McDonald summarized the appropriate approach that should inform a court's application of the governing legal test:

> [37] The Court considers whether the settlement is reasonable, not whether it is perfect (*Châteauneuf v Canada*, 2006 FC 286 at para 7; *Merlo*, at para 18). Likewise, the Court only has the power to approve or to reject the settlement; it cannot modify or alter the settlement (*Merlo*, at para 17; *Manuge v Canada*, 2013 FC 341 at para 5).
>
> [39] …as noted in *McLean* (para 68), the proposed settlement must be considered as a whole and it is not open to the Court to rewrite the substantive terms of the settlement or assess the interests of individual class members in isolation from the whole class.

[63] To reject a settlement, the Courts must conclude that the settlement does not fall within a zone or range of reasonable outcomes (*Dabbs v Sun Life Assurance Company of Canada* (1998), 40 OR (3d) 429 (Gen Div) at 440-44; *Haney Iron Works v Manufacturers Life Insurance Co* (1998), 169 DLR (4th) 565 (SC) at para 44). A zone of reasonable outcomes reflects the fact that "settlements rarely give all parties exactly what they want" and are a result of compromise (*Nunes v Air Transat AT Inc*, 2005 CanLII 21681 (ON SC) at para 7 [*Nunes*]; *McLean* at para 9).

[64] The Court should consider the following non-exhaustive factors when assessing if a settlement is fair and reasonable and in the best interests of the class (*Condon v Canada*, 2018 FC 522 at para 19; *McLean* at para 66; *Tk'emlúps* at para 38]:

> a. The likelihood of recovery or likelihood of success;
>
> b. The amount and nature of discovery, evidence or investigation;
>
> c. The terms and conditions of the Settlement;
>
> d. The number of objectors and nature of objections;
>
> e. The presence of arm's length bargaining and the absence of collusion;
>
> f. The information conveying to the Court the dynamics of, and the positions taken, by the parties during the negotiations;

g. Communications with Class Members during litigation; and

h. The recommendation and experience of counsel.

[65] These factors are to be given varying weight depending on the circumstances (*McLean* at para 67). The respective factors are addressed below.

B. *Factors*

(1) Likelihood of recovery or likelihood of success

[66] The risks associated with litigating the Actions created a high degree of uncertainty, particularly at the beginning of the proceeding. Those risks included but were not limited to the novelty of the claims; delays due to appeals; possible defences raised by Canada; limitation periods; evidentiary issues associated with proving semi-historical wrongs; and the 2021 federal election. As a result, it is fair to say that the likelihood of success was uncertain. Additionally and always, there are significant and ongoing human costs associated with litigation. Separate from the inevitable frustrations and stresses attached to any Court process, the Courts cannot ignore that, as noted by Class Counsel, “every day without water compounds the harms Class Members experience.”

[67] If Class Counsel successfully established the first common issue, there would be significant evidentiary hurdles to establish that Canada breached their duties. Doing so would require proceeding on a First Nation by First Nation basis, incurring further delay and expense. Furthermore, Class Members would have to testify, which may be re-traumatizing.

[68] Novel claims pose a significant challenge for litigants (*Tk'emlúps* at para 41). At the time of filing, there was uncertainty in the law regarding the ability of collective entities to assert *Charter* claims. Furthermore, there remains uncertainty about the Courts' ability to compel the type of prospective relief contemplated in the Settlement. For example, the Representative Plaintiffs asked the Courts to compel government spending on a go-forward basis to ensure access to safe drinking water.

[69] As time went on, the Representative Plaintiffs' case became stronger and there were some assurances of success. For example, the first class-wide award of aggregate *Charter* damages was confirmed by the Court of Appeal for Ontario after the Actions were commenced (*Reddock v Canada (Attorney General)*, 2019 ONSC 3196; aff'd in *Brazeau v Canada (Attorney General)*, 2020 ONCA 184). However, the delays and scope of available remedies still loomed large. In that same Ontario Court of Appeal case, the Court reversed an order directing Canada to spend money on inmate mental health to correct ongoing *Charter* violations in its prisons. While this ruling may have posed significant challenges for the plaintiffs, it is well to note Justice Phelan's words in *McLean*. In the *McLean* settlement, there was prospective relief in the form of a 'Legacy Fund' to promote healing for Indian Day School survivors. Justice Phelan wrote, "[t]here is uncertainty that a court could order such a creation but, no doubt for another day, if Aboriginal issues and litigation are *sui generis*, remedies available might likewise be *sui generis*" *(McLean* at para 103*)*.

[70] Ultimately, in the present case, the Class did not shoulder the risk alone. The outcome was also uncertain for Canada. Canada was required to contemplate an outcome in which the

Courts may have settled the law in favour of the Plaintiffs (*McLean* at paras 94-95). Put simply, uncertainty in the law meant that both parties faced a real and present risk of failure.

[71] In the end, we are of the view that like *McLean*, this too is a "case which cries out for settlement" (*McLean* at para 79). The Settlement reduces risk and delay. It simplifies the compensation process, enhances access to justice, and most importantly, provides funding to fix the problem. It creates a degree of certainty that First Nations will be able to lift water advisories in the near future. That is an assurance that litigation could not promise.

(2) The amount and nature of discovery, evidence, or investigation

[72] Over the entire course of the Actions, Class Counsel consulted with fourteen experts including First Nation Elders and knowledge keepers, hydrologists, infectious disease experts, aquatic toxicologists, history professors, and more. The parties also jointly retained and instructed an actuary to determine the size and distribution of the Class. In addition to consulting with experts, the affidavit of John P. Brown explains that Class Counsel reviewed thousands of pages of publically available documentation from Canada and extensively researched relevant legal and factual issues, including causes of action and theories of damages.

[73] As stated above, prior to reaching the Settlement, the parties completed the record for a summary judgment motion. Class Counsel did not file their record but it apparently consisted of 2800 pages, 8 experts, and 24 witnesses. The parties exchanged the evidentiary records for summary judgment and were ready to begin cross-examinations. It was at this point, after both sides put in a high degree of investigation and the strength of the case became apparent, that

negotiations began to intensify. The parties reached the Settlement less than a month before the summary judgment motion was scheduled. The Courts agree with Class Counsel that by that time, a great deal of work had been undertaken to prepare this matter for judgment on the merits.

[74] The Courts are satisfied that Class Counsel put in great effort to gather relevant facts, assess liability and damages, and had a clear understanding of the strengths and weaknesses of the Actions.

(3) Terms and conditions of the Settlement

[75] These reasons have already provided an overview of the Settlement's important terms and provisions at paragraphs 35-59, above. In considering the governing test, it is the view of both Courts that some of the more significant features of the Settlement that "underpin its fairness" include:

- The relief contemplated is not just compensatory in nature – it looks forward to actually solving the root causes of drinking water advisories on reserves and is legally enforceable;
- The 6 billion dollars in prospective relief must adhere to a nine-year timeline, thus ensuring expedient resolution of those root causes;
- Compensation for Individual Class Members is relative to the duration of the advisory, type of advisory, and the remoteness of a First Nation. Factoring in remoteness acknowledges the increased cost of living in remote areas, including the price of bottled water, and that remote communities like Neskantaga have had to evacuate;
- With respect to Class Members claiming specified injuries:

° The paper based claims process is simple;

° The burden of proof is low;

° Claims are assessed through a harms grid;

° There is a presumption of truthfulness and good faith;

° All reasonable inferences must be drawn in favour of claimants; and

° There is a low likelihood of re-traumatization.

(See *McLean* at para 107; *Tk'emlúps* at para 49; *Riddle v Canada*, 2018 FC 641 at para 36).

- Specified injuries include mental health injuries;
- If the specified claims exceed 50 million dollars, the Settlement is structured in such a way that any trust surplus will go toward supplementing specified injuries;
- First Nation Class Members receiving an amount equal to 50% of the total damages paid to individual Class Members living on that reserve can use that money for *any* purpose;
- The ADR Process draws on the Indigenous legal traditions specific to and defined by the relevant First Nation;
- Canada is responsible for paying 100% of the reasonable costs of convening the ADR process and 50% of the reasonable costs of a First Nation's participation in that process;
- The Administrator is "experienced and renowned" (*McLean* at para 107);
- Legal fees are not payable from the settlement funds, meaning that Class Counsel is not taking money away from Class Members **(***Tk'emlúps* at para 51);

- Legal fees were negotiated after the Settlement was reached, ensuring that "the issue of legal fees did not inform or influence" the terms of the Settlement **(***Tk'emlúps* at para 51)
- The release is proportionate to the claims being resolved in this action. Class members retain their rights for several liability of third parties and claims arising after June 20, 2021.

[76] On balance, the benefits of the Settlement outweigh the concessions that the Class had to make. In their affidavits, the Representative Plaintiffs voiced disappointment that the base rate of compensation for Individual Class Members (ranging between 1300-2000 dollars for every year living under a water advisory) was too low. Additionally, the application of a limitations period significantly curtails the retrospective compensation that community members – particularly elders – will receive. In their Factum, Class Counsel noted that the application of the limitations period was particularly difficult in light of the Truth and Reconciliation Call to Action #26. However, those same affidavits recognized that the primary objective of the litigation was to ensure future generations' access to safe drinking water. They also state that no amount of money can compensate for the harms experienced while living under drinking water advisories. The Courts agree with the Representative Plaintiffs that these concessions are tough compromises. However, overall, the Settlement offers significant benefits for the Class and certainly falls within the zone of reasonableness.

(4) Future expense and likely duration of litigation

[77] Due to the novel claims advanced in the Actions, it is reasonable to expect that if this litigation did not settle, it would be long, involved, and expensive. The issues presented in this

case are likely questions of significant and general public importance to the country as a whole. It is not outside the realm of possibility that certain issues could be appealed to the Supreme Court of Canada, protracting litigation. Furthermore, if litigation ensued, evidence of individual communities would have to be collected and presented.

[78] Class Counsel pointed to the *Okanagan* action to support their position that if the Crown aggressively defended the Actions, litigation would be drawn out. That case advances similar claims but did not reach settlement. It has been ongoing for over 6 years. Likewise, the trial in *Tk'emlúps*, another recent mega-settlement involving Indigenous class members, was set down for 74 days (*Tk'emlúps* at para 52).

[79] The expected future expenses and likely duration of the litigation weigh in favour of approving the Settlement.

(5) Recommendations of neutral third parties

[80] For the purposes of settlement approval, the following experts submitted affidavits and reports:

a. Kerry Black, Assistant Professor and Canada Research Chair in the Department of Civil Engineering and the Centre of Environmental Research and Education at the University of Calgary;
b. Ian Halket, President of Halket Environmental Consultants Inc.;
c. Peter Gorham, President and Actuary of JDM Actuarial Expert Services Inc. and Fellow of Canadian Institute of Actuaries and the Society of Actuaries;

d. Jillian Campbell, toxicologist and senior project manager with over 15 years of experience in human health and ecological risk assessment, toxicology, and contaminated site investigation;
e. Gary Chaimowitz, Head of Service at the Forensic Psychiatry Program at St. Joseph's Healthcare Hamilton, a Professor of Psychiatry at McMaster University, and the President of the Canadian Academy of Psychiatry and the Law;
f. James Reynolds, historian and author on the relationship between the Crown and Indigenous Peoples in Canada;
g. Adele Perry, Distinguished Professor of History and the Director of the Centre for Human Rights Research at the University of Manitoba; and
h. Brittany Luby, Assistant Professor of History in the College of Arts at the University of Guelph.

[81] Some of these reports did not offer opinions about the Settlement Agreement itself. Rather, they provided valuable information describing the history, causes, and current state of drinking water advisories on First Nation reserves.

[82] Jillian Campbell's affidavit, however, confirmed that Article 8, section 8.02 and Schedule H of the Settlement Agreement adequately incorporates the types of injuries that result from drinking contaminated or untreated water, the symptoms of those injuries, and the likely effect on Class Members if they suffered those injuries. Gary Chaimowitz similarly confirmed in his affidavit that the 'Mental Health' row in Schedule H and Appendix H-1 to the Settlement

accurately identifies the types of mental health injuries Class Members may have suffered and the primary symptoms of those injuries.

[83] Further, Kerry Black submitted an affidavit dated November 21, 2021 expressing her support for settlement approval. For over a decade, Dr. Black has worked with Indigenous groups to understand their water infrastructure needs. In her opinion, the Settlement adequately addresses the objectives of First Nations.

[84] After canvassing some of the key provisions of the Settlement, Dr. Black stated that in her opinion, the Settlement will "address the water crisis in Canada in an historic, comprehensive and meaningful way." Further, it will "have an immeasurable and in many cases life-changing impact on the lives of First Nations members and their communities across Canada." In particular, Dr. Black confirmed that the minimum spend of 6 billion dollars over the next nine years in prospective relief is a reasonable amount to remedy water systems on First Nations. Furthermore, she noted the significance of including private water systems in the Commitment because Canada has historically excluded the cost of that type of infrastructure when providing funding to First Nations. Finally, she notes that it is significant that Canada has committed to funding the actual cost of construction, upgrading, operation, and maintenance of water infrastructure on reserves for First Nations because Canada has chronically underfunded these aspects of water infrastructure for decades.

[85] In our opinion, these objective third-party opinions reinforce the fairness of the Settlement.

(6) Number of objectors and nature of objections

[86] Eric Khan, the Director of CA2 Inc., swore an affidavit on December 6, 2021 that CA2 Inc. had not received any opt-out coupons or notices of objections. At the Settlement Approval Hearing, throughout the day, potential Class Members had the opportunity voice their objections but no one came forward.

[87] While there were no formal objections raised, Class Counsel submitted correspondence and newspaper articles to alert the Courts to potential criticisms of the Settlement. In that regard, Class Counsel submitted a letter dated November 23, 2021 from counsel of a First Nation that intended to object to the Settlement. That letter expressed two concerns: (a) the Settlement relies on Canada's list of drinking water advisories and (b) the Settlement excludes First Nations with short-term drinking water advisories. After speaking with Class Counsel about these concerns, the First Nation withdrew their objection. Similarly, another lawyer voiced his concerns to the media. Those concerns related to (a) uncertainty about who is included in the Class; (b) the exclusion of First Nations with short-term drinking water advisories; and (c) ambiguity about what advisories are counted and what authorities get to declare those advisories.

[88] At the Settlement Approval hearing on December 7, 2021, Class Counsel addressed each of these criticisms.

[89] First, it is untrue that the Settlement only relies on Canada's records to determine what First Nations have been subject to a drinking water advisory. Sections 10-12 of Schedule F of the Settlement state that if a Class Member makes a claim and their First Nation is not included on

the existing List of Eligible First Nations, the Settlement Implementation Committee shall determine if that First Nation should be added to the List and may request further information or evidence before making their decision. Class Counsel explained that the intent of this provision to ensure inclusivity and that the List is, in fact, subject to change.

[90] Second, Class Counsel acknowledged that there is a prevalence of short-term drinking water advisories on First Nations, some of which have occurred on and off for long periods of time. With that said, however, it need also be acknowledged that in class proceedings, class members must suffer a common harm. When determining that commonality, Class Counsel's opinion was that long-term advisories were more clearly linked to government underfunding that resulted in an infrastructure gap. This class proceeding does not affect the ability of First Nations experiencing short-term drinking water advisories to commence their own actions.

[91] Finally, with respect to the criticisms voiced in the media, Article 1, Section 1.01 of the Settlement Agreement clearly defines who is included in the Class (see also paragraph 37, above) and who constitutes "Excluded Persons." These definitions were also included in the Short and Long Form Notices. Additionally, the same section defines an "Advisory Body" as "provincial, territorial, regional, municipal, or First Nation government or governmental authority, chief, band council, health authority, or any executive, judicial, regulatory or administrative body or similar body or its delegate, in each case that issues Drinking Water Advisories." Any of these bodies may issue any one of the three types of drinking water advisories that may bring a First Nation or Individual Class Member into the Settlement

Agreement. Again, this definition is intended to foster inclusion and ensure that First Nations are not dependent on government definitions or data in order to benefit from the Settlement.

[92] It should also be noted that the law firm representing the "Excluded Persons" in the Settlement inquired with Class Counsel about how the Settlement will affect their clients and whether the 6 billion dollars in prospective relief will apply to all First Nations or only those who opt in to the Settlement. Class Counsel replied indicating that the Settlement does not apply to the "Excluded Persons" and that as a result, they are free to continue pursuing their own actions related to drinking water.

[93] In airing all of the concerns noted above, Class Counsel fulfilled its obligation to provide the Courts with full and frank disclosure relevant to the settlement approval. In our view, in the absence of any formal objections, the support of the Representative Plaintiffs and other Class Members need be seen as unchallenged. Numerous affidavits included in the Motion Record expressed support for the Settlement, including community members of Curve Lake, Neskantaga, and Tataskweyak. The Representative Plaintiffs all expressed their support for the Settlement and unanimously voiced their opinion that the Settlement Agreement achieves their litigation objectives.

(7) Presence of arm's length bargaining, absence of collusion, and the positions taken by the parties during negotiation

[94] It is appropriate to address these factors together because in this case, the positions taken by the parties during the negotiation demonstrate the presence of arm's length bargaining and absence of collusion.

[95] Class Counsel's strategy in this proceeding was to pursue a "two track approach" where they aggressively pursued litigation and negotiation simultaneously. In our opinion, this approach demonstrates that the proceeding was always adversarial in nature and that Class Counsel's primary goal was to advance the Class' interests. Clearly, such a historic Settlement would be impossible without cooperation on both sides. Although the parties cooperated wherever possible, both parties were prepared to proceed to litigation. The parties consented to an expedited litigation timeline and the Representative Plaintiffs aggressively advanced motions for summary judgment.

[96] It is also significant to note that negotiations lasted for just under a year. In our view, this timeline evidences what John P. Brown referred to as "hard bargaining sessions" where counsel advanced their respective clients' positions. Indeed, the affidavit of Chief Whetung stated that at times, negotiations broke down and she felt ready to "walk away" and push forward with litigation.

[97] We have no concerns that the Settlement Agreement was anything other than the result of good strategy, dedication, and compromise. We are satisfied that the parties always engaged in good faith negotiations and that there has been no collusion in reaching the Settlement. We note that there is a strong presumption of fairness when a proposed settlement was negotiated at arm's-length by Class Counsel (*Nunes* at para 7).

(8) Communication with Class Members

[98] In advance of the summary judgment motions, Class Counsel reached out to various First Nations to have them opt-in in support of the Actions. Clearly, these efforts were effective as more than 120 First Nations joined the Representative Plaintiffs in seeking judgment. Furthermore, Class Counsel created a dedicated webpage to provide Class Members with access to information and documents related to the Actions. The webpages included a case description, new developments, news releases and reports, case documents, FAQs, and contact details. They also promoted the Actions to the media as a way of communicating with Class Members.

[99] Similarly, throughout settlement negotiations, Class Counsel stayed in close contact with the Representative Plaintiffs and Class Members. The affidavit of Christopher Moonias confirms that Class Counsel worked closely with the Representative Plaintiffs, who, in turn, consulted with their respective band councils and/or community members regarding the Agreement in Principle and the Settlement Agreement. Likewise, Class Counsel engaged directly with Class Members by visiting communities, answering Class Members' questions, listening to their stories, and "socializing" the Agreement.

[100] The Courts approved the Settlement Notice Plan on October 8, 2021. CA2 Inc. published the Short Form Notice in fifteen daily newspapers and The First Nation Drum. Similarly, on or about October 16, 2021 CA2 Inc. distributed legal notices of settlement approval to Curve Lake, Neskantaga, Tataskweyak, the Assembly of First Nations, and 713 Chiefs and Band Offices that have been affected by drinking water advisories. Finally, the October 8, 2021 Order required CA2 Inc. to set up a toll-free support line to answer Class Members' questions and to provide the

Short and Long Form Notice to any member that requested it. These materials were provided in both English and French.

[101] Statements of support and objection can indicate that Class Counsel sufficiently communicated with the Class (*McLean* at para 116). While no objections were made at the Settlement Approval Hearing, the Motion Record demonstrates that various First Nations and/or their legal counsel reached out to Class Counsel to ask questions about the Settlement. Additionally, it is clear that Representative Plaintiffs and Class Counsel spoke with other First Nations and Indigenous governance organizations. We are satisfied that in this circumstance the absence of objections indicates that potential Class Members understand and support the Agreement. It is also telling that 18 Class Members submitted affidavits indicating their support for the Agreement.

[102] Overall, we are satisfied that Class Counsel provided a "robust, clear and accessible" notice of the Settlement to potential Class Members (*Tk'emlúps* at para 72).

(9) Recommendations and experience of counsel

[103] Both Class Counsel and counsel for the Defendant recommend settling. In Class Counsel's view, continued negotiation would not have led to a better result for the Class, particularly with respect to retrospective compensation. Further, Class Counsel stated that compensation was within the range expected on judgment, without the uncertainty of outcome or delay. Class Counsel similarly felt that litigation would not have achieved a better result for the

Class. As already discussed, it is uncertain whether courts would be able to order the same type of prospective relief reached in the Settlement Agreement.

[104] Overall, Class Counsel felt that the Settlement addressed the Representative Plaintiffs' litigation objectives (*Tk'emlúps* at para 73). Indeed, the affidavits of the Representative Plaintiffs confirmed as much, placing particular emphasis on the prospective relief guaranteed in the Settlement.

[105] Class Counsel states that its recommendation is based on its experience in class actions, Indigenous rights, and Aboriginal law. McCarthy Tétrault is recognized nationally as having one of Canada's leading and largest class actions team. McCarthy Tétrault also enlisted the assistance of lawyers at their firm who specialize in contract drafting, tax, trusts, and estate law matters. OKT is Canada's largest law firm specializing in Aboriginal law and Indigenous rights. It serves northern and Indigenous clients in every territory and most provinces in Canada. Class Counsel also collaborated with First Peoples Law and Erickson's LLP. Both firms have close connections with various First Nation communities.

[106] Notably, members of Class Counsel at both firms included Indigenous lawyers and students at law. In our view, these team members, in addition to their professional expertise, provide valuable lived experience that uniquely enables them to understand the needs and objectives of Class Members.

[107] For all the reasons already discussed, the record demonstrates that Class Counsel has been alert and alive to the needs of the Class and the risk reward-balance unique to this proceeding. The simplified claims process, which has a low burden of proof in an effort to avoid re-traumatization, demonstrates that Class Counsel has applied the lessons from past class actions involving Indigenous Class Members. Overall, the large, diverse, and competent team constructed by Class Counsel demonstrates a commitment to carry out the Settlement in a good way using the necessary infrastructure and personnel to do so (*McLean* at para 113).

V. Conclusion

[108] For decades, members of First Nations have endured harm while living under drinking water advisories. Canada's failure to provide safe drinking water has resulted in deep frustration and relationships being tainted by mistrust. We share Chief Whetung's hope that the Settlement will result in Indigenous communities being able "to turn their taps on just like non-Indigenous communities in Canada and drink and bathe in the water without fear for our health." It is also our hope that this Settlement symbolizes a step down the long trail towards healing the relationship between Canada and First Nations.

[109] The Courts agree that the Settlement is fair and reasonable and in the best interests of the Class as a whole. In the form of the attached Order, the Courts approve the Settlement Agreement and order that the Actions against the Defendant be discontinued.

[110] The Courts retain jurisdiction over this case and specifically, over the Order and Settlement. The Order specifies the retention of jurisdiction and it may be amended as circumstances dictate.

ORDER in T-1673-19

Without any admission of wrongdoing or liability by the Defendant, which denies any wrongdoing and disclaims any liability to the Class, this Court orders:

1. That the Parties' settlement agreement dated September 15, 2021, including the first addendum dated October 8, 2021 (together, the "Proposed Settlement Agreement"), is fair, reasonable, and in the best interests of the Class.

2. That the Proposed Settlement Agreement, attached hereto as Appendix "1" in English and Appendix "2" in French, is approved and its terms shall be given effect.

3. That the Defendant shall pay the funds set out in the Proposed Settlement Agreement, and that said funds be distributed in accordance with the Proposed Settlement Agreement.

4. That Class Members, as defined in the Proposed Settlement Agreement, be notified of the approval of the Proposed Settlement Agreement substantially as set out in Schedule M and N of the Proposed Settlement Agreement, and in accordance with the Notice Plan attached hereto as Appendix "3", with such modifications as the Parties may agree, and with the Defendant to pay the cost.

5. That, without affecting the finality of this Order or the dismissal of these Actions, the Court retains continuing jurisdiction as set out in the Proposed Settlement Agreement to interpret, supervise, construe, and enforce the Proposed Settlement Agreement, as applicable, for the mutual benefit of the Parties.

6. That the within Action be discontinued on a without costs basis.

"Paul Favel"

Judge

APPENDIX 1

PROPOSED SETTLEMENT AGREEMENT

Manitoba Court of Queen's Bench File No.: CI-19-01-24661

Federal Court File No.: T-1673-19

SETTLEMENT AGREEMENT

THE QUEEN'S BENCH, Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE, on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under
***The Class Proceedings Act*, CCSM. c. C. 130**

- and -

FEDERAL COURT

BETWEEN:

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under Part 5.1 of the
***Federal Court Rules*, SOR/98-106**

SETTLEMENT AGREEMENT

THIS AGREEMENT is made as of September 15, 2021

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE, on their own behalf and on behalf of all INDIVIDUAL CLASS MEMBERS (as defined herein)

(together, the "**Manitoba Action Plaintiffs**")

AND:

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG, on their own behalf and on behalf of all INDIVIDUAL CLASS MEMBERS (as defined herein)

(together, the "**Curve Lake First Nation Plaintiffs**")

AND:

NESKANTAGA FIRST NATION and CHIEF WAYNE MOONIAS and FORMER CHIEF CHRISTOPHER MOONIAS, each on his own behalf and on behalf of all INDIVIDUAL CLASS MEMBERS (as defined herein)

(together, the "**Neskantaga First Nation Plaintiffs**", and collectively with the Curve Lake First Nation Plaintiffs, the "**Federal Action Plaintiffs**")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

("**Canada**")

WHEREAS:

A. The Federal Action Plaintiffs commenced the action styled as *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation v Attorney General of Canada*, Court File No. T-1673-19 in the Federal Court on October 11, 2019 (the "**Federal Action**");

B. The Manitoba Action Plaintiffs commenced the action styled *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation v Attorney General of Canada*, Court File No. CI-19-01-24661 in the Manitoba Court of Queen's Bench on November 20, 2019 (the "**Manitoba Action**", and together with the Federal Action, the "**Actions**");

C. The Manitoba Court of Queen's Bench certified the Manitoba Action as a class proceeding on July 14, 2020, and the Federal Court certified the Federal Action as a class proceeding on October 8, 2020;

D. The "**Class**" in each of the Actions is as follows:

(a) all persons, other than Excluded Persons, who:

(i) are members of a First Nation;

(ii) had not died before November 20, 2017; and

(iii) during the Class Period ordinarily resided in an Impacted First Nation for at least one year while it was subject to a Long-Term Drinking Water Advisory; and

(b) Tataskweyak Cree Nation, Curve Lake First Nation, Neskantaga First Nation, and any other First Nation that gives notice of Acceptance in accordance with the terms of this Agreement;

E. Notice of the certification of the Actions was given in the form approved by the Courts and in the manner directed by the Courts. Individual Class Members were given the opportunity to Opt Out of the Class for a period of one hundred and twenty (120) days following the first publication of notice of certification (the "**Opt-Out Period"**);

F. The Opt-Out Period expired March 29, 2021. None of the Individual Class Members Opted Out of the Actions;

G. The Class has suffered considerable hardships as a result of being deprived of safe drinking water and such hardships have seriously harmed both individuals and their communities;

H. Canada acknowledges the hardships faced by Class Members and wishes to support Class Members in securing regular access to safe drinking water;

I. Class Counsel and Canada concluded an agreement in principle dated June 20, 2021, which set out in principle the terms on which Canada was prepared to settle the Actions, and which Class Counsel would recommend to the Manitoba Action Plaintiffs and the Federal Action Plaintiffs (together, the "**Representative Plaintiffs**");

J. Chief Wayne Moonias has succeeded Christopher Moonias as Chief of Neskantaga First Nation and will seek leave of the Federal Court to replace him as a Representative Plaintiff;

K. The Representative Plaintiffs and Canada concluded an agreement in principle dated July 29, 2021 which set out the principal terms of their agreement to settle the Actions, and which forms the basis for this Agreement;

L. In drafting this Agreement, the Parties:

(a) intend there to be a fair, comprehensive and lasting settlement of claims related to Class Members' deprivation of safe drinking water and their hardships resulting therefrom;

(b) desire the implementation of concrete measures to prevent a recurrence of the harms suffered by Class Members;

(c) acknowledge the importance of providing First Nations with funding for projects related to water and wastewater, economic development, and cultural activities, and respect the autonomy of First Nations to choose the use to which such funds are directed;

(d) desire to promote healing, education, commemoration, and reconciliation; and

(e) intend to include Modern Treaty First Nations, as applicable, but recognize the uniqueness of each Modern Treaty First Nation, its lands, peoples, and relationship with Canada, and therefore agree that the specific details of the participation of any Modern Treaty First Nation will be developed in consultation with the Parties and the applicable Modern Treaty First Nation.

NOW THEREFORE, in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.01 **Definitions**

In this Agreement, the following definitions apply:

"**Acceptance**" means acceptance of this Agreement by a First Nation Class Member:

(a) pursuant to a Band Council Acceptance Resolution that is provided to the Administrator; or

(b) otherwise in accordance with the Settlement Approval Orders;

"**Acceptance Deadline**" means the date two hundred and seventy (270) days after the Implementation Date or such other date as the Parties may agree;

"**Action Plan**" means Indigenous Services Canada's Long-Term Drinking Water Advisory Action Plan detailing corrective measures to be undertaken by Canada to end Long-Term Drinking Water Advisories, attached as Schedule J, as it may be amended from time to time to reflect the addition of new commitments or the completion of existing commitments;

"**Actions**" has the meaning set out in the Recitals, and "**Action**" means either of them;

"**Administrator**" means the administrator appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Section 3.01;

"**Advisory Body**" means a federal, provincial, territorial, regional, municipal, or First Nation government or governmental authority, chief, band council, health authority, or any executive,

judicial, regulatory or administrative body or similar body or its delegate, in each case that issues Drinking Water Advisories;

"**Advisory Year**" has the meaning set out in Section 8.01(1);

"**Aggregate Specified Injuries Compensation Amount**" has the meaning set out in Section 8.02(4);

"**Agreement**" means this Settlement Agreement, including the Schedules attached hereto;

"**Agreement in Principle**" means the Agreement in Principle dated July 29, 2021, attached hereto as Schedule A;

"**Auditors**" means the auditors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Section 17.01;

"**Band Classification Manual**" means the 2005 Band Classification Manual published by the Corporate Information Management Directorate Information Management Branch of Indigenous and Northern Affairs Canada;

"**Band Council Acceptance Resolution**" means a band council resolution of a First Nation Class Member confirming Acceptance, substantially in the form set out in Schedule D, or another form acceptable to Canada and Class Counsel;

"**Band Council Confirmation**" means an optional declaration by a First Nation Class Member that identifies Individual Class Members and the dates during the Class Period that they were Ordinarily Resident on a Reserve of such First Nation Class Member while a Long-Term Drinking Water Advisory was in effect on that Reserve, substantially in the form set out in Schedule E or another form acceptable to Canada and Class Counsel, and is provided to the Administrator;

"**Base Payment**" has the meaning set out in Section 8.03(1)(a);

"**Boil Water Advisory**" means a notification issued by an Advisory Body to warn the public that they should bring their tap water to a rolling boil before they drink the water or use the water for other purposes such as to cook, feed pets, brush their teeth, and similar activities, and that tap water should not be used to bathe those who need help, such as infants, toddlers and the elderly, who should instead be given sponge baths, or some similar advisory;

"**Business Day**" means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the province or territory in which the person who needs to take action pursuant to this Agreement is ordinarily resident or a holiday under the federal laws of Canada applicable in the said province or territory;

"**Canada**" has the meaning set out in the preamble;

"**Claim**" means a claim for compensation made by (a) an Individual Class Member, or by an Estate Executor, Estate Claimant or Personal Representative on behalf of an Individual Class Member or their estate, by submitting a Claims Form to the Administrator in accordance with this Agreement, or (b) a band council on behalf of an Individual Class Member, by identifying that Individual Class Member in a Band Council Confirmation;

"**Claimant**" means (a) a person who makes a Claim by completing and submitting a Claims Form to the Administrator, or on whose behalf a Claim is made by such Class Member's Estate Executive, Estate Claimant or Personal Representative, or (b) a person identified as an Individual Class Member in a Band Council Confirmation;

"**Claims Deadline**" means the date that is one (1) year following the Implementation Date or such other date as the Parties agree and the Courts approve, and any reference to the Claims Deadline includes any extension thereto;

"**Claims Form**" means a simplified written declaration in respect of a Claim by an Individual Class Member, in the form attached hereto as Schedule I, or such other form as may be recommended by the Administrator and agreed by the Parties, without supporting documentation except as agreed upon by the Parties;

"**Claims Process**" means the process outlined in this Agreement, including in Schedule F and related forms, or such other process as may be recommended by the Administrator and agreed by the Parties, for the determination of Class membership, submission of Claims, and assessment, determination and payment of compensation to Class Members;

"**Class**" has the meaning set out in the Recitals;

"**Class Counsel**" means, together, McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP;

"**Class Member**" means an Individual Class Member or a First Nation Class Member, as applicable, and "**Class Members**" means all of them, collectively;

"**Class Period**" means the period from and including November 20, 1995, to June 20, 2021;

"**Commitment**" has the meaning set out in Section 9.02(1);

"**Commitment Dispute Resolution Process**" has the meaning set out in Section 9.07;

"**Commitment Expenditures**" has the meaning set out in Section 9.02(2);

"**Confirmed Individual Class Member**" has the meaning set out in Section 7.02(5);

"**Constitution Act, 1982**" means the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c. 11;

"**Courts**" means, collectively, the Federal Court and the Manitoba Court of Queen's Bench;

"**Curve Lake First Nation Plaintiffs**" has the meaning set out in the preamble to this Agreement;

"**Deceased Individual Class Member**" has the meaning set out in Section 13.01(1);

"**Dispute**" has the meaning set out in Section 19.01(1);

"**Do Not Consume Advisory**" means a notification issued by an Advisory Body to warn the public that they should not use their tap water to cook, drink, feed pets, brush their teeth, and/or similar activities, and that tap water should not be used to bathe those who need help, such as

infants, toddlers and the elderly, who should instead be given sponge baths, or some similar advisory;

"**Do Not Use Advisory**" means a notification issued by an Advisory Body to warn the public that they should not use their tap water for any reason, or some similar advisory;

"**Drinking Water Advisory**" means a Boil Water Advisory, Do Not Consume Advisory, Do Not Use Advisory, or similar advisory with respect to the use of drinking water;

"**Eligibility Decision**" has the meaning set out in Section 7.02(1);

"**Eligible Class Member Address Search Plan**" means the Eligible Class Member Address Search Plan attached hereto as Schedule Q;

"**Estate Claimant**" has the meaning set out in Section 13.02(1);

"**Estate Executor**" means the executor, administrator, trustee or liquidator of a deceased Individual Class Member's estate;

"**Estate Representation Claim**" has the meaning set out in Section 13.02(1);

"**Excluded Person**" is any member of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, and the Okanagan Indian Band, and Michael Darryl Isnardy;

"**Federal Action**" has the meaning set out in the Recitals;

"**Federal Action Plaintiffs**" has the meaning set out in the preamble to this Agreement;

"**Federal Certification Order**" means the order of the Federal Court dated October 8, 2020, certifying the Federal Action as a class proceeding, a copy of which is attached at Schedule B;

"**Financial Administration Act**" means the *Financial Administration Act,* R.S.C., 1985, c. F-11;

"**First Nation**" means a band, as defined in subsection 2(1) of the Indian Act, the disposition of whose lands is subject to that Act or the First Nations Land Management Act, or a Modern Treaty First Nation;

"**First Nation Class Member**" means an Impacted First Nation that provides the Administrator with notice of Acceptance in accordance with this Agreement;

"**First Nation Damages**" has the meaning set out in Section 8.03(1)(b);

"**First Nation Water and Wastewater Systems**" means water and wastewater systems on Reserves;

"**First Nations Advisory Committee on Safe Drinking Water**" or "**FNAC**" has the meaning set out in Section 9.04(1);

"**First Nations Economic and Cultural Restoration Fund**" has the meaning set out in Section 6.01(2);

"**First Nations Land Management Act**" means the *First Nations Land Management Act*, S.C. 1999, c. 24;

"**First Nations Lands**" means lands of a First Nation, the disposition of which is subject to the Indian Act, the First Nations Land Management Act or a Modern Treaty;

"**Fund**" has the meaning set out in Section 16.02(a);

"**Funds Held in Trust for Ongoing Fees**" has the meaning set out in Section 18.02(1);

"**Impacted First Nations**" means First Nations whose First Nations Lands were subject to a Drinking Water Advisory that lasted at least one year between November 20, 1995 and June 20, 2021;

"**Implementation Date**" means the later of:

(a) the day following the last day on which a Class Member may appeal or seek leave to appeal the Settlement Approval Orders; and

(b) the date on which the last of any appeals of the Settlement Approval Orders is finally determined;

"**Income Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp);

"**Indian Act**" means the *Indian Act*, R.S.C. 1985, c. I-5;

"**Individual Class Member**" means a natural person who is a member of the Class and has not Opted Out of the Actions, and "**Individual Class Members**" means all such persons collectively;

"**Individual Damages**" has the meaning set out in Section 8.01(2);

"**Individual Damages Formula**" has the meaning set out in Section 8.01(2);

"**Joint Committee**" means a committee of three (3) persons appointed by the Courts in accordance with Section 15.01 and composed of one (1) Class Counsel representative from Olthuis Kleer Townshend LLP and two (2) Class Counsel representatives from McCarthy Tétrault LLP;

"**Late Claims Period**" has the meaning set out in Section 4.03(3)(c);

"**Late Opt-Out"** means the right to Opt Out in accordance with Section 12.02;

"**Long-Term Drinking Water Advisory**" means a Drinking Water Advisory for a Reserve or a part of a Reserve that lasted at least one (1) year;

"**Manitoba Action**" has the meaning set out in the Recitals;

"**Manitoba Action Plaintiffs**" has the meaning set out in the preamble to this Agreement;

"**Manitoba Certification Order**" means the order of the Manitoba Court of Queen's Bench dated July 14, 2020, certifying the Manitoba Action as a class proceeding, a copy of which is attached at Schedule C;

"**Member**" has the meaning set out in Section 14.01(1);

"**Missing Eligible Class Member**" has the meaning set out in Schedule Q;

"**Modern Treaty**" means a land claims agreement within the meaning of section 35 of the Constitution Act, 1982, entered into on or after January 1, 1973;

"**Modern Treaty First Nations**" means aboriginal peoples of Canada, other than the Inuit or Métis aboriginal peoples of Canada, with a Modern Treaty;

"**Neskantaga First Nation Plaintiffs**" has the meaning set out in the preamble to this Agreement;

"**Non-Remote First Nation**" means every Reserve that is not a Remote First Nation;

"**Notice Plan**" means the Notice Plan substantially in the form attached as Schedule L or as otherwise recommended by the Administrator and agreed by the Parties;

"**Ongoing Fees**" has the meaning set out in Section 18.02(1);

"**Opt Out**" means (a) the delivery by an Individual Class Member to CA2 Inc., being the administrator for notice of certification and notice of settlement, of an opt-out coupon or a written request to be removed from the Actions within the Opt-Out Period; (b) after the Opt-Out Period, an Individual Class Member obtaining leave of the Courts to opt out of the Actions; or (c) a Late Opt-Out, any of which has the effect of excluding an Individual Class Member from the Actions, and "**Opted Out**" has a corresponding meaning;

"**Opt-Out Period**" has the meaning set out in the Recitals and such period expired on March 29, 2021;

"**Ordinarily Resident**" has the meaning set out in Section 8.01(1);

"**Parties**" means:

(a) prior to the Implementation Date, the Manitoba Action Plaintiffs and the Federal Action Plaintiffs, on behalf of the Class, and Canada; and

(b) after the Implementation Date, the Class Members, as represented by the Joint Committee, and Canada;

"**Person Under Disability**" means:

(a) a minor as defined by the legislation of that individual's province or territory of residence; or

(b) an individual who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom

a Personal Representative has been appointed pursuant to the applicable provincial or federal legislation;

"**Personal Representative**" means the Person appointed pursuant to the applicable provincial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability and includes an administrator for property;

"**Recitals**" means the recitals to this Agreement;

"**Releasees**" has the meaning set out in Section 10.03(1);

"**Releasors**" has the meaning set out in Section 10.03(1);

"**Remediation Plan**" has the meaning set out in Section 9.06(4);

"**Remote First Nation**" means every Reserve that is classified as Zone 3 or 4 in the Band Classification Manual, being Reserves deemed either "Remote" or "Isolated and require Special Access", respectively, or if a Reserve is not classified in the Band Classification Manual, it is either (i) more than 350 kilometers from the nearest service centre with year round road access; or (ii) without year round road access to a service centre;

"**Replacement Legislation**" has the meaning set out in Section 9.03(1)(b);

"**Representative Plaintiffs**" has the meaning set out in the Recitals;

"**Reserve**" means a discrete tract of First Nations Lands that has been set apart by Her Majesty the Queen in Right of Canada for the use and benefit of one or more First Nations, or an analogous discrete tract of land that is subject to a Modern Treaty;

"**Restoration Fund Account"** has the meaning set out in Section 6.01(1);

"**Safe Drinking Water Trust**" has the meaning set out in in Section 16.01;

"**Schedule I Canadian Bank**" means a Canadian chartered bank listed on Schedule I to the *Bank Act,* S.C. 1991, c. 46;

"***SDWFNA***" has the meaning set out in Section 9.03(1)(a);

"**Settlement Approval Hearing**" means a joint hearing of the Courts to determine a motion to approve this Agreement and Class Counsel's fees;

"**Settlement Approval Orders**" means the orders of the Courts approving this Agreement, substantially in the form set out in Schedule O;

"**Settlement Implementation Committee**" or "**Settlement Implementation Committee and its Members**" means the committee established pursuant to Section 14.01 and the persons who are appointed as members thereof, being two (2) representatives of the Joint Committee, two (2) representatives of Canada, and two (2) representatives of the FNAC;

"**Source Water**" means untreated water from surface water sources such as lakes, ponds, or rivers;

"**Specified Injuries**" has the meaning set out in Section 8.02(1);

"**Specified Injuries Compensation**" has the meaning set out in Section 8.02(2);

"**Specified Injuries Compensation Account**" has the meaning set out in Section 5.01(1);

"**Specified Injuries Compensation Fund**" has the meaning set out in Section 5.01(2);

"**Specified Injuries Compensation Grid**" means the Specified Injuries Compensation Grid set out in Schedule H attached hereto, or such other Specified Injuries Compensation Grid as the Courts may approve;

"**Specified Injuries Decision**" has the meaning set out in Section 7.02(1);

"**Third-Party Assessor**" means the person or persons appointed by the Courts to carry out the duties of the Third-Party Assessor as specified in this Agreement and in the Claims Process and their successors appointed from time to time pursuant to the provisions of Section 3.03;

"**Trust Account**" has the meaning set out in in Section 4.01(1);

"**Trust Fund**" has the meaning set out in in Section 4.01(2);

"**Trust Fund Surplus**" has the meaning set out in Section 4.03(1);

"**Trustee**" means the trustee appointed by the Courts for the purposes of this Agreement;

"**Ultimate Claims Deadline**" has the meaning set out in Section 13.02(1);

"**Underserviced First Nation**" has the meaning set out in in Section 9.06(1); and

"**Water Governance Fund**" has the meaning set out in in Section 9.05(1).

1.02 **Headings**

The division of this Agreement into paragraphs and the use of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.03 **Extended Meanings**

In this Agreement, words importing the singular number include the plural and *vice versa,* words importing any gender or no gender include all genders and words importing persons include First Nations. The term "including" means "including without limiting the generality of the foregoing". Any reference to a government ministry, department or position shall include any successor government ministry, department or position.

1.04 **Interpretation**

The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that there shall be no presumptive rule of construction to the effect that any ambiguity in this Agreement is to be resolved in favour of any particular Party.

1.05 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date of such reference and not as the statute may from time to time be amended, re-enacted, or replaced, and the same applies to any regulations made thereunder.

1.06 **Day For Any Action**

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

1.07 **Currency**

All references to currency herein are to lawful money of Canada.

1.08 **Compensation Inclusive**

The amounts payable to Class Members under this Agreement are inclusive of any prejudgment or post-judgment interest.

1.09 **Schedules**

The following Schedules to this Agreement are incorporated into and form part of this Agreement:

Schedule A	Agreement in Principle
Schedule B	Federal Certification Order
Schedule C	Manitoba Certification Order
Schedule D	Form of Band Council Acceptance Resolution
Schedule E	Form of Band Council Confirmation
Schedule F	Claims Process
Schedule G	Individual Damages Compensation Grid
Schedule H	Specified Injuries Compensation Grid
Schedule I	Claims Form
Schedule J	Indigenous Services Canada's Long-Term Drinking Water Advisory Action Plan
Schedule K	Commitment Dispute Resolution Process (and Appendix)
Schedule L	Notice Plan

Schedule M	Notice of Settlement Approval Hearing (Long and Short Forms)
Schedule N	Notice of Settlement Agreement Approval (Long and Short Forms)
Schedule O	Form of Federal Court Approval Order and Manitoba Court Approval Order
Schedule P	Form of Band Council Acceptance Resolution Approving Private Water Systems on Reserve
Schedule Q	Eligible Class Member Address Search Plan

1.10 **No Effect on Treaties or Existing Agreements**

Nothing in this Agreement shall cancel or supersede any treaty between Canada and any one or more Class Members, or any existing agreement between Canada and any one or more Class Members with respect to First Nation Water and Wastewater Systems, Long-Term Drinking Water Advisories, or similar matters, save and except for the Agreement in Principle, which this Agreement shall supersede.

1.11 **No Derogation from Constitutional Rights**

This Agreement is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.

1.12 **Benefit of the Agreement**

This Agreement will inure to the benefit of and be binding upon the Parties, and for Canada and First Nation Class Members, upon their respective successors, and for Individual Class Members, upon their estates, heirs, Estate Executors, Estate Claimants, and Personal Representatives.

1.13 **Applicable Law**

This Agreement will be governed by the laws of Canada together with the laws of Manitoba, as applicable, or alternatively, at the election of a Class Member, the laws of Canada together with the laws of the province or territory where the Class Member is ordinarily resident, as applicable.

1.14 **Counterparts**

This Agreement may be executed electronically and in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

1.15 **Official Languages**

Class Counsel shall prepare a French translation of this Agreement for use at the Settlement Approval Hearing. Following the Settlement Approval Orders, such French version shall be of equal weight and force at law.

1.16 **Ongoing Supervisory Role of the Courts**

Notwithstanding any other provision of this Agreement, the Courts shall maintain jurisdiction to supervise the implementation of this Agreement in accordance with its terms, including the adoption of protocols and statements of procedure, and the Parties attorn to the jurisdiction of the Courts for that purpose. The Courts may give any directions or make any orders that are necessary for the purposes of this Section.

ARTICLE 2 – EFFECTIVE DATE OF AGREEMENT

2.01 **Date when Binding and Effective**

On the Implementation Date, this Agreement will become binding on all Individual Class Members. This Agreement will become binding on all First Nation Class Members on the later of (a) the date of their Acceptance and (b) the Implementation Date. If a First Nation Class Member does not give notice of Acceptance by the Acceptance Deadline, this Agreement will not bind the First Nation Class Member and the First Nation Class Member will not be entitled to any benefit hereunder unless the Courts order otherwise.

2.02 **Effective Upon Approval**

Subject to Section 2.03, none of the provisions of this Agreement will become effective unless and until the Courts approve this Agreement.

2.03 **Legal Fees Severable**

Class Counsel's fees for prosecuting the Actions have been negotiated separately from this Agreement and remain subject to approval by the Courts. The Courts' refusal to approve Class Counsel's fees will have no effect on the implementation of this Agreement. In the event that the Courts refuse to approve the fees of Class Counsel set out in Section 18.01, (a) the remainder of the provisions of this Agreement shall remain in full force and effect and in no way shall be affected, impaired or invalidated, and (b) Section 18.01 shall be modified to reflect such Class Counsel fees as are approved by the Courts, while otherwise effecting the original intent of the Parties as closely as possible.

ARTICLE 3 – ADMINISTRATION

3.01 **Designation of Administrator**

On the recommendation of the Parties, the Courts shall appoint an Administrator to administer the Claims Process with such powers, rights, duties and responsibilities as are set out in Section 3.02 and such other powers, rights, duties and responsibilities as are determined by the Joint Committee and approved by the Courts. On the recommendation of the Parties, or of their own motion, the Courts may replace the Administrator at any time.

3.02 **Duties of the Administrator**

The Administrator's duties and responsibilities include the following:

(a) developing, installing, and implementing systems, forms, information, guidelines and procedures for processing Claims and making decisions on Claims in accordance with this Agreement;

(b) developing, installing, and implementing systems and procedures for making payments of compensation in accordance with this Agreement;

(c) receiving funds from the Safe Drinking Water Trust and the Trustee to make payments to Class Members in accordance with this Agreement;

(d) providing personnel in such reasonable numbers as are required for the performance of its duties under this Agreement, and training and instructing those personnel;

(e) retaining community liaisons in Impacted First Nations and liaisons at tribal councils to facilitate the implementation of the Notice Plan and the Claims Process;

(f) keeping or causing to be kept accurate accounts of its activities and its administration and preparing such financial statements, reports, and records as are required by the Courts;

(g) reporting to the Settlement Implementation Committee on a monthly basis respecting:

(i) Claims received and determined;

(ii) Claims deemed ineligible and the reason(s) for that determination; and

(iii) appeals from the Administrator's decisions and the outcomes of those appeals;

(h) responding to inquiries respecting Claims and Claims Forms,

(i) reviewing Claims Forms and Band Council Confirmations, and determining, subject to Section 7.02(2) in the case of a Band Council Confirmation:

(i) a Claimant's membership in the Class;

(ii) the dates and places a Claimant was Ordinarily Resident;

(iii) a Claimant's entitlement to Individual Damages, if any; and

(iv) a Claimant's entitlement to Specified Injuries Compensation, if any;

(j) reviewing Acceptances and determining whether a First Nation submitting an Acceptance is eligible to be a First Nation Class Member and each First Nation Class Member's entitlement to First Nation Damages, if any;

(k) giving notice of decisions made in accordance with this Agreement;

(l) communicating with Claimants in either English or French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate such Claimant; and

(m) such other duties and responsibilities as the Courts or the Parties may from time to time direct.

3.03 **Appointment of the Third-Party Assessor**

On the recommendation of the Parties, the Courts shall appoint one or more Third-Party Assessors. On the recommendation of the Parties, or of their own motion, the Courts may replace a Third-Party Assessor at any time. The Third-Party Assessor shall perform the duties of the Third-Party Assessor set out in this Agreement.

3.04 **Responsibility for Costs**

Canada shall pay:

(a) the costs of giving notice in accordance with the Notice Plan and any additional notice ordered by the Courts;

(b) the costs and reasonable disbursements of the Administrator, the Third-Party Assessor, the Trustee, the Auditors, and the Settlement Implementation Committee (except Joint Committee Members), up to a maximum of fifty million dollars in the aggregate ($50,000,000), and thereafter the Administrator shall pay such costs out of the Trust Fund on approval by the Courts;

(c) the costs of the First Nations Advisory Committee on Safe Drinking Water in accordance with Section 9.04;

(d) the costs of the Water Governance Fund in accordance with Section 9.05;

(e) the costs of technical advice relating to the Commitment in accordance with Section 9.06(3); and

(f) the costs of the Commitment Dispute Resolution Process in accordance with Section 9.08.

ARTICLE 4 – TRUST FUND

4.01 **Establishment of the Trust Fund**

(1) As soon as practicable after its appointment and after the settlement of the Safe Drinking Water Trust in accordance with Section 16.01, the Trustee shall establish an interest-

bearing trust account at a Schedule I Canadian Bank for purposes of the Trust Fund (the "**Trust Account**").

(2) No later than sixty (60) days following the Implementation Date, and in accordance with the terms of Article 16 , Canada shall make a contribution to the Safe Drinking Water Trust by paying one billion four-hundred and thirty-eight million dollars ($1,438,000,000) into the Trust Account, with such payment being a distinct fund (the "**Trust Fund**") within the Safe Drinking Water Trust.

4.02 **Distribution of the Trust Fund**

The Trustee shall authorize the Administrator to, and the Administrator shall, distribute the Trust Fund for the benefit of the Class Members in accordance with this Agreement, including by paying Individual Damages in accordance with Section 8.01(2)(a).

4.03 **Trust Fund Surplus**

(1) On the advice of an actuary or a similar advisor, the Joint Committee may determine at any time or from time to time that it is more likely than not that there are unallocated or surplus funds in the Trust Fund (a "**Trust Fund Surplus**").

(2) The Joint Committee shall propose a distribution of any Trust Fund Surplus for the direct or indirect benefit of the Class Members in accordance with this Section 4.03.

(3) A distribution of a Trust Fund Surplus shall include distributions to effect one or more of the following, in descending order of priority, and such other uses as the Joint Committee may determine in consultation with the FNAC:

(a) transferring up to four hundred million dollars ($400,000,000) to the First Nations Economic and Cultural Restoration Fund, as needed;

(b) paying Specified Injuries Compensation if the Specified Injuries Compensation Fund is insufficient to pay the Aggregate Specified Injuries Compensation Amount;

(c) paying Individual Damages or First Nation Damages to Claimants who filed valid Claims during a specified period after the Claims Deadline, if any (a "**Late Claims Period**"), as the Joint Committee considers appropriate;

(d) paying increased Individual Damages or First Nation Damages, as the Joint Committee considers appropriate; and

(e) funding programming to promote education, cultural or spiritual practices, study, or healing in connection with Long-Term Drinking Water Advisories, as the Joint Committee considers appropriate.

(4) The Joint Committee shall propose any distribution of Trust Fund Surplus and bring motions in the Courts for approval of the proposed distribution of any Trust Fund Surplus.

(5) An allocation of a Trust Fund Surplus shall require approval of both Courts, and it shall be effective on the later of:

(a) the day following the last day on which a Class Member may appeal or seek leave to appeal either of the approval orders in respect of such allocation; and

(b) the date on which the last of any appeals of either of the approval orders in respect of such allocation is finally determined.

(6) For greater certainty, in no event shall any amount from the Trust Fund, including any Trust Fund Surplus, revert to Canada, and Canada shall not be an eligible recipient of any Trust Fund Surplus.

ARTICLE 5 – SPECIFIED INJURIES COMPENSATION FUND

5.01 Establishment of the Specified Injuries Compensation Fund

(1) As soon as practicable after its appointment and after the settlement of the Safe Drinking Water Trust in accordance with Section 16.01, the Trustee shall establish an interest-bearing trust account at a Schedule I Canadian Bank for purposes of the Specified Injuries Compensation Fund (the "**Specified Injuries Compensation Account**").

(2) No later than sixty (60) days following the Implementation Date, and in accordance with the terms of Article 16 , Canada shall make a contribution to the Safe Drinking Water Trust by paying fifty million dollars ($50,000,000) into the Specified Injuries Compensation Account, with such payment being a distinct fund (the "**Specified Injuries Compensation Fund**") within the Safe Drinking Water Trust.

5.02 Distribution of the Specified Injuries Compensation Fund

(1) The Trustee shall authorize the Administrator to, and the Administrator shall, pay Specified Injuries Compensation from the Specified Injuries Compensation Fund in accordance with Section 8.02.

(2) If, following the Ultimate Claims Deadline and the payment of the Specified Injuries Compensation as set out in Section 8.02, any funds remain in the Specified Injuries Compensation Fund, the Trustee shall transfer such remaining funds into the Trust Fund.

(3) For greater certainty, in no event shall any amount from the Specified Injuries Compensation Fund revert to Canada, and Canada shall not be an eligible recipient of any amount from the Specified Injuries Compensation Fund.

ARTICLE 6 – FIRST NATIONS ECONOMIC AND CULTURAL RESTORATION FUND

6.01 Establishment of the First Nations Economic and Cultural Restoration Fund

(1) As soon as practicable after its appointment and after the settlement of the Safe Drinking Water Trust in accordance with Section 16.01, the Trustee shall establish an interest-bearing trust account at a Schedule I Canadian Bank for purposes of the First Nations Economic and Cultural Restoration Fund (the "**Restoration Fund Account**").

(2) No later than sixty (60) days following the Implementation Date, and in accordance with the terms of Article 16 , Canada shall make a contribution to the Safe Drinking

Water Trust by paying four hundred million dollars ($400,000,000) into the Restoration Fund Account, with such payment being a distinct fund (the "**First Nations Economic and Cultural Restoration Fund**") within the Safe Drinking Water Trust.

(3) The purpose of the First Nations Economic and Cultural Restoration Fund is to provide First Nation Class Members with funds to use on projects related to water and wastewater, economic development, and cultural activities. The Parties respect the autonomy of First Nations to choose the use to which funds distributed from the Restoration Fund Account are directed.

6.02 **Distribution of the First Nations Economic and Cultural Restoration Fund**

(1) The Trustee shall authorize the Administrator to, and the Administrator shall, pay First Nation Damages from the First Nations Economic and Cultural Restoration Fund in accordance with Section 8.03(1).

(2) If, following the Ultimate Claims Deadline and the payment of the First Nations Damages set out in Section 8.03(1), any funds remain in the First Nations Economic and Cultural Restoration Fund, the Trustee shall transfer such remaining funds into the Trust Fund.

(3) For greater certainty, in no event shall any amount from the First Nations Economic and Cultural Restoration Fund revert to Canada, and Canada shall not be an eligible recipient of any amount from the First Nations Economic and Cultural Restoration Fund.

ARTICLE 7 – CLAIMS PROCESS

7.01 **Principles Governing Claims Administration**

(1) The Claims Process is intended to be expeditious, cost-effective, user-friendly, culturally sensitive, trauma-informed, and non-traumatizing to participants. The Administrator shall identify and implement service times for the Claims Process no later than sixty (60) days after the Implementation Date.

(2) The Administrator, the Third-Party Assessor, and the Settlement Implementation Committee and its Members shall, in the absence of reasonable grounds to the contrary, assume that a Claimant is acting honestly and in good faith with respect to any Claim.

(3) In considering a Claims Form or a Band Council Confirmation, the Administrator, the Third-Party Assessor, and the Settlement Implementation Committee and its Members shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant.

7.02 **Eligibility Decisions and Specified Injuries Decisions**

(1) The Administrator shall review each Claims Form, Band Council Confirmation, and/or such other information as the Administrator considers relevant to determine, subject to Section 7.02(2) in the case of a Band Council Confirmation, whether each Claimant is an Individual Class Member and the period of time that they were Ordinarily Resident on a Reserve during a Long-Term Drinking Water Advisory (an "**Eligibility Decision**") and, if applicable, the validity of a Claim for Specified Injuries Compensation (a "**Specified Injuries Decision**"). For greater certainty, the Administrator may provide a Claimant with an Eligibility Decision or a

Specified Injuries Decision before the Administrator has calculated the Claimant's entitlement, if any, to Individual Damages or Specified Injuries Compensation.

(2) A Band Council Confirmation is intended to be optional. Where provided, and in the absence of evidence to the contrary, a Band Council Confirmation shall constitute sufficient evidence of the Individual Class Members identified therein being Ordinarily Resident on a Reserve during a Long-Term Drinking Water Advisory for the purpose of an Eligibility Decision and shall be sufficient to make Claims for Individual Damages on behalf of such Individual Class Members without such Individual Class Members being required to submit Claims Forms. Notwithstanding the foregoing, an Individual Class Member identified in a Band Council Confirmation, or an Estate Executor, Estate Claimant or Personal Representative on their behalf, shall be entitled to submit a Claims Form, and a Band Council Confirmation is not intended to override any Claims Form submitted by or on behalf of an Individual Class Member, whether or not such Individual Class Member is identified in a Band Council Confirmation. In the event of a conflict between a Band Council Confirmation and a Claims Form, the Claims Form shall prevail. Any Claimant who desires to make a Claim for Specified Injuries Compensation shall be required to submit a Claims Form in respect of their Specified Injuries.

(3) The Administrator shall give written notice to each Claimant setting out the results of its Eligibility Decision and, if applicable, Specified Injuries Decision. If the Administrator determines that the Claimant is an Individual Class Member, the Eligibility Decision will state the period of time that such Claimant was Ordinarily Resident on an applicable Reserve during a Long-Term Drinking Water Advisory, what kind of Drinking Water Advisory applied, and whether the Reserve was in a Remote First Nation.

(4) The Administrator shall provide written reasons to a Claimant in any case of:

(a) an Eligibility Decision that a Claimant is not an Individual Class Member, or that the Claimant was not Ordinarily Resident on an applicable Reserve for the entire period claimed in the Claimant's Claims Form; or

(b) a Specified Injuries Decision that a Claimant is not eligible for the Specified Injuries Compensation claimed in the Claimant's Claims Form.

(5) Only a Claimant confirmed by an Eligibility Decision (including, for greater certainty, by being identified as an Individual Class Member in a Band Council Confirmation) to be an Individual Class Member (a "**Confirmed Individual Class Member**") may be entitled to compensation pursuant to Section 8.01 and, if applicable, Section 8.02.

(6) A Claimant shall have sixty (60) days to commence an appeal to the Third-Party Assessor in accordance with the Claims Process after receiving:

(a) an Eligibility Decision that a Claimant is not an Individual Class Member or that the Claimant was not Ordinarily Resident on an applicable Reserve for the entire period claimed in the Claimant's Claims Form or a Band Council Confirmation; or

(b) a Specified Injuries Decision that a Claimant is not entitled to the Specified Injuries Compensation claimed in the Claimant's Claims Form.

(7) The Third-Party Assessor's decision on an appeal pursuant to Section 7.02(6) will be final and not subject to appeal or review.

(8) Class Counsel shall assist Claimants or their representatives, as reasonably requested, in making Claims for Specified Injuries Compensation or in appealing a Specified Injuries Decision at no cost to Canada or the Claimant other than, for certainty, Class Counsel's fees as separately negotiated or as approved by the Courts and payable in accordance with Section 18.02.

7.03 **First Nation Damages Decisions**

Within thirty (30) days following receipt by a First Nation Class Member of the Administrator's determination of its eligibility for a Base Payment or the Administrator's calculation of its First Nation Damages in accordance with the Claims Process, the First Nation Class Member may appeal such decision(s) in accordance with the Claims Process. The decision of the Third-Party Assessor on such an appeal will be final and not subject to appeal or review.

7.04 **Referrals to Settlement Implementation Committee**

(1) The Administrator shall refer a Claims Form to the Settlement Implementation Committee where the harms described in the Claims Form are not contemplated in the Specified Injuries Compensation Grid, and where the Settlement Implementation Committee has not already declined to extend Specified Injuries Compensation in substantially similar circumstances.

(2) The decision of the Settlement Implementation Committee on a Claims Form referred under this Section 7.04 will be final and not subject to appeal or review.

7.05 **Finality of Decisions**

Except as set out in this Article 7 and in the Claims Process, all decisions of the Administrator are final and binding upon a Claimant and not subject to appeal or review.

ARTICLE 8 – RETROSPECTIVE COMPENSATION

8.01 **Individual Damages**

(1) In determining where a Claimant was Ordinarily Resident for the purpose of this Agreement, the Administrator shall consider each year during the Class Period that a Reserve was subject to a Long-Term Drinking Water Advisory, beginning on the date that the advisory was imposed (each such year, an "**Advisory Year**"), and a Claimant shall have been "**Ordinarily Resident**" on an affected Reserve, for the purposes of this Agreement, if:

(a) the Claimant lived on the affected Reserve for a greater portion of an Advisory Year (or, after the first Advisory Year, the applicable portion of such subsequent Advisory Year that a Long-Term Drinking Water Advisory was in effect if the Long-Term Drinking Water Advisory terminated before the end of the Advisory Year) than the Claimant lived elsewhere; and

(b) notwithstanding the foregoing, in the case of any Claimant who was eighteen (18) years of age or younger at the applicable time, such Claimant habitually lived on an affected Reserve but lived elsewhere for a portion of the Advisory Year to attend an educational facility.

(2) The Administrator shall calculate damages for each Confirmed Individual Class Member ("**Individual Damages**") in accordance with the following formula (the "**Individual Damages Formula**"):

(a) in the case of a Confirmed Individual Class Member who had not yet reached the age of eighteen (18) years on November 20, 2013, for:

(i) every Advisory Year; and

(ii) after the first Advisory Year, every portion of an Advisory Year in accordance with Section 8.01(4),

during the Class Period that such Confirmed Individual Class Member was Ordinarily Resident on a Reserve where a Long-Term Drinking Water Advisory was in effect;

(b) in the case of a Confirmed Individual Class Member who had reached the age of eighteen (18) years before November 20, 2013, but was incapable of commencing a proceeding in respect of their Claim because of their physical, mental or psychological condition, for:

(i) every Advisory Year (and, after the first Advisory Year, every portion of an Advisory Year in accordance with Section 8.01(4)) prior to November 20, 2019, for which the Confirmed Individual Class Member had reached the age of eighteen (18) years and had been capable of commencing a proceeding in respect of that Advisory Year (or portion thereof) for a cumulative period of less than six (6) years as of November 20, 2019; and

(ii) every Advisory Year (and, after the first Advisory Year, every portion of an Advisory Year in accordance with Section 8.01(4)) subsequent to November 20, 2019,

during the Class Period that such Confirmed Individual Class Member was Ordinarily Resident on a Reserve where a Long-Term Drinking Water Advisory was in effect; or

(c) in the case of a Confirmed Individual Class Member who had reached the age of eighteen (18) years before November 20, 2013, other than a person described in Section 8.01(2)(b), for:

(i) every Advisory Year; and

(ii) after the first Advisory Year, every portion of an Advisory Year in accordance with Section 8.01(4),

between November 20, 2013, and the end of the Class Period that such Confirmed Individual Class Member was Ordinarily Resident on a Reserve where a Long-Term Drinking Water Advisory was in effect.

(3) The Joint Committee, acting on the advice of an actuary or a similar advisor, shall determine the rates at which Individual Damages will be paid. Subject to (a) the availability

of sufficient funds in the Trust Fund and (b) the availability of sufficient funds in the First Nations Economic and Cultural Restoration Fund to pay First Nation Damages in an amount equal to fifty percent (50%) of the Individual Damages, Individual Damages shall be paid at the rates set out in Schedule G, or as close to those rates as the sufficiency of the Trust Fund and the First Nations Economic and Cultural Restoration Fund allows.

(4) Individual Damages for any partial Advisory Years after the first Advisory Year shall be calculated for each Confirmed Individual Class Member by multiplying:

(a) the Individual Damages such Confirmed Individual Class Member would have been entitled to for a full Advisory Year, calculated in accordance with Section 8.01(2); by

(b) a fraction, the numerator of which is the number of days in the applicable partial Advisory Year after the first Advisory Year during which a Long-Term Drinking Water Advisory remained in effect on a Reserve where the Class Member was Ordinarily Resident and the denominator of which is three hundred and sixty-five (365).

(5) Except as otherwise provided in this Agreement, within one hundred and twenty (120) days following the Claims Deadline, the Administrator shall pay Individual Damages in Accordance with this Agreement. The Administrator shall request such funds from the Trustee, the Trustee shall provide such funds to the Administrator, and the Administrator shall pay such funds in accordance with this Agreement.

8.02 **Specified Injuries Compensation**

(1) In addition to Individual Damages, an Individual Class Member may indicate on their Claims Form that they claim damages for one or more of the specified medical conditions listed on Schedule H that were caused by using treated or tap water in accordance with a Long-Term Drinking Water Advisory on a Reserve where such Individual Class Member was Ordinarily Resident, or by restricted access to treated or tap water caused by a Long-Term Drinking Water Advisory on a Reserve where such Individual Class Member was Ordinarily Resident ("**Specified Injuries**"). For greater certainty, medical conditions caused by using water in a manner that is contrary to an applicable Long-Term Drinking Water Advisory or using Source Water will not constitute Specified Injuries.

(2) Confirmed Individual Class Members will be entitled to compensation for Specified Injuries in the amount set out in Schedule H (the "**Specified Injuries Compensation**"), provided that the Claimant establishes that the injury was caused by using treated or tap water in accordance with a Long-Term Drinking Water Advisory, or by restricted access to treated or tap water caused by a Long-Term Drinking Water Advisory, in accordance with the Claims Process and Schedule H.

(3) Confirmed Individual Class Members must establish a Specified Injury by the means set out in Schedule H and the Claims Process, unless the Settlement Implementation Committee directs otherwise. Each amount set out in in Schedule H will be paid only once to a particular Claimant, even if the Claimant suffered multiple Specified Injuries of the same nature or kind.

(4) Within one hundred and twenty (120) days following the Claims Deadline, the Administrator shall determine whether there are sufficient funds in the Specified Injuries Compensation Fund to pay the aggregate Specified Injuries Compensation for each valid and established Claim for Specified Injuries Compensation (the "**Aggregate Specified Injuries Compensation Amount**") established in accordance with the Claims Process, and:

(a) if there are sufficient funds in the Specified Injuries Compensation Fund to pay the Aggregate Specified Injuries Compensation Amount, the Administrator shall pay Specified Injuries Compensation in accordance with this Agreement; or

(b) if there are insufficient funds in the Specified Injuries Compensation Fund to pay the Aggregate Specified Injuries Compensation Amount, the Administrator shall pay each Confirmed Individual Class Member in accordance with this Agreement their *pro rata* share of the Specified Injuries Compensation Fund in proportion to the Specified Injuries Compensation to which such Confirmed Individual Class Member would be entitled if the Aggregate Specified Injuries Compensation Amount was equal to the Specified Injuries Compensation Fund; and

(c) in either case, the Administrator shall request such funds from the Trustee, the Trustee shall provide such funds to the Administrator, and the Administrator shall pay such funds in accordance with this Agreement.

8.03 **First Nation Class Member Damages**

(1) The Administrator shall calculate First Nation Class Members' damages in accordance with the following entitlement of each First Nation Class Member:

(a) a base payment of five hundred thousand dollars ($500,000) (the "**Base Payment**"); and

(b) an amount equal to fifty percent (50%) of the Individual Damages paid to Confirmed Individual Class Members who were Ordinarily Resident on such First Nation Class Member's Reserve or Reserves during a Long-Term Drinking Water Advisory on such First Nation Class Member's Reserve or Reserves ("**First Nation Damages**").

(2) The Administrator shall pay the Base Payment to each First Nation Class Member from the First Nations Economic and Cultural Restoration Fund within ninety (90) days following the later of (a) the Implementation Date, and (b) the date on which such First Nation Class Member gives written notice of Acceptance to Class Counsel. The Administrator shall request such funds from the Trustee, the Trustee shall provide such funds to the Administrator, and the Administrator shall pay such funds in accordance with this Agreement.

(3) Every six (6) months after the Base Payment is made pursuant to Section 8.03(2), the Administrator shall pay each First Nation Class Member from the First Nations Economic and Cultural Restoration Fund, without duplication, any accrued but unpaid First Nation Damages to date for such First Nation Class Member. The Administrator shall request such funds from the Trustee, the Trustee shall provide such funds to the Administrator, and the Administrator shall pay such funds in accordance with this Agreement.

ARTICLE 9 – PROSPECTIVE RELIEF

9.01 **Action Plan for First Nation Class Members**

(1) Canada shall make all reasonable efforts to support the removal of Long-Term Drinking Water Advisories that affect Class Members, including by taking the steps set out in the Action Plan within the project timeframes set out therein.

(2) Canada shall update the Action Plan regularly, and no less than quarterly, so as to reflect progress against the Action Plan.

(3) The Action Plan shall be amended to reflect additional commitments made by Canada, including commitments in Remediation Plans.

(4) Within thirty (30) Business Days following any update or amendment to the Action Plan, Canada shall provide the Joint Committee with a copy of the updated or amended Action Plan.

(5) For greater certainty, nothing in this Agreement limits Canada to taking the measures set out in the Action Plan or prevents Canada from taking additional measures not contemplated in the Action Plan for the benefit of Class Members.

9.02 **Commitment to Additional Measures**

(1) In addition to the measures set out in the Action Plan, Canada shall make all reasonable efforts to ensure that Individual Class Members living on Reserves have regular access to drinking water in their homes, whether from a public water system or a private water system approved by a band council resolution substantially in the form set out in Schedule P, or another form acceptable to Canada and Class Counsel, including on-site systems, that meets the stricter of the federal requirements or provincial standards governing residential water quality (the "**Commitment**"). For greater certainty:

(a) such "regular access" shall be of a nature and quantity sufficient to permit all usual and necessary uses of water in a similarly situated Canadian home, including but not limited to drinking water, bathing and personal hygiene, food preparation and dishwashing, sanitation, and laundry;

(b) the Commitment is limited to Canada's reasonable efforts, including the provision of actual cost funding, training, planning, and technical assistance;

(c) if, despite Canada making all reasonable efforts, such regular access cannot be achieved, Canada is not required to warranty such regular access in an Individual Class Member's home; and,

(d) factors that may be considered in any determination of reasonable efforts include, but are not limited to:

(i) the views of the particular First Nation;

(ii) any federal requirements or provincial standards and protocols relating to water;

(iii) whether monitoring and testing are performed on the water system; and

(iv) the physical location of the home, including proximity to centralized water systems and remoteness.

(2) Canada shall spend at least six billion dollars ($6,000,000,000) between June 20, 2021, and March 31, 2030, to meet the Commitment, at a rate of at least four hundred million dollars ($400,000,000) per fiscal year ending March 31, by funding the actual cost of construction, upgrading, operation, and maintenance of water infrastructure on Reserves for First Nations ("**Commitment Expenditures**").

(3) Canada shall provide the Joint Committee with an annual statement of all Commitment Expenditures actually made each fiscal year through March 31, 2030, which statement shall be provided no later than ninety (90) days after the end of the applicable fiscal year.

(4) Upon request, Canada shall promptly provide any First Nation Class Member with a statement of the Commitment Expenditures in respect of such First Nation Class Member's Reserves.

9.03 **Repeal and Replacement of *Safe Drinking Water for First Nations Act***

(1) Canada shall make all reasonable efforts to:

(a) introduce legislation repealing the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21 (the "***SDWFNA***") on or before March 31, 2022;

(b) develop and introduce replacement legislation for the *SDWFNA* ("**Replacement Legislation**"), in consultation with First Nations; and

(c) introduce the Replacement Legislation by December 31, 2022.

(2) The objectives of the Replacement Legislation shall be to:

(a) ensure sustainable First Nation Water and Wastewater Systems, premised upon:

(i) defining minimum standards of water quality for First Nation Water and Wastewater Systems, with reference to standards that are directly applicable to First Nation communities; and

(ii) defining minimum capacity standards for the delivery of water to First Nation communities, in terms of volume per individual community member;

(b) create a transparent approach to building, improving, and providing drinking water and wastewater services for First Nations;

(c) confirm adequate and sustainable funding for First Nation Water and Wastewater Systems; and

(d) support the voluntary assumption of water and wastewater infrastructure by First Nations.

(3) Notwithstanding Canada's commitment to introduce the Replacement Legislation, Canada shall support the development of First Nations governance initiatives as described in Section 9.05, below.

9.04 **First Nations Advisory Committee on Safe Drinking Water**

(1) Canada shall provide twenty million dollars ($20,000,000) in funding through the fiscal year ending March 31, 2026, for the creation of the First Nations Advisory Committee on Safe Drinking Water (the "**FNAC**").

(2) The FNAC's membership shall reflect Canada's diversity of First Nation Class Member communities, languages, genders, geographies, skills, expertise, and experience with water insecurity.

(3) The members of the FNAC shall be appointed by agreement of the Parties, on the recommendation of the Joint Committee, and failing agreement, the members shall be appointed by the Courts. The Parties may agree to remove any member of the FNAC, and such removal will be effective upon approval of the Courts.

(4) The primary functions of the FNAC shall be to:

(a) work with First Nation Class Members to provide oversight, guidance, and recommendations to Indigenous Services Canada to support the development and implementation of forward-looking policy initiatives, including:

(i) the development of Indigenous Services Canada's Long Term Strategy for Water and Wastewater on First Nation Class Members' Reserves; and

(ii) the development of the Replacement Legislation;

(b) contribute strategic advice and perspectives to Indigenous Services Canada in order to advance the long-term sustainability of safe drinking water in First Nation communities; and

(c) support the identification and prioritization of funding for water and wastewater in First Nations communities.

(5) The terms of reference for the FNAC shall be developed jointly by the Parties.

9.05 **First Nations Governance Initiatives**

(1) Canada shall provide nine million dollars ($9,000,000) in funding for First Nations to pursue governance initiatives and by-law development through the fiscal year ending March 31, 2026 (the "**Water Governance Fund**"). Indigenous Services Canada shall administer the Water Governance Fund in accordance with its terms of reference.

(2) The funding for the Water Governance Fund shall continue through the fiscal year ending March 31, 2026, regardless of whether the Replacement Legislation is enacted within the anticipated time frame or at all.

(3) The Water Governance Fund shall assist First Nation Class Members that wish to develop their own water-related governance initiatives, including by funding:

(a) research;

(b) technical advice;

(c) by-law drafting; and

(d) the implementation of pilot projects on Reserves.

(4) The terms of reference for the Water Governance Fund shall be developed jointly by the Parties.

9.06 **Agreement on Required Measures**

(1) If a First Nation determines that the Commitment is not met or ceases to be met on its Reserve or Reserves or if a First Nation determines that Canada is not complying with a Remediation Plan (each such First Nation is an "**Underserviced First Nation**"), it shall give written notice to Canada, directed to the Deputy Minister of Indigenous Services, describing the way in which the Commitment is not met or ceases to be met or the way in which Canada is not complying with a Remediation Plan.

(2) Canada shall promptly consult with each Underserviced First Nation, with a view to meeting the Commitment as soon as possible.

(3) Canada shall pay the reasonable cost of an Underserviced First Nation obtaining technical advice to determine what steps are required to meet the Commitment on the Underserviced First Nation's Reserve or Reserves.

(4) Canada shall make all reasonable efforts to reach an agreement with the Underserviced First Nation detailing the steps that are required to meet the Commitment (a "**Remediation Plan**").

(5) Canada and the Underserviced First Nation shall each comply with the Remediation Plan.

9.07 **Dispute Resolution for Required Measures**

If Canada does not comply with an existing Remediation Plan or Canada and an Underserviced First Nation fail to agree upon a Remediation Plan within three (3) months following the Underserviced First Nation delivering notice as set out in Section 9.06 or such other time period as the Parties may agree, the Underserviced First Nation may invoke the dispute resolution process set out on Schedule K (the "**Commitment Dispute Resolution Process**"), in which case Canada and the Underserviced First Nation shall submit the existing Remediation Plan or their respective proposed forms of Remediation Plan to the Commitment Dispute Resolution Process.

9.08 **Costs of Commitment Dispute Resolution Process**

(1) Canada shall pay fifty percent (50%) of the reasonable costs and disbursements of any Underserviced First Nation Class Member's participation in the Commitment Dispute Resolution Process, including reasonable legal fees and disbursements, provided that Canada shall pay one hundred percent (100%) of the reasonable costs of convening collaborative negotiations, mediations, and arbitrations in accordance with the Commitment Dispute Resolution Process, together with the reasonable fees and disbursements of any mediator or arbitrator appointed in accordance with the Commitment Dispute Resolution Process; and

(2) For greater certainty, the costs and disbursements set out in Section 9.08(1) are separate and distinct from the fees and disbursements payable to Class Counsel and the Joint Committee pursuant to Article 18 .

ARTICLE 10 – EFFECT OF AGREEMENT

10.01 **No Provision for Continued Damages**

This Agreement makes no provision for any damages that may accrue to Class Members in respect of Long-Term Drinking Water Advisories that begin or continue after June 20, 2021, and Class Members shall not release any claims to any such damages.

10.02 **Canada's Liability**

The Parties specifically agree that once Canada has complied with the terms of this Agreement, it shall have no further liability to Class Members for damages that they incurred prior to June 20, 2021 in respect of or arising from Canada's failure to provide, or fund the provision of, safe drinking water on the Reserve or Reserves of such First Nation Class Members, or on which such Individual Class Members were Ordinarily Resident during a Long-Term Drinking Water Advisory.

10.03 **Releases**

(1) The Settlement Approval Orders issued by the Courts will declare that, except as set forth in Section 10.01 and Section 10.04, and in consideration for Canada's obligations and liabilities under this Agreement, each Individual Class Member or their Estate Executor, Estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate and each First Nation Class Member (hereinafter collectively the "**Releasors**") has fully, finally and forever released Canada and its servants, agents, officers and employees, predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasors had, now have or may in the future have against the Releasees in respect of or arising from Canada's failure to provide, or fund the provision of, safe drinking water on the Reserve or Reserves of such First Nation Class Member, or on which such Individual Class Member was Ordinarily Resident during a Long-Term Drinking Water Advisory, in each case prior to the conclusion of the Class Period.

(2) The Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim arises against the Releasees for contribution or indemnity or other relief over, whether by statute,

common law, or Quebec civil law, in relation to the claims released in Section 10.03(1), above, the Releasors shall expressly limit their claims so as to exclude any portion of Canada's liability.

(3) Upon a final determination of a Claim made under and in accordance with the Claims Process, the Releasors are also deemed to fully and finally release:

(a) the Parties, Class Counsel, counsel for Canada, the Settlement Implementation Committee and its Members, the FNAC and its members, the Joint Committee and its members, the Administrator, and the Third-Party Assessor with respect to any claims that have arisen, arise, or could arise out of the application of the Claims Process, including any claims relating to the calculation of Individual Damages, Specified Injuries Compensation, and First Nation Damages, the sufficiency of the compensation received, and the allocation and distribution of Trust Fund Surplus;

(b) any band council that submitted a Band Council Confirmation in respect of any claims that have arisen, arise, or could arise out of the Band Council Confirmation, including any claims in respect of the completeness or accuracy thereof; and

(c) any band council that adopts a band council resolution approving private water systems, substantially in the form set out in Schedule P or in another form acceptable to Canada and Class Counsel, in respect of any claims that have arisen, arise, or could arise out of the band council resolution approving private water systems, including any claims in respect of the completeness or accuracy thereof, and the adoption or failure to adopt a band council resolution approving private water systems shall not have the effect of making a First Nation or its band council responsible or liable for any water system described therein.

(4) The Parties, Class Counsel, counsel for Canada, the Settlement Implementation Committee and its Members, the FNAC and its members, the Joint Committee and its members, the Administrator, and the Third-Party Assessor shall have no liability to a Missing Eligible Class Member with respect to any claims that have arisen, arise, or could arise in respect of the payment or non-payment of any amount in accordance with this Agreement once the Administrator has complied with the Eligible Class Member Address Search Plan set out in Schedule Q.

(5) For greater certainty:

(a) any living Individual Class Member who does not submit a valid Claims Form to the Administrator, or on whose behalf a valid Claim is not made in the form of a Band Council Confirmation, or, in the case of a Class Member who is a Person Under Disability, on whose behalf a valid Claims Form is not submitted by such Class Member's Personal Representative; and

(b) any Deceased Individual Class Member who did not submit a valid Claims Form prior to their death, or whose Estate Executor or Estate Claimant does not submit a valid Claims Form on behalf of such Deceased Individual Class Member, together with any other information required by this Agreement,

in each case on or prior to the Ultimate Claims Deadline shall have no right to Individual Damages or Specified Injuries Compensation under this Agreement, and the Administrator shall reject any Claim submitted following the Ultimate Claims Deadline. Each Individual Class Member shall continue to be bound by the release set out in this Section 10.03 notwithstanding their failure to submit a valid Claims Form on or prior to the Ultimate Claims Deadline.

(6) For greater certainty any Impacted First Nation that does not give notice of Acceptance by the Acceptance Deadline shall forfeit any right to any benefit under this Agreement, including First Nation Damages, and the Administrator shall reject any notice of Acceptance submitted following the Acceptance Deadline.

10.04 **Continuing Remedies**

(1) The Parties acknowledge and agree that, notwithstanding Section 10.03 or any other provision of this Agreement, Class Members do not release, and specifically retain, their claims or causes of action for any breach by Canada of this Agreement.

(2) The Parties acknowledge and agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event Canada failed to perform its obligations under Section 3.04, Article 4 Article 5 Article 6 or Article 9 . It is accordingly agreed that, subject to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Parties shall be entitled to injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief, this being in addition to damages and any other remedy to which the Parties may be entitled at law or in equity.

10.05 **Canadian Income Tax and Social Benefits**

(1) Canada shall make best efforts to ensure that any Class Member's entitlement to federal social benefits or social assistance benefits will not be negatively affected by receipt of any payment in accordance with this Agreement, and no such payment will be considered taxable income within the meaning of the Income Tax Act.

(2) Canada shall make best efforts to obtain agreement with provincial and territorial governments to the effect that the receipt of any payment in accordance with this Agreement will not affect the amount, nature, or duration of any social benefits or social assistance benefits available or payable to any Class Member.

ARTICLE 11 – IMPLEMENTATION OF THIS AGREEMENT

11.01 **Settlement Approval Orders**

(1) The Parties agree that the Settlement Approval Orders will be sought from the Courts substantially in the form attached as Schedule O.

(2) The Parties shall consent to the entry of the Settlement Approval Orders.

(3) The Parties shall take all reasonable measures to cooperate in requesting that the Courts issue the Settlement Approval Orders.

(4) The Parties shall schedule the Settlement Approval Hearing as soon as practicable considering the requirements of the Notice Plan and the Courts' availability.

11.02 **Notice Plan**

(1) The Parties agree that they shall jointly seek approval from the Courts of the Notice Plan as the means by which Class Members will be provided with notice of settlement and settlement approval, as well as the Late Opt-Out, as applicable.

(2) Canada agrees to fund the implementation of the Notice Plan and any subsequent notice ordered by the Courts.

ARTICLE 12 – OPTING OUT

12.01 **Opting Out**

No Individual Class Member may Opt Out of the Actions without leave of the Courts, and each Individual Class Member shall be bound by this Agreement if it is approved by the Courts.

12.02 **Late Opt-Out**

Notwithstanding Section 12.01, Individual Class Members who are Ordinarily Resident in Mitaanjigaming First Nation, North Caribou Lake, Ministikwan Lake Cree Nation, Oneida of the Thames, and Deer Lake First Nation shall have a right to Opt Out by providing the Administrator with written notice within forty-five (45) days of the date on which notice of settlement is first published. The First Nations named in this Section 12.02 first experienced a Long-Term Drinking Water Advisory after the commencement of the Opt-Out Period. Save and except for the Late Opt-Out in this Section 12.02, Individual Class Members shall have no right to Opt Out under this Agreement and may only exclude themselves from the Actions with leave of the Courts in accordance with Section 12.01.

12.03 **Automatic Exclusion for Individual Claims**

Any Individual Class Member who does not, before the expiry of the time to Opt Out, discontinue a proceeding that raises questions of law or fact that are common to the Actions, is deemed to have Opted Out.

ARTICLE 13 – PAYMENTS FOR DECEASED INDIVIDUAL CLASS MEMBERS AND PERSONS UNDER DISABILITY

13.01 **Compensation if Deceased: Grant of Authority or the Like**

(1) If an Individual Class Member died or dies on or after November 20, 2017 (any such Individual Class Member, a "**Deceased Individual Class Member**"), and:

(a) the Deceased Individual Class Member has been identified in a Band Council Confirmation;

(b) a Claims Form has been submitted to the Administrator by such Deceased Individual Class Member or their Personal Representative prior to their death; or

(c) a Claims Form has been submitted to the Administrator by their Estate Executor after their death,

and the Estate Executor of such Deceased Individual Class Member has submitted the evidence required by Section 13.01(2) to the Administrator, the Administrator shall pay such Deceased Individual Class Member's Estate Executor the compensation to which such Deceased Individual Class Member was entitled under the Claims Process, with such payment made payable to "the estate of" such Deceased Individual Class Member.

(2) In support of a Claim made pursuant to Section 13.01(1), the Estate Executor for the Deceased Individual Class Member shall submit to the Administrator, in each case in a form acceptable to the Administrator:

(a) a Claims Form (if a Claims Form was not submitted by such Deceased Individual Class Member or their Personal Representative prior to their death and such Deceased Individual Class Member was not identified in a Band Council Confirmation);

(b) evidence that such Deceased Individual Class Member is deceased and of the date on which such Deceased Individual Class Member died; and

(c) evidence in the following form identifying such representative as having the legal authority to receive compensation on behalf of the estate of the Deceased Individual Class Member:

(i) if the claim is based on a will or other testamentary instrument or on intestacy, a copy of a grant of probate or a grant and letters testamentary or other document of like import or a grant of letters of administration or other document of like import, purporting to be issued by any court or authority in Canada; or

(ii) if the claim is based on a Quebec notarial will, an authenticated copy thereof.

13.02 **Compensation if Deceased: No Grant of Authority or the Like**

(1) If a Claims Form has been submitted to the Administrator by a Deceased Individual Class Member or by their Personal Representative prior to their death, or by their Estate Executor or another representative of such Deceased Individual Class Member (an "**Estate Claimant**") after their death, but the estate of such Deceased Individual Class Member has not submitted all of the evidence required by Section 13.01(2) to the Administrator, the Estate Executor or Estate Claimant must submit the evidence required by Section 13.01(2)(a) and Section 13.01(2)(b) to the Administrator, together with evidence identifying the basis on which the Estate Executor or Estate Claimant represents the estate of such Deceased Individual Class Member in accordance with Section 13.02(3) (in totality, an "**Estate Representation Claim**"), by the date that is the later of the Claims Deadline and the end of any Late Claims Period (the "**Ultimate Claims Deadline**") and otherwise in accordance with this Agreement, and:

(a) if only one Estate Representation Claim has been submitted in respect of such Deceased Individual Class Member on or prior to the Ultimate Claims Deadline,

the Administrator shall pay the compensation to which such Deceased Individual Class Member is entitled to the Estate Executor or Estate Claimant identified in the Estate Representation Claim on behalf of the estate; or

(b) if more than one Estate Representation Claim has been submitted in respect of such Deceased Individual Class Member on or prior to the Ultimate Claims Deadline, the Administrator shall:

(i) if the Estate Executors or Estate Claimants identified in all such Estate Representation Claims submit to the Administrator a signed agreement directing the payment of the compensation to which such Deceased Individual Class Member is entitled and provide a release in a form acceptable to the Administrator, pay such compensation to the estate in accordance with such agreement; or

(ii) if the Estate Executors or Estate Claimants identified in all such Estate Representation Claims do not submit to the Administrator an agreement in accordance with Section 13.02(1)(b)(i), require one of the Estate Executors or Estate Claimants identified in one of the Estate Representation Claims to submit to the Administrator the evidence set out in Section 13.01(2)(c) and pay such person on behalf of the estate the compensation to which such Deceased Individual Class Member is entitled, provided that if no person submits to the Administrator the evidence set out in Section 13.01(2)(c) within two (2) years of the Ultimate Claims Deadline, the Claim on behalf of such Deceased Individual Class Member and their estate will be extinguished, the Administrator will have no further obligation to make any payment in respect of such Deceased Individual Class Member or to their estate, and all Claims by or on behalf of such Deceased Individual Class Member and their estate shall be deemed to be released and discharged in accordance with Section 10.03.

(2) If a Claims Form is submitted to the Administrator by, or on behalf of, a Deceased Individual Class Member but no Estate Representation Claim is submitted to the Administrator in respect of such Deceased Individual Class Member in accordance with Section 13.01(1) within ninety (90) days of the Administrator receiving the Claims Form, the Administrator shall make reasonable efforts to send a notice to the last known address of the Deceased Individual Class Member or the Estate Executor or Estate Claimant of such Deceased Individual Class Member, as applicable, requiring the submission of an Estate Representation Claim. If no person submits to the Administrator an Estate Representation Claim in respect of a given Deceased Individual Class Member within two (2) years of the Ultimate Claims Deadline, the Claim on behalf of such Deceased Individual Class Member and their estate will be extinguished, the Administrator will have no further obligation to make any payment in respect of such Deceased Individual Class Member or to their estate, and any Claim by or on behalf of such Deceased Individual Class Member and their estate shall be deemed to be released and discharged in accordance with Section 10.03.

(3) In support of an Estate Representation Claim made pursuant to Section 13.02(1), the Estate Executor or Estate Claimant for the Deceased Individual Class Member, as applicable, shall submit to the Administrator the following evidence that they represent the estate of such Deceased Individual Class Member, in each case in a form acceptable to the Administrator:

(a) if the Deceased Individual Class Member had a will:

(i) a copy of the will appointing the Estate Executor or Estate Claimant, as applicable, to represent the estate of such Deceased Individual Class Member; and

(ii) an attestation or declaration signed by the Estate Executor or Estate Claimant, together with one other person who knew the Deceased Individual Class Member personally, confirming that they believe the will to be valid, do not know the will to have been revoked, know of no later will of the Deceased Individual Class Member, and know of no executor, administrator, trustee, or liquidator that has been appointed by a court; or

(b) if the Deceased Individual Class Member did not have a will:

(i) an attestation or declaration signed by the Estate Executor or Estate Claimant, together with one other person who knew the Deceased Individual Class Member personally, confirming that they do not know such Deceased Individual Class Member to have had a will and that no executor, administrator, trustee, or liquidator has been appointed by a court;

(ii) proof of the relationship of such Estate Executor or Estate Claimant, as applicable, to the Deceased Individual Class Member in a form reasonably acceptable to the Administrator;

(iii) an attestation or declaration signed by the Estate Executor or Estate Claimant, together with one other person who knew the Deceased Individual Class Member personally:

A. confirming that they know of no higher priority heir of such Deceased Individual Class Member in accordance with Section 13.02(4); and

B. either:

(I) confirming that they know of no equal priority heir of such Deceased Individual Class Member in accordance with Section 13.02(4), or

(II) if there is any equal priority heir of such Deceased Individual Class Member in accordance with Section 13.02(4), listing the persons at the same priority level; and

(iv) if there are heirs of such Deceased Individual Class Member of equal priority to the Estate Executor or Estate Claimant in accordance with Section 13.02(4), all such persons' signed consent for such Estate Executor or Estate Claimant, as applicable, to act for the estate of such Deceased Individual Class Member.

(4) For purposes of Section 13.02(3)(b), the priority level of heirs shall follow the provisions of the Indian Act in respect of distribution of property on intestacy, and such priority level of heirs from highest to lowest priority is as follows:

(a) surviving spouse or common-law partner;

(b) children;

(c) grandchildren;

(d) parents;

(e) siblings; and

(f) children of siblings.

All terms in this Section 13.02(4) used but not defined in this Agreement have the definitions set out in the Indian Act.

13.03 **Person Under Disability**

If an Individual Class Member who submitted a Claims Form to the Administrator prior to the Claims Deadline, or was identified in a Band Council Confirmation, is or becomes a Person Under Disability prior to their receipt of compensation, and the Administrator is advised that such Individual Class Member is a Person Under Disability prior to paying compensation, the Administrator shall pay the Personal Representative of such Individual Class Member the compensation to which the Individual Class Member would have been entitled under the Claims Process, and if the Administrator is not so advised, the Administrator shall make such payment payable to such Individual Class Member. If an Individual Class Member is or becomes a Person Under Disability prior to submitting a Claims Form to the Administrator, the Personal Representative of the Individual Class Member may submit a Claims Form on behalf of such Individual Class Member prior to the Claims Deadline and the Personal Representative of the Individual Class Member shall be paid the compensation to which the Individual Class Member would have been entitled under the Claims Process.

13.04 **Canada, Administrator, Class Counsel, Joint Committee, Third-Party Assessor, Settlement Implementation Committee, and FNAC Held Harmless**

Canada and its counsel, the Administrator, Class Counsel, the Joint Committee and its members, the Third-Party Assessor, the Settlement Implementation Committee and its Members, and the FNAC shall be held harmless from any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by reason of or resulting from a payment or non-payment to or on behalf of a Deceased Individual Class Member or a Person Under Disability, or to an Estate Executor, Estate Claimant, estate, or Personal Representative pursuant to this Agreement, and this Agreement shall be a complete defence.

ARTICLE 14 – SETTLEMENT IMPLEMENTATION COMMITTEE

14.01 **Settlement Implementation Committee**

(1) There shall be a Settlement Implementation Committee appointed by the Courts consisting of two (2) members of the Joint Committee, two (2) representatives of Canada, and two (2) members of the FNAC, each of whom is herein defined as a "**Member**" for the purposes of this Agreement. One of the members of the Joint Committee will be appointed as President of the Settlement Implementation Committee.

(2) The Settlement Implementation Committee shall endeavour to reach consensus. If consensus is not possible, the Settlement Implementation Committee shall decide by majority. If majority cannot be reached, the President shall cast the deciding vote.

(3) Any of the Members of the Settlement Implementation Committee may be substituted by the Courts or by agreement of the Parties so long as the composition of the Settlement Implementation Committee remains as set out in Section 14.01(1) above.

(4) The Settlement Implementation Committee is a monitoring body established under this Agreement with the following responsibilities:

(a) monitoring the work of the Administrator and the Claims Process;

(b) receiving and considering reports from the Administrator, including on administrative costs;

(c) giving such directions to the Administrator or the Third-Party Assessor as may, from time to time, be necessary in accordance with the mandate of the Settlement Implementation Committee;

(d) receiving and deciding requests for an extension to the Claims Deadline, which extension shall require an order of the Courts;

(e) proposing for the Courts' approval such protocols as may be necessary for the implementation of this Agreement;

(f) considering Claims Forms referred to it by the Administrator; and

(g) addressing any other matter referred to the Settlement Implementation Committee by the Courts or any one of them.

(5) For greater certainty, the Settlement Implementation Committee has no jurisdiction to consider appeals or applications or similar process from a Claimant or Class Member. No Class Member or other person may apply to the Settlement Implementation Committee for relief of any sort and the Settlement Implementation Committee shall not entertain any such applications or similar process.

14.02 **Decisions Are Final and Binding**

The decisions of the Settlement Implementation Committee shall be final and binding and shall not be subject to appeal or review.

14.03 **Costs of Settlement Implementation Committee**

In accordance with Section 3.04(b), Canada shall pay the costs of participation in the Settlement Implementation Committee of Members who are not also members of the Joint Committee. The costs of members of the Joint Committee shall be paid in accordance with Section 15.01(8). Canada shall pay the reasonable disbursements that all Members incur to participate in the Settlement Implementation Committee.

ARTICLE 15 – JOINT COMMITTEE

15.01 **Joint Committee**

(1) There shall be a Joint Committee of three (3) members recommended by Class Counsel and appointed by the Courts, with such powers, rights, duties and responsibilities as are required to perform its obligations under this Agreement. The Joint Committee shall consist of one (1) Class Counsel representative from Olthuis Kleer Townshend LLP and two (2) Class Counsel representatives from McCarthy Tétrault LLP.

(2) Subject to Section 15.01(1), on the recommendation of the Joint Committee, or of their own motion, the Courts may substitute any member of the Joint Committee in the best interests of the Class.

(3) The Joint Committee shall make reasonable efforts to reach consensus. If consensus is not possible, the Joint Committee shall decide by majority.

(4) The Joint Committee shall represent the Class Members and act in the best interests of the Class Members as a whole in performing the functions set out in this Agreement.

(5) The Joint Committee shall consult with the FNAC and Class Members, or a subset of them, as required by this Agreement or as the Joint Committee considers appropriate.

(6) The Joint Committee may bring or respond to whatever motions or institute whatever proceedings it considers necessary to advance the interests of Class Members.

(7) The Joint Committee may divide its work among its members and their law firms, or retain other counsel, in which case the fees and disbursements of such other counsel, together with applicable taxes, shall be a disbursement of the Joint Committee.

(8) The Joint Committee's fees and reasonable disbursements shall be paid in accordance with Section 18.02, unless there are insufficient Funds Held in Trust for Ongoing Fees, in which case the Administrator shall pay the Joint Committee's fees and reasonable disbursements from the Trust Fund on approval by the Courts.

(9) If any member of the Joint Committee believes that the majority of the Joint Committee has taken a decision that is not in the best interest of the Class, that member may refer the decision to confidential and binding arbitration to determine, on a balance of probabilities, whether the majority's decision is not in the best interest of the Class, with a determination to be rendered expeditiously and summarily, and without a right of appeal. If the members of the Joint Committee cannot agree on an arbitrator, they may ask the Courts to appoint one. The costs of the arbitration shall be a disbursement of the Joint Committee.

(10) The Joint Committee shall meet quarterly, or more frequently as required.

ARTICLE 16 – TRUSTEE AND TRUST

16.01 **Trust**

No later than thirty (30) days following the appointment by the Courts of the Trustee, Canada will settle a single trust (the "**Safe Drinking Water Trust**") with ten dollars ($10), to be held by the Trustee in accordance with the terms of this Agreement.

16.02 **Trustee**

On the recommendation of the Joint Committee, the Courts will appoint the Trustee to act as the trustee of the Safe Drinking Water Trust, with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include:

(a) to hold each of the Trust Fund, the Specified Injuries Compensation Fund and the First Nations Economic and Cultural Restoration Fund (each, a "**Fund**") in the Safe Drinking Water Trust;

(b) if the Trustee determines that it is in the best interests of Class Members, to invest the funds of each Fund (or any of them) with a view to achieving a maximum rate of return without material risk of loss, having regard to the ability of the Safe Drinking Water Trust and each Fund to meet its financial obligations;

(c) to provide such amounts from the Safe Drinking Water Trust to the Administrator and any other person described in Section 3.04 and Section 15.01(8), as required from time to time in order to give effect to any provision of this Agreement, including the payment of Individual Damages, Specified Injuries Compensation, and First Nation Damages;

(d) to engage the services of professionals to assist in fulfilling the Trustee's duties;

(e) to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(f) to keep such books, records and accounts as are necessary or appropriate to document the assets held in the Safe Drinking Water Trust and each Fund, and each transaction of the Safe Drinking Water Trust and each Fund;

(g) to take all reasonable steps and actions required under the Income Tax Act as set out in the Agreement;

(h) to report to the Administrator and Canada and the Joint Committee on a quarterly basis the assets held in the Safe Drinking Water Trust and each Fund at the end of each such quarter, or on an interim basis if so requested; and

(i) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Safe Drinking Water Trust or to carry out the provisions of this Agreement.

16.03 **Trustee Fees**

Canada shall pay the fees, disbursements and other costs of the Trustee in accordance with Section 3.04(b).

16.04 **Nature of the Safe Drinking Water Trust**

The Safe Drinking Water Trust will be established for the following purposes:

(a) to acquire the applicable funds payable by Canada;

(b) to hold the Trust Fund, the Specified Injuries Compensation Fund and the First Nations Economic and Cultural Restoration Fund, as separate funds in the Safe Drinking Water Trust;

(c) to make any necessary disbursements;

(d) to invest cash in investments in the best interests of Class Members, as provided in this Agreement; and

(e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry out the provisions of this Agreement.

16.05 **Legal Entitlements**

The legal ownership of the assets of the Safe Drinking Water Trust, including each Fund, and the right to conduct the activities of the Safe Drinking Water Trust, including the activities with respect to each Fund, will be, subject to the specific limitations and other terms contained herein, vested exclusively in the Trustee, and the Class Members and other beneficiaries of the Safe Drinking Water Trust have no right to compel or call for any partition, division or distribution of any of the assets of the Safe Drinking Water Trust except in an action to enforce the provisions of this Agreement. No Class Member or any other beneficiary of the Safe Drinking Water Trust will have or is deemed to have any right of ownership in any of the assets of the Safe Drinking Water Trust.

16.06 **Records**

The Trustee shall keep such books, records and accounts as are necessary or appropriate to document the assets of the Safe Drinking Water Trust and each transaction of the Safe Drinking Water Trust. Without limiting the generality of the foregoing, the Trustee shall keep, at its principal office, records of all transactions of the Safe Drinking Water Trust and a list of the assets held in trust, including each Fund, and a record of each Fund's account balance from time to time.

16.07 **Quarterly Reporting**

The Trustee shall deliver to the Administrator, Canada and the Joint Committee, within thirty (30) days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Safe Drinking Water Trust and each Fund (including

the term, interest rate or yield and maturity date thereof) and a record of the Safe Drinking Water Trust's account balance during such quarter.

16.08 **Annual Reporting**

The Auditors shall deliver to the Administrator, the Trustee, Canada, the Joint Committee, and the Courts, within sixty (60) days after the end of each anniversary of the date that the Safe Drinking Water Trust was funded, which date shall be the fiscal year-end for the Safe Drinking Water Trust:

(a) the audited financial statements of the Safe Drinking Water Trust, segmented by each Fund, for the most recently completed fiscal year, together with the report of the Auditors thereon; and

(b) a report setting forth a summary of the assets held in trust as at the end of the fiscal year for each Fund and the disbursements made by the Safe Drinking Water Trust during the preceding fiscal year.

16.09 **Method of Payment**

The Trustee shall have sole discretion to determine whether any amount paid or payable out of the Safe Drinking Water Trust is paid or payable out of the income of the Safe Drinking Water Trust or the capital of the Safe Drinking Water Trust.

16.10 **Additions to Capital**

Any income of the Safe Drinking Water Trust not paid out in a fiscal year will at the end of such fiscal year be added to the capital of the Safe Drinking Water Trust.

16.11 **Tax Elections**

For each taxation year of the Safe Drinking Water Trust, the Trustee shall file any available elections and designations under the Income Tax Act and equivalent provisions of the income tax act of any province or territory and take any other reasonable steps such that the Safe Drinking Water Trust and no other person is liable to taxation on the income of the Safe Drinking Water Trust, including the filing of an election under subsection 104(13.1) of the Income Tax Act and equivalent provisions of the income tax act of any province or territory for each taxation year of the Safe Drinking Water Trust and the amount to be specified under such election will be the maximum allowable under the Income Tax Act or the income tax act of any province or territory, as the case may be.

16.12 **Canadian Income Tax**

(1) Canada shall make best efforts to exempt any income earned by the Safe Drinking Water Trust from federal taxation, and Canada shall have regard to the measures that it took in similar circumstances for the class action settlements addressed in section 81(g.3) of the Income Tax Act.

(2) The Parties agree that the payments to Class Members are in the nature of personal injury damages and are not taxable income and Canada shall make best efforts to

obtain an advance ruling to this effect, or failing that a technical interpretation to the same effect, in either case from the Income Tax Rulings Directorate of the Canada Revenue Agency.

16.13 **Investment Advisors**

On request of the Trustee, the Joint Committee may ask the Courts to appoint investment advisors to provide the Trustee with advice on the investment of the funds held in each Fund of the Safe Drinking Water Trust. The Trustee shall pay the reasonable fees of any investment advisors out of the applicable Fund of the Safe Drinking Water Trust.

ARTICLE 17 – AUDITORS

17.01 **Appointment of Auditors**

On the recommendation of the Joint Committee, the Courts shall appoint Auditors with such powers, rights, duties and responsibilities as the Courts direct. On the recommendation of the Parties, or of their own motion, the Courts may replace the Auditors at any time. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include:

(a) to audit the accounts for the Safe Drinking Water Trust in accordance with generally accepted auditing standards on an annual basis;

(b) to provide the reporting set out in Section 16.08; and

(c) to file the financial statements of the Safe Drinking Water Trust together with the Auditors' report thereon with the Courts and deliver a copy thereof to Canada, the Joint Committee, the Administrator, and the Trustee within sixty (60) days after the end of each financial year of the Safe Drinking Water Trust.

17.02 **Payment of Auditors**

Canada shall pay the reasonable fees, disbursements and other costs of the Auditors in accordance with Section 3.04(b).

ARTICLE 18 – LEGAL FEES

18.01 **Class Counsel Fees**

Subject to approval by the Courts, and within sixty (60) days of the Implementation Date, Canada shall pay Class Counsel the amount of fifty-three million dollars ($53,000,000), plus applicable taxes, in respect of their legal fees and disbursements for the prosecution of the Actions to the date of the Settlement Approval Hearing, together with advice to Class Members regarding the Agreement and Acceptance.

18.02 **Ongoing Fees**

(1) Subject to approval by the Courts, within sixty (60) days after the Implementation Date, Canada shall pay to Class Counsel the additional sum of five million dollars ($5 million), plus applicable taxes, in trust ("**Funds Held in Trust for Ongoing Fees**") for fees and disbursements for services to be rendered by Class Counsel and the Joint Committee in accordance with this Agreement, including the implementation and administration of this

Agreement, for a period of four (4) years after the Settlement Approval Hearing ("**Ongoing Fees**").

(2) Class Counsel shall maintain appropriate records and seek Court approval for payment of the Ongoing Fees from the Funds Held in Trust for Ongoing Fees.

(3) Class Counsel shall report the balance of the Funds Held in Trust for Ongoing Fees to the Courts and Canada on a semi-annual basis.

(4) Class Counsel shall apply to the Courts for orders directing the payment of any Funds Held in Trust for Ongoing Fees that remain in trust four (4) years after the Settlement Approval Hearing.

18.03 **Ongoing Legal Services**

(1) Class Counsel shall divide the work of providing ongoing legal services to Class Members among themselves, or otherwise as directed by the Joint Committee.

(2) To the extent that Class Counsel's fees, disbursements, and applicable taxes are paid pursuant to Section 18.01 or Section 18.02, they shall not charge Class Members any additional amounts for legal services rendered in accordance with this Agreement.

(3) Following the Implementation Date, responsibility for representing the interests of the Class as a whole (as distinct from assisting a particular Class Member or Class Members, as reasonably requested) will pass from Class Counsel to the Joint Committee, and Class Counsel shall have no further obligations in that regard.

(4) For greater certainty, the Joint Committee and its members, and counsel appointed by the Joint Committee, shall be paid their fees, applicable taxes, and disbursements in accordance with Section 15.01(8).

(5) Neither Class Counsel nor the Joint Committee will be responsible for representing First Nation Class Members in the Commitment Dispute Resolution Process unless they are separately retained for that purpose, in which case they may represent First Nation Class Members in the Commitment Dispute Resolution Process, but their fees will not be paid pursuant to Section 18.01 or Section 18.02.

18.04 **Choice of Counsel**

Nothing in this Agreement prevents a Class Member from retaining separate counsel, other than Class Counsel, at their own cost. However, no such separate counsel shall be entitled to any payment under this Article 18 . Furthermore, no such separate counsel shall be entitled to receive any payment of any kind from any Class Member in connection with this Agreement, whether direct or indirect, unless the payment is approved by the Courts.

ARTICLE 19 – GENERAL DISPUTE RESOLUTION

19.01 **Initial Referral to Third-Party Assessor**

(1) Subject to Section 19.03, where a dispute arises regarding any right or obligation under this Agreement except a dispute regarding the Claims Process or a dispute to which

Section 9.07 applies (each such dispute other than a dispute regarding the Claims Process or a dispute to which Section 9.07 applies, a "**Dispute**"), the parties to the Dispute shall meet and make reasonable, good-faith efforts to resolve the Dispute within thirty (30) days.

(2) If a Dispute cannot be resolved within thirty (30) days, Canada, the Joint Committee, or any Class Member may refer the Dispute to the Third-Party Assessor.

(3) The Third-Party Assessor shall decide the referred Dispute summarily and issue written reasons.

19.02 **Subsequent Referral to the Courts**

(1) Canada and the Joint Committee may appeal a decision rendered under Section 19.01(3) to the Courts, and the Courts shall review the decision of the Third-Party Assessor on a standard of reasonableness.

(2) A decision of the Courts may be appealed in accordance with the rules of each Court.

19.03 **Claims Process Decisions and Remediation Plans Excluded**

For greater certainty, Article 19 shall not apply to disputes regarding the Claims Process, including eligibility for membership in the Class and the compensation due to any Class Member, or in respect of a Remediation Plan, including its content or Canada's compliance, and any such disputes shall be resolved in accordance with this Agreement.

ARTICLE 20 – TERMINATION AND OTHER CONDITIONS

20.01 **Termination of Agreement**

(1) Except as set forth in Section 20.01(2), this Agreement shall continue in full force and effect until all obligations under this Agreement are fulfilled.

(2) Notwithstanding any other provision in the Agreement:

(a) the Commitment shall survive the termination of this Agreement and shall continue in force, together with Section 9.06, Section 9.07, and Section 9.08 and the Commitment Dispute Resolution Process; and

(b) Section 10.02 and Section 10.03 shall survive the termination of this Agreement; and

(c) Article 21 shall survive the termination of this Agreement.

20.02 **Amendments**

Except as expressly provided in this Agreement, no amendment may be made to this Agreement unless agreed to by the Parties in writing, and if the Courts have issued the Settlement Approval Orders, then any amendment shall only be effective once approved by the Courts.

20.03 **No Assignment**

(1) No amount payable under this Agreement can be assigned and any such assignment is null and void except as expressly provided for in this Agreement.

(2) Subject to Section 20.03(3) and Section 18.04, any payment to which a Claimant is entitled will be made to such Claimant in accordance with the direction that such Claimant provides to the Administrator unless a court of competent jurisdiction has ordered otherwise.

(3) Any payments in respect of a Deceased Individual Class Member or a Person Under Disability will be made in accordance with Article 13 .

ARTICLE 21 – CONFIDENTIALITY

21.01 **Confidentiality**

Any information provided, created or obtained in the course of implementing this Agreement will be kept confidential and will not be used for any purpose other than this Agreement unless otherwise agreed by the Parties.

21.02 **Destruction of Class Member Information and Records**

Two (2) years after completing the payment of Individual Damages, Specified Injuries Compensation, and First Nation Damages, the Administrator shall destroy all Class Member information and documentation in its possession, unless a Class Member or their Estate Executor or Estate Claimant specifically requests the return of such information within the two (2)-year period. Upon receipt of such request, the Administrator shall forward the Class Member information as directed. Before destroying any information or documentation in accordance with this Section, the Administrator shall prepare an anonymized statistical analysis of the Class in accordance with Section 39 of the Claims Process.

21.03 **Confidentiality of Negotiations**

Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the Agreement in Principle and this Agreement continues in force.

ARTICLE 22 – COOPERATION

22.01 **Cooperation on Settlement Approval and Implementation**

Upon execution of this Agreement, the Representative Plaintiffs in the Actions, Class Counsel and Canada shall make best efforts to obtain approval of this Agreement by the Courts and to support and facilitate participation of Class Members in all aspects of this Agreement. If this Agreement is not approved by the Courts, the Parties shall negotiate in good faith to cure any defects identified by the Courts.

22.02 **Public Announcements**

Upon the issuance of the Settlement Approval Orders, the Parties shall release a joint public statement announcing the settlement in a form to be agreed by the Parties and, at a

mutually agreed time, will make public announcements in support of this Agreement. The Parties will continue to speak publicly in favour of the Agreement as reasonably requested by any Party.

[The remainder of this page is left intentionally blank. Signature pages follow.]

SCHEDULE A

AGREEMENT IN PRINCIPLE

See attached.

Manitoba Court of Queen's Bench File No.: CI-19-01-24661

Federal Court File No.: T-1673-19

THE QUEEN'S BENCH

Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under *The Class Proceedings Act*, CCSM. c. C. 130

- and -

FEDERAL COURT

BETWEEN:

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under Part 5.1 of the *Federal Court Rules*, SOR/98-106

AGREEMENT IN PRINCIPLE (the "AGREEMENT")

WHEREAS the Plaintiffs commenced the action styled as *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation v Attorney General of Canada*, Court File No. T-1673-19 in the Federal Court on October 11, 2019 (the "**Curve Lake Action**") and the action styled *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation v Attorney General of Canada*, Court File No. CI 19-01-24661 in the Manitoba Court of Queen's Bench on November 20, 2019 (the "**Tataskweyak Action**", and with the Curve Lake Action, the "**Actions**");

AND WHEREAS the Manitoba Court of Queen's Bench certified the Tataskweyak Action as a class proceeding on July 14, 2020 and the Federal Court certified the Curve Lake Action as a class proceeding on October 8, 2020;

AND WHEREAS the "**Class**" in the Actions is defined as follows:

(a) All persons who:

(i) are members of a band, as defined in subsection 2(1) of the *Indian Act*, R.S.C. 1985, c, I-5 ("**First Nation**"), the disposition of whose lands is subject to that Act or the First Nations Land Management Act, S.C. 1999, c. 24 ("**First Nations Lands**"), and whose First Nations Lands were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to June 20, 2021 ("**Impacted First Nations**");

(ii) had not died before November 20, 2017; and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(b) Tataskweyak Cree Nation, Curve Lake First Nation, Neskantaga First Nation, and any other First Nation that elects to join this action in a representative capacity;

"**Excluded Persons**" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, and the Okanagan Indian Band, and Michael Darryl Isnardy.

AND WHEREAS the Class has suffered considerable hardships as a result of being deprived of clean drinking water and these hardships have seriously harmed both individuals and their communities;

AND WHEREAS the Class has moved for summary judgment on the first common issue concerning the existence and scope of Canada's obligation to provide Class Members with clean drinking water;

AND WHEREAS none of the Individual Class Members have opted out of the Actions and some one-hundred-and-twenty-two (122) First Nation Class Members have opted into the Actions;

AND WHEREAS the Defendant ("**Canada**") acknowledges the hardships faced by Class members and wishes to support them in securing regular access to clean drinking water;

AND WHEREAS Canada is prepared to settle the Actions on the terms set out below, subject to negotiating a definitive settlement agreement (the "**Settlement Agreement**");

AND WHEREAS Chief Doreen Spence, Tataskweyak Cree Nation, Chief Emily Whetung, Curve Lake First Nation, Former Chief Christopher Moonias, and Neskantaga First Nation (together, the "**Representative Plaintiffs**") are prepared to settle the Actions on the terms set out below, subject to incorporating them into the Settlement Agreement, and recommend that First Nation Class Members accept these terms;

NOW THEREFORE Canada and the Plaintiffs shall negotiate in good faith and make all reasonable efforts to execute the Settlement Agreement no later than August 27, 2021, subject to the Parties' agreement to any extension.

ARTICLE 1 GENERAL

1.01 **Definitions**

(1) **Acceptance**: Indication of acceptance of the Settlement Agreement by a First Nation Class Member in a form to be agreed upon by the Parties and before a date certain to be agreed upon by the Parties.

(2) **Action Plan:** Indigenous Services Canada's Long-Term Drinking Water Advisory Action Plan, attached as **Schedule "A"**, detailing the corrective measures to be undertaken by Canada to end the Long-Term Drinking Water Advisories.

(3) **Administrator:** An appropriately qualified claims administrator selected by agreement of the Parties, or failing that by the Courts, to perform the duties set out in the Agreement.

(4) **Band Council Confirmation**: A declaration by a First Nation Class Member identifying the Individual Class Members ordinarily resident on its Reserve and the dates that such Individual Class Members were ordinarily resident on its Reserve while a Long-Term Drinking Water Advisory was in effect.

(5) **Base Payment**: Five-hundred thousand dollars ($500,000).

(6) **Canada:** The Defendant.

(7) **Class Counsel:** McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP.

(8) **Claims Deadline**: Two (2) years following the resolution of appeals or such other date agreed upon by the Parties.

(9) **Claim Form:** A simplified written declaration to be completed by Individual Class Members and submitted to the Administrator, without supporting documentation except as agreed upon by the Parties.

(10) **Class**:

(a) All persons who:

(i) are members of a band, as defined in subsection 2(1) of the *Indian Act*, R.S.C. 1985, c, I-5 (**"First Nation"**), the disposition of whose lands is subject to that Act or the First Nations Land Management Act, S.C. 1999, c. 24 (**"First Nations Lands"**), and whose First Nations Lands were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present (**"Impacted First Nations"**);

(ii) had not died before November 20, 2017; and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(b) Tataskweyak Cree Nation, Curve Lake First Nation, Neskantaga First Nation, and any other First Nation that elects to join this action in a representative capacity;

(11) **Class Period:** November 20, 1995 to June 20, 2021.

(12) **Commitment**: has the meaning set out in Section 3.02(1).

(13) **Commitment Dispute Resolution Process**: has the meaning set out in Section 3.07.

(14) **Commitment Expenditures**: has the meaning set out in Section 3.02(1)(d)(iv).

(15) **Courts:** The Manitoba Court of Queen's Bench and the Federal Court.

(16) **Curve Lake Action**: The action styled as *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation v Attorney General of Canada*, Court File No. T-1673-19 in the Federal Court commenced on October 11, 2019.

(17) **Eligibility Decision:** has the meaning set out in Section 1.05(1).

(18) **Excess Funds:** has the meaning set out in Section 1.04(4).

(19) **First Nation:** A band, as defined in subsection 2(1) of the *Indian Act*, R.S.C. 1985, c, I-5, the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24.

(20) **First Nation Class Member**: A First Nation that meets the definition for membership in the Class and provides Class Counsel with notice of Acceptance.

(21) **First Nation Damages**: has the meaning set out in Section 2.04.

(22) **First Nation Damages Formula**: has the meaning set out in Section 2.04.

(23) **First Nations Advisory Committee on Safe Drinking Water or FNAC**: has the meaning set out in Section 3.04.

(24) **First Nations Economic and Cultural Restoration Fund**: has the meaning set out in Section 1.04.

(25) **Fund Transfer**: Monies transferred from the Trust Fund to the First Nations Economic and Cultural Restoration Fund.

(26) **First Nations Lands**: Lands subject to the *Indian Act*, R.S.C. 1985, c, I-5 or the *First Nations Land Management Act*, S.C. 1999, c. 24.

(27) **Individual Class Members:** natural persons who are members of the Class and have not opted out of the Actions.

(28) **Individual Damages:** has the meaning set out in Section 2.01(2).

(29) **Individual Damages Formula:** has the meaning set out in Section 2.01.

(30) **Long-Term Drinking Water Advisory:** A drinking water advisory for a Reserve or a part of a Reserve that lasts for more than one (1) year.

(31) **Parties:** The Plaintiffs, on behalf of the Class, and Canada, each one of which is a "**Party**".

(32) **Plaintiffs:** Doreen Spence, Tataskweyak Cree Nation, Emily Whetung, Curve Lake First Nation, Christopher Moonias, and Neskantaga First Nation.

(33) **Remediation Agreement**: has the meaning set out in Section 3.06(2).

(34) **Remote First Nation:** Every Reserve that is classified as Zone 3 or 4 by Indigenous and Northern Affairs Canada in the 2005 Band Classification Manual published by the Corporate Information Management Directorate Information Management Branch, being Reserves deemed either "Remote" or "Isolated and require Special Access".

(35) **Replacement Legislation:** has the meaning set out in Section 3.03(2).

(36) **Reserve:** lands whose disposition is subject to the *Indian Act*, R.S.C. 1985, c, I-5 or the *First Nations Land Management Act*, S.C. 1999, c. 24.

(37) **Restoration Fund Account:** has the meaning set out in Section 1.04(2).

(38) **Settlement Agreement**: A final, legally binding settlement agreement to be executed by the Defendant and the Plaintiffs no later than August 27, 2021, or such other date as the Parties may agree, which incorporates terms of the Agreement, except as otherwise agreed by the Parties.

(39) **Specified Injuries:** has the meaning set out in Section 2.03(1).

(40) **Specified Injuries Compensation:** has the meaning set out in Section 2.03(2).

(41) **Specified Injuries Compensation Account:** has the meaning set out in Section 2.03(3).

(42) **Specified Injuries Compensation Fund:** has the meaning set out in Section 2.03(4).

(43) **Specified Injuries Decision:** has the meaning set out in Section 2.03(5)(b).

(44) **Surplus**: has the meaning set out in Section 1.03(3).

(45) **Tataskweyak Action:** The action styled as *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation v Attorney General of Canada*, Court File No. CI 19-01-24661 in the Manitoba Court of Queen's Bench commenced on November 20, 2019.

(46) **Trust Account:** has the meaning set out in Section 1.03(1).

(47) **Trust Fund:** has the meaning set out in Section 1.03(2).

(48) **Underserviced First Nation:** has the meaning set out in Section 3.06(1).

(49) **Water Governance Fund:** has the meaning set out in Section 3.05(1).

1.02 **Administration**

(1) The Parties shall agree to the selection of the Administrator. If the Parties cannot reach agreement, any Party may bring a motion for directions in the Courts.

(2) The Administrator shall be appointed by the Courts.

(3) Canada shall be solely responsible for paying the Administrator's reasonable fees and disbursements, including any applicable taxes.

1.03 **Trust Fund**

(1) As soon as practicable after its appointment, the Administrator shall establish an interest-bearing trust account at a Schedule I Canadian Bank (the "**Trust Account**").

(2) Canada shall settle the **Trust Fund** by paying one billion four-hundred and thirty-eight million dollars ($1,438,000,000) into the Trust Account within sixty (60) days of the date on which the orders approving the Settlement Agreement become final, including any appeals.

(3) If Class Counsel, on the advice of an expert actuary, determine that there are unallocated funds in the Trust Fund (the "**Surplus**"), those funds shall be distributed for the direct or indirect benefit of the Class.

(4) Class Counsel, with the guidance of Class Members or a representative committee thereof, shall propose an allocation of the Surplus, which may include the following:

(i) Transfer of up to four hundred million dollars ($400,000,000) to the First Nation Economic and Cultural Restoration Fund;

(ii) Increased Individual Damages or First Nation Damages;

(iii) Individual Damages or First Nation Damages for late claimants who filed valid claims after the Claims Deadline;

(iv) Specified Injuries Compensation if the Specified Injuries Compensation Fund was insufficient to pay the Specified Injuries Compensation for all valid claims; or

(v) Programming to promote education, cultural or spiritual practices, study, or healing in connection with Long-Term Drinking Water Advisories.

(b) Class Counsel shall bring motions for directions in the Courts for approval of the proposed distribution of the Surplus.

(5) For greater certainty, there shall be no reversion to Canada from the Trust Fund and Canada shall not be an eligible recipient of the Surplus.

1.04 **First Nation Economic and Cultural Restoration Fund**

(1) The Parties acknowledge the importance of providing First Nations with funds for use on projects related to water and wastewater, economic development, and cultural activities. The Parties respect the autonomy of First Nations to choose the use to which funds are directed.

(2) As soon as practicable after its appointment, the Administrator shall establish an interest-bearing trust account at a Schedule I Canadian Bank (the "**Restoration Fund Account**").

(3) Canada shall fund the **First Nation Economic and Cultural Restoration Fund** by paying four-hundred million dollars ($400,000,000) into the Restoration Fund Account within sixty (60) days of the date on which the orders approving the Settlement Agreement become final, including any appeals.

(4) If funds remain in the Restoration Fund Account after the Claims Deadline has passed and the Administrator has paid all of the First Nation Damages (the "**Excess Funds**"), those funds shall be distributed for the direct or indirect benefit of the Class.

(5) Class Counsel, with the guidance of Class Members, shall propose an allocation of the Excess Funds, which may include the following:

(i) Enhanced Individual Damages or First Nation Damages;

(ii) Individual Damages or First Nation Damages for late claimants who filed valid claims after the Claims Deadline;

(iii) Specified Injuries Compensation if the Specified Injuries Compensation Fund was insufficient to pay the Specified Injuries Compensation for all valid claims; or

(iv) Programming to promote education, cultural or spiritual practices, study, or healing in connection with Long-Term Drinking Water Advisories.

(b) Class Counsel shall bring motions for directions in the Courts for approval of the proposed distribution of the Excess Funds.

(6) There shall be no reversion to Canada from the First Nation Economic and Cultural Restoration Fund and Canada shall not be an eligible recipient of the Excess Funds.

1.05 **Eligibility**

(1) The Administrator shall review each Claim Form,Band Council Confirmation, or such other information as the Administrator considers relevant, to identify eligible Individual Class Members (the "**Eligibility Decision**"). The Administrator shall issue written reasons when it determines that a claimant is not a Class Member.

(2) Within thirty (30) days of the receipt of an Eligibility Decision denying membership in the Class, the claimant and any Party may appeal the Eligibility Decision.

(3) The procedure for an appeal from an Eligibility Decision shall be decided by the Parties.

ARTICLE 2 RETROSPECTIVE COMPENSATION

2.01 **Calculation of Individual Class Member damages**

(1) The Administrator shall calculate Individual Class Members' damages in accordance with the information set out in a valid Claim Form, Band Council Confirmation, or such other information as the Administrator considers relevant, pursuant to the formula set out below (the "**Individual Damages Formula**").

(2) Individual Class Members shall be paid damages ("**Individual Damages**") for:

(a) If the Individual Class Member had not yet reached the age of 18 on November 20, 2013, every year during the Class Period that they were ordinarily resident on a Reserve while a Long-Term Drinking Water Advisory was in effect; or

(b) If the Individual Class Member had reached the age of 18 before November 20, 2013, every year from November 20, 2013 to the end of the Class Period that they were ordinarily resident on a Reserve while a Long-Term Drinking Water Advisory was in effect.

(3) Individual Damages shall be paid at approximately the following rates, with the actual rates to be determined by Class Counsel on the advice of an expert actuary:

(a) One-thousand three-hundred dollars ($1,300) per year for a Boil Water Advisory that is not in a Remote First Nation;

(b) One-thousand six-hundred and fifty ($1,650) per year for a Do Not Consume Advisory that is not in a Remote First Nation;

(c) Two-thousand dollars ($2,000) per year for a Do Not Use Advisory that is not in a Remote First Nation; and

(d) Two-thousand dollars ($2,000) per year for any Drinking Water Advisory in a Remote First Nation.

(4) Individual Damages shall be paid *pro rata* for any portion of a year for which they are due.

2.02 **Payment of Individual Class Member Damages**

(1) Within a reasonable period to be determined by the Parties in consultation with the Administrator, the Administrator shall pay each Individual Class Member the Individual Damages from the Trust Fund in accordance with the Individual Damages Formula.

2.03 **Specified Injuries Compensation Fund**

(1) In addition to Individual Damages, Individual Class Members may indicate on their Claim Form that they claims damages for specified medical conditions that were caused by a Long-Term Drinking Water Advisory on a Reserve where they were ordinarily resident ("**Specified Injuries**"). For greater certainty, the claimant must establish that the injury was caused by using water, other than source water, in accordance with a Long-Term Drinking Water Advisory or by a lack of clean water during a Long-Term Drinking Water Advisory.

(2) The Parties shall determine the list of Specified Injuries, together with the compensation for each Specified Injury (the "**Specified Injuries Compensation**") .

(3) The Administrator shall establish an interest-bearing trust account at a Schedule I Canadian Bank (the **"Specified Injuries Compensation Account"**).

(4) Canada shall settle the **Specified Injuries Compensation Fund** by paying fifty million dollars ($50,000,000) into the Specified Injuries Compensation Account within sixty (60) days of the date on which the orders approving the Settlement Agreement become final, including any appeals.

(5) The Parties shall agree upon:

(a) The means of proving a Specified Injury in a non-adversarial, culturally sensitive manner that is designed so as not to re-traumatize claimants;

(b) Appropriate timelines for the Administrator to determine the validity of a Specified Injuries Compensation claim (a "**Specified Injuries Decision**"); and

(c) An appropriate appeal mechanism and timeline;

(6) Class Counsel shall assist Individual Class Members or their representatives, as requested, in making a claim for Specified Injuries Compensation or in appealing a Specified Injuries Decision at no cost to Canada or the Individual Class Member.

(7) Within ninety (90) days following the Claims Deadline, the Administrator shall determine whether there are sufficient funds in the Specified Injuries Compensation Fund to pay the Specified Injuries Compensation for each valid claim.

(a) If there are sufficient funds in the Specified Injuries Compensation Fund, the Administrator shall pay Individual Class Members their Specified Injuries Compensation; or

(b) If there are insufficient funds in the Specified Injuries Compensation Fund, the Administrator shall pay Individual Class Members their *pro rata* share of the Specified Injuries Compensation Fund, in proportion to the Specified Injuries Compensation that they would be due.

(8) There shall be no reversion to Canada from the Specified Injuries Compensation Fund.

(9) If any funds remain in the Specified Injuries Compensation Fund after paying all of the claims for Specified Injuries Compensation, the Administrator shall pay such funds into the Trust Fund.

2.04 **Calculation of First Nation Class Member Damages**

(1) The Administrator shall calculate First Nation Class Members' damages pursuant to the formula set out below (the "**First Nation Damages Formula**").

(2) Each First Nation Class Member shall be paid a base payment of five-hundred thousand dollars ($500,000) (the "**Base Payment**").

(3) In addition to the Base Payment, First Nations shall be paid an amount equal to fifty percent (50%) of the Individual Damages paid to Individual Class Members in respect of Drinking Water Advisories on the First Nation Class Member's Reserve or Reserves ("**First Nation Damages**").

2.05 **Payment of First Nation Class Member Damages**

(1) The Administrator shall pay the Base Payment and the First Nation Damages from the First Nation Economic and Cultural Restoration Fund.

(2) The Administrator shall pay the Base Payment to every First Nation Class Member within ninety (90) days of the later of the approval of the Settlement Agreement by the Courts, including all appeals, and a First Nation Class Member giving notice of Acceptance to Class Counsel.

(3) Every six (6) months after the Base Payment is made pursuant to Section 2.05(2) the Administrator shall pay the First Nation Class Member the First Nation Damages that have accrued to date.

2.06 **No provision for continued damages**

(1) The Agreement makes no provision for any damages that may accrue to Class Members in respect of Long-Term Drinking Water Advisories that begin or continue after June 20, 2021, and Class Members shall not release any claims to any such future damages.

2.07 **Canada's Liability**

(1) The Parties specifically agree that upon making the payments contemplated in the Settlement Agreement, Canada's liability to Individual Class Members and First Nation Class Members that have accepted the Settlement Agreement for damages to June 20, 2021, arising from Canada's failure to provide clean drinking water is at an end.

(2) The Parties shall agree on specific release language for the Settlement Agreement.

ARTICLE 3 PROSPECTIVE RELIEF

3.01 **Action Plan for First Nation Class Members to be implemented**

(1) Canada shall make all reasonable efforts to support the removal of Long-Term Drinking Water Advisories that affect Class Members, including by taking the steps set out in the Action Plan, within the Project timeframes set out therein.

(2) The Action Plan may be amended on consent of the Parties, in addition to being regularly updated by Canada as progress is made.

(3) Nothing in the Agreement bars Canada from taking additional measures to benefit Class Members, which measures are not contemplated in the Action Plan.

3.02 **Commitment to additional measures**

(1) In addition to the Action Plan, the Defendant shall make all reasonable efforts to ensure that Individual Class Members living on Reserves have regular access to drinking water in their homes, whether from a public water system or a private water system approved by a Band Council Resolution, including on-site systems, that meets the stricter of the federal requirements or provincial standards governing residential water quality (the "**Commitment**"). For the sake of greater certainty:

(a) regular access shall permit all usual and necessary uses of water in a similarly situated Canadian home, including but not limited to drinking water, bathing and personal hygiene, food preparation and dish washing, sanitation, and laundry;

(b) the Commitment is limited to Canada's reasonable efforts, including the provision of actual cost funding, training, planning, and technical assistance;

(c) if, despite Canada's reasonable efforts, regular access cannot be achieved, Canada is not required to warranty regular access in an Individual Class Member's home; and,

(d) Factors that may be considered in any determination of reasonable efforts include, but are not limited to:

(i) the views of the First Nation;

(ii) any federal requirements or provincial standards and protocols relating to water;

(iii) whether monitoring and testing are performed on the water system; and

(iv) the physical location of the home, including proximity to centralized water systems and remoteness.

(2) Canada shall spend at least six billion dollars ($6,000,000,000) through 2030 as contemplated by Indigenous Services Canada's Main Estimates, at a rate of at least four hundred million dollars ($400,000,000) per year, to meet the Commitment by funding the actual cost of construction, upgrading, operation, and maintenance of water infrastructure on reserve for First Nations (**"Commitment Expenditures"**).

(a) Canada shall provide Class Counsel with an annual statement of all Commitment Expenditures through 2030.

(b) Upon request, Canada shall provide any First Nation Class Member with a statement of the Commitment Expenditures that it has received.

3.03 **Repeal and replacement of *Safe Drinking Water for First Nations Act***

(1) Canada shall make all reasonable efforts to introduce legislation repealing the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21 (the "***SDWFNA***") on or before March 31, 2022.

(2) Canada shall make all reasonable efforts to develop and introduce replacement legislation for the *SDWFNA* ("Replacement Legislation"), in consultation with First Nations, and to introduce this legislation by December 31, 2022.

(3) The objectives of the Replacement Legislation shall be:

(a) Ensure sustainable First Nation Water Systems, premised upon:

(i) Defining minimum standards of water quality for First Nation Water Systems, with reference to standards that are directly applicable to First Nation communities, and;

(ii) Defining minimum capacity standards for the delivery of water to First Nation communities, in terms of volume per individual community member;

(b) Create a transparent approach to building, improving, and providing drinking water and wastewater services for First Nations;

(c) Confirm adequate and sustainable funding for First Nation Water and Wastewater Systems; and,

(d) Support the voluntary assumption of water and wastewater infrastructure by First Nations.

(4) Notwithstanding Canada's commitment to introduce the Replacement Legislation, Canada shall support the development of First Nations governance initiatives as described in Article 3.04, below.

3.04 **First Nations Advisory Committee**

(1) Canada shall provide twenty million dollars ($20,000,000) in funding through the 2025/2026 Fiscal Year for the creation of the First Nations Advisory Committee on Safe Drinking Water ("FNAC").

(2) The FNAC's membership shall reflect Canada's diversity of First Nation Class Member communities, languages, genders, geographies, skills, expertise, and experience with water insecurity.

(3) The primary functions of the FNAC shall be to:

(a) Work with First Nation Class Members to provide oversight, guidance, and recommendations to Indigenous Services Canada to support the development and implementation of forward-looking policy initiatives, including, without limitation:

(i) The development of Indigenous Services Canada's Long Term Strategy for Water and Wastewater on First Nation Class Member's Reserves;

(ii) The development of the Replacement Legislation.

(b) Contribute strategic advice and perspectives to Indigenous Services Canada in order to advance the long-term sustainability of safe drinking water in First Nation communities; and,

(c) Support the identification and prioritization of funding for water and wastewater in First Nations communities.

(4) The terms of reference for the FNAC shall be developed jointly by the Parties.

3.05 **First Nations governance initiatives**

(1) Canada shall make available nine million dollars ($9,000,000) in funding for First Nations to pursue governance initiatives and by-law development through the 2025/2026 Fiscal Year (the "**Water Governance Fund**").

(2) The funding for the Water Governance Fund shall continue through the stated period, regardless of whether the Replacement Legislation is enacted within the anticipated time frame or at all.

(3) The Water Governance Fund shall assist First Nation Class Members that wish to develop their own water-related governance initiatives, including for research, technical advice, by-law drafting, and the implementation of pilot projects in First Nation communities.

(4) The terms of reference for the Water Governance Fund shall be developed jointly by the Parties.

3.06 **Agreement on required measures**

(1) Canada shall promptly consult with each First Nation Class Member that gives notice to Canada that the Commitment is not met or ceases to be met (each an "**Underserviced First Nation**") with a view to meeting the Commitment.

(2) Canada shall make all reasonable efforts to reach an agreement with the Underserviced First Nation detailing the steps that are required to meet the Commitment (a "**Remediation Agreement**").

(3) Canada and the Underserviced First Nation shall comply with the Remediation Agreement.

3.07 **Dispute resolution for required measures**

(1) If Canada fails to reach a Remediation Agreement with an Underserviced First Nation after six (6) months, Canada and the Underserviced First Nation shall each submit their proposed form of Remediation Agreement to a dispute resolution process (the "**Commitment Dispute Resolution Process**").

(2) The Commitment Dispute Resolution Process shall be developed jointly by the Parties, and it shall incorporate Indigenous dispute resolution practices.

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SCHEDULE "A"

Long-Term Drinking Water Advisory Action Plan: Bi-Weekly Status Update

Updated: June 25, 2021

Long-term DWA Progress Since November 2015

Region	LT DWAs in effect	No. of Communities affected by LTDWAS	LT DWAs added since Nov. 2015	LT DWAs lifted since Nov. 2015	No. of LT DWAs Deactivated since November 2015	DWAs that have been in effect for 2-12 months	Lifted DWAs that had been in effect for 2-12 months
ATL	0	0	1	1	0	0	0
QC	0	0	5	3	0	0	3
ON	44	26	61	59	3	3	54
MB	2	2	31	16	0	1	15
SK	5	4	42	27	2	3	49
AB	0	0	1	1	0	0	86
BC	0	0	2	10	0	1	10
YK	0	0	0	0	0	0	0
Total	52	32	77	102	5	9	117

Legend

LT DWAs with Other Considerations

ST DWA expected to become long-term

DWA lifted since last report

Long-Term Drinking Water Advisories in Effect on Public System on Reserve

*Number of homes and community buildings affected are estimates and should be confirmed before being used in reporting.

**New target dates are rough estimates only and subject to change as impacts from the pandemic evolve. Target dates will be re-assessed as projects progress.

Region	First Nation	System Name	Date Set (YYYY/MM/DD)	Date Advisory Became a Long-Term DWA (YYYY/MM/DD)	Number of homes affected*	Number of community buildings affected*	Issue	Corrective Measure(s)	Current Status	Target Date**
ON	Bearskin Lake	Bearskin Lake Community Centre/Youth Centre Semi-Public Water System (#17218) *Do Not Consume Since March 2006*	2006/03/21	2007/03/21	0	1	Uranium levels exceed Ontario guidelines.	Long-term: Major plant upgrades, extension of piped network Short-term: Truck to cistern at the community centre	- First Nation has agreed to interim solution (installation of cistern at community centre); project approved - Restrictions limited implementation of interim solution - ISC officials advised by Council Jan 18, 2021 that new cistern was installed at arena; delivery of cistern for Youth Centre delayed; equipment delivered Feb 2021 - End of March 2021, contractor advised 50% of plumbing work completed; Contractor recommended 37500 tank, rather than three 1,100L tanks (smaller tanks to be used as replacements for cisterns served by truck-haul); Project Management Team (PMT) agreed - April 2021, new tankage on-site; at request of community, contractor postponed mobilization to May 12, 2021; Contractor mobilized to site on June 8, 2021, work on the water system expected to begin the week of June 14, 2021; Contractor advised work to require 7 to 14 days to complete - Regional officials continue outreach, respecting community's other priorities including public health through pandemic - Long-term solution total project estimated at over $60M to address water, wastewater and servicing recommendations; currently an unfunded project estimated at 3 - 4 years to complete, discussions in April / May 2021 with community leadership agreed on multi-phase approach: PMT, with Windigo Tribal Council as lead, working to develop approval documentation for detailed design of WTP upgrades and wastewater lagoon with aim to begin design activities in 2021-2022 - Operational supports provided to community through ISC funded Hub being delivered by Windigo Tribal Council	2021/07

ON	Beerskin Lake	Beerskin Lake Nursing Station Semi Private Water *DWA since February 2020*	2020/02/26	2021/02/25	0	1	Groundwater well with no treatment or disinfection	Long-term: Installation of a treatment system for the building Short-term: n/a	- Beerskin Lake declared a State of Emergency due to COVID-19 with subsequent restrictions on travel into the community - An initial meeting between ISC and Windigo Tribal Council occurred July 28, 2020. Windigo worked with the community to develop a proposal for assessment of the wells, design of an appropriate treatment system, and on-going maintenance/monitoring - ISC working with the First Nation and Windigo Tribal Council Water Hub for the design, installation and operation of a stand alone water treatment system for the Nursing Station and Residence - ISC received funding submission from First Nation that outlines scope, schedule and cost of proposed project; funding has been approved and Windigo First Nation's Council advised ISC officials that an engineering firm has been engaged to begin work to define the treatment system for the existing groundwater source; project schedule to come - PMT has been established; funding has been provided; Windigo emailed the Chief on April 12th to confirm approval for project kick-off, on May 5, 2021 ISC was informed community had provided consulting engineer authorization to proceed; Consultant working with PMT to make arrangements to mobilize to community to complete site assessment; On-site assessment scheduled for June 17, 2021; revised project schedule will then be developed - Local WTP operator providing support to complete raw water quality testing - Challenges with coordination and communication continue	2021/09
ON	Chippewas of Nawash	Cape Croker Public Water System *DWA since January 2019*	2019/01/21	2020/01/21	364	20	System does meet minimum treatment requirements	Long-term: New treatment plant and distribution system extension Short-term: Rejected by First Nation	- Long-term: 99% design submission of distribution work received. 99% design of treatment that was expected July 2021 has been received by ISC and is under review; treatment supplier selected, evaluation of pre-qualification for General Contractors for distribution completed, pre-qualification for General Contractors for WTP underway - First Nation requested scope of project be expanded to extend distribution system and fire flows beyond ISC LOSS and approve funding to support; discussions with First Nation to bring project scope in-line with ISC LOSS held; ISC met with community Jan 2021, cost estimate increased from $10M to $63M - 99% Design submission for distribution was submitted to ISC on March 19, 2021, has been reviewed and comments issued - ISC and Chief met Feb 2021 to discuss First Nation's request for ISC to approve new TEC of $63M and fund all components of project that are outside LOSS; follow-up meeting occurred where community advised that they would support a partial cost-share for scope outside of LOSS, community has indicated can contribute $700,000 - Revisions to Change Request based on Tier 1 national review, and revised cost estimates from consulting engineer, shared with community and endorsed; Regional officials have submitted for approval consideration; Project scheduled to be presented in June 2021 - Interim containerized plant investigated; initially First Nation opted not to pursue, but then agreed to implement, First Nation provided ISC with formal correspondence on August 17, 2020 confirming their request to forgo interim solution to apply funding to long-term project	2023/10
ON	Deer Lake	Deer Lake Public Water System *DWA since October 2019*	2019/10/15	2020/10/15	225	3	Inconsistent sampling	Long-term: To be determined through feasibility study Short-term: Improved operations and monitoring	- DWA in place due to operational inconsistencies, operators must submit 4 weeks of bacteriologicals samples to EPHO before conducting back-to-back samples for laboratory analysis - Community receives operational support through ISC funded Hub delivered by Keewaytinook Okimakanak (K/O) Tribal Council - ISC senior officials met with Chief and Council Sept 17 & 24, 2020 to encourage improved operations - Hub provided training to operators in sampling techniques, Hub reported water quality monitoring and other operational duties improved in Jan 2021, in Feb 2021, water quality monitoring not completed with needed frequency - K/O Hub advised ISC officials on May 12, 2021 there are no technical issues in the short-term; filter media and flow control valve successfully replaced; testing on April 29, 2021 showed plant producing water meeting applicable guidelines; sampling/testing must occur weekly to be in compliance; on-going operational issues - ISC working with community to advance feasibility study for long-term needs; funding for this and immediate repairs to existing system (filter media replacement) approved by ISC Dec 2020; competitive procurement for feasibility closed; proposal evaluations completed and consultant selected April 2021; kick-off meeting held April 30; Background/Needs Report expected to be delivered in July 2021 - ISC regional officials working with Hub to discuss with community need for monitoring and to offer support	TBD

ON	Sabaskong First Nation	Sabaskong Public Water System (#7132) *DWA since August 2001*	2001/08/01	2003/08/01	267	12	Treatment process and distribution system are unreliable and do not meet guidelines	Long-term: Expansion and upgrades to water treatment plant Short-term: N/A	- Expansion, upgrades, commissioning complete - MECP inspection Oct 2019; operational deficiencies addressed - First Nation requested funding for additional WTP work and to clean existing wastewater system prior to lifting DWA; Funding approved Oct 2020, work remains outstanding due to supply chain challenges - Warranty inspection Nov 16th, 2020; portions of wastewater work completed prior to Jan 2021, restrictions due to COVID hindered work; Contractor has advised that scheduling to address final deficiencies (bag breaker, hoist, minor civil works) will occur week of June 14, 2021 - Sampling shows 4 quarterly THM and HAA results in 2020-2021 below MAC for quarterly average - Matawa EPHO advised May 7, 2021 that back to back samples and resolution of operational issues needed before recommendation will be issued - O&M funding raised as an issue in Jan 2020; First Nation intended to operate for 1 year prior to lifting, has requested 100% O&M funding; community has not shared findings of O&M costs; correspondence from ISC to Chief and Council issued Dec 2020 - Meeting March 29, 2021; community open to outside workers; regular PMT meetings occurring; meeting held May 10, 2021 to discuss wastewater issues, tied to LTDWA remarks; First Nation preparing funding submissions to initiate a study/assessment - Contractor for wastewater cleaning work advised materials/equipment scheduled to arrive April 23, a status update has not been shared with ISC - Correspondence from Chief to ISC indicates interest in resolving LTDWA once a plan to address operations and construction deficiencies is established - Due to sewage system issues, WTP is intermittently shut down to control WW flow; community requested provision and reimbursement for bottled water. ISC has approved funding to support bottled water provision for 2021-2022 - Operational supports being provided through ISC funded Hub being delivered by Matawa Tribal Council	TBD
ON	Marten Falls	Marten Falls Public Water System (#7135) *DWA since July 2009*	2009/07/10	2009/07/10	91	6	Treatment system produces water that does not meet guidelines	Long-term: Treatment system replacement at existing plant and upgrades to facility Short-term: N/A	- Construction complete March 2019; third round of commissioning successfully completed June 2019 - Distribution system flushing completed July 2019 - MECP assessment report (July 2019) identified operational deficiencies, issues addressed Nov 2019 - Sampling meets requirements, however UR not set recommended by Matawa EPHO - EPHO advised four sets of quarterly samples for THM and HAA testing (Aug, Oct and Dec 2020, Feb 2021) were within applicable regulatory limits; well below running quarterly average MAC - Warranty inspection completed, as of March 29, 2021, all WTP deficiencies confirmed as addressed; completion report submitted March 19, 2021 - Jan 2021 Chief advised letter outlining community's concerns with respect to O&M, operations, and Asset Management Approach forthcoming - Meeting held April 22, 2021 where the Chief advised of letter issued to Minister dated April 8, 2021 seeking commitments for: a) 100% O&M based on actuals, b) an asset management system, c) Matawa's proposal for 24/7 Operations by Hub - In correspondence from Matawa EPHO dated Mar 9, 2021, First Nation was advised DWA would remain until two consecutive bacteriological water samples taken 24 hours apart comply with applicable requirements; sampling has not occurred and likely not to occur until concerns of Chief and Council with respect to O&M funding, Asset Management Approach and operations are addressed - Operational supports provided through ISC funded Centralized Water and Wastewater Hub delivered by Matawa Tribal Council	TBD
ON	Mishkeegogamang	Mishkeegogamang Ten Houses Systems (6A) (#7139) *DWA since June 2018*	2019/06/30	2020/06/30	87	3	Treatment system does not meet requirements for GUDI. Operation and maintenance issues.	Long-term: New water treatment plant Short-term: Upgrades to treatment system	- **Interim** - New UV system completed Nov 2020 - EPHO advised 4 weeks of sampling needed to confirm safety, ORO supporting operators, operational challenges persist - EPHO sampled Jan 25, 2021, adverse results for manganese Feb 2, 2021, OFNTSC actively involved - Feb 2021, COVID delayed Hub's on-site support, operational challenges continue - Chief advised staff March 2021 of importance of regular monitoring; OFTNSC reiterated willingness to work directly with local operators - Operational supports through ISC funded Hub delivered by OFNTSC; ORO returned to site week of April 26, 2021 for two week period - May 5, 2021, ORO confirmed testing showed conformance for manganese; ORO reported improved water monitoring practices with 3 rounds of in-house bacteriological testing completed; May 17, 2021 ORO reported that through tweakd to the treatment system, very good results achieved. ORO plans to return to site on June 7, 2021 - May 28, 2021 EPHO reported that with oversight, taxi results submitted for 5 weeks - June 1, 2021, ORO reported regular bacterial samples not being taken as required - **Long-Term** - Design phase of long-term WTP upgrade complete, TEC escalated from $5.75M to $8M; First Nation received funding approval for construction phase, competitive tendering for construction complete; all bids exceeded approved project budget, ISC approved funding to support new TEC $11.2M - Construction phase underway, expected completion fNovember 2021; construction reported on-schedule	2021/07

ON	Mississaugas of Scugog Island First Nation	Scugog Community Water System 1 Public Water System (#13899) *DWA since October 2008*	2008/10/23	2009/10/23	9	0	Treatment systems do not meet requirements for GUDI	Long-term: New treatment plant, elevated storage and distribution system Short-term: N/A	- Construction of new wells and treatment plant, elevated storage, pumphouse upgrades, and distribution system complete; minor landscaping and other deficiencies were expected to be addressed spring 2021 - EPHO engaged and commissioning complex meet contractual requirements - Final inspections of WTP and Distribution contract are underway, several civil deficiencies remain (landscaping, etc.) and action plan being developed by contractor to address; warranty period expired May 22, 2021 - First Nation requires 55 homes currently on private wells to be connected to new system before lifting advisory; involves work inside homes; COVID-related delays have been experienced - Meeting with Chief and Council Dec 2020, advised contract awarded for servicing connections to 2 public and 2 semi-public buildings, as well as 55 homes; work was to be completed by Mar 31, 2021. Chief requested ISC funding support for the construction contract of approximately $750,000; ISC approved the additional funding - Construction delays due to COVID restrictions; Chief and Council postponed work until February 11, 2021 due to safety concerns about work inside homes; PMT meeting held Feb 24, 2021 to confirm start-up schedule and health and safety parameters; work was not expected to be completed until July 2021 - Construction has begun with contractor conducting directional drilling at various properties in the community and installing water service connections to curb stops - April 22, 2021 Chief and Council advised contractor that due to Provincial COVID restrictions, no work can be performed in homes until stay-at-home lockdown lifted; due to previous contractual commitments, contractor's return to site will not occur until August 2021 - Operational supports are being provided through the ISC funded Centralized Water and Wastewater Hub being delivered by the Opemawahi Tribal Council	2021/09
ON	Mississaugas of Scugog Island First Nation	Scugog Community Water System 2 Public Water System (#13900) *DWA since October 2008*	2008/10/23	2009/10/23	6	0				2021/05
ON	Mississaugas of Scugog Island First Nation	Scugog Band Office Semi-Public Water System (#17224) *DWA since October 2008*	2008/10/23	2009/10/23	0	1				2021/09
ON	Mississaugas of Scugog Island First Nation	Scugog Health Centre Semi-Public Water System (#17225) *DWA since October 2008*	2008/10/23	2009/10/23	0	1				2021/09
ON	Mnaamjigaming	Mnaamjigaming Public Water System *DWA since May 2020*	2020/05/15	2021/05/15	49	5	Shutdowns required to support construction work to upgrade the facility	Long-term: Upgrades to treatment and disinfection processes, structural improvements to building, electrical and mechanical upgrades Short-term: n/a	- DWA in place to support shut-downs needed for upgrades, including filter media replacement - DWA remained in place due to challenges operating with one treatment train; issues with distribution system resolved - Upgrades to plant and treatment processes continue; filter media replaced and biological layer on new slow-sand filter media developed - Jan 21, 2021 PMT meeting: contractor advised of further delay as equipment/materials tied up at Canada/USA border, awaiting clearance for entry into Canada - Feb 23, 2021 contractor attempted start-up, however several components required additional adjustment; Contractor worked with sub-contractors to complete adjustments, and planned to execute start-up procedure on March 23, 2021. - Consultant advised that start-up activities were unsuccessful, as SCADA sub-contractor did not have system programmed and ready; start-up was scheduled for April 26, 2021 however further issues with U/V systems were identified and parts required had not yet arrived on site, start-up attempt on May 8, 2021 unsuccessful as analyzers not functioning as designed, restart occurred on May 11, 2021, but also unsuccessful - Restart occurred week of May 17, 2021, however performance test failed as ozone system did not meet requirements for maximum design flow; work underway on-site to address performance issues; as of June 10, 2021, PMT advised that contractor continues to work to address issues with the ozone generator; no timeline provided for the work to be completed and for start-up and performance testing to be re-started; PMT meeting has been scheduled for week of June 14, 2021 - Operational supports provided to community by ISC funded Centralized Water and Wastewater Hub delivered by Pwi-Di-Goo-Zhing Tribal Council	TBD - Project schedule not defined

ON	Mohawks of the Bay of Quinte	All MBQ Semi-Public Water System (#17216) *DWA since June 2008*	2008/06/06	2009/04/06	64	6	Groundwater supply at risk of contamination	Long-term: Upgrades to Deseronto water treatment plant, water main extension and water tower (Phase 2), water main extension (Phase 3) Short-term: N/A	- First Nation considers all affected systems as one system - Deseronto plant upgrades meet MTSA requirements - Phase 2 water main extension and water tower complete; system commissioned Nov 10, 2020, work has been completed - Phase 3 tender for construction closed Sept 2020, one bid received and exceeded approved budget by approx. $8M, First Nation PMT considered scope reduction and delay of construction until Spring 2021, negotiations reduced costs by approximately $1M - Oct 2020 MBQ advised delays impacting MTO Skyway Bridge Rehabilitation Project and requested project advance with securing ISC funding approval for phase 3 at tender price - ISC approved full scope and costs for project; contract awarded; construction underway - Work will fulfill requirements needed to lift all five advisories affecting community - First Nation concerned private wells adjacent to Lake Ontario not serviced by Phase 3 or Infra Canada project; ISC officials working with community to identify solutions - First Nation concerned about soil contamination (fuel) found on construction route; contractor to install watermain with insulating plastic wrapping around pipe where contamination exists - Week of May 24, 2021, PMT advised that directional drilling under river to extend distribution system failed due to unforeseen ground conditions; Consultant examining options, including suggested option of drilling deeper to learn more about its viability, may require re-design of section of pipe, potential for delays - Consultant/contractor concern on condition of existing Johnson's Lane watermain; project plan includes use of existing watermain with allowance for minor repairs; deficiency report reviewed and based on condition of watermain, replacement likely required, options being evaluated, and PMT working to determine additional project costs; as of June 10, 2021, options analysis continues	2021/09
ON	Mohawks of the Bay of Quinte	MBQ Airport Public Water System (#17227) *DWA since October 2003*	2008/10/17	2004/10/17	10	0	Insufficient disinfection			2021/09
ON	Mohawks of the Bay of Quinte	MBQ Bayview Variety Apartments Public Water System (#27228) *DWA since June 2008*	2008/06/06	2009/04/06	6	0	Groundwater supply at risk of contamination			2021/09
ON	Mohawks of the Bay of Quinte	MBQ Clifford Maracle's Well Public Water Supply (#17229) *DWA since January 2012*	2012/01/20	2013/01/20	unknown	unknown	E. Coli and total coliform are present. Treatment system not being maintained			2021/09
ON	Mohawks of the Bay of Quinte	MBQ Trailer Park Public Water System (#17230) *DWA since June 2008*	2008/06/06	2009/04/06	6	0	Groundwater supply at risk of contamination			2021/09
ON	Muskrat Dam Lake	Muskrat Dam Public Water System (#6502) *DWA since October 2003*	2003/10/24	2004/10/24	68	5	Filtration system inadequate and plant has insufficient capacity	Long-term: Upgrades to filtration and disinfection systems Short-term: N/A	- Upgrades to filtration and disinfection systems complete; commissioning started July 2019; halted March 2020 due to COVID; re-started and completed July 2020 - Sept 2020 EPHO issued letter to Chief and Council recommending resolution of LTDWA - Oct 2020 Chief indicated support for resolution of DWA; October 7 new Chief and Council were elected, following meeting with Deputy Chief on Nov 5th, EPHO re-sent recommendation to resolve DWA to new Chief and Council - Dec 16, 2020, at request of First Nation, ISC discussed resolution of DWA; Chief advised that under previous term (2012-2015) FN wanted a new WTP (and new location) due to risk of contamination from Diesel Generating Station; Chief requested ISC cease to pressure DWA resolution - ISC previously funded project to remediate contaminated soils - Correspondance sent from ISC offering congratulations and support of resolution of DWA; Follow-up by ISC in March 2021, community advised they will contact department when ready - May 28, 2021 EPHO advised ISC test results not received since fall 2020; EPHO recommendation to lift from September 2020 required another round of testing to confirm water meets guidelines - June 7, 2021, 24/7 Technical Support requested by Chief, local operator experiencing issues that required shut-down; operator had been working with treatment supplier to adjust process to accommodate fluctuations in raw water quality; progress was being made, water production restored, however at the request of First Nation, ISC approved on-site support - Warranty phase expires July 27, 2021, ISC requested consultant provide dates for inspection - Operational supports provided through ISC funded Hub delivered by IRHA Tribal Council	TBD
ON	Neskantaga	Neskantaga Public Water System (#7137) *DWA since February 1995*	1995/02/01	1996/01/01	70	8	Treatment system does not meet guidelines; chlorine residual inadequate	Long-term: Upgrade and expansion of existing treatment plant Short-term: N/A	- Due to delays, First Nation terminated contract for upgrades Feb 2019; new contractor hired - Construction completed; First Nation to operate 1 year prior to lifting, requested 100% O&M funding; letter received Feb 2020 outlining requests - Dist. system and WW work required; approved Oct 7, 2020; increase of $4,197,105, revised TEC $16,436,740 - Oct 19, 2020 sheen on reservoir water noted; concluded mineral oil (non-toxic) from pump; distribution system flushed; water sampling confirmed no traces of oil/grease remain - Community evacuated; returned Dec 20, 2020; new system operational since Nov 12, 2020 -Testing Dec 13, 2020; water meets requirements; ISC funding full-time on-site support delivered by DCWA - Work continues on WW issues; new pumping truck to support interim management of WW flows; work on lift station completed, pumps replaced, airlocks flushed; lift station able to pump to lagoon; Consultant recommended replacement of forcemain; funding approved, Bid prices exceeded consultant's estimate and approved budget by $1.34M, Region supports additional cost; contractor hired, replacement forcemain pipe is in community; installation was to start in late May and completed end of Sept 2021 - First Nation in lock-down; all contractors departed except DCWA, as of June 11, 2021, lock-down remains and no work to address wastewater or performance of WTP is being undertaken; June 8, 2021 First Nation advised that a decision on restrictions being lifted is expected by June 11, 2021 - Cost overrun for $4M submitted, increasing TEC from $16.5M to $20M; ISC officials preparing to advance to appropriate approval authorities once any concerns are addressed	TBD

ON	Nibinamik	Nibinamik Public Water System (#7138) *DWA since February 2013*	2013/02/05	2014/03/05	101	5	System is inadequate and does not meet Ontario guidelines. Capacity upgrades required.	Long-term: Upgrade and expansion of the existing plant, and distribution work Short-term: Rejected by First Nation	**Long-term**: Design of plant upgrade and expansion complete; Design changs in Nov 2019 delayed completion - Equipment pre-purchased; construction contract awarded; materials and equipment shipped to site winter 2020 - First Nation closed March 2020 due to COVID-19 - Construction not started, First Nation prioritized diesel plant project on an emergency basis - Options analysis completed by consultant to advance water project construction in 2020; First Nation provided correspondence July 2020 notifying contractor that construction delayed until Spring 2021 due to community access restrictions - ISC issued correspondence Dec 2020 acknowledging First Nation's decision to delay water project by a year, due to COVID-19 and availability of accommodations - Accommodations related materials and equipment mobilized over the 2021 Winter Road - PMT meeting April 20, 2021; contractor to be on-site until May 5 for camp preparation. Construction anticipated to start May 10, 2021 instead of May 19, 2021 - Construction kick-off meeting May 6, 2021, Contractor confirmed foundation construction to begin on May 14 - First Nation in full lockdown in response to COVID and two deaths in community; contractor scheduled to return May 25, 2021, however under direction of First Nation postponed return - PMT met June 7, 2021, First Nation accepted General Contractor's revised COVID-19 protocol and supported resumption of construction; contractor coordinating remobilization to site, target date of June 14, 2021; revised project schedule to follow: - **Interim**: Interim solution previously identified (membrane treatment unit to replace existing treatment) was not accepted by First Nation - Operational supports provided to community through ISC funded Hub being delivered by Matawa Tribal Council	2022/05
ON	North Caribou Lake	North Caribou Lake Public Water System *DWA since March 2020*	2020/03/03	2021/03/03	191	7	System cannot meet demand and does not meet treatment requirements.	Long-term: Plant expansion and replacement of treatment system Short-term: TBD	- Feasibility study for long-term needs for water and wastewater completed; no interim solutions provided; main issue is capacity; difficult to fix due to age and inability to repair due to age of equipment - First Nation completed distribution system leak detection and repair including residential plumbing repairs to reduce consumption; community repaired 3 sections of distribution system; leak detection did not identify further issues; water treatment plant operating 24/7 to produce quantity to meet demands, with distribution repairs executed by community, no longer required to shut-down distribution to allow reservoirs to fill - First Nation requires commitment for unfunded water and wastewater long-term solution in order to consider a potential interim solution for the water treatment plant - Work to advance design of long-term solution for water based on the Feasibility Study's recommendations is underway with approval pending; project documentation has been shared with the First Nation, for their review and endorsement - Interim options identified, recommending rental of containerized treatment system(s), however increasing reservoir storage capacity deemed not technically or financially feasible through an interim solution - Meeting held May 14, 2021, First Nation focused on review of Project Approval Request (PAR) for WTP upgrades; interim solution being considered as separate project, First Nation has not yet confirmed willingness to lift advisory through an interim approach - Comments based on the First Nation's review of PAR received May 26, 2021, Final review by First Nation and ISC underway; Draft PFM and Design consultant ToR shared with First Nation in preparation for next steps - Approval documentation for interim solution is under development	TBD - Project schedule not yet defined
ON	North Spirit Lake	North Spirit Lake Public Water System (#7125) *DWA since April 2019*	2019/04/05	2020/04/05	90	5	Water distribution system leaks; water plant failure and capacity issues. Operation and maintenance issues.	Long-term: Plant and distribution system maintenance and repairs; operational improvements Short-term: N/A	- Difficulty retaining local operators; First Nation hired new uncertified water operator - Hub increased frequency of community visits and remote support - Additional repairs to dist. system, replacement of high lift pumps and installation of a transfer switch for back-up power system required. 3 new high-lift pumps installed October 2020 - Installation of transfer switch for emergency generator/fire pumps delayed due to availability of contractor (result of COVID); contractor mobilized but additional parts required - Work includes: commissioning two chlorine trailer units and fire protection system for community's school, K/O Hub reported automation of 3 high lift pumps and PLC programming completed; distribution system flushing has been delayed - Feb 2021 no access to community due to COVID, April 16, 2021 revised schedule not established, April 28, 2021 community indicated would like feasibility study on long-term solution (plant at end of life), ISC drafted funding submission on behalf of community and shared for review and endorsement May 5, 2021; meeting scheduled for May 19, 2021 rescheduled to May 27 - ISC advised by K/O Hub that week of May 19, 2021 transfer switch and commission back-up generator work completed, ozone generators received and expected to be installed week of May 31, 2021; distribution flushing program scheduled for week of May 31, 2021, ISC has not been provided an update - Wastewater lift stations functioning through work completed by local operators, with tele-support from Hub - K/O Hub advised that they cannot confirm plant is being monitored, testing is not occurring, K/O continues to advise Chief and Council that operational issues need to be addressed	TBD

ON	Northwest Angle No. 33	East Pump house Plant Public Water System (part of Angle Inlet Public Water System) (#7126) *DWA since April 2021*	2011/04/11	2012/04/11	17	3	East Pumphouse: insufficient disinfection.	Long-term: New centralized water treatment plant at Angle Inlet Short-term: N/A	- Interim options to alleviate advisory explored and determined to be neither feasible, nor cost-effective - Design and tendering for new plant complete; equipment pre-purchased and mobilized to site - Community closed in March 2020; construction halted due to COVID-19; limited re-opening in May & construction resumed - Construction continues to progress on WTP; COVID-19 delays resulted in cost increase of $1.2M - March 2021, contractor indicated that they are on-track for July 2021 completion, given that the building had yet to be closed in. ISC regional officials advised there was a high risk that work would not be completed as per schedule - April 12, 2021, contractor issued revised schedule calling for substantial completion in Oct 2021, Contractor cited non-performance of sub-contractors (concrete) as well as other issues not at fault of the First Nation or COVID as reasons for delays; Contractor made aware of contractual terms that outline costs for on-going engineering, project management and First Nation administration are to be covered by the contractor; Contractor advised they are working to identify means by which to accelerate - At April 26 PMT meeting contractor advised of new site safety coordinator and site supervisor, Contract administrator advised that production and on the ground organization has improved - At request of ISC, PMT agreed to institute bi-weekly meetings to support issues management, meetings were previously monthly; PMT meeting occurred June 10, 2021, and project reported to remain on-track to revised schedule - Operational supports are being provided to the community through the ISC funded Centralized Water and Wastewater Hub being delivered by the AKRC Tribal Council, Community working with Hub to train primary operator to advance from Class II to Class III certification, and 2 other candidates to achieve OIT	2021/11
ON	Northwest Angle No. 33	West Pump House Plant Public Water System (part of Angle Inlet Public Water System) (#7126) *DNC since February 2016*	2016/02/12	2017/02/13	unknown	unknown	West Pumphouse: radionuclides above guidelines.			2021/11
ON	Northwest Angle No. 33	Elsie Blackhawk Pump house Public Water System (#17223) *DWA since April 2021*	2011/04/11	2012/04/11	5	0	Does not meet the minimum recommendations for disinfection.			2021/11
ON	Ojibway Nation of Saugeen	Saugeen Health Clinic Semi-Public Water System *DWA since April 2018*	2018/04/26	2019/04/26	0	1	Turbidity levels exceed guidelines.	Long-term: Point-of-entry treatment units on the two wells Short-term: N/A	- Training and physical work to rehabilitate/repair wells completed through CRTP March 2019; sampling showed bacteriological presence - Consultant assessment Nov 2019 recommended new well and treatment units for each affected building; detailed design completed January 2021 - New wells drilled for community buildings in Oct 2020; pumps and plumbing work completed - Testing indicates good quality raw water with slight exceedances for manganese aesthetic objective - Quotes requested from contractors February 19, 2021; contract awarded, equipment and parts on order, contractor advised some materials delayed, supply chain issues hindering schedule of construction work; shop drawings being reviewed by consulting engineer; PMT met week of April 5, 2021; contractor advised work requires 8 weeks to complete - May 13, 2021, contractor has not received materials, suppliers advised delivery expected by end of May - Contractor advised waiting arrival of key materials, including needed tamage that must be installed first, other parts, including a pump are a month overdue, little information on delivery provided by supplier - Contractor confirmed mobilization to site scheduled for June 14 for installation of Health Centre Water System, anticipating to require a week to complete, equipment [chlorine contact tanks] required to complete School and Multiplex point-of-entry systems on backorder and, at best, forecasted to become available mid-to-end of June - Full chemical analysis will be required, along with other testing to resolve the LTDWA - First Nation concerned with residential wells and has sought funding from Investing in Canada - Green Stream program administered by Province of Ontario, First Nation has sought contribution from ISC to support project should they receive approval - Operational supports provided to community through the ISC funded Hub being delivered by OFNTSC	2021/07
ON	Ojibway Nation of Saugeen	Saugeen School Semi-Public Water System *DWA since April 2018*	2018/04/27	2018/04/27	0	1	Total coliform and e-coli present in water from the well			2021/07
ON	Oneida of the Thames	Oneida Public Water System (#7176) *DWA since September 2019*	2019/09/26	2020/09/26	546	22	Treatment system does not meet requirements for GUDI.	Long-term: To be determined through feasibility study Short-term: Interim options to be assessed	- Feasibility study kick-off meeting held Sept 2020; interim option(s) could not be designed and constructed prior to March 2021 - Project cost increases approved to determine long-term viability of current groundwater source; results indicated groundwater well/aquifer cannot meet forecasted demand; - Consultant initiated investigations of connections to municipal systems in area - Consultant advanced investigations into interim solutions; options include rental of mobile membrane system, concerns of wastewater capacity to handle Backwash and significant electrical and mechanical retrofits of existing water treatment facility, interim solution may not be technically or financially feasible - PMT meeting held Feb 3, 2021 to discuss options analysis; consultant advised that municipal connection could be constructed as quickly as an interim solution, First Nation expressed support for municipal connection, there are two municipal connection options, one has potential to support needs for some homes in other nearby First Nation communities, connection to other communities has not been fully explored - Consultant presented options to Chief and Council Feb 2021 to determine preference on two connection options, gauge interest in interim solution; details of discussion and outcomes not shared with ISC - Through conversations with community project representatives, ISC advised that Chief and Council are leaning toward an MTSA solution; First Nation reviewing Final Feasibility Study, May 26, 2021 shared with ISC; technical reviews underway and comments expected to be issued by June 18, 2021 - ISC working to schedule meeting to advance project; follow-up continues	TBD - Project schedule not yet defined

ON	Sachigo Lake	Sachigo Lake Public Water System *DWA since October 2018*	2018/10/19	2019/10/19	193	5	Water treatment plant tank is leaking; safety of the water cannot be guaranteed	Long-term: Expansion of existing plant Short-term: Installation of new treatment units in existing plant as early as possible	- Long-term solution: expansion and upgrade of existing WTP; shipped via 2019 winter road - Interim solution: install one treatment train early in existing plant - initially supported by First Nation; installation of equipment and upgrades to existing facility to be completed under one contract for cost-savings - Restricted access in March 2020 due to COVID-19; August 19, 2020, First Nation supported return to site; negotiated with contractor, including delay claim costs - WTP contractor on-site Nov 24, 2020; commissioning of interim treatment train was priority; membranes damaged during idle time - First Nation, under advisement from Hub, informed PMT that LTDWA cannot be resolved until second treatment train installed - EPHO advised exceedances of manganese MAC from new treatment train; unit functioning as designed; with support from ORO, pH adjustment effective to manage seasonal manganese - Samples sent to lab; several performance parameters not met; unit's production into distribution on-hold; caused delays to decommission old treatment unit in order to install second train; May 5, 2021 PMT meeting, contractor advised that treatment supplier has solution to manganese and pH issues; work continued to address - May 25, 2021, contractor issued new schedule for DWA to be resolved in Sept, due to delays with operation of 1st treatment train; substantial completion of WTP upgrades and expansion Feb 2022. - Contractor submitted samples from new treatment train for testing and awaits results; if requirements met, water from new unit will be diverted to reservoir for distribution, decommissioning of existing treatment unit will begin; First Nation supports this approach - Installation of water/sewer pipe upgrades/extensions temporarily suspended due to reports of an unmarked burial site; forensic team on-site June 9, 2021 to investigate - Operational support provided through ISC funded Hub delivered by Windigo Tribal Council	2021/09
ON	Sandy Lake	Sandy Lake Public Water System (KTFN) *DWA since October 2002*	2002/10/19	2007/10/19	400	15	System is inadequate and does not meet guidelines. Capacity upgrades required.	Long-term: Water treatment plant upgrades and expansion Short-term: Repairs and optimization of the plant, repairs and cleaning of distribution system, operational improvements	- Interim solution (repairs and optimization of WTP and distribution system) complete; additional repairs completed July 2020 - Operational challenges preventing EPHO from recommending lift: - OFNTSC Hub providing support to prepare operators for upgraded facility - Chief indicated lifting DWA is priority; Dec 11 operators advised want to complete monitoring with support from OFTNSC; ISC letter week of Dec 14, 2020 encouraged use of supports to improve operations - Construction of long-term solution began Jan 2020; access restrictions due to COVID March 2020, contractor re-mobilized Sept 2020; completion date of long-term project revised to June 2021 (COVID impacts) - Construction resumed, production slowed due to COVID; materials for construction mobilized to community via winter road network, except a load of fuel; contractor working to make arrangements for air freight of fuel - OFNTSC advised staff can enter community, rapid test with negative result required prior to flying via charter and isolation prior to working; OFTNSC advised these protocols limit ability to deliver approved level of service; April 13, 2021 OFNTSC received permission to mobilize to community in June 2021 , no update yet on whether Hub has mobilized to the community. - PMT meeting April 27, 2021, First Nation advised no changes to COVID protocols; Contractor advised of 2 week delay as result of COVID and cold weather, contractor working to restore schedule throughout remainder of project - At May 25, 2021 PMT meeting contractor issued a revised schedule; calling for 3 week extension; Consultant and PMT completing analysis against contractual obligations; First Nation confirmed no changes to COVID mitigation protocols, and that an agreement with OFTNSC has been signed to deliver Hub support to local operators; as of June 11, 2021, construction of long-term solution continues as planned and on schedule - Operations and monitoring remain inconsistent	2022/07

ON	Shoal Lake No. 40	Pump house No. 1 Public Water System (#6594) *DWA since February 1997*	1997/02/18	1998/02/18	15	1	Treatment processes are inadequate and produce water that does not meet guidelines	Long-term: New centralized water treatment plant and distribution system Short-term: N/A	- Detailed design from 2010 was updated to ensure it meets current regulatory requirements and community's long-term needs - At request of First Nation, project was included in the Indigenous Specific Tendering Pilot Project, which enabled competitive procurement of an Indigenous-owned qualified contractor - Construction underway, with below grade reservoirs constructed, blasting and trenching for new distribution piping and raw water intake complete, as well as marina linac, filter beds placed, masonry work underway, building closed in and biological layer on filter media developing. Electrical and mechanical work inside plant underway. Contractor schedule calls for start-up and performance testing be completed by end of June 2021 - First Nation supports the project with strict COVID-19 health and safety precautions in place, which has slowed progress, and contractor has advised of a minor project delay pushing completion to July 2021 - At February 26, 2021 PMT meeting community raised concerns with the ability of septic systems at some homes to handle the increased usage anticipated; assessment and options being explored by First Nation and their consulting team to develop an action plan; First Nation has received funding approval through ICIP-Greenstream to support upgrades to septic systems - Construction meetings held monthly; at PMT meeting May 19, 2021 contractor advised of potential schedule slippage as motor control systems did not function upon delivery; if not corrected by manufacturer in timely manner planned commissioning for mid June 2021 will be delayed; Consultant and contractor working to identify options to complete other work to keep critical path somewhat on-track; next meeting scheduled for June 23, 2021 where any schedule changes will be more fully known - Operational supports provided through the ISC funded Hub being delivered by the Bimose Tribal Council	2021/07
ON	Shoal Lake No. 40	Pump house No. 2 Public Water System (#17125) *DWA since February 1997*	1997/02/18	1998/02/18	15	1				2021/07
ON	Shoal Lake No. 40	Pump house No. 3 Public Water System (#17126) *DWA since February 1997*	1997/02/18	1998/02/18	28	3				2021/07
ON	Shoal Lake No. 40	Pump house No. 4 Public Water System (#17127) *DWA since February 1997*	1997/02/18	1998/02/18	8	4				2021/07
ON	Shoal Lake No. 40	Pump house No. 5 Public Water System (#17128) *DWA since February 1997*	1997/02/18	1998/02/18	10	0				2021/07
ON	Shoal Lake No. 40	Pump house No. 9 Public Water System (#17129) *DWA since February 1997*	1997/02/18	1998/02/18	10	0				2021/07
On	Shoal Lake No. 40	School Pump house Public Water System (#17217) *DWA since February 1997*	1997/02/18	1998/02/18	15	0				2021/07
ON	Washagamis Bay	Washagamis Bay East Public Water System (#6532) *DWA since December 2008*	2008/12/19	2009/12/19	34	2	Poor groundwater quality, insufficient treatment, inadequate capacity	Long-term: New treatment plant and distribution system upgrades Short-term: New wells and interim repairs to plant, distribution system cleaning and repairs	- New wells drilled, interim plant repairs complete, plant producing potable water - Dirt system cleaning complete, damage from pressure testing occurred, repairs completed - Intake work to address quantity issues completed - Work halted due to community lock-down Oct 1, 2020 (confirmed COVID case), lock-down lifted Oct 6, 2020 - EPHO sampled week of December 14th and provided recommendation to lift LTDWA on January 4, 2021 - Sodium levels in treated water slightly elevated, causing concern for community - EPHO provided information session to Chief and Council, Chief advised ISC that community will not accept recommendations to resolve the DWAs until the long-term solution is completed - Construction of long-term solution (new WTP) underway, First Nation worked with contractor to establish COVID-19 protocols that allow construction activities to continue - Contractor has advised of schedule delay, start-up and commissioning scheduled for May with training and sampling to follow; full chemical analysis required and will be coordinated by contractor, KCA EPHO will coordinate bacteriological sampling following commissioning, and is actively involved in project team discussions - Commissioning had been planned for May 17, 2021, Consultant informed by contractor that performance and commissioning delayed as a result of issues with SCADA programming and backwash reject tank pump failures; revised schedule yet to be issued - At PMT meeting held June 9, 2021, contractor advised that start-up procedures were scheduled to begin on June 11, 2021 - Community has hired two operators from Bimose Water First initiative (working with construction team and trying to achieve OIT certification). Community also receives operational supports through ISC funded Bimose Hub	2021/07
ON	Washagamis Bay	Washagamis Bay West Public Water System (#17132) *DWA since December 2008*	2008/12/19	2009/12/19	6	0			- Interim solution (pumphouse upgrades) complete - Sampling and testing lift plan developed in collaboration with EPHO - EPHO collected samples on June 2, 2020, chlorine residuals not within required parameters - Corrective measures have been completed - Kenora Chiefs Association (EPHO collected samples for testing July 23 and 24, 2020; testing showed water meeting all regulatory requirements and a letter was issued on August 12, 2020 by the EPHO to Chief and Council recommending resolution of the DWA at this system; Chief and Council deferred acceptance of the recommendation until the East System is also producing safe drinking water - Long-term solution and operator support as above for the East system	2021/07

MB	Shamattawa	Shamattawa Public Water System (#6601) *DWA since December 2019*	2019/12/06	2019/12/06	163	14	Plant beyond lifecycle and capacity upgrades required. Operation and maintenance issues.	Long-term: Upgrade / expansion of plant Short-term: Interim repairs and operational improvements.	- Repairs to plant completed; work on hold due to COVID, resumed April 23, 2020 - Enhanced operator support through CRTP, two back-up operators being trained - issues at control panel on Sept 8; raw water pumps stopped causing reservoirs to empty; Hydro capacity for community an issue. CRTP repaired control panel, water throughout distribution system with adequate chlorine residuals - issues with wiring to some valves; CRTP, EPHO and contractor addressed electrical/pressure loss at nursing station Oct 2020; 11 defective shut off valves at station were replaced; pressure and chlorine residual acceptable Dec 4, 2020 - Low chlorine residuals persist whenever main operator is absent; Jan 2021, Chief wanted to start process to lift; FNIHB advised Chief that DWA should remain in place until 2 consecutive samples confirm equity and ensure adequate residuals in distribution system - CRTP in community Feb 19 to work with operator; met with Chief to discuss importance of having trained and committed back-up operators; contractor returned to community Feb 18; valves and pumps installed, problems continue with a modulating valve and a water line break needs to be located and repaired; samples indicate issues with chlorine residual persists - CRTP in community April 21 to 29; several leaking hydrants and burnt house where water not shut off identified, CRTP has identified individual interested in working in WTP; chlorine residuals remain an issue in the distribution system - Work began on long-term solution, construction of major upgrades, expansion and new intake to WTP to be completed Fall 2022; target date updated to align with long-term solution given on-going issues with existing plant	2022/09
MB	Tataskweyak Cree Nation	Tataskweyak Cree Public Water System (#6602) *DWA since May 2017*	2017/06/17	2018/05/17	881	5	First Nation issued advisory due to contamination concerns during spring flooding, not based on EPHO recommendation	Long-term: Upgrades to water treatment plant (filtration and UV), Source water assessment and THM study; update to feasibility study underway for longer-term solution; design and construction of a pipeline to source water from Assean Lake Short-term: N/A	- Water quality meets guidelines; repairs and upgrades completed to enhance treatment; source water study completed in January 2019, recommending Assean Lake as the preferred source and an upgrade to the treatment plant; extra THM study completed - Letters provided to First Nation regarding good quality of water (most recent sent Feb. 2019) but First Nation has not lifted - Funding being provided for bottled water and to conduct further assessment of current source water with respect to cyanotoxins; Cyanotoxin assessment goes beyond testing requirements of Canadian guidelines and provincial regulations - A source water study has been completed and an update to the 2019 feasibility study is being contracted to assess the options to meet the community's long-term drinking water needs; following the feasibility study, the project to source water from Assean Lake will proceed to design and construction - ISC is committed to funding design and construction of pipeline to source First Nation's water from Assein Lake	TBD
SK	Little Pine	Little Pine Public Water System *DWA since November 2018*	2018/11/14	2019/11/19	469	10	Plant is in poor condition and beyond its lifecycle Operation and maintenance issues.	Long-term: Upgrade water treatment plant Short-term: Repairs to plant; operational improvements.	- Short-term repairs to bring system back into proper operation are complete, plant is producing adequate supply of safe drinking water - In early August 2020 E.Coli was reported in one of the raw water wells; the affected well was super-chlorinated on August 10th, 2020 - Initially there were some water supply issues; however, some wells were serviced and two wells have been drilled and connected - First Nation is currently without a certified operator; ISC Regional office will be working closely with the First Nation to secure another operator. In the meantime CRTP trainers will be providing support; operator is experiencing difficulty completing the necessary training due to the COVID-19 pandemic; DWA is expected to remain in place until the operator is certified; operator training continues - Design of long-term solution underway, tendering to close end of June, with construction expected to begin in July 2021; long-term solution is not required in order to address advisory, but First Nation may not be receptive to lifting the LT DWA prior to completion of the long-term solution; ISC working to provide assurance to First Nation that construction of the long-term solution will continue; Project Brief was signed on September 1, 2020	2031/08
SK	Peepeekisis	Peepeekisis Main Public Water System (#6603) *DWA since February 2015*	2015/02/05	2016/02/05	174	10	Treatment processes for both systems require maintenance and upgrades. Operation and maintenance issues.	Long-term: Upgrade water treatment plant; expand distribution system Short-term: Repairs complete, EPHO has recommended advisories be revoked	- Repairs complete, lift recommended in July 2018, but First Nation reluctant to lift advisory until long-term upgrades to WTP complete - ISC offered to cost share a low-pressure distribution system to date First Nation has not agreed to this approach - Construction of long-term upgrades is substantially complete and the upgraded water treatment plant is producing potable water and is now servicing the community	TBD
SK	Peepeekisis	Peepee Well (#17366) *DWA since April 2015*	2015/04/10	2014/04/10	9	0				TBD

Short-Term Drinking Water Advisories on Public Systems Financially Supported by ISC (i.e. Advisories that have been in effect for 2 to 12 months)										
Region	First Nation	System Name	Date Set (YYYY/MM/DD)	Date Advisory Could Become a Long-Term DWA (YYYY/MM/DD)	Number of homes affected*	Number of community buildings affected*	Issue	Corrective Measure(s)	Current Status	New Target Date**
ON	Big Grassy	Big Grassy Public Water System *DWA since March 2021*	2021/03/09	2022/03/09	30	7	Water loss and distribution pressure loss	Long-term: Upgrades and expansion to existing treatment plant Short-term: n/a	- Community experiencing challenges with current plant, and have experienced 3 DWAs in the past 10 months; current DWA due to pressure loss in distribution, suspected leak - Leak detection completed, and addressed, however other issues as a result of upgrade work and tie-in of new treatment equipment and systems continues to present unforeseen challenges in maintaining safe drinking water production - First Nation leadership has decided to keep the DWA in place until upgrades and expansion project is completed, under construction since March 2020 - Contractor schedule calls for substantial completion in August 2021, with commissioning planned to commence on July 5, 2021 - PMT meetings occur monthly, with most recent on May 21, 2021, and next scheduled for June 15, 2021, at May PMT meeting contractor advised that supply chain challenges for variable frequency drives (VFD) and motor control centre (MCC) are affecting critical path; start-up of new filter train planned for June 21, 2021, pending receipt of back-ordered MCC - Operational issues exist and the First Nation has advised that they are working on a succession plan with aim to have new operators hired in time for commissioning - Operational supports being provided through ISC funded Centralized Water and Wastewater Hub being delivered by the AKRC Tribal Council	2021/08
ON	Mishkeegogamang	Ace Lake Public Water System *DWA since September 2020*	2020/09/08	2021/09/08	unknown	unknown	Treatment system does not meet log removal requirements; inadequate sampling and testing	Long-term: Upgrades to treatment system Short-term: n/a	- Boil water advisory in place as treatment system does not meet log removal requirements; water quality information is not supported by adequate water sampling and testing routines - Long-term design of upgrades to treatment system completed as part of the Mishkeegogamang Ten Houses Systems project - Current construction schedule identifies upgrades to be completed by July 2021. ISC officials have requested an updated schedule from the contractor to be issued; contractor provided updated schedule on May 28, 2021 indicating the date for completion of the Ace Lake system remains the same.	2021/07
ON	Mishkeegogamang	Mishkeegogamang 488 Public Water System *DWA since January 2021*	2021/01/07	2022/01/07	77	6	No plant or water quality monitoring - operational issues	Long-term: Upgrade and expansion of plant Short-term: Address maintenance deficiencies identified through plant assessment (pumps, filters, electrical and automation) and improve operations	- Operational challenges, inconsistent plant and water quality monitoring are reason for DWA - Assessment of plant identified maintenance deficiencies (pumps, electrical, automation, filter); ISC has approved funding to support estimated costs to address these maintenance issues - Call for proposals for a consulting engineer completed, and contract awarded; on-site visit by consultant occurred during the week of March 20, 2021; Engineer's Assessment report received noting issues with nano-filtration membranes; treatment supplier to assess week of May 17, 2021; updated assessment report that includes findings and recommendations of treatment supplier expected to be issued May 31, 2021; As of June 11, 2021, report yet to be received by ISC, as consulting engineer has reported that treatment supplier (Nepser Reid) has yet to submit its assessment and recommendations. Repair work anticipated to be complete by end of August 2021; however given the delays by the treatment supplier, schedule at medium risk of slipping - Operational supports provided by ISC funded Centralized Water and Wastewater Hub delivered by OFNTSC - Evolving COVID situation hindering Hub progress in supporting improved operations - Long-term solution determined through feasibility study; project is currently unfunded	2021/08

OTHER RELATED INITIATIVES			
Region	First Nation	Project	Current Status
ON	Curve Lake First Nation	Curve Lake New Water Treatment Plant	- Curve Lake First Nation does not currently have a drinking water advisory in effect. In June 2018, the LTDWA on the Curve Lake Seniors Administration Building was lifted. - Curve Lake is serviced with groundwater drawn from roughly 308 individual wells for each home, plus the Nishnawbeke Subdivision that is serviced with a communal groundwater supply system (Curve Lake (Nishnawbeke) Water Supply Treatment System - serving 59 homes), this system will be demolished once the new water treatment plant is operational and the existing water distribution system for the Nishnawbeke Subdivision will be incorporated into the new system. There are 208 rental income properties on the reserve also serviced by individual wells. These units will not be served through the new water treatment and distribution system. - Individual wells in Curve Lake are unreliable in both quantity and quality with poor yields/water shortages and contamination from on-site septic systems. Previous test results show that high levels of sodium, turbidity, iron and nitrate were present in numerous groundwater supplies. The National Assessment (Neegan Burnside Ltd., December 2010) assessed four private wells and noted water quality issues concerning coliforms, nitrates and nitrites, hardness and total dissolved solids. A hydrogeological report issued November 2018 (Oakridge Environmental Ltd.) noted that four wells that had originally been intended to supply a communal water treatment plant exhibited high concentrations of total dissolved solids (TDS), hardness and sodium, as well as variable dissolved organic carbon (DOC) concentrations. - The Nishnawbeke Subdivision pumphouse runs short of water frequently and does not have the capacity to meet current demands. The latest Asset Condition Reporting System (ACRS) Report (year 2018-2019) recommended major renovation or replacement. A new water treatment and distribution system capable of conforming to Ontario drinking water regulations is needed to ensure that the First Nation is supplied with safe, potable water, for at least the next 20 years. - ISC provided funding to Curve Lake First Nation to update an existing feasibility study. The updated study recommended, and the community prefers, a surface water treatment plant with membrane filtration and extended distribution system with fireflow at an estimated cost of just over $50 million. - ISC is committed to funding construction of the Curve Lake water treatment system as defined in the Project Approval Request approved by Chief and Council on June 2, 2020 and ISC on June 22, 2020, subject to further growth identified in the design study in the First Nation membership living on reserve. - ISC received the final feasibility study on May 29, 2020. The design phase of the project was approved on July 15, 2020 at a cost of $2.3 million. The First Nation is working with a Project Manager and a Design Consultant to complete the design by end of March 2022.
ON	Nessarage	Trust the Topic	- FNIHB ON region funded the "Trust the Topic" proposal for $200K in Nessarage, which is a Community Wellness/Healing Plan that focuses on collective healing, cultural education, building self esteem, and identifying other community appropriate wellness strategies. This proposal arose from the need to address psychological and physical impact of the LTDWA which only compounds the ongoing trauma and mental health challenges experienced by the community. - FNIHB ON's initial funding will be used mainly for community engagement and capacity support to develop the Community Wellness/Healing Plan, as well as direct mental health support for the community engagement and issues that may arise from those sessions. - The initial community engagement (approved in February 2021) will be implemented by the First Nation; FNIHB continues to be available to support the First Nation as they advance the implementation of the project - FNIHB ON is committed to funding the implementation and delivery of the Community Wellness/Healing Plan that is developed through the community engagement process in consultation with FNIHB.

SCHEDULE B

FEDERAL CERTIFICATION ORDER

See attached.

Federal Court  Cour fédérale

Date: 20201008

Docket: T-1673-19

Ottawa, Ontario, October 8, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

CURVE LAKE FIRST NATION AND CHIEF EMILY WHETUNG ON HER OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF CURVE LAKE FIRST NATION AND NESKANTAGA FIRST NATION AND CHIEF CHRISTOPHER MOONIAS ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF NESKANTAGA FIRST NATION

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

ORDER

THIS MOTION for certification, brought by the Plaintiffs, was heard on September 16, 2020.

ON READING the motion record of the Plaintiffs and the consent of the Defendant.

1. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to the *Federal Courts Rules*, 334.16 and 334.17.

2. **THIS COURT ORDERS AND DECLARES** that the Class is defined as:

(a) *All persons other than Excluded Persons who:*

(i) are members of a band, as defined in subsection 2(1) of the *Indian Act*, R.S.C. 1985, c, I-5 ("**First Nation**"), the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24 ("**First Nations Lands**"), and whose First Nations Lands were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present ("**Impacted First Nations**");

(ii) had not died before November 20, 2017; and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(b) *Curve Lake First Nation, Neskantaga First Nation, and any other Impacted First Nation that elects to join this action in a representative capacity ("**Participating Nations**").*

"**Excluded Persons**" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, and the Okanagan Indian Band, and Michael Darryl Isnardy.

3. **THIS COURT ORDERS AND DECLARES** that until the claims asserted in this class proceeding are fully and finally decided, settled, discontinued, or abandoned, including the exhaustion of all rights of appeal, leave of the Court is required to commence any other proceeding on behalf of any member of the Class in respect of the claims asserted in this action, save and except for proceedings commenced on behalf of those members of the Class who opt out of this class proceeding in the manner prescribed below.

4. **THIS COURT ORDERS AND DECLARES** that the following common issues be and are hereby certified for resolution on behalf of the Class as a whole:

(a) *From November 20, 1995 to the present, did the Defendant owe a duty or an obligation to Class members to take reasonable measures to provide them with, or*

ensure they were provided with, or refrain from barring, adequate access to water that is safe for human use?

5. **THIS COURT ORDERS AND DECLARES** that a sub-group be and is hereby recognized for the members of each Impacted First Nation, and the First Nation itself, if it is a Participating Nation;

6. **THIS COURT ORDERS AND DECLARES** that the following common issues be and are hereby certified for resolution on behalf of each sub-group:

(a) *If the answer to common issue 4(a) is "yes", did Canada breach its duties or obligations to members of the sub-group?*

(b) *If the answer to common issue 6(a) is yes, is any breach of the Charter of Rights and Freedoms ("**Charter**") saved by s. 1 of the Charter?*

(c) *If the answer to common issue 6(a) is yes, did the Defendant's breach cause a substantial and unreasonable interference with Class members' or their First Nations' use and enjoyment of their lands?*

(d) *If the answer to common issue 6(a) is "yes" and the answer to common issue 6(b) is "no", are damages available to members of the sub-group under s. 24(1) of the Charter?*

(e) *Can the causation of any damages suffered by members of the sub-group be determined as a common issue?*

(f) *Can the Court make an aggregate assessment of all or part of any damages suffered by members of the sub-group?*

(g) *Does the Defendant's conduct justify an award of punitive damages, and if so, in what amount?*

(h) *Should the Court order that the Defendant take measures to provide or ensure that members of the sub-group are provided with, or refrain from barring, adequate access to clean tap water?*

(i) If so, what measures should be ordered?

7. **THIS COURT ORDERS AND DECLARES** that Chief Emily Whetung, Curve Lake First Nation, Chief Christopher Moonias, and Neskantaga First Nation are hereby appointed as Representative Plaintiffs for the Class.

8. **THIS COURT ORDERS AND DECLARES** that McCarthy Tétrault LLP and Olthuis Kleer Townshend are hereby appointed as class counsel ("**Class Counsel**").

9. **THIS COURT ORDERS AND DECLARES** that the Plaintiffs and the Defendant shall make reasonable efforts to agree on the appointment of an administrator for the purpose of giving notice of the certification of this class proceeding (the "**Administrator**"). The Parties shall advise the Court of the appointment of the Administrator within sixty (60) days of the date of this Order, failing which the Court shall appoint an appropriately qualified Administrator.

10. **THIS COURT ORDERS** that class members shall be notified that this action has been certified as a class proceeding as follows, which shall be and is hereby deemed adequate notice:

(a) *by posting the Short Form Notice set out in **Schedule "A"** and Long Form Notice set out in **Schedule "B"**, and the French language translations of these documents, as agreed upon by the parties, on the respective websites of Class Counsel, the Defendant, and the Administrator;*

(b) *by the Administrator publishing the Short Form Notice in the newspapers set out in **Schedule "C"** attached hereto, in ¼ of a page size in the weekend edition of each newspaper, if possible;*

(c) *by the Administrator distributing the Short Form Notice to all offices of Curve Lake First Nation, Neskantaga First Nation, and the Assembly of First Nations;*

(d) *by the Administrator forwarding the Short Form Notice and Long Form Notice to any Class member who requests them;*

(e) *by the Administrator forwarding the Short Form Notice and Long Form Notice to the Chiefs of every Impacted First Nation identified in accordance with paragraph 12, below, except for Excluded Persons;*

(f) *by the Administrator forwarding the Short Form Notice and Long Form Notice to the band office or similar office of every Impacted First Nation identified in accordance with paragraph 12, below, except for Excluded Persons, together with a request that they be posted in a prominent place;*

(g) *by the Administrator establishing a national toll-free support line, to provide assistance to Class members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.*

11. **THIS COURT ORDERS** that the Defendant shall be responsible for the cost of giving notice of the certification of a class proceeding as set out in paragraph 10, above.

12. **THIS COURT ORDERS** that within 30 days of the date of this Order, the Plaintiffs and the Defendant shall exchange a list setting out their best information on the names of the First Nations that are eligible to opt into the Class, and taken together these lists shall constitute the means of identifying the First Nations that are entitled to direct notice for the purpose of paragraphs 10(e) and 10(f), above.

13. **THIS COURT ORDERS** that a class member may opt out of this class proceeding by delivering a signed opt-out coupon, a form of which is attached as **Schedule "D"**, or some other legible signed request to opt out, within one-hundred-and-twenty (120) days of the date on which notice is first published in accordance with paragraph 10(b), above (the "**Opt Out Deadline**"), to the Administrator. The Short Form Notice and Long Form Notice shall state the Opt Out Deadline and the address of the Administrator for the purpose of receiving opt-out coupons.

14. **THIS COURT ORDERS** that no Class Member may opt out of this class proceeding after the Opt Out Deadline, except with leave of the Court.

15. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.

16. **THIS COURT ORDERS** that any Impacted First Nation may opt into this class proceeding by retaining Class Counsel no fewer than one-hundred-and-twenty (120) days before the disposition of any of the common issues (the "**Opt In Deadline**"), to Class Counsel, at the address set out in paragraph 11, above.

17. **THIS COURT ORDERS** that no Class member may opt into this class proceeding after the Opt In Deadline, except with leave of the Court.

18. **THIS COURT ORDERS** that Class Counsel shall serve on the parties and file with the Court, within sixty (30) days of the expiry of the Opt In Deadline, a list of all the Impacted First Nations that have opted into the class proceeding.

19. **THIS COURT DECLARES** that the Litigation Plan attached hereto as Appendix 1 is a workable method of advancing the class proceeding on behalf of the Class.

20. **THIS COURT ORDERS** that each party shall bear its own costs of the within motion for certification of this class proceeding.

"Paul Favel"
Judge

Schedule A

Legal Notice

Are You a Member of a First Nation That Has Been Subject To A Long-Term Drinking Water Advisory?

A Lawsuit May Affect You and Your First Nation. Please Read this Carefully.

You could be affected by class action litigation regarding the lack of access to clean drinking water on First Nations reserves.

The Manitoba Court of Queen's Bench and the Federal Court of Canada decided that a class action on behalf of a "Class" of both First Nations and band members may proceed. Band members can choose whether to stay in the Class. First Nations can choose whether to join the Class. There is no money available now and no guarantee that the class action will succeed.

The Courts appointed Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias to act as representative Plaintiffs for the Class.

What is this case about?

This class action asserts that Canada breached its obligations by failing to ensure that First Nations communities had adequate access to clean drinking water. The class action asserts that members of these communities and the communities themselves were harmed emotionally, physically, financially, and spiritually. The class action asserts that Canada has breached its fiduciary duties, its duty of care, and the *Charter of Rights and Freedoms*. The Court has not decided whether any of these assertions are true. If there is no settlement, the Plaintiffs will have to prove their claims in Court.

If you have questions about this class action, you can contact **Eric Khan** 1(800) 538-0009 or info@classaction2.com.

Who represents the class?

The Court has appointed McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP to represent the Class as "Class Counsel". You do not have to pay Class Counsel, or anyone else, to participate. If Class Counsel obtains money or benefits for the Class they may ask for lawyers' fees and costs, which would be deducted from any money or benefits recovered for Class members.

Individuals Class Members: Who is included and who is excluded?

Band Members Included: The Class includes band members (as defined by the *Indian Act*): (a) whose reserve was subject to a drinking water advisory (such as a boil water advisory, etc.) that lasted at least one year at any time from November 20, 1995 to the present; (b) had not died before November 20, 2017; and (c) ordinarily lived on their reserve.

Band Members Excluded: Members of the Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, Okanagan Indian Band, and Michael Darryl Isnardy are excluded from this class action.

Individuals: What are your options?

Stay in the Class: To stay in the Class, you do not have to do anything. If the Class obtains money or benefits, Class Counsel will give notice about how to ask for your share. You will be legally bound by all orders and judgments, and you will not be able to sue Canada about the legal claims in this case.

Staying in the Class will not impact the supports received from community-based agencies that are funded by any government.

Get out of the Class: If you do not want to participate in this class action litigation, you need to remove yourself by opting out. If you opt out, you cannot get money or benefits from this litigation. To opt out, please visit **[NTD: Insert Administrator's website for this action]** to obtain an opt out coupon, or write to CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2 requesting to be removed from this class action. Please include your name, address, telephone number, and signature. **Your request to opt out must be sent by [NTD: 90 days from the date of the first publication of notice].**

First Nations: What are your options?

Elect to join the Class: First Nations that wish to join the Class and assert claims on behalf of their community must take action to opt in. To opt in, or to seek more information, please contact the Administrator at 1(800)538-0009 or info@classaction2.com. First Nations may also contact Class Counsel Stephanie Willsey (toll free:1-877-244-7711; swillsey@mccarthy.ca) or Class Counsel Kevin Hille ((416) 598-3694; khille@oktlaw.com). **Your request to opt in must be sent no later than 120 days before Class members' claims are determined.**

How Can I Get More Information?

Name of Administrator: CA2
Contact Information: 1(800)538-0009 or info@classaction2.com

Getting Information To People Who Need It

The representative Plaintiffs and Class Counsel ask for the help of health care workers, social workers, First Nations community leaders, family members, caregivers and friends of Class members in getting information to Class members who would have trouble reading or understanding this notice. More information about this lawsuit is available at the website or by contacting the Administrator. Please show this notice to people who may be impacted by this lawsuit or their caregivers.

Schedule B

Are You a Member of a First Nation That Has Been Subject To A Long-Term Drinking Water Advisory?

If YES, A Class Action May Affect Your Rights and the Rights of First Nations

A court authorized this notice

- You could be affected by a class action involving access to clean drinking water in your First Nation Communities.
- The Manitoba Court of Queen's Bench and the Federal Court of Canada has decided that class actions on behalf of a "Class" of both First Nations and band members may proceed. Band members can choose whether to stay in the Class. First Nations can choose whether to join the Class. The Courts appointed Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias to act as representative Plaintiffs for the Class.
- The Courts have not decided whether Canada did anything wrong, and there still has to be a Court case about whether Canada did anything wrong. There is no money available now and no guarantee there will ever be any money. However, your rights are affected, and you have a choice to make now. This notice is to help you and your First Nation make that choice.

INDIVIDUAL BAND MEMBERS: YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING: KEEP YOUR RIGHTS UNDER THE CLASS ACTION	**Stay in these lawsuits and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.** By doing nothing, you keep the possibility of receiving money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Canada on your own about the same legal claims in this lawsuit.
REMOVE YOURSELF (OPT OUT)	**Get out of these lawsuits and get no benefits from it. Keep rights.** If you ask to opt out and money or benefits are later awarded to Class members, you won't get a share. But, you keep any rights to sue Canada on your own about the same legal claims in this lawsuit.
FIRST NATIONS: YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
CHOOSE TO JOIN THE CLASS (OPT IN)	**Join the Class. If you join, your First Nations might share in money and benefits from the outcome.** By joining the Class (opting in), First Nations might receive money or other benefits, including water infrastructure, that may come from a trial or settlement in the Class Action. Opting in is an easy process, and there is no cost to opt in.

QUESTIONS? CALL TOLL-FREE 1-800-538-0009 OR VISIT HTTPS://CLASSACTION2.COM/

DO NOTHING: LOSE YOUR FIRST NATION'S RIGHTS UNDER THE CLASS ACTION	**By doing nothing, your First Nation will lose the possibility of receiving money and other benefits if the Class Action succeeds.** If First Nations do not join the Class (opt in) and money or benefits are later awarded, your First Nation won't share in those. By not opting-in, your First Nation may keep any rights to sue Canada about the same legal claims in this litigation.

- Lawyers must prove the claims against Canada at a trial or a settlement must be reached. If money or benefits are obtained you will be notified about how to ask for your share.

- Your options are explained in this notice. To be removed from the litigation, individual band members must ask to be removed by **[NTD: 90 days from the first publication of notice.]**. To join the Class Action, First Nations must send their opt in notice no later than 120 days before Class members' claims are to be determined.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is there a notice?

The Courts have "certified" Class Actions. This means that the lawsuits meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Courts decide whether the claims being made against Canada on your behalf are correct. This notice attempts to explain all of these things.

Chief Justice Joyal of the Manitoba Court of Queen's Bench is currently overseeing the case known as *Tataskweyak Cree Nation and Chief Doreen Spence v. Canada*. Justice Favel of the Federal Court of Canada is currently overseeing the case known as *Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias v. Canada*. The persons who sued are called the Plaintiffs. Canada is the Defendant. A link to the latest version of the Statement of Claim (the legal document that makes the allegations against Canada) can be found here: https://www.mccarthy.ca/en/class-action-litigation-drinking-water-advisories-first-nations-0

2. What is this litigation about?

These Class Actions assert that Canada breached its obligations by failing to ensure that First Nations communities had adequate access to clean drinking water. The Class Actions also assert that members of these communities and the communities themselves were harmed emotionally, physically, financially, and spiritually. The Class Actions assert that Canada has breached its fiduciary duties, its duty of care, and the *Charter of Rights and Freedoms*. The Courts have not decided (and Canada has not admitted) that any of these assertions are true. If there is no settlement with Canada, the Plaintiffs will have to prove their claims in Court.

If you are having a difficult time dealing with these issues, or have questions about the Class Action, you can call 1 (800) 538-0009 for assistance.

3. Why is this a class action?

In a class action, the "representative plaintiffs" (in this case, Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias) sued on behalf of individual band members and First Nations who have similar claims. All of these individual band members are part of the "Class" or "Class Members", as are First Nations who choose to join the Class Action. The Court resolves the issues for all Class Members in one case, except (in the case of individual band members) for those who remove themselves from (opt out of) the Class and (in the case of First Nations) for those that do not join (opt into) the Class Action.

4. Who is a member of the Class?

The Class includes and excludes the following:

All persons, other than "Excluded Persons" who:

(i) are members of a band, as defined in subsection 2(1) of the Indian Act, R.S.C. 1985, c, I-5 ("**First Nation**"), the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24 ("**First Nations Lands**"), and whose First Nations Lands were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present ("**Impacted First Nations**");

(ii) were not dead two years prior to the commencement of this action (that is, by November 20, 2017); and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(iv) Tataskweyak Cree Nation, Curve Lake First Nation, Neskantaga First Nation, and any other Impacted First Nation that elects to join this action in a representative capacity ("**Participating Nations**").

"Excluded Persons" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, Okanagan Indian Band, and Okanagan Indian Band and Michael Darryl Isnardy.

5. What are the Plaintiffs asking for?

The Plaintiffs are asking for money and other benefits for the Class, including water infrastructure. The Plaintiffs are also asking for legal fees and costs, plus interest.

6. Is there any money available to Class Members now?

No money or benefits are available now because the Court has not yet decided whether Canada did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If money or other benefits become available, notice will be provided about how to ask for your share.

YOUR RIGHTS AND OPTIONS

Individual band members must decide whether to stay in the Class, and you have to decide this by **[NTD: 90 days from the first publication of notice]**. First Nations must decide whether they want to join the class by **no later than 120 days before the Class members' claims are determined.**

7. What happens if I do nothing at all? What happens if the First Nation does nothing at all?

Individuals Band Members: if you do nothing, you will automatically remain in the Class Action. You will be bound by all Court orders, good or bad. If any money or other benefits are awarded, you may need to take action after notice to you to receive any benefits.
First Nations: First Nations must chose to join the Class Action to receive the potential benefits and to be bound by all Court orders, good or bad.

8. What if I don't want to be in the Lawsuit? What if a First Nation wants to join the Lawsuit?

Individual Band Members: If you do not want to be in the lawsuit, you must remove yourself – this is referred to as "opting out." If you remove yourself, you will not receive any benefit that may be obtained from the Class Action. You will not be bound by any Court orders and you keep your right to sue Canada as an individual regarding the issues in this case.

To remove yourself, send a communication that says you want to be removed from the Class in *Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias v. Canada* Court File No. CI-19-01-2466. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at **[insert Administrator web link].** You must deliver your removal request by **[NTD: 90 days from the first publication of notice]** to: CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2 or info@classaction2.com.

Call **1 (800) 538-0009** if you have any questions about how to get out of the Class Action.

First Nations: First Nations that wish to join the Class Action and assert claims on behalf of their band or community must take action to join – this is referred to as "opting in." To opt in, or to seek more information, please contact the Administrator **1(800)538-0009** or info@classaction2.com. First Nations may also contact Class Counsel and ask for Class Counsel Stephanie Willsey (toll free: 1-877-244-7711 or swillsey@mccarthy.ca) or Kevin Hille at khille@oktlaw.com or (416) 598-3694. **Requests by First Nations to opt in must be sent no later than 120 days before Class members' claims are determined.**

THE LAWYERS REPRESENTING YOU

10. Do Individual Band Members have a lawyer in the case?

Yes. The Court has appointed McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP to represent you and other Class Members as "Class Counsel." You will not be charged legal or other fees or expenses for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

11. How will the lawyers be paid?

Class Counsel will only be paid if they win judgement or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

A TRIAL

12. How and when will the Court decide who is right?

If the Class Action is not dismissed or settled, the Plaintiffs must prove their claims at a motion for summary judgement or a trial that will take place in Ottawa, Ontario. During the motion or trial, the Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiffs or Canada is right about the claims in the Class Action. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

13. Will I get money after the trial?

If the Plaintiffs obtain money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website **[NTD: insert Administrator website]** as it becomes available.

GETTING MORE INFORMATION

14. How do I get more information? How to I get information to people who need it?

You can get more information at **https://classaction2.com/** by calling toll free at 1(800)538-0009, by writing to: CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2, or by emailing: **info@classaction2.com.**

First Nations and Individual Band Members may also contact Class Counsel and ask for Class Counsel Stephanie Willsey (toll free: 1-877-244-7711 or swillsey@mccarthy.ca or 66 Wellington Street West, Toronto, Ontario, M5K 1E6) or Class Counsel Kevin Hille at khille@oktlaw.com or (416) 598-3694 or 250 University Avenue, 8th floor, Toronto, Ontario, M5H 3E5.

Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, Chief Christopher Moonias, Tataskweyak Cree Nation, Chief Doreen Spence, and Class Counsel kindly ask for the help of health care workers, social workers, First Nation community leaders, family members, caregivers and friends of Class members in getting information to Class Members who would have trouble reading or understanding this notice. More information about this lawsuit is available at the website or by contacting the Administrator or Class Counsel. Please show this notice to people who may be impacted by this lawsuit or their caregivers.

Schedule C

List of Newspapers

Globe and Mail
National Post
Winnipeg Free Press
Vancouver Sun
Edmonton Sun
Calgary Herald
Saskatoon Star Phoenix
Regina Leader Post
Thunder Bay Chronicle-Journal
Toronto Star
Ottawa Citizen
Montreal Gazette
Montreal La Presse (digital edition)
Halifax Chronicle-Herald
Moncton Times and Transcript

First Nations Drum

Schedule D

FORM OF OPT OUT COUPON

To: **[Insert Claim Administrator Address]**
[Insert Administrator Email Address]

This is **NOT** a claim form. Completing this **OPT OUT COUPON** will exclude you from receiving any compensation or other benefits arising out of any settlement or judgment in the class proceeding named below:

***Note: To opt out, this coupon must be properly completed and sent to the above-address no later than* [INSERT DATE THAT IS 90 DAYS FROM THE FIRST NOTICE PUBLICATION]**

Court File No.: T-1673-19

CURVE LAKE FIRST NATIONAL and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that any individual claim I may have must be commenced within a specified limitation period or that claim will be legally barred.

I understand that the certification of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period legal steps to protect any claim I may have.

Date: _____

Name of Class Member: _____

Signature of Witness	Signature of Class Member Opting Out

Name of Witness:

Appendix 1

Court File No. T-1673-19

FEDERAL COURT

BETWEEN:

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *Federal Courts Rules, 334.16 and 334.17*

LITIGATION PLAN

FOR COMMON ISSUES, CERTIFICATION AND SUMMARY JUDGMENT MOTIONS

1. Attached as **Schedule "A"** is the parties' consent timetable. This Litigation Plan is intended to address the Plaintiffs' motions for certification and summary judgement.

2. If the motion for summary judgement is successful, a further plan will be proposed to address any remaining issues, depending on the outcome.

3. Alternatively, if the motion for summary judgement is not successful, the Plaintiffs will propose a further plan for the trial of the common issues.

4. The Plaintiffs seek certification of the following common issue to be resolved on behalf of the class as a whole ("**Stage 1 Common Issue**"):

   (a) From November 20, 1995 to the present, did the Defendant owe a duty or an obligation to Class members to take reasonable measures to provide them with, or ensure they were provided with, or refrain from barring, adequate access to water that is safe for human use?

5. If the Defendant consents to certification of a class proceeding, the Plaintiffs will negotiate with the Defendant to resolve the common issues. If the negotiations fail, the Plaintiffs will require the delivery of a Statement of Defence, following which they will deliver a record in support of a motion for summary judgement on the Stage 1 Common Issue. At a pre-trial conference following delivery of the Plaintiffs' record, they will ask the Court to determine that this matter is appropriate for summary judgement and schedule a hearing of their motion.

6. If the Defendant opposes the certification of a class proceeding, the Plaintiffs will require the Defendant to deliver a Statement of Defence. The Plaintiffs will then deliver a record in support of motions for certification and summary judgement on the Stage 1 Common Issue. At a pre-trial conference following the delivery of the Plaintiffs' record, they will ask the Court to determine that this matter is appropriate for summary judgement and schedule the hearing of their motion for summary judgement together with the hearing of their motion for certification.

7. At the certification motion, the Plaintiffs will also seek certification of the following common issues to be resolved on behalf of each Impacted First Nation sub-group, being the members of that First Nation and the First Nation itself, if it is a Participating First Nation ("**Stage 2 Common Issues**"):

(a) If the answer to common issue 4(a) is "yes", did Canada breach its duties or obligations to members of the sub-group?

(b) If the answer to common issue 7(a) is yes, is any breach of the *Charter of Rights and Freedoms* ("***Charter***") saved by s. 1 of the *Charter*?

(c) If the answer to common issue 7(a) is yes, did the Defendant's breach cause a substantial and unreasonable interference with Class members' or their First Nations' use and enjoyment of their lands?

(d) If the answer to common issue 7(a) is "yes" and the answer to common issue 7(b) is "no", are damages available to members of the sub-group under s. 24(1) of the *Charter*?

(e) Can the causation of any damages suffered by members of the sub-group be determined as a common issue?

(f) Can the Court make an aggregate assessment of all or part of any damages suffered by members of the sub-group?

(b) publishing the notice in designated newspapers;

(c) distributing the notice to all offices of Tataskweyak Cree Nation and the Assembly of First Nations.

(d) forwarding the notice to any Class member who requests it and the Chiefs of every First Nation that is eligible to opt into the class, as well as each band office;

(e) establishing a national toll-free support line, to provide assistance to Class members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.

(a) And by such other notice as the Court directs.

14. The Plaintiffs will ask the Court to approve opt-out and opt-in forms to be used by class members wishing to opt out of, or opt into, the class action, which will require the Class member to provide sufficient information to establish their membership in the Class.

LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS

Notice of Resolution of Common Issues

15. The Plaintiffs will ask that the Court settle the form and content for notification of the resolution of the Stage 1 and Stage 2 Common Issues ("**Resolution Notice Plan**") and the means by which Class members will file claims ("**Claim Forms**") by a fixed date with the Administrator. The Plaintiffs will also ask that the Court settle an appropriate process to determine any remaining individual issues.

Valuation of Damages

16. If the Common Issues are resolved in favour of the Plaintiffs, the Plaintiffs propose two (2) methods for assessing and distributing damages for the class members as follows:

(a) Aggregate damages that accrue to individual Class members on a *pro rata* basis or on a *pro rata* basis within a sub-group;

(b) Aggregate damages that accrue to Participating First Nations on a community basis; and

17. Following the determination of aggregate damages, including punitive damages, additional damages may be awarded in individual issues proceedings.

(g) Does the Defendant's conduct justify an award of punitive damages, and if so, in what amount?

(h) Should the Court order that the Defendant take measures to provide or ensure that members of the sub-group are provided with, or refrain from barring, adequate access to clean tap water?

(i) If so, what measures should be ordered?

8. If the Stage 1 Common Issue is determined in favour of the Plaintiffs, the parties will conclude a discovery plan to manage the Defendant's timely production of relevant documents in respect of the Stage 2 Common Issues for each Impacted First Nation sub-group.

9. Upon assessing the Defendant's productions, the Plaintiffs will decide whether to bring motions for summary judgement on the Stage 2 Common Issues for some or all of the Impacted First Nation sub-groups, or alternatively, to schedule a trial of these common issues.

NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

10. On the motion for certification, the Plaintiffs will ask that the Court settle the form and content for notification of the certification of this action (the "**Notice of Certification**"), the timing and manner of providing Notice of Certification ("**Notice Program**") and set out an opt-out date as being three (3) months following the date of the Certification Order ("**Opt-Out Date**"), and an opt-in date as being six (6) months prior to the commencement of the determination of the Stage 2 Common Issues.

11. If a motion for summary judgement is being heard together with a motion for certification, the Plaintiffs will ask the court to render its decision on certification first, direct that notice issue if a class proceeding is certified, and then render its decision on the Stage 1 Common Issue following the Opt-Out Date.

12. The Plaintiffs will ask the Court to order that the defendant pay the costs of the Notice Program, including the cost of the Administrator.

13. The Plaintiffs will seek an order for the distribution of notice of certification as follows:

(a) posting the notice on the respective websites of Class Counsel, the Defendant, and the Administrator;

(b) publishing the notice in designated newspapers;

(c) distributing the notice to all offices of Tataskweyak Cree Nation and the Assembly of First Nations.

(d) forwarding the notice to any Class member who requests it and the Chiefs of every First Nation that is eligible to opt into the class, as well as each band office;

(e) establishing a national toll-free support line, to provide assistance to Class members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.

(a) And by such other notice as the Court directs.

14. The Plaintiffs will ask the Court to approve opt-out and opt-in forms to be used by class members wishing to opt out of, or opt into, the class action, which will require the Class member to provide sufficient information to establish their membership in the Class.

LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS

Notice of Resolution of Common Issues

15. The Plaintiffs will ask that the Court settle the form and content for notification of the resolution of the Stage 1 and Stage 2 Common Issues ("**Resolution Notice Plan**") and the means by which Class members will file claims ("**Claim Forms**") by a fixed date with the Administrator. The Plaintiffs will also ask that the Court settle an appropriate process to determine any remaining individual issues.

Valuation of Damages

16. If the Common Issues are resolved in favour of the Plaintiffs, the Plaintiffs propose two (2) methods for assessing and distributing damages for the class members as follows:

(a) Aggregate damages that accrue to individual Class members on a *pro rata* basis or on a *pro rata* basis within a sub-group;

(b) Aggregate damages that accrue to Participating First Nations on a community basis; and

17. Following the determination of aggregate damages, including punitive damages, additional damages may be awarded in individual issues proceedings.

Assessment of Number of Claimants

18. After the deadline for submitting Claim Forms has expired, the Administrator shall calculate the total number of claimants for the purpose of any *pro rata* distribution of aggregate damages.

19. The Parties may also retain an actuary to assist with the determination of Class size and the demographics of the Class.

Global Punitive Damages Distribution

20. Should the Court award aggregate damages to the Class or a sub-group, the total amount of damages will be apportioned to the class in a manner to be determined by the Court within a fixed period of time set by the Court from the Notice of Resolution.

Funds not Distributed

21. Any monies not distributed will be distributed *cy-près* as the Court directs. The Plaintiffs propose that any residual amounts be distributed *cy-près* to community organizations that assist with water infrastructure in Impacted First Nations.

Resolution of the Individual Issues

22. Within thirty (30) days of the issuance of the judgment on the common issues, the parties will convene to settle a protocol to resolve any individual issues. If the parties cannot settle such a protocol, the Plaintiffs will move for directions from the Court within sixty (60) days.

MISCELLANEOUS REQUIREMENTS OF THE LITIGATION PLAN

Funding

23. Class Counsel have entered into an agreement with the Representative Plaintiffs with respect to legal fees and disbursements. This agreement provides that counsel will not receive payment for their work unless and until the class proceeding is successful or costs are recovered from the Defendant.

24. Class Counsel's legal fees are subject to court approval.

Claims Administration

25. The Administrator will provide the claims administration for any settlement or judgement achieved. The Administrator will distribute notice in accordance with the Resolution Notice Plan. If a settlement is achieved and a settlement fund is provided, or if judgement results in an award in favour of Class members, the Administrator will administer payments out of the fund to claimants based on the procedures set out above, after approval and/or modification by the Court.

Class Action Website

26. From time to time, Class Counsel will post relevant pleadings and court filings, the latest documents and summaries of the latest developments, anticipated timelines, frequently asked questions and answers, and contact information for class counsel for the information of class members.

Conflict Management

27. Class Counsel and the Plaintiffs have taken appropriate measures to determine that no conflict of interest exists among the members of the Class, and no such conflict is anticipated. Should a conflict arise, McCarthy Tétrault LLP will represent one sub-group, and Olthuis Kleer Townshend LLP will represent the other. Should any conflict arise as between First Nations and their members, which is not anticipated given their commonality of interest, McCarthy Tétrault LLP will represent the members and Olthuis Kleer Townshend LLP will represent the First Nations.

Applicable Law

28. The applicable law is the *Constitution Act, 1982*, the *Constitution Act, 1867*, the *Charter of Rights and Freedoms*, the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21, the *Indian Act*, R.S.C. 1985, c, I-5, the *First Nations Land Management Act*, S.C. 1999, c. 24, *The Federal Courts Act*, R.S.C., 1985 c. F-7 as well as applicable regulations, the common law and the law of Canada.

Coordination of proceedings

29. On July 14, 2020 the Manitoba Court of Queen's Bench certified a related class proceeding in the matter styled *Tataskweyak Cree Nation v. Canada*, Court File No. 19-01¬24661 (the

"**Tataskweyak Action**"). The representative plaintiffs in the Tataskweyak Action have pledged to work collaboratively with the Plaintiffs to advance their common interests. Pursuant to the *Canadian Judicial Protocol for the Management of Multi-jurisdictional Class Actions and the Provision of Class Action Notice*, the Plaintiffs will ask the Federal Court and the Manitoba Court of Queen's Bench to convene joint case management conferences, as appropriate, to ensure coordination between the two proceedings and to promote efficiency. In order to ensure consistent results, the Plaintiffs may ask that the Federal Court and the Manitoba Court of Queen's Bench sit together to hear any motion for summary judgement or any trial of the Tataskweyak Action and this action.

Schedule A

Timetable

PROPOSED LITIGATION TIMETABLE		
Steps To Be Completed	**By Which Party**	**Date To Be Completed By**
Delivery of Statement of Defence	Defendant	To be delivered on 60 days' notice by the Plaintiffs
Delivery of Reply, if any	Plaintiffs	To be delivered 15 days after delivery of Statement of Defence
Delivery of Summary Judgement Record	Plaintiffs	June 30, 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Pre-trial to assess summary judgement	All parties	July 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Delivery of Responding Record	Defendant	October 30, 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Delivery of Reply Record, if any	Plaintiffs	December 16, 2020 (or 45 days after delivery of Responding Record, whichever is later)
Cross-examinations	All parties	To be completed 75 days after delivery of Reply Record, if any, or 120 days after delivery of Responding Record
Refusals Motions, if any	All parties	To be completed 30 days after completion of cross-examinations
Delivery of answers to undertakings	All parties	To be completed 15 days after refusals motion

PROPOSED LITIGATION TIMETABLE		
Steps To Be Completed	**By Which Party**	**Date To Be Completed By**
Delivery of Moving Factum	Plaintiffs	To be delivered 45 days after completion of answers to undertakings
Delivery of Responding Factum	Defendant	To be delivered 45 days after delivery of Moving Factum
Delivery of Reply Factum	Plaintiffs	To be delivered 15 days after delivery of Responding Factum
Hearing of possible Summary Judgement Motion	All parties	July-August 2021

Court File No. T-1673-19

FEDERAL COURT

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

LITIGATION PLAN

(Filed this 8th day of September, 2020)

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

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OLTHUIS KLEER TOWNSHEND LLP
250 University Avenue, 8th Floor
Toronto ON M5H 3E5
The Honourable Harry S. LaForme LSO#19338D
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Lawyers for the Plaintiffs

SCHEDULE C

MANITOBA CERTIFICATION ORDER

See attached.

File No. CI-19-01-24661

THE QUEEN'S BENCH

Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and –

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M.c. C. 130

ORDER

THIS MOTION for certification, brought by the Plaintiffs was heard on July 14, 2020 at 408 York Ave in Winnipeg, Manitoba.

ON READING the motion record of the Plaintiffs and the consent of the Defendant.

AND ON BEING ADVISED that the parties consent to this order.

1. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to *The Class Proceedings Act*, C.C.S.M.c. C. 130.

2. **THIS COURT ORDERS AND DECLARES** that the Class is defined as:

   (a) All persons other than Excluded Persons who:

      (i) are members of a band, as defined in subsection 2(1) of the *Indian Act*, R.S.C. 1985, c, I-5 ("**First Nation**"), the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24 ("**First Nations Lands**"), and whose First Nations Lands were subject

to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present ("**Impacted First Nations**");

(ii) had not died before November 20, 2017; and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(b) Tataskweyak Cree Nation and any other Impacted First Nation that elects to join this action in a representative capacity ("**Participating Nations**").

"**Excluded Persons**" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, and the Okanagan Indian Band, and Michael Daryl Isnardy.

3. **THIS COURT ORDERS AND DECLARES** that until the claims asserted in this class proceeding are fully and finally decided, settled, discontinued, or abandoned, including the exhaustion of all rights of appeal, leave of the Court is required to commence any other proceeding on behalf of any member of the Class in respect of the claims asserted in this action, save and except for proceedings commenced on behalf of those members of the Class who opt out of this class proceeding in the manner prescribed below.

4. **THIS COURT ORDERS AND DECLARES** that the following common issues be and are hereby certified for resolution on behalf of the Class as a whole:

(a) From November 20, 1995 to the present, did the Defendant owe a duty or an obligation to Class members to take reasonable measures to provide them with, or ensure they were provided with, or refrain from barring, adequate access to water that is safe for human use?

5. **THIS COURT ORDERS AND DECLARES** that a sub-group be and is hereby recognized for the members of each Impacted First Nation, and the First Nation itself, if it is a Participating Nation;

6. **THIS COURT ORDERS AND DECLARES** that the following common issues be and are hereby certified for resolution on behalf of each sub-group:

(a) If the answer to common issue 4(a) is "yes", did Canada breach its duties or obligations to members of the sub-group?

(b) If the answer to common issue 6(a) is yes, is any breach of the *Charter of Rights and Freedoms* ("***Charter***") saved by s. 1 of the *Charter*?

(c) If the answer to common issue 6(a) is yes, did the Defendant's breach cause a substantial and unreasonable interference with Class members' or their First Nations' use and enjoyment of their lands?

(d) If the answer to common issue 6(a) is "yes" and the answer to common issue 6(b) is "no", are damages available to members of the sub-group under s. 24(1) of the *Charter*?

(e) Can the causation of any damages suffered by members of the sub-group be determined as a common issue?

(f) Can the Court make an aggregate assessment of all or part of any damages suffered by members of the sub-group?

(g) Does the Defendant's conduct justify an award of punitive damages, and if so, in what amount?

(h) Should the Court order that the Defendant take measures to provide or ensure that members of the sub-group are provided with, or refrain from barring, adequate access to clean tap water?

(i) If so, what measures should be ordered?

7. **THIS COURT ORDERS AND DECLARES** that Chief Doreen Spence and Tataskweyak Cree Nation are hereby appointed as Representative Plaintiffs for the Class.

8. **THIS COURT ORDERS AND DECLARES** that McCarthy Tétrault LLP and Olthuis Kleer Townshend are hereby appointed as class counsel ("**Class Counsel**").

9. **THIS COURT ORDERS AND DECLARES** that the Plaintiffs and the Defendant shall make reasonable efforts to agree on the appointment of an administrator for the purpose of giving notice of the certification of this class proceeding (the "**Administrator**"). The Parties shall advise the Court of the appointment of the Administrator within sixty (60) days of the date of this Order, failing which the Court shall appoint an appropriately qualified Administrator.

10. **THIS COURT ORDERS** that class members shall be notified that this action has been certified as a class proceeding as follows, which shall be and is hereby deemed adequate notice:

(a) by posting the Short Form Notice set out in **Schedule "A"** and Long Form Notice set out in **Schedule "B"**, and the French language translations of these documents, as agreed upon by the parties, on the respective websites of Class Counsel, the Defendant, and the Administrator;

(b) by the Administrator publishing the Short Form Notice in the newspapers set out in **Schedule "C"** attached hereto, in ¼ of a page size in the weekend edition of each newspaper, if possible;

(c) by the Administrator distributing the Short Form Notice to all offices of Tataskweyak Cree Nation and the Assembly of First Nations;

(d) by the Administrator forwarding the Short Form Notice and Long Form Notice to any Class member who requests them;

(e) by the Administrator forwarding the Short Form Notice and Long Form Notice to the Chiefs of every Impacted First Nation identified in accordance with paragraph 12, below, except for Excluded Persons;

(f) by the Administrator forwarding the Short Form Notice and Long Form Notice to the band office or similar office of every Impacted First Nation identified in accordance with paragraph 12, below, except for Excluded Persons, together with a request that they be posted in a prominent place;

(g) by the Administrator establishing a national toll-free support line, to provide assistance to Class members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.

11. **THIS COURT ORDERS** that the Defendant shall be responsible for the cost of giving notice of the certification of a class proceeding as set out in paragraph 10, above.

12. **THIS COURT ORDERS** that within 30 days of the date of this Order, the Plaintiffs and the Defendant shall exchange a list setting out their best information on the names of the First Nations that are eligible to opt into the Class, and taken together these lists shall constitute the means of identifying the First Nations that are entitled to direct notice for the purpose of paragraphs 10(e) and 10(f), above.

13. **THIS COURT ORDERS** that a class member may opt out of this class proceeding by delivering a signed opt-out coupon, a form of which is attached as **Schedule "D"**, or some other legible signed request to opt out, within one-hundred-and- twenty-days (120) days of the date on which notice is first published in accordance with paragraph 10(b), above (the "**Opt Out Deadline**"), to the Administrator. The Short Form Notice and Long Form Notice shall state the Opt Out Deadline and the address of the Administrator for the purpose of receiving opt-out coupons.

14. **THIS COURT ORDERS** that no Class Member may opt out of this class proceeding after the Opt Out Deadline, except with leave of the Court.

15. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.

16. **THIS COURT ORDERS** that any Impacted First Nation may opt into this class proceeding by retaining Class Counsel no fewer than one-hundred-and-twenty (120) days before

the disposition of any of the common issues (the "**Opt In Deadline**"), to Class Counsel, at the address set out in paragraph 11, above.

17. **THIS COURT ORDERS** that no Class member may opt into this class proceeding after the Opt In Deadline, except with leave of the Court.

18. **THIS COURT ORDERS** that Class Counsel shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt In Deadline, a list of all the Impacted First Nations that have opted into the class proceeding.

19. **THIS COURT DECLARES** that the Litigation Plan attached hereto as Appendix 1 is a workable method of advancing the class proceeding on behalf of the Class.

20. **THIS COURT ORDERS** that each party shall bear its own costs of the within motion for certification of this class proceeding.

July 14 , 2020

G.D. JOYAL

The Honourable Chief Justice Joyal

CONSENTED TO AS TO FORM AND CONTENT:

Per: _____
Stephanie Willsey for Catharine Moore/Scott Farlinger
The Attorney General of Canada

Per: _____
Stephanie Willsey
Tataskweyak Cree Nation and Chief Doreen Spence

Schedule A

Legal Notice

Are You a Member of a First Nation That Has Been Subject To A Long-Term Drinking Water Advisory?

A Lawsuit May Affect You and Your First Nation. Please Read this Carefully.

You could be affected by class action litigation regarding the lack of access to clean drinking water on First Nations reserves.

The Manitoba Court of Queen's Bench and the Federal Court of Canada decided that a class action on behalf of a "Class" of both First Nations and band members may proceed. Band members can choose whether to stay in the Class. First Nations can choose whether to join the Class. There is no money available now and no guarantee that the class action will succeed.

The Courts appointed Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias to act as representative Plaintiffs for the Class.

What is this case about?

This class action asserts that Canada breached its obligations by failing to ensure that First Nations communities had adequate access to clean drinking water. The class action asserts that members of these communities and the communities themselves were harmed emotionally, physically, financially, and spiritually. The class action asserts that Canada has breached its fiduciary duties, its duty of care, and the *Charter of Rights and Freedoms*. The Court has not decided whether any of these assertions are true. If there is no settlement, the Plaintiffs will have to prove their claims in Court.

If you have questions about this class action, you can contact **Eric Khan** 1(800) 538-0009 or info@classaction2.com.

Who represents the class?

The Court has appointed McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP to represent the Class as "Class Counsel". You do not have to pay Class Counsel, or anyone else, to participate. If Class Counsel obtains money or benefits for the Class they may ask for lawyers' fees and costs, which would be deducted from any money or benefits recovered for Class members.

Individuals Class Members: Who is included and who is excluded?

Band Members Included: The Class includes band members (as defined by the *Indian Act*): (a) whose reserve was subject to a drinking water advisory (such as a boil water advisory, etc.) that lasted at least one year at any time from November 20, 1995 to the present; (b) had not died before November 20, 2017; and (c) ordinarily lived on their reserve.

Band Members Excluded: Members of the Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, Okanagan Indian Band, and Michael Darryl Isnardy are excluded from this class action.

Individuals: What are your options?

Stay in the Class: To stay in the Class, you do not have to do anything. If the Class obtains money or benefits, Class Counsel will give notice about how to ask for your share. You will be legally bound by all orders and judgments, and you will not be able to sue Canada about the legal claims in this case.

Staying in the Class will not impact the supports received from community-based agencies that are funded by any government.

Get out of the Class: If you do not want to participate in this class action litigation, you need to r emove yourself by opting out. If you opt out, you cannot get money or benefits from this litigatio n. To opt out, please visit **[NTD: Insert Administrator's website for this action]** to obtain an o pt out coupon, or write to CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2 request ing to be removed from this class action. Please include your name, address, telephone number, a nd signature. **Your request to opt out must be sent by [NTD: 120 days from the date of the first publication of notice].**

First Nations: What are your options?

Elect to join the Class: First Nations that wish to join the Class and assert claims on behalf of their community must take action to opt in. To opt in, or to seek more information, please contact the Administrator at 1(800)538-0009 or info@classaction2.com. First Nations may also contact Class Counsel Stephanie Willsey (toll free:1-877-244-7711; swillsey@mccarthy.ca) or Class Counsel Kevin Hille ((416) 598-3694; khille@oktlaw.com). **Your request to opt in must be sent no later than 120 days before Class members' claims are determined.**

How Can I Get More Information?

Name of Administrator: CA2
Contact Information: 1(800)538-0009 or info@classaction2.com

Getting Information To People Who Need It

The representative Plaintiffs and Class Counsel ask for the help of health care workers, social workers, First Nations community leaders, family members, caregivers and friends of Class members in getting information to Class members who would have trouble reading or understanding this notice. More information about this lawsuit is available at the website or by contacting the Administrator. Please show this notice to people who may be impacted by this lawsuit or their caregivers.

Schedule B

Are You a Member of a First Nation That Has Been Subject To A Long-Term Drinking Water Advisory?

If YES, A Class Action May Affect Your Rights and the Rights of First Nations

A court authorized this notice

- You could be affected by a class action involving access to clean drinking water in your First Nation Communities.
- The Manitoba Court of Queen's Bench and the Federal Court of Canada has decided that class actions on behalf of a "Class" of both First Nations and band members may proceed. Band members can choose whether to stay in the Class. First Nations can choose whether to join the Class. The Courts appointed Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias to act as representative Plaintiffs for the Class.
- The Courts have not decided whether Canada did anything wrong, and there still has to be a Court case about whether Canada did anything wrong. There is no money available now and no guarantee there will ever be any money. However, your rights are affected, and you have a choice to make now. This notice is to help you and your First Nation make that choice.

INDIVIDUAL BAND MEMBERS: YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING: KEEP YOUR RIGHTS UNDER THE CLASS ACTION	**Stay in these lawsuits and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.** By doing nothing, you keep the possibility of receiving money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Canada on your own about the same legal claims in this lawsuit.
REMOVE YOURSELF (OPT OUT)	**Get out of these lawsuits and get no benefits from it. Keep rights.** If you ask to opt out and money or benefits are later awarded to Class members, you won't get a share. But, you keep any rights to sue Canada on your own about the same legal claims in this lawsuit.
FIRST NATIONS: YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
CHOOSE TO JOIN THE CLASS (OPT IN)	**Join the Class. If you join, your First Nations might share in money and benefits from the outcome.** By joining the Class (opting in), First Nations might receive money or other benefits, including water infrastructure, that may come from a trial or settlement in the Class Action. Opting in is an easy process, and there is no cost to opt in.

QUESTIONS? CALL TOLL-FREE 1-800-538-0009 OR VISIT HTTPS://CLASSACTION2.COM/

DO NOTHING: LOSE YOUR FIRST NATION'S RIGHTS UNDER THE CLASS ACTION	**By doing nothing, your First Nation will lose the possibility of receiving money and other benefits if the Class Action succeeds.** If First Nations do not join the Class (opt in) and money or benefits are later awarded, your First Nation won't share in those. By not opting-in, your First Nation may keep any rights to sue Canada about the same legal claims in this litigation.

- Lawyers must prove the claims against Canada at a trial or a settlement must be reached. If money or benefits are obtained you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the litigation, individual band members must ask to be removed by **[NTD: 120 days from the first publication of notice.]**. To join the Class Action, First Nations must send their opt in notice no later than 120 days before Class members' claims are to be determined.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is there a notice?

The Courts have "certified" Class Actions. This means that the lawsuits meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Courts decide whether the claims being made against Canada on your behalf are correct. This notice attempts to explain all of these things.

Chief Justice Joyal of the Manitoba Court of Queen's Bench is currently overseeing the case known as *Tataskweyak Cree Nation and Chief Doreen Spence v. Canada*. Justice Favel of the Federal Court of Canada is currently overseeing the case known as *Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias v. Canada*. The persons who sued are called the Plaintiffs. Canada is the Defendant. A link to the latest version of the Statement of Claim (the legal document that makes the allegations against Canada) can be found here: https://www.mccarthy.ca/en/class-action-litigation-drinking-water-advisories-first-nations-0

2. What is this litigation about?

These Class Actions assert that Canada breached its obligations by failing to ensure that First Nations communities had adequate access to clean drinking water. The Class Actions also assert that members of these communities and the communities themselves were harmed emotionally, physically, financially, and spiritually. The Class Actions assert that Canada has breached its fiduciary duties, its duty of care, and the *Charter of Rights and Freedoms*. The Courts have not decided (and Canada has not admitted) that any of these assertions are true. If there is no settlement with Canada, the Plaintiffs will have to prove their claims in Court.

If you are having a difficult time dealing with these issues, or have questions about the Class Action, you can call 1 (800) 538-0009 for assistance.

3. Why is this a class action?

In a class action, the "representative plaintiffs" (in this case, Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias) sued on behalf of individual band members and First Nations who have similar claims. All of these individual band members are part of the "Class" or "Class Members", as are First Nations who choose to join the Class Action. The Court resolves the issues for all Class Members in one case, except (in the case of individual band members) for those who remove themselves from (opt out of) the Class and (in the case of First Nations) for those that do not join (opt into) the Class Action.

4. Who is a member of the Class?

The Class includes and excludes the following:

All persons, other than "Excluded Persons" who:

(i) are members of a band, as defined in subsection 2(1) of the Indian Act, R.S.C. 1985, c, I-5 ("**First Nation**"), the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24 ("**First Nations Lands**"), and whose First Nations Lands were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present ("**Impacted First Nations**");

(ii) were not dead two years prior to the commencement of this action (that is, by November 20, 2017); and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(iv) Tataskweyak Cree Nation, Curve Lake First Nation, Neskantaga First Nation, and any other Impacted First Nation that elects to join this action in a representative capacity ("**Participating Nations**").

"Excluded Persons" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, Okanagan Indian Band, and Okanagan Indian Band and Michael Darryl Isnardy.

5. What are the Plaintiffs asking for?

The Plaintiffs are asking for money and other benefits for the Class, including water infrastructure. The Plaintiffs are also asking for legal fees and costs, plus interest.

6. Is there any money available to Class Members now?

No money or benefits are available now because the Court has not yet decided whether Canada did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If money or other benefits become available, notice will be provided about how to ask for your share.

YOUR RIGHTS AND OPTIONS

Individual band members must decide whether to stay in the Class, and you have to decide this by **[NTD: 120 days from the first publication of notice]**. First Nations must decide whether they w ant to join the class by **no later than 120 days before the Class members' claims are determined.**

7. What happens if I do nothing at all? What happens if the First Nation does nothing at all?

Individuals Band Members: if you do nothing, you will automatically remain in the Class Action. You will be bound by all Court orders, good or bad. If any money or other benefits are awarded, you may need to take action after notice to you to receive any benefits.
First Nations: First Nations must chose to join the Class Action to receive the potential benefits and to be bound by all Court orders, good or bad.

8. What if I don't want to be in the Lawsuit? What if a First Nation wants to join the Lawsuit?

Individual Band Members: If you do not want to be in the lawsuit, you must remove yourself – this is referred to as "opting out." If you remove yourself, you will not receive any benefit that may be obtained from the Class Action. You will not be bound by any Court orders and you keep your right to sue Canada as an individual regarding the issues in this case.

To remove yourself, send a communication that says you want to be removed from the Class in *C urve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher M oonias v. Canada* Court File No. CI-19-01-2466. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at **[insert Administrator web link].** You must deliver your removal request by **[NTD: 120 days from the first publication of notice]** to: CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2 or ~~info@classaction2.com~~.

Call **1 (800) 538-0009** if you have any questions about how to get out of the Class Action.

First Nations: First Nations that wish to join the Class Action and assert claims on behalf of their band or community must take action to join – this is referred to as "opting in." To opt in, or to seek more information, please contact the Administrator **1(800)538-0009** or info@classaction2.com. First Nations may also contact Class Counsel and ask for Class Counsel Stephanie Willsey (toll free: 1-877-244-7711 or swillsey@mccarthy.ca) or Kevin Hille at khille@oktlaw.com or (416) 598-3694. **Requests by First Nations to opt in must be sent no later than 120 days before Class members' claims are determined.**

THE LAWYERS REPRESENTING YOU

10. Do Individual Band Members have a lawyer in the case?

Yes. The Court has appointed McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP to represent you and other Class Members as "Class Counsel." You will not be charged legal or other fees or expenses for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

11. How will the lawyers be paid?

Class Counsel will only be paid if they win judgement or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

A TRIAL

12. How and when will the Court decide who is right?

If the Class Action is not dismissed or settled, the Plaintiffs must prove their claims at a motion for summary judgement or a trial that will take place in Ottawa, Ontario. During the motion or trial, the Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiffs or Canada is right about the claims in the Class Action. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

13. Will I get money after the trial?

If the Plaintiffs obtain money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website **[NTD: insert Administrator website]** as it becomes available.

GETTING MORE INFORMATION

14. How do I get more information? How to I get information to people who need it?

You can get more information at **https://classaction2.com/** by calling toll free at 1(800)538-0009, by writing to: CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2, or by emailing: **info@classaction2.com.**

First Nations and Individual Band Members may also contact Class Counsel and ask for Class Counsel Stephanie Willsey (toll free: 1-877-244-7711 or swillsey@mccarthy.ca or 66 Wellington Street West, Toronto, Ontario, M5K 1E6) or Class Counsel Kevin Hille at khille@oktlaw.com or (416) 598-3694 or 250 University Avenue, 8th floor, Toronto, Ontario, M5H 3E5.

Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, Chief Christopher Moonias, Tataskweyak Cree Nation, Chief Doreen Spence, and Class Counsel kindly ask for the help of health care workers, social workers, First Nation community leaders, family members, caregivers and friends of Class members in getting information to Class Members who would have trouble reading or understanding this notice. More information about this lawsuit is available at the website or by contacting the Administrator or Class Counsel. Please show this notice to people who may be impacted by this lawsuit or their caregivers.

Schedule C

List of Newspapers

Globe and Mail
National Post
Winnipeg Free Press
Vancouver Sun
Edmonton Sun
Calgary Herald
Saskatoon Star Phoenix
Regina Leader Post
Thunder Bay Chronicle-Journal
Toronto Star
Ottawa Citizen
Montreal Gazette
Montreal La Presse (digital edition)
Halifax Chronicle-Herald
Moncton Times and Transcript

First Nations Drum

Schedule D

FORM OF OPT OUT COUPON

To: **[Insert Claim Administrator Address]**
[Insert Administrator Email Address]

This is **NOT** a claim form. Completing this **OPT OUT COUPON** will exclude you from receiving any compensation or other benefits arising out of any settlement or judgment in the class proceeding named below:

***Note: To opt out, this coupon must be properly completed and sent to the above-address no later than* [INSERT DATE THAT IS 120 DAYS FROM THE FIRST NOTICE PUBLICATION]**

Court File No.: T-1673-19

CURVE LAKE FIRST NATIONAL and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that any individual claim I may have must be commenced within a specified limitation period or that claim will be legally barred.

I understand that the certification of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period legal steps to protect any claim I may have.

Date: _____

Name of Class Member: _____

Signature of Witness	Signature of Class Member Opting Out

Name of Witness:

Appendix 1

File No. CI-19-01-24661

THE QUEEN'S BENCH

Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and –

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M.c. C. 130

LITIGATION PLAN

FOR COMMON ISSUES, CERTIFICATION AND SUMMARY JUDGMENT MOTIONS

1. Attached as **Schedule "A"** is the parties' consent timetable, as ordered by the Court. This Litigation Plan is intended to address the Plaintiffs' motions for certification and summary judgement.

2. If the motions are successful, a further plan will be proposed to address any remaining issues, depending on the outcome.

3. Alternatively, if the motion for summary judgement is not successful, the Plaintiffs will propose a further plan for the trial of the common issues.

4. At the certification motion, the Plaintiffs will seek certification of the following common issue to be resolved on behalf of the class as a whole ("**Stage 1 Common Issue**"):

(a) From November 20, 1995 to the present, did the Defendant owe a duty or an obligation to Class members to take reasonable measures to provide them with, or ensure they were provided with, or refrain from barring, adequate access to water that is safe for human use?

5. If the Defendant consents to certification of a class proceeding, the Plaintiffs will negotiate with the Defendant to resolve the common issues. If the negotiations fail, the Plaintiffs will require the delivery of a Statement of Defence, following which they will deliver a record in support of a motion for summary judgement on the Stage 1 Common Issue. At a pre-trial conference following delivery of the Plaintiffs' record, they will ask the Court to determine that this matter is appropriate for summary judgement and schedule a hearing of their motion.

6. If the Defendant opposes the certification of a class proceeding, the Plaintiffs will require the Defendant to deliver a Statement of Defence. The Plaintiffs will then deliver a record in support of motions for certification and summary judgement on the Stage 1 Common Issue. At a pre-trial conference following the delivery of the Plaintiffs' record, they will ask the Court to determine that this matter is appropriate for summary judgement and schedule the hearing of their motion for summary judgement together with the hearing of their motion for certification.

7. At the certification motion, the Plaintiffs will also seek certification of the following common issues to be resolved on behalf of each Impacted First Nation sub-group, being the members of that First Nation and the First Nation itself, if it is a Participating First Nation ("**Stage 2 Common Issues**"):

(a) If the answer to common issue 4(a) is "yes", did Canada breach its duties or obligations to members of the sub-group?

(b) If the answer to common issue 7(a) is yes, is any breach of the *Charter of Rights and Freedoms* ("***Charter***") saved by s. 1 of the *Charter*?

(c) If the answer to common issue 7(a) is yes, did the Defendant's breach cause a substantial and unreasonable interference with Class members' or their First Nations' use and enjoyment of their lands?

(d) If the answer to common issue 7(a) is "yes" and the answer to common issue 7(b) is "no", are damages available to members of the sub-group under s. 24(1) of the *Charter*?

(e) Can the causation of any damages suffered by members of the sub-group be determined as a common issue?

(f) Can the Court make an aggregate assessment of all or part of any damages suffered by members of the sub-group?

(g) Does the Defendant's conduct justify an award of punitive damages, and if so, in what amount?

(h) Should the Court order that the Defendant take measures to provide or ensure that members of the sub-group are provided with, or refrain from barring, adequate access to clean tap water?

(i) If so, what measures should be ordered?

8. If the Stage 1 Common Issue is determined in favour of the Plaintiffs, the parties will conclude a discovery plan to manage the Defendant's timely production of relevant documents in respect of the Stage 2 Common Issues for each Impacted First Nation sub-group.

9. Upon assessing the Defendant's productions, the Plaintiffs will decide whether to bring motions for summary judgement on the Stage 2 Common Issues for some or all of the Impacted First Nation sub-groups, or alternatively, to schedule a trial of these common issues.

NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

10. On the motion for certification, the Plaintiffs will ask that the Court settle the form and content for notification of the certification of this action (the "**Notice of Certification**"), the timing and manner of providing Notice of Certification ("**Notice Program**") and set out an opt-out date as being three (3) months following the date of the Certification Order ("**Opt-Out Date**"), and an opt-in date as being six (6) months prior to the commencement of the determination of the Stage 2 Common Issues.

11. If a motion for summary judgement is being heard together with a motion for certification, the Plaintiffs will ask the court to render its decision on certification first, direct that notice issue if a class proceeding is certified, and then render its decision on the Stage 1 Common Issue following the Opt-Out Date.

12. The Plaintiffs will ask the Court to order that the defendant pay the costs of the Notice Program, including the cost of the Administrator.

13. The Plaintiffs will seek an order for the distribution of notice of certification as follows:

(a) posting the notice on the respective websites of Class Counsel, the Defendant, and the Administrator;

(b) publishing the notice in designated newspapers;

(c) distributing the notice to all offices of Tataskweyak Cree Nation and the Assembly of First Nations.

(d) forwarding the notice to any Class member who requests it and the Chiefs of every First Nation that is eligible to opt into the class, as well as each band office;

(e) establishing a national toll-free support line, to provide assistance to Class members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.

(a) And by such other notice as the Court directs.

14. The Plaintiffs will ask the Court to approve opt-out and opt-in forms to be used by class members wishing to opt out of, or opt into, the class action, which will require the Class member to provide sufficient information to establish their membership in the Class.

LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS

Notice of Resolution of Common Issues

15. The Plaintiffs will ask that the Court settle the form and content for notification of the resolution of the Stage 1 and Stage 2 Common Issues ("**Resolution Notice Plan**") and the means by which Class members will file claims ("**Claim Forms**") by a fixed date with the Administrator. The Plaintiffs will also ask that the Court settle an appropriate process to determine any remaining individual issues.

Valuation of Damages

16. If the Common Issues are resolved in favour of the Plaintiffs, the Plaintiffs propose two (2) methods for assessing and distributing damages for the class members as follows:

(a) Aggregate damages that accrue to individual Class members on a *pro rata* basis or on a *pro rata* basis within a sub-group;

(b) Aggregate damages that accrue to Participating First Nations on a community basis; and

17. Following the determination of aggregate damages, including punitive damages, additional damages may be awarded in individual issues proceedings.

Assessment of Number of Claimants

18. After the deadline for submitting Claim Forms has expired, the Administrator shall calculate the total number of claimants for the purpose of any *pro rata* distribution of aggregate damages.

Global Punitive Damages Distribution

19. Should the Court award aggregate damages to the Class or a sub-group, the total amount of damages will be apportioned to the class in a manner to be determined by the Court within a fixed period of time set by the Court from the Notice of Resolution.

Funds not Distributed

20. Any monies not distributed will be distributed *cy-près* as the Court directs. The Plaintiffs propose that any residual amounts be distributed *cy-près* to community organizations that assist with water infrastructure in Impacted First Nations.

Resolution of the Individual Issues

21. Within thirty (30) days of the issuance of the judgment on the common issues, the parties will convene to settle a protocol to resolve any individual issues. If the parties cannot settle such a protocol, the Plaintiffs will move for directions from the Court within sixty (60) days.

MISCELLANEOUS REQUIREMENTS OF THE LITIGATION PLAN

Funding

22. Class Counsel has entered into an agreement with the Representative Plaintiffs with respect to legal fees and disbursements. This agreement provides that counsel will not receive payment for their work unless and until the class proceeding is successful or costs are recovered from the Defendant.

23. Class Counsel's legal fees are subject to court approval under the *Class Proceedings Act*.

Claims Administration

24. The Administrator will provide the claims administration for any settlement or judgement achieved. The Administrator will distribute notice in accordance with the Resolution Notice Plan. If a settlement is achieved and a settlement fund is provided, or if judgement results in an award in favour of Class members, the Administrator will administer payments out of the fund to claimants based on the procedures set out above, after approval and/or modification by the Court.

Class Action Website

25. From time to time, Class Counsel will post relevant pleadings and court filings, the latest documents and summaries of the latest developments, anticipated timelines, frequently asked questions and answers, and contact information for class counsel for the information of class members.

Conflict Management

26. Class Counsel and the Plaintiffs have taken appropriate measures to determine that no conflict of interest exists among the members of the Class, and no such conflict is anticipated. Should a conflict arise, McCarthy Tétrault LLP will represent one sub-group, and Olthuis Kleer Townshend LLP will represent the other. Should any conflict arise as between First Nations and their members, which is not anticipated given their commonality of interest, McCarthy Tétrault LLP will represent the members and Olthuis Kleer Townshend LLP will represent the First Nations.

Applicable Law

27. The applicable law is the *Constitution Act, 1982*, the *Constitution Act, 1867*, the *Charter of Rights and Freedoms*, the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21, the

Indian Act, R.S.C. 1985, c, I-5, the *First Nations Land Management Act*, S.C. 1999, c. 24, *The Class Proceedings Act*, C.C.S.M. c. C130, as well as applicable regulations, the common law and the law of Manitoba.

Schedule "A"

Timetable

PROPOSED LITIGATION TIMETABLE		
Steps To Be Completed	**By Which Party**	**Date To Be Completed By**
Delivery of Statement of Defence	Defendant	To be delivered on 60 days' notice by the Plaintiffs
Delivery of Reply, if any	Plaintiffs	To be delivered 15 days after delivery of Statement of Defence
Delivery of Certification/Summary Judgement Record	Plaintiffs	June 30, 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Pre-trial to assess summary judgement	All parties	July 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Delivery of Responding Record	Defendant	October 30, 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Delivery of Reply Record, if any	Plaintiffs	December 16, 2020 (or 45 days after delivery of Responding Record, whichever is later)
Cross-examinations	All parties	To be completed 75 days after delivery of Reply Record, if any, or 120 days after delivery of Responding Record
Refusals Motions, if any	All parties	To be completed 30 days after completion of cross-examinations
Delivery of answers to undertakings	All parties	To be completed 15 days after refusals motion

PROPOSED LITIGATION TIMETABLE		
Steps To Be Completed	**By Which Party**	**Date To Be Completed By**
Delivery of Moving Factum	Plaintiffs	To be delivered 45 days after completion of answers to undertakings
Delivery of Responding Factum	Defendant	To be delivered 45 days after delivery of Moving Factum
Delivery of Reply Factum	Plaintiffs	To be delivered 15 days after delivery of Responding Factum
Hearing of Certification and possible Summary Judgement Motion	All parties	July-August 2021

Court File No.: CI 19-01-24661

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Proposed Class Proceeding commenced under Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C. 130

LITIGATION PLAN

(Filed this 2nd day of July, 2020)

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Lawyers for the Plaintiffs

Court File No.: CI 19-01-24661

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Proposed Class Proceeding commenced under Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C. 130

ORDER

(July 14, 2020)

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Lawyers for the Plaintiffs

File No. CI-19-01-24661

THE QUEEN'S BENCH

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BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and –

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M.c. C. 130

ORDER

THIS MOTION for certification, brought by the Plaintiffs was heard on July 14, 2020 at 408 York Ave in Winnipeg, Manitoba.

ON READING the motion record of the Plaintiffs and the consent of the Defendant.

AND ON BEING ADVISED that the parties consent to this order.

1. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to *The Class Proceedings Act*, C.C.S.M.c. C. 130.

2. **THIS COURT ORDERS AND DECLARES** that the Class is defined as:

(a) All persons other than Excluded Persons who:

(i) are members of a band, as defined in subsection 2(1) of the *Indian Act*, R.S.C. 1985, c, I-5 ("**First Nation**"), the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24 ("**First Nations Lands**"), and whose First Nations Lands were subject

to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present ("**Impacted First Nations**");

(ii) had not died before November 20, 2017; and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(b) Tataskweyak Cree Nation and any other Impacted First Nation that elects to join this action in a representative capacity ("**Participating Nations**").

"**Excluded Persons**" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, and the Okanagan Indian Band, and Michael Daryl Isnardy.

3. **THIS COURT ORDERS AND DECLARES** that until the claims asserted in this class proceeding are fully and finally decided, settled, discontinued, or abandoned, including the exhaustion of all rights of appeal, leave of the Court is required to commence any other proceeding on behalf of any member of the Class in respect of the claims asserted in this action, save and except for proceedings commenced on behalf of those members of the Class who opt out of this class proceeding in the manner prescribed below.

4. **THIS COURT ORDERS AND DECLARES** that the following common issues be and are hereby certified for resolution on behalf of the Class as a whole:

(a) From November 20, 1995 to the present, did the Defendant owe a duty or an obligation to Class members to take reasonable measures to provide them with, or ensure they were provided with, or refrain from barring, adequate access to water that is safe for human use?

5. **THIS COURT ORDERS AND DECLARES** that a sub-group be and is hereby recognized for the members of each Impacted First Nation, and the First Nation itself, if it is a Participating Nation;

6. **THIS COURT ORDERS AND DECLARES** that the following common issues be and are hereby certified for resolution on behalf of each sub-group:

(a) If the answer to common issue 4(a) is "yes", did Canada breach its duties or obligations to members of the sub-group?

(b) If the answer to common issue 6(a) is yes, is any breach of the *Charter of Rights and Freedoms* ("***Charter***") saved by s. 1 of the *Charter*?

(c) If the answer to common issue 6(a) is yes, did the Defendant's breach cause a substantial and unreasonable interference with Class members' or their First Nations' use and enjoyment of their lands?

(d) If the answer to common issue 6(a) is "yes" and the answer to common issue 6(b) is "no", are damages available to members of the sub-group under s. 24(1) of the *Charter*?

(e) Can the causation of any damages suffered by members of the sub-group be determined as a common issue?

(f) Can the Court make an aggregate assessment of all or part of any damages suffered by members of the sub-group?

(g) Does the Defendant's conduct justify an award of punitive damages, and if so, in what amount?

(h) Should the Court order that the Defendant take measures to provide or ensure that members of the sub-group are provided with, or refrain from barring, adequate access to clean tap water?

(i) If so, what measures should be ordered?

7. **THIS COURT ORDERS AND DECLARES** that Chief Doreen Spence and Tataskweyak Cree Nation are hereby appointed as Representative Plaintiffs for the Class.

8. **THIS COURT ORDERS AND DECLARES** that McCarthy Tétrault LLP and Olthuis Kleer Townshend are hereby appointed as class counsel ("**Class Counsel**").

9. **THIS COURT ORDERS AND DECLARES** that the Plaintiffs and the Defendant shall make reasonable efforts to agree on the appointment of an administrator for the purpose of giving notice of the certification of this class proceeding (the "**Administrator**"). The Parties shall advise the Court of the appointment of the Administrator within sixty (60) days of the date of this Order, failing which the Court shall appoint an appropriately qualified Administrator.

10. **THIS COURT ORDERS** that class members shall be notified that this action has been certified as a class proceeding as follows, which shall be and is hereby deemed adequate notice:

(a) by posting the Short Form Notice set out in **Schedule "A"** and Long Form Notice set out in **Schedule "B"**, and the French language translations of these documents, as agreed upon by the parties, on the respective websites of Class Counsel, the Defendant, and the Administrator;

(b) by the Administrator publishing the Short Form Notice in the newspapers set out in **Schedule "C"** attached hereto, in ¼ of a page size in the weekend edition of each newspaper, if possible;

(c) by the Administrator distributing the Short Form Notice to all offices of Tataskweyak Cree Nation and the Assembly of First Nations;

(d) by the Administrator forwarding the Short Form Notice and Long Form Notice to any Class member who requests them;

(e) by the Administrator forwarding the Short Form Notice and Long Form Notice to the Chiefs of every Impacted First Nation identified in accordance with paragraph 12, below, except for Excluded Persons;

(f) by the Administrator forwarding the Short Form Notice and Long Form Notice to the band office or similar office of every Impacted First Nation identified in accordance with paragraph 12, below, except for Excluded Persons, together with a request that they be posted in a prominent place;

(g) by the Administrator establishing a national toll-free support line, to provide assistance to Class members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.

11. **THIS COURT ORDERS** that the Defendant shall be responsible for the cost of giving notice of the certification of a class proceeding as set out in paragraph 10, above.

12. **THIS COURT ORDERS** that within 30 days of the date of this Order, the Plaintiffs and the Defendant shall exchange a list setting out their best information on the names of the First Nations that are eligible to opt into the Class, and taken together these lists shall constitute the means of identifying the First Nations that are entitled to direct notice for the purpose of paragraphs 10(e) and 10(f), above.

13. **THIS COURT ORDERS** that a class member may opt out of this class proceeding by delivering a signed opt-out coupon, a form of which is attached as **Schedule "D"**, or some other legible signed request to opt out, within one-hundred-and- twenty-days (120) days of the date on which notice is first published in accordance with paragraph 10(b), above (the "**Opt Out Deadline**"), to the Administrator. The Short Form Notice and Long Form Notice shall state the Opt Out Deadline and the address of the Administrator for the purpose of receiving opt-out coupons.

14. **THIS COURT ORDERS** that no Class Member may opt out of this class proceeding after the Opt Out Deadline, except with leave of the Court.

15. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.

16. **THIS COURT ORDERS** that any Impacted First Nation may opt into this class proceeding by retaining Class Counsel no fewer than one-hundred-and-twenty (120) days before

the disposition of any of the common issues (the "**Opt In Deadline**"), to Class Counsel, at the address set out in paragraph 11, above.

17. **THIS COURT ORDERS** that no Class member may opt into this class proceeding after the Opt In Deadline, except with leave of the Court.

18. **THIS COURT ORDERS** that Class Counsel shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt In Deadline, a list of all the Impacted First Nations that have opted into the class proceeding.

19. **THIS COURT DECLARES** that the Litigation Plan attached hereto as Appendix 1 is a workable method of advancing the class proceeding on behalf of the Class.

20. **THIS COURT ORDERS** that each party shall bear its own costs of the within motion for certification of this class proceeding.

July 14 , 2020

_____

The Honourable Chief Justice Joyal

CONSENTED TO AS TO FORM AND CONTENT:

Per: _____
Stephanie Willsey for Catharine Moore/Scott Farlinger
The Attorney General of Canada

Per: _____
Stephanie Willsey
Tataskweyak Cree Nation and Chief Doreen Spence

Schedule A

Legal Notice

Are You a Member of a First Nation That Has Been Subject To A Long-Term Drinking Water Advisory?

A Lawsuit May Affect You and Your First Nation. Please Read this Carefully.

You could be affected by class action litigation regarding the lack of access to clean drinking water on First Nations reserves.

The Manitoba Court of Queen's Bench and the Federal Court of Canada decided that a class action on behalf of a "Class" of both First Nations and band members may proceed. Band members can choose whether to stay in the Class. First Nations can choose whether to join the Class. There is no money available now and no guarantee that the class action will succeed.

The Courts appointed Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias to act as representative Plaintiffs for the Class.

What is this case about?

This class action asserts that Canada breached its obligations by failing to ensure that First Nations communities had adequate access to clean drinking water. The class action asserts that members of these communities and the communities themselves were harmed emotionally, physically, financially, and spiritually. The class action asserts that Canada has breached its fiduciary duties, its duty of care, and the *Charter of Rights and Freedoms*. The Court has not decided whether any of these assertions are true. If there is no settlement, the Plaintiffs will have to prove their claims in Court.

If you have questions about this class action, you can contact **Eric Khan** 1(800) 538-0009 or info@classaction2.com.

Who represents the class?

The Court has appointed McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP to represent the Class as "Class Counsel". You do not have to pay Class Counsel, or anyone else, to participate. If Class Counsel obtains money or benefits for the Class they may ask for lawyers' fees and costs, which would be deducted from any money or benefits recovered for Class members.

Individuals Class Members: Who is included and who is excluded?

Band Members Included: The Class includes band members (as defined by the *Indian Act*): (a) whose reserve was subject to a drinking water advisory (such as a boil water advisory, etc.) that lasted at least one year at any time from November 20, 1995 to the present; (b) had not died before November 20, 2017; and (c) ordinarily lived on their reserve.

Band Members Excluded: Members of the Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, Okanagan Indian Band, and Michael Darryl Isnardy are excluded from this class action.

Individuals: What are your options?

Stay in the Class: To stay in the Class, you do not have to do anything. If the Class obtains money or benefits, Class Counsel will give notice about how to ask for your share. You will be legally bound by all orders and judgments, and you will not be able to sue Canada about the legal claims in this case.

Staying in the Class will not impact the supports received from community-based agencies that are funded by any government.

Get out of the Class: If you do not want to participate in this class action litigation, you need to r emove yourself by opting out. If you opt out, you cannot get money or benefits from this litigatio n. To opt out, please visit **[NTD: Insert Administrator's website for this action]** to obtain an o pt out coupon, or write to CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2 request ing to be removed from this class action. Please include your name, address, telephone number, a nd signature. **Your request to opt out must be sent by [NTD: 120 days from the date of the first publication of notice].**

First Nations: What are your options?

Elect to join the Class: First Nations that wish to join the Class and assert claims on behalf of their community must take action to opt in. To opt in, or to seek more information, please contact the Administrator at 1(800)538-0009 or info@classaction2.com. First Nations may also contact Class Counsel Stephanie Willsey (toll free:1-877-244-7711; swillsey@mccarthy.ca) or Class Counsel Kevin Hille ((416) 598-3694; khille@oktlaw.com). **Your request to opt in must be sent no later than 120 days before Class members' claims are determined.**

How Can I Get More Information?

Name of Administrator: CA2
Contact Information: 1(800)538-0009 or info@classaction2.com

Getting Information To People Who Need It

The representative Plaintiffs and Class Counsel ask for the help of health care workers, social workers, First Nations community leaders, family members, caregivers and friends of Class members in getting information to Class members who would have trouble reading or understanding this notice. More information about this lawsuit is available at the website or by contacting the Administrator. Please show this notice to people who may be impacted by this lawsuit or their caregivers.

Schedule B

Are You a Member of a First Nation That Has Been Subject To A Long-Term Drinking Water Advisory?

If YES, A Class Action May Affect Your Rights and the Rights of First Nations

A court authorized this notice

- You could be affected by a class action involving access to clean drinking water in your First Nation Communities.
- The Manitoba Court of Queen's Bench and the Federal Court of Canada has decided that class actions on behalf of a "Class" of both First Nations and band members may proceed. Band members can choose whether to stay in the Class. First Nations can choose whether to join the Class. The Courts appointed Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias to act as representative Plaintiffs for the Class.
- The Courts have not decided whether Canada did anything wrong, and there still has to be a Court case about whether Canada did anything wrong. There is no money available now and no guarantee there will ever be any money. However, your rights are affected, and you have a choice to make now. This notice is to help you and your First Nation make that choice.

INDIVIDUAL BAND MEMBERS: YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING: KEEP YOUR RIGHTS UNDER THE CLASS ACTION	**Stay in these lawsuits and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.** By doing nothing, you keep the possibility of receiving money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Canada on your own about the same legal claims in this lawsuit.
REMOVE YOURSELF (OPT OUT)	**Get out of these lawsuits and get no benefits from it. Keep rights.** If you ask to opt out and money or benefits are later awarded to Class members, you won't get a share. But, you keep any rights to sue Canada on your own about the same legal claims in this lawsuit.
FIRST NATIONS: YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
CHOOSE TO JOIN THE CLASS (OPT IN)	**Join the Class. If you join, your First Nations might share in money and benefits from the outcome.** By joining the Class (opting in), First Nations might receive money or other benefits, including water infrastructure, that may come from a trial or settlement in the Class Action. Opting in is an easy process, and there is no cost to opt in.

QUESTIONS? CALL TOLL-FREE 1-800-538-0009 OR VISIT HTTPS://CLASSACTION2.COM/

DO NOTHING: LOSE YOUR FIRST NATION'S RIGHTS UNDER THE CLASS ACTION	**By doing nothing, your First Nation will lose the possibility of receiving money and other benefits if the Class Action succeeds.** If First Nations do not join the Class (opt in) and money or benefits are later awarded, your First Nation won't share in those. By not opting-in, your First Nation may keep any rights to sue Canada about the same legal claims in this litigation.

- Lawyers must prove the claims against Canada at a trial or a settlement must be reached. If money or benefits are obtained you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the litigation, individual band members must ask to be removed by **[NTD: 120 days from the first publication of notice.]**. To join the Class Action, First Nations must send their opt in notice no later than 120 days before Class members' claims are to be determined.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is there a notice?

The Courts have "certified" Class Actions. This means that the lawsuits meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Courts decide whether the claims being made against Canada on your behalf are correct. This notice attempts to explain all of these things.

Chief Justice Joyal of the Manitoba Court of Queen's Bench is currently overseeing the case known as *Tataskweyak Cree Nation and Chief Doreen Spence v. Canada*. Justice Favel of the Federal Court of Canada is currently overseeing the case known as *Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias v. Canada*. The persons who sued are called the Plaintiffs. Canada is the Defendant. A link to the latest version of the Statement of Claim (the legal document that makes the allegations against Canada) can be found here: https://www.mccarthy.ca/en/class-action-litigation-drinking-water-advisories-first-nations-0

2. What is this litigation about?

These Class Actions assert that Canada breached its obligations by failing to ensure that First Nations communities had adequate access to clean drinking water. The Class Actions also assert that members of these communities and the communities themselves were harmed emotionally, physically, financially, and spiritually. The Class Actions assert that Canada has breached its fiduciary duties, its duty of care, and the *Charter of Rights and Freedoms*. The Courts have not decided (and Canada has not admitted) that any of these assertions are true. If there is no settlement with Canada, the Plaintiffs will have to prove their claims in Court.

If you are having a difficult time dealing with these issues, or have questions about the Class Action, you can call 1 (800) 538-0009 for assistance.

3. Why is this a class action?

In a class action, the "representative plaintiffs" (in this case, Tataskweyak Cree Nation, Chief Doreen Spence, Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias) sued on behalf of individual band members and First Nations who have similar claims. All of these individual band members are part of the "Class" or "Class Members", as are First Nations who choose to join the Class Action. The Court resolves the issues for all Class Members in one case, except (in the case of individual band members) for those who remove themselves from (opt out of) the Class and (in the case of First Nations) for those that do not join (opt into) the Class Action.

4. Who is a member of the Class?

The Class includes and excludes the following:

All persons, other than "Excluded Persons" who:

(i) are members of a band, as defined in subsection 2(1) of the Indian Act, R.S.C. 1985, c, I-5 ("**First Nation**"), the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24 ("**First Nations Lands**"), and whose First Nations Lands were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year from November 20, 1995 to present ("**Impacted First Nations**");

(ii) were not dead two years prior to the commencement of this action (that is, by November 20, 2017); and

(iii) ordinarily resided in an Impacted First Nation while it was subject to a drinking water advisory that lasted at least one year; and

(iv) Tataskweyak Cree Nation, Curve Lake First Nation, Neskantaga First Nation, and any other Impacted First Nation that elects to join this action in a representative capacity ("**Participating Nations**").

"Excluded Persons" are members of Tsuu T'ina Nation, Sucker Creek First Nation, Ermineskin Cree Nation, the Blood Tribe, Okanagan Indian Band, and Okanagan Indian Band and Michael Darryl Isnardy.

5. What are the Plaintiffs asking for?

The Plaintiffs are asking for money and other benefits for the Class, including water infrastructure. The Plaintiffs are also asking for legal fees and costs, plus interest.

6. Is there any money available to Class Members now?

No money or benefits are available now because the Court has not yet decided whether Canada did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If money or other benefits become available, notice will be provided about how to ask for your share.

YOUR RIGHTS AND OPTIONS

Individual band members must decide whether to stay in the Class, and you have to decide this by **[NTD: 120 days from the first publication of notice]**. First Nations must decide whether they w ant to join the class by **no later than 120 days before the Class members' claims are determined.**

7. What happens if I do nothing at all? What happens if the First Nation does nothing at all?

Individuals Band Members: if you do nothing, you will automatically remain in the Class Action. You will be bound by all Court orders, good or bad. If any money or other benefits are awarded, you may need to take action after notice to you to receive any benefits.
First Nations: First Nations must chose to join the Class Action to receive the potential benefits and to be bound by all Court orders, good or bad.

8. What if I don't want to be in the Lawsuit? What if a First Nation wants to join the Lawsuit?

Individual Band Members: If you do not want to be in the lawsuit, you must remove yourself – this is referred to as "opting out." If you remove yourself, you will not receive any benefit that may be obtained from the Class Action. You will not be bound by any Court orders and you keep your right to sue Canada as an individual regarding the issues in this case.

To remove yourself, send a communication that says you want to be removed from the Class in *C urve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher M oonias v. Canada* Court File No. CI-19-01-2466. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at **[insert Administrator web link].** You must deliver your removal request by **[NTD: 120 days from the first publication of notice]** to: CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2 or info@classaction2.com.

Call **1 (800) 538-0009** if you have any questions about how to get out of the Class Action.

First Nations: First Nations that wish to join the Class Action and assert claims on behalf of their band or community must take action to join – this is referred to as "opting in." To opt in, or to seek more information, please contact the Administrator **1(800)538-0009** or info@classaction2.com. First Nations may also contact Class Counsel and ask for Class Counsel Stephanie Willsey (toll free: 1-877-244-7711 or swillsey@mccarthy.ca) or Kevin Hille at khille@oktlaw.com or (416) 598-3694. **Requests by First Nations to opt in must be sent no later than 120 days before Class members' claims are determined.**

THE LAWYERS REPRESENTING YOU

10. Do Individual Band Members have a lawyer in the case?

Yes. The Court has appointed McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP to represent you and other Class Members as "Class Counsel." You will not be charged legal or other fees or expenses for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

11. How will the lawyers be paid?

Class Counsel will only be paid if they win judgement or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

A TRIAL

12. How and when will the Court decide who is right?

If the Class Action is not dismissed or settled, the Plaintiffs must prove their claims at a motion for summary judgement or a trial that will take place in Ottawa, Ontario. During the motion or trial, the Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiffs or Canada is right about the claims in the Class Action. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

13. Will I get money after the trial?

If the Plaintiffs obtain money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website **[NTD: insert Administrator website]** as it becomes available.

GETTING MORE INFORMATION

14. How do I get more information? How to I get information to people who need it?

You can get more information at **https://classaction2.com/** by calling toll free at 1(800)538-0009, by writing to: CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2, or by emailing: **info@classaction2.com.**

First Nations and Individual Band Members may also contact Class Counsel and ask for Class Counsel Stephanie Willsey (toll free: 1-877-244-7711 or swillsey@mccarthy.ca or 66 Wellington Street West, Toronto, Ontario, M5K 1E6) or Class Counsel Kevin Hille at khille@oktlaw.com or (416) 598-3694 or 250 University Avenue, 8th floor, Toronto, Ontario, M5H 3E5.

Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, Chief Christopher Moonias, Tataskweyak Cree Nation, Chief Doreen Spence, and Class Counsel kindly ask for the help of health care workers, social workers, First Nation community leaders, family members, caregivers and friends of Class members in getting information to Class Members who would have trouble reading or understanding this notice. More information about this lawsuit is available at the website or by contacting the Administrator or Class Counsel. Please show this notice to people who may be impacted by this lawsuit or their caregivers.

Schedule C

List of Newspapers

Globe and Mail
National Post
Winnipeg Free Press
Vancouver Sun
Edmonton Sun
Calgary Herald
Saskatoon Star Phoenix
Regina Leader Post
Thunder Bay Chronicle-Journal
Toronto Star
Ottawa Citizen
Montreal Gazette
Montreal La Presse (digital edition)
Halifax Chronicle-Herald
Moncton Times and Transcript

First Nations Drum

Schedule D

FORM OF OPT OUT COUPON

To: **[Insert Claim Administrator Address]**
[Insert Administrator Email Address]

This is **NOT** a claim form. Completing this **OPT OUT COUPON** will exclude you from receiving any compensation or other benefits arising out of any settlement or judgment in the class proceeding named below:

***Note: To opt out, this coupon must be properly completed and sent to the above-address no later than* [INSERT DATE THAT IS 120 DAYS FROM THE FIRST NOTICE PUBLICATION]**

Court File No.: T-1673-19

CURVE LAKE FIRST NATIONAL and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that any individual claim I may have must be commenced within a specified limitation period or that claim will be legally barred.

I understand that the certification of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period legal steps to protect any claim I may have.

Date: _____

Name of Class Member: _____

Signature of Witness	Signature of Class Member Opting Out

Name of Witness:

Appendix 1

File No. CI-19-01-24661

THE QUEEN'S BENCH

Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and –

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M.c. C. 130

LITIGATION PLAN

FOR COMMON ISSUES, CERTIFICATION AND SUMMARY JUDGMENT MOTIONS

1. Attached as **Schedule "A"** is the parties' consent timetable, as ordered by the Court. This Litigation Plan is intended to address the Plaintiffs' motions for certification and summary judgement.

2. If the motions are successful, a further plan will be proposed to address any remaining issues, depending on the outcome.

3. Alternatively, if the motion for summary judgement is not successful, the Plaintiffs will propose a further plan for the trial of the common issues.

4. At the certification motion, the Plaintiffs will seek certification of the following common issue to be resolved on behalf of the class as a whole ("**Stage 1 Common Issue**"):

(a) From November 20, 1995 to the present, did the Defendant owe a duty or an obligation to Class members to take reasonable measures to provide them with, or ensure they were provided with, or refrain from barring, adequate access to water that is safe for human use?

5. If the Defendant consents to certification of a class proceeding, the Plaintiffs will negotiate with the Defendant to resolve the common issues. If the negotiations fail, the Plaintiffs will require the delivery of a Statement of Defence, following which they will deliver a record in support of a motion for summary judgement on the Stage 1 Common Issue. At a pre-trial conference following delivery of the Plaintiffs' record, they will ask the Court to determine that this matter is appropriate for summary judgement and schedule a hearing of their motion.

6. If the Defendant opposes the certification of a class proceeding, the Plaintiffs will require the Defendant to deliver a Statement of Defence. The Plaintiffs will then deliver a record in support of motions for certification and summary judgement on the Stage 1 Common Issue. At a pre-trial conference following the delivery of the Plaintiffs' record, they will ask the Court to determine that this matter is appropriate for summary judgement and schedule the hearing of their motion for summary judgement together with the hearing of their motion for certification.

7. At the certification motion, the Plaintiffs will also seek certification of the following common issues to be resolved on behalf of each Impacted First Nation sub-group, being the members of that First Nation and the First Nation itself, if it is a Participating First Nation ("**Stage 2 Common Issues**"):

(a) If the answer to common issue 4(a) is "yes", did Canada breach its duties or obligations to members of the sub-group?

(b) If the answer to common issue 7(a) is yes, is any breach of the *Charter of Rights and Freedoms* ("***Charter***") saved by s. 1 of the *Charter*?

(c) If the answer to common issue 7(a) is yes, did the Defendant's breach cause a substantial and unreasonable interference with Class members' or their First Nations' use and enjoyment of their lands?

(d) If the answer to common issue 7(a) is "yes" and the answer to common issue 7(b) is "no", are damages available to members of the sub-group under s. 24(1) of the *Charter*?

(e) Can the causation of any damages suffered by members of the sub-group be determined as a common issue?

(f) Can the Court make an aggregate assessment of all or part of any damages suffered by members of the sub-group?

(g) Does the Defendant's conduct justify an award of punitive damages, and if so, in what amount?

(h) Should the Court order that the Defendant take measures to provide or ensure that members of the sub-group are provided with, or refrain from barring, adequate access to clean tap water?

(i) If so, what measures should be ordered?

8. If the Stage 1 Common Issue is determined in favour of the Plaintiffs, the parties will conclude a discovery plan to manage the Defendant's timely production of relevant documents in respect of the Stage 2 Common Issues for each Impacted First Nation sub-group.

9. Upon assessing the Defendant's productions, the Plaintiffs will decide whether to bring motions for summary judgement on the Stage 2 Common Issues for some or all of the Impacted First Nation sub-groups, or alternatively, to schedule a trial of these common issues.

NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

10. On the motion for certification, the Plaintiffs will ask that the Court settle the form and content for notification of the certification of this action (the "**Notice of Certification**"), the timing and manner of providing Notice of Certification ("**Notice Program**") and set out an opt-out date as being three (3) months following the date of the Certification Order ("**Opt-Out Date**"), and an opt-in date as being six (6) months prior to the commencement of the determination of the Stage 2 Common Issues.

11. If a motion for summary judgement is being heard together with a motion for certification, the Plaintiffs will ask the court to render its decision on certification first, direct that notice issue if a class proceeding is certified, and then render its decision on the Stage 1 Common Issue following the Opt-Out Date.

12. The Plaintiffs will ask the Court to order that the defendant pay the costs of the Notice Program, including the cost of the Administrator.

13. The Plaintiffs will seek an order for the distribution of notice of certification as follows:

(a) posting the notice on the respective websites of Class Counsel, the Defendant, and the Administrator;

(b) publishing the notice in designated newspapers;

(c) distributing the notice to all offices of Tataskweyak Cree Nation and the Assembly of First Nations.

(d) forwarding the notice to any Class member who requests it and the Chiefs of every First Nation that is eligible to opt into the class, as well as each band office;

(e) establishing a national toll-free support line, to provide assistance to Class members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.

(a) And by such other notice as the Court directs.

14. The Plaintiffs will ask the Court to approve opt-out and opt-in forms to be used by class members wishing to opt out of, or opt into, the class action, which will require the Class member to provide sufficient information to establish their membership in the Class.

LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS

Notice of Resolution of Common Issues

15. The Plaintiffs will ask that the Court settle the form and content for notification of the resolution of the Stage 1 and Stage 2 Common Issues ("**Resolution Notice Plan**") and the means by which Class members will file claims ("**Claim Forms**") by a fixed date with the Administrator. The Plaintiffs will also ask that the Court settle an appropriate process to determine any remaining individual issues.

Valuation of Damages

16. If the Common Issues are resolved in favour of the Plaintiffs, the Plaintiffs propose two (2) methods for assessing and distributing damages for the class members as follows:

(a) Aggregate damages that accrue to individual Class members on a *pro rata* basis or on a *pro rata* basis within a sub-group;

(b) Aggregate damages that accrue to Participating First Nations on a community basis; and

17. Following the determination of aggregate damages, including punitive damages, additional damages may be awarded in individual issues proceedings.

Assessment of Number of Claimants

18. After the deadline for submitting Claim Forms has expired, the Administrator shall calculate the total number of claimants for the purpose of any *pro rata* distribution of aggregate damages.

Global Punitive Damages Distribution

19. Should the Court award aggregate damages to the Class or a sub-group, the total amount of damages will be apportioned to the class in a manner to be determined by the Court within a fixed period of time set by the Court from the Notice of Resolution.

Funds not Distributed

20. Any monies not distributed will be distributed *cy-près* as the Court directs. The Plaintiffs propose that any residual amounts be distributed *cy-près* to community organizations that assist with water infrastructure in Impacted First Nations.

Resolution of the Individual Issues

21. Within thirty (30) days of the issuance of the judgment on the common issues, the parties will convene to settle a protocol to resolve any individual issues. If the parties cannot settle such a protocol, the Plaintiffs will move for directions from the Court within sixty (60) days.

MISCELLANEOUS REQUIREMENTS OF THE LITIGATION PLAN

Funding

22. Class Counsel has entered into an agreement with the Representative Plaintiffs with respect to legal fees and disbursements. This agreement provides that counsel will not receive payment for their work unless and until the class proceeding is successful or costs are recovered from the Defendant.

23. Class Counsel's legal fees are subject to court approval under the *Class Proceedings Act*.

Claims Administration

24. The Administrator will provide the claims administration for any settlement or judgement achieved. The Administrator will distribute notice in accordance with the Resolution Notice Plan. If a settlement is achieved and a settlement fund is provided, or if judgement results in an award in favour of Class members, the Administrator will administer payments out of the fund to claimants based on the procedures set out above, after approval and/or modification by the Court.

Class Action Website

25. From time to time, Class Counsel will post relevant pleadings and court filings, the latest documents and summaries of the latest developments, anticipated timelines, frequently asked questions and answers, and contact information for class counsel for the information of class members.

Conflict Management

26. Class Counsel and the Plaintiffs have taken appropriate measures to determine that no conflict of interest exists among the members of the Class, and no such conflict is anticipated. Should a conflict arise, McCarthy Tétrault LLP will represent one sub-group, and Olthuis Kleer Townshend LLP will represent the other. Should any conflict arise as between First Nations and their members, which is not anticipated given their commonality of interest, McCarthy Tétrault LLP will represent the members and Olthuis Kleer Townshend LLP will represent the First Nations.

Applicable Law

27. The applicable law is the *Constitution Act, 1982*, the *Constitution Act, 1867*, the *Charter of Rights and Freedoms*, the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21, the

Indian Act, R.S.C. 1985, c, I-5, the *First Nations Land Management Act*, S.C. 1999, c. 24, *The Class Proceedings Act*, C.C.S.M. c. C130, as well as applicable regulations, the common law and the law of Manitoba.

Schedule "A"

Timetable

PROPOSED LITIGATION TIMETABLE		
Steps To Be Completed	**By Which Party**	**Date To Be Completed By**
Delivery of Statement of Defence	Defendant	To be delivered on 60 days' notice by the Plaintiffs
Delivery of Reply, if any	Plaintiffs	To be delivered 15 days after delivery of Statement of Defence
Delivery of Certification/Summary Judgement Record	Plaintiffs	June 30, 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Pre-trial to assess summary judgement	All parties	July 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Delivery of Responding Record	Defendant	October 30, 2020 (may be adjourned up to 5 months if Defendant consents to certification and engages in exploratory settlement discussions)
Delivery of Reply Record, if any	Plaintiffs	December 16, 2020 (or 45 days after delivery of Responding Record, whichever is later)
Cross-examinations	All parties	To be completed 75 days after delivery of Reply Record, if any, or 120 days after delivery of Responding Record
Refusals Motions, if any	All parties	To be completed 30 days after completion of cross-examinations
Delivery of answers to undertakings	All parties	To be completed 15 days after refusals motion

PROPOSED LITIGATION TIMETABLE		
Steps To Be Completed	**By Which Party**	**Date To Be Completed By**
Delivery of Moving Factum	Plaintiffs	To be delivered 45 days after completion of answers to undertakings
Delivery of Responding Factum	Defendant	To be delivered 45 days after delivery of Moving Factum
Delivery of Reply Factum	Plaintiffs	To be delivered 15 days after delivery of Responding Factum
Hearing of Certification and possible Summary Judgement Motion	All parties	July-August 2021

Court File No.: CI 19-01-24661

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Proposed Class Proceeding commenced under Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C. 130

LITIGATION PLAN

(Filed this 2nd day of July, 2020)

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Court File No.: CI 19-01-24661

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Proposed Class Proceeding commenced under Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C. 130

ORDER

(July 14, 2020)

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Lawyers for the Plaintiffs

SCHEDULE D

FORM OF BAND COUNCIL ACCEPTANCE RESOLUTION

See attached.

[Name of First Nation]

Band Council Resolution

Regarding the Settlement Agreement for the
Class Action Litigation on Drinking Water Advisories on First Nations Lands

WHEREAS certain plaintiffs commenced a court action styled as *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation v Attorney General of Canada*, Court File No. T-1673-19, in the Federal Court on October 11, 2019 (the "**Federal Action**");

AND WHEREAS certain plaintiffs commenced a court action styled *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation v Attorney General of Canada*, Court File No. CI-19-01-24661, in the Manitoba Court of Queen's Bench on November 20, 2019 (the "**Manitoba Action**", and together with the Federal Action, the "**Actions**");

AND WHEREAS the Actions were certified by the respective courts as class proceedings;

AND WHEREAS the Attorney General of Canada and the plaintiffs in the Actions have negotiated a settlement agreement (the "**Settlement Agreement**") in respect of the Actions;

AND WHEREAS the Settlement Agreement provides that a First Nation that is a member of the class described in the Actions (the "**Class**") may provide the administrator appointed by the courts under the Settlement Agreement (the "**Administrator**") with notice of acceptance by that First Nation of the Settlement Agreement and thereby become entitled to certain compensation and benefits under the Settlement Agreement available to First Nation Class members;

AND WHEREAS [Name of First Nation] is a member of the Class and the **[Name of First Nation Council]** (the "**Council**") wishes to confirm and approve the acceptance of the Settlement Agreement by **[Name of First Nation]** by passing this Band Council Resolution at a properly constituted meeting called for this purpose;

BE IT HEREBY RESOLVED THAT:

1. The Council hereby directs and authorizes Chief **[Name of Chief]**, on behalf of the **[Name of First Nation]**, to approve and accept the Settlement Agreement, a copy of which was reviewed by the signatories below on behalf of the Council, and the Council hereby further directs and authorizes such signing authority to deliver an executed copy of this Band Council Resolution to the Administrator to confirm acceptance of the Settlement Agreement by **[Name of First Nation]**. The Council hereby acknowledges and confirms that no further actions are required by Council to accept the Settlement Agreement.

2. The Council hereby directs and authorizes the Chief, on behalf of the **[Name of First Nation]**, from time to time, to execute and deliver these resolutions and such further documents and instruments and do all acts and things as may be reasonably necessary

to carry out and give effect to the Settlement Agreement, including, if the Chief determines appropriate, a confirmation of the individual class members resident on a **[Name of First Nation]** reserve while a long-term drinking water advisory was in force on that reserve during the period applicable to the Settlement Agreement.

3. These resolutions may be signed by the Chief and Council members in as many counterparts as may be necessary, in original or electronic form, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same resolution.

The signatories below hereby certify and warrant that a quorum of Council has signed this Band Council Resolution as evidenced by their signatures below.

DATED as of the ____ day of _____, 202__.

_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	
[insert name]	

SCHEDULE E

FORM OF BAND COUNCIL CONFIRMATION

See attached.

[Name of First Nation]

Band Council Confirmation

Regarding the Settlement Agreement for the
Class Action Litigation on Drinking Water Advisories on First Nations Lands

Reference is made to the settlement agreement (the "**Settlement Agreement**") dated September **[●]**, 2021, between the Attorney General of Canada ("**Canada**"), Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation; Chief Wayne Moonias and Former Chief Christopher Moonias on their own behalf and on behalf of all members of Neskantaga First Nation, and Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation. Capitalized terms used but not defined in this Band Council Confirmation have the meanings given to them in the Settlement Agreement.

In accordance with the Settlement Agreement, a First Nation Class Member may provide the Administrator with a declaration identifying Individual Class Members who were ordinarily resident on a Reserve of that First Nation Class Member between November 20, 1995, and June 20, 2021 while a Long-Term Drinking Water Advisory was in place on that Reserve (collectively, the "**Identified Class Members**"). Ordinarily resident means that a person lived on the Reserve more than that person lived anywhere else, or a person who was eighteen (18) years of age or younger at the applicable time and habitually lived on an affected Reserve but lived elsewhere for a portion of the year to attend an educational facility. Identified Class Members must have been ordinarily resident on the Reserve for at least one year during a period in which a Long-Term Drinking Water Advisory was in effect.

[Name of First Nation] is a First Nation Class Member. **[Name of First Nation Council]** (the "**Council**") hereby declares that attached to this Band Council Confirmation as **Appendix "A"** is a list of Identified Class Members at **[Name of First Nation]**.

DATED as of the ____ day of _____, 202__.

_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____

APPENDIX "A"

Identified Class Members at [Name of First Nation]

Name	Reserve	Period(s) Ordinarily Resident on Reserve	Last Known Address or Other Contact Information

SCHEDULE F

CLAIMS PROCESS

CLAIMS FORMS

1. Upon the appointment of the Administrator, the Parties shall provide to the Administrator a list or lists in electronic spreadsheet format (the "**List**") identifying, to the best of the Parties' knowledge:

   (a) the First Nations eligible to become First Nations Class Members should they accept the Agreement by the Acceptance Deadline;

   (b) the contact information for the band office or similar office of the First Nations in subsection (a);

   (c) the Reserve(s) affected, and the dates on which Drinking Water Advisories that lasted at least one (1) year were in effect for each First Nation in subsection (a);

   (d) whether each of the Drinking Water Advisories in subsection (c) was a Boil Water Advisory, Do Not Consume Advisory, or Do Not Use Advisory; and

   (e) whether the First Nations in subsection (a) are Remote or Non-Remote First Nations.

2. Promptly after receipt of the List, the Administrator shall send a Claims Form to each band office or similar office identified in subsection 1(b) with a request that a copy of the Claims Form be provided to members of that First Nation. The Administrator shall send the Claims Forms by email or, if no email address is provided, by regular mail if an address is provided. If an email is undelivered or undeliverable, the Administrator shall send the Claims Form by regular mail. If regular mail is undelivered or undeliverable, the Administrator shall have no further obligation to make efforts to provide a copy of the Claims Form to that First Nation.

3. Promptly after receipt of the List, the Administrator shall use all reasonable efforts to retain a community liaison from each First Nation on the List, or an appropriate tribal council, for the purposes of making all reasonable efforts to:

   (a) provide Claims Forms to members of that First Nation;

   (b) encourage eligible members of that First Nation to submit Claims Forms;

   (c) assist members of that First Nation with the completion and submission of their Claims Forms, including by referring them to the Administrator;

   (d) advise First Nation Class Members that they must give notice of Acceptance if they wish to participate in the Agreement; and

(e) advise First Nation Class Members that they can submit a Band Council Confirmation, if they wish.

4. The Administrator shall make the Claims Form available on its website and shall email or mail a Claims Forms to any person who requests one.

5. The Administrator shall include a postage paid return envelope with every Claims Form sent by mail.

6. The Administrator shall maintain a database of all Claims Forms and Band Council Confirmations it receives. If the Parties receive Claims Forms or Band Council Confirmations, they shall immediately forward them to the Administrator.

7. Upon receipt of a Claims Form or Band Council Confirmation, the Administrator shall examine the Claims Form or Band Council Confirmation, as applicable, to determine if it is complete, and if it is not complete, the Administrator shall make all reasonable efforts to contact the Claimant or First Nation Class Member, as applicable, to obtain further information to complete the Claims Form or Band Council Confirmation. However, the Administrator will have discretion to accept minor deficiencies and if the Administrator accepts a Claims Form or Band Council Confirmation with minor deficiencies, the Administrator need not contact the Claimant or First Nation Class Member for more information. Claimants and First Nation Class Members will have ninety (90) days from the date on which they are contacted to address any identified deficiencies, failing which the Administrator will provide to the Claimant or the First Nation Class Member, as applicable, in writing its refusal to accept the Claims Form or the Band Council Confirmation and the reason for its refusal. Notwithstanding the foregoing, the Administrator may accept such part of an incomplete Band Council Confirmation that provides sufficient information to make an Eligibility Decision.

8. Where a Claims Form or Band Council Confirmation contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.

9. Each Claimant may only submit one (1) Claims Form in respect of all such Claimant's Claims, and an Estate Executor, Estate Claimant, or Personal Representative may submit only one (1) Claims Form on behalf of a particular Claimant.

ELIGIBILITY DECISIONS FOR INDIVIDUAL CLASS MEMBERS

10. Promptly on receipt of a Claims Form, the Administrator shall make an Eligibility Decision in accordance with the Agreement with reference to the Claims Form, the List, any relevant Band Council Confirmation, any other information received from the Parties, and other information the Administrator considers appropriate. Promptly on receipt of a Band Council Confirmation, the Administrator shall make Eligibility Decisions in accordance with the Agreement (including Section 7.02(2)) with respect to the Claimants identified therein, with reference to the Band Council Confirmation, any Claims Forms received in respect of the Claimants listed in the Band Council Confirmation, the List, any other information received from the Parties, and other information the Administrator considers appropriate.

11. If a Claims Form or Band Council Confirmation indicates that the Claimant was Ordinarily Resident on a Reserve that is on the List for at least one (1) year during a Long-Term Drinking Water Advisory, but the Claimant is a member of a First Nation that is not an Impacted First Nation, the Claimant is nevertheless eligible for inclusion in the Class. If a Claims Form or Band Council Confirmation indicates that the Claimant was Ordinarily Resident on a Reserve that is not on the List, and which the Administrator has not previously considered, the Administrator:

    (a) shall consult with the Settlement Implementation Committee before determining whether the Reserve should be added to the List on the basis that it was subject to a Long-Term Drinking Water Advisory during the Class Period, and if so, when the Reserve was subject to a Long-Term Drinking Water Advisory; and

    (b) may request further information or evidence before making an Eligibility Decision.

12. If the Administrator determines that that the Claimant is not an Individual Class Member, the Administrator shall promptly inform the Claimant:

    (a) of the Administrator's decision;

    (b) the reasons for the Administrator's decision that the Claimant is not an Individual Class Member; and

    (c) that the Claimant may appeal the Administrator's decision to the Third-Party Assessor in accordance with this Claims Process and the Agreement.

INDIVIDUAL CLASS MEMBER COMPENSATION

13. If the Administrator makes an Eligibility Decision that a Claimant is an Individual Class Member in accordance with the Agreement, the Administrator shall quantify the amount payable to that Individual Class Member from the Trust Fund in accordance with Section 8.01 and Schedule G of the Agreement, the Administrator shall request such funds from the Trustee, the Trustee shall pay such funds to the Administrator, and the Administrator shall pay such funds in accordance with the Agreement.

14. When the Administrator pays compensation in accordance with Section 8.01 of the Agreement and Section 13 of this Schedule F, the Administrator shall also inform the Individual Class Member:

    (a) how the amount paid was calculated; and

    (b) that the Individual Class Member may appeal the Administrator's quantification of the amount payable to the Third-Party Assessor in accordance with this Claims Process and the Agreement.

SPECIFIED INJURIES COMPENSATION

15. On reasonable request, Class Counsel shall assist a Claimant with their claim for Specified Injuries Compensation or their appeal from a Specified Injuries Decision at no

additional cost to the Claimant, and Class Counsel's fees shall be payable in accordance with Section 18.02 of the Agreement.

16. A Confirmed Individual Class Member is eligible for Specified Injuries Compensation if they meet the criteria in Section 8.02 of the Agreement.

17. To support their claim for Specified Injuries Compensation, a Claimant may, at their option, submit some or all of the following to the Administrator with their Claims Form:

    (a) medical records of the injury and its cause;

    (b) other records, including written records, photographs, and videos, of the injury and its cause;

    (c) a written statement; and

    (d) oral testimony.

18. For greater certainty, the process of claiming compensation for Specified Injuries is intended to be non-traumatizing and Section 17 of this Schedule F does not prevent a Claimant from establishing their eligibility for Specified Injuries Compensation on the basis of their Claims Form alone.

19. If a Claimant claims Specified Injuries Compensation but the Administrator determines that said Claimant is not entitled to Specified Injuries Compensation for the injuries claimed because the injuries are not contemplated in the Specified Injuries Compensation Grid, the Administrator shall promptly comply with Section 7.04 of the Agreement.

20. If a Claimant claims Specified Injuries Compensation but the Administrator determines that said Claimant is not entitled to Specified Injuries Compensation for the injuries claimed for any reason other than the fact that the injuries are not contemplated in the Specified Injuries Compensation Grid, the Administrator shall promptly inform said Claimant:

    (a) of the Administrator's decision;

    (b) the reasons for the Administrator's decision that the Claimant is not entitled to Specified Injuries Compensation; and

    (c) that the Claimant may appeal the Administrator's decision to the Third-Party Assessor in accordance with this Claims Process and the Agreement.

21. If the Administrator determines that a Confirmed Individual Class Member is entitled to Specified Injuries Compensation, the Administrator shall quantify the amount payable to that Confirmed Individual Class Member from the Specified Injuries Compensation Fund in accordance with Section 8.02 of the Agreement and Schedule H.

22. Payment of Specified Injuries Compensation will be made as provided in Section 8.02 of the Agreement. The Administrator shall request such funds from the Trustee, the

Trustee shall pay such funds to the Administrator, and the Administrator shall pay such funds in accordance with the Agreement.

23. When the Administrator pays Specified Injuries Compensation to a Confirmed Individual Class Member in accordance with Section 8.02 of the Agreement and this Schedule F, the Administrator shall also inform the Confirmed Individual Class Member:

    (a) of how the amount paid was calculated; and

    (b) that the Individual Class Member may appeal the Administrator's quantification of the amount payable to the Third-Party Assessor in accordance with this Claims Process and the Agreement.

FIRST NATIONS CLASS MEMBER DAMAGES

24. Upon receipt of an Acceptance, the Administrator shall determine whether the First Nation is eligible to be a First Nation Class Member. Inclusion on the List is conclusive proof that the First Nation is eligible to be a First Nation Class Member. If the First Nation is not on the List, the Administrator:

    (a) shall consult with the Settlement Implementation Committee before determining whether the First Nation is eligible to be a First Nation Class Member; and

    (b) may request additional information or evidence before making the determination as to whether a First Nation is eligible to be a First Nation Class Member.

25. If the Administrator determines that that a First Nation is not a First Nation Class Member under Section 24 of this Schedule F, the Administrator shall promptly inform the First Nation:

    (a) of the Administrator's decision;

    (b) of the reasons for the Administrator's decision that the First Nation is not a First Nation Class Member; and

    (c) that the First Nation may appeal the Administrator's decision to the Third-Party Assessor in accordance with this Claims Process and the Agreement.

26. If the Administrator determines that a First Nation that has submitted an Acceptance is a First Nations Class Member, the Administrator shall pay the Base Payment and First Nation Damages in accordance with Section 8.03 of the Agreement. The Administrator shall request such funds from the Trustee, the Trustee shall pay such funds to the Administrator, and the Administrator shall pay such funds in accordance with the Agreement.

27. Whenever the Administrator pays First Nation Damages to a First Nation Class Member, the Administrator shall inform the First Nation Class Member:

    (a) of how it calculated the amount paid; and

(b) that the First Nation Class Member may appeal the Administrator's quantification of the amount payable to the Third-Party Assessor in accordance with this Claims Process and the Agreement.

APPEALS

28. When a Claimant, Individual Class Member, First Nation, or First Nation Class Member, as the case may be (an "**Appellant**"), wants to appeal a decision of the Administrator, the Appellant shall within sixty (60) days of receiving the Administrator's decision provide to the Administrator a written statement identifying the decision the Appellant wants to appeal and the reasons why the Appellant believes that the Administrator erred.

29. The Administrator shall immediately forward the materials it receives under Section 28 of this Schedule F to the Third-Party Assessor for determination.

30. When considering an appeal, the Third-Party Assessor may consult the Appellant, the Administrator, and the Settlement Implementation Committee. Without limitation, the Third-Party Assessor may request evidence from the Appellant and the Administrator.

31. The Third-Party Assessor shall adjudicate an appeal as soon as practicable.

32. Upon making a decision, the Third-Party Assessor shall promptly inform the Appellant and the Administrator:

(a) of the Third-Party Assessor's decision; and

(b) the reasons for the Third-Party Assessor's decision.

33. A decision of the Third-Party Assessor is final and not subject to appeal or review.

34. For greater certainty, there is no right of appeal to the Third-Party Assessor where an Individual Class Member claims Specified Injuries Compensation for injuries that the Administrator determines are not contemplated in the Specified Injuries Compensation Grid. Instead, Section 7.04 of the Agreement applies.

GENERAL

35. Unless otherwise specified in the Agreement or this Claims Process, the standard of proof in all cases shall be a balance of probabilities in accordance with the Agreement, and the Third-Party Assessor shall apply a standard of review of correctness in accordance with the Agreement. For greater certainty, for the Administrator or Third-Party Assessor to conclude that a Claimant or First Nation is eligible for compensation, in accordance with the Agreement and unless otherwise specified in the Agreement or this Claims Process, the Administrator or Third-Party Assessor must conclude that it is more likely than not that the Claimant or First Nation is eligible for compensation on the information available to the Administrator or Third-Party Assessor.

36. To determine whether (i) a Claimant is an Individual Class Member and eligible for compensation under the Agreement or (ii) a First Nation is a First Nation Class Member, the Administrator and Third-Party Assessor may:

(a) request more information from a Claimant, a First Nation or the Parties; and

(b) interview a Claimant or representative of a First Nation.

37. The Parties may amend this Claims Process on consent to make procedural changes, such as the extension of time, and to adopt protocols and procedures, without obtaining Court approval, so long as such amendments do not substantively affect the rights and remedies set out in the Claims Process. The Parties shall obtain the Courts' approval of substantive changes to this Claims Process.

38. The Administrator shall provide a bilingual (English and French) toll-free support line to assist Claimants, their families, their guardians, or other persons who make inquiries on behalf of Claimants.

39. After the distribution, in accordance with this Agreement, of the:

(a) Trust Fund, including any Trust Fund Surplus;

(b) Specified Injuries Compensation Fund; and

(c) First Nations Economic and Cultural Restoration Fund,

the Administrator shall apply to be discharged and shall file with the Courts a report in accordance with Section 21.02 of the Agreement, containing its best information respecting the following:

(d) the total number of Individual Class Members and First Nation Class Members;

(e) the number of Claimants who submitted a Claims Form and the number who were paid Individual Damages;

(f) the number of Claimants who applied for Specified Injuries Compensation and the number who were paid Specified Injuries Compensation;

(g) the number of First Nations Class Members who provided Acceptance of the Agreement;

(h) the amounts distributed to Class Members or on behalf of Class Members, as Individual Damages, Specified Injuries Compensation, or First Nation Damages, and a description of how the amounts were distributed;

(i) the number of Claims by First Nation and the amounts paid by First Nation; and

(j) the costs associated with the Administrator's work.

40. Any Party or the Administrator may move to have any part of the report contemplated by Section 39 of this Schedule F placed under seal.

41. Upon being discharged as Administrator, the Administrator shall retain in hard copy or electronic form all documents relating to a Claim for two (2) years, after which the Administrator shall destroy the documents.

SCHEDULE G

INDIVIDUAL DAMAGES: COMPENSATION GRID

Joint Committee to determine actual figures on the advice of an actuary or a similar advisor

	Compensation
Long-Term Drinking Water Advisory – Remote First Nation	$2,000 per year
Long-Term Drinking Water Advisory: Do Not Use Advisory – Non-Remote First Nation	$2,000 per year
Long-Term Drinking Water Advisory: Do Not Consume Advisory – Non-Remote First Nation	$1,650 per year
Long-Term Drinking Water Advisory: Boil Water Advisory – Non-Remote First Nation	$1,300 per year

SCHEDULE H

SPECIFIED INJURIES: COMPENSATION GRID

Category	Specified Injury	Exemplar Symptoms	Level 1 *Significant and prolonged disruption to health, well-being and/or daily activities that: (a) persisted for a minimum of one month; (b) impaired the Claimant's quality of life; and (c) for which the Claimant sought treatment from a health practitioner, including traditional healers, medicine-people, elders, community health leaders, shamans, or knowledge keepers (total compensation for all such injuries)*	Level 2 *Level 1 effects that: (a) persisted for a minimum of one year; (b) seriously impaired the Claimant's health and daily activities; and (c) for which the Claimant sought and received treatment from a health practitioner, including traditional healers or medicine-people (total compensation for all such injuries)*

Gastroenterological	Ingestion of bacteria (*Escherichia coli, Salmonella, Shigella, Campylobacter jejuni, Cholera, Giardia lamblia, Cryptosporidium, Cyanobacteria (blue-green algae) toxins, Total coliforms, Helicobacter pylori*) Viral infection (*rotavirus, norovirus, hepatitis A*) Ingestion of chemicals in quantities harmful to human health: *arsenic, atrazine, diquat copper, lead, fluoride, glyphosate, nitrite, nitrate, phorate, chromium, sulphate* Stomach ulcers	Stomach cramps, nausea, diarrhea, vomiting, abdominal pain, dehydration, constipation	$5,000	$20,000
Respiratory/ Breathing	Chlorine toxicity Ingestion of chemicals in quantities harmful to human health: *nitrite, nitrate*	Significant trouble breathing, painfully irritated airways or lungs (may be accompanied by irritated eyes), significant chest pain, shortness of breath, blue skin	$20,000	$50,000
Dermatological	Skin infections (*Staphylococcus sureus, Streptococcus pyogenes*) Dermal lesions	Cellulitis, boils (furuncles), dermal lesions, skin pigmentation,	$10,000	$25,000

	Chlorine toxicity	necrotizing fasciitis		
Mental Health	Major depressive disorder; persistent depressive disorder (dysthymia); panic disorder; alcohol use disorder; cannabis use disorder; tobacco use disorder; sedative, hypnotic, anxiolytic use disorder; post-traumatic stress disorder; specific phobia; adjustment disorder; generalized anxiety disorder	See Appendix "H-1"	$15,000	$30,000
Liver	Viral Infection (*hepatitis A*) Ingestion of bacteria (*cyanobacteria (blue-green algae) toxins*) Liver damage (*cysts, lesions, toxicity*) Ingestion of chemicals in quantities harmful to human health: *antimony, bromoxynil, carbon tetrachloride, copper, dicamba dichloromethane, 1,1-dichloroethylene, 2,4-dichlorophenol, diclofop-methyl, ethylbenzene, haloacetic acids (HAAs), metachlor, metribuzin, paraquat, pentachlorophenol, perfluorooctane sulfonate, perfluorooctanoic acid, picloram, vinyl chloride, benzo(a)pyrene, metachlor, trifluralin trihalomethanes (THMs)*	Discolouration of eyes and skin, swelling in legs and ankles, chronic fatigue, loss of appetite, abdominal pain, liver inflammation, liver failure	$35,000	$80,000 (if liver failure)

Neurological	Ingestion of chemicals in quantities harmful to human health: *azinphos-methyl*, *chlorite*, *dimethoate*, *lead*, *malathion*, *manganese*, *mercury*, *phorate*, *toluene*	Irritability, poor attention span, headache, insomnia, dizziness, memory loss, IQ deficits, behavioral effects in children	$20,000	$50,000
Kidney	Ingestion of chemicals in quantities harmful to human health: *antimony*, *barium*, *bromate*, *cadmium*, *copper*, *2,4-dichlorophenoxy acetic acid*, *2-methyl-4-chlorophenoxyacetic acid*, *diquat*, *malathion*, *nitrilotriacetic acid*, *paraquat*, *pentachlorophenol*, *picloram*, *trihalomethanes (THMs)*, *uranium*	Kidney damage, kidney lesions, kidney failure	$25,000	$65,000 (if kidney failure)
Bloodstream infections, including infective endocarditis	Infections contracted from using water for injections/syringes/needles	Aching joints and muscles, chest pain, fatigue, flu-like symptoms, night sweats, shortness of breath, lower body swelling, heart murmurs	$20,000	$80,000 (if infective endocarditis)
Tumors/Cancer	Ingestion of chemicals in quantities harmful to human health	Tumors, cancer	$40,000	$100,000

Appendix H-1
Mental Health Exemplar Symptoms

• Major Depressive Disorder	A. Five (or more) of the following symptoms have been present during the same 2-week period and represent a change from previous functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure. Do not include symptoms that are clearly attributable to another medical condition. 1. Depressed mood most of the day, nearly every day, as indicated by either subjective report (e.g., feels sad, empty, hopeless) or observation made by others (e.g., appears tearful). (Note: In children and adolescents, can be irritable mood.) 2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation). 3. Significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month), or decrease or increase in appetite nearly every day. (Note: In children, consider failure to make expected weight gain.) 4. Insomnia or hypersomnia nearly every day. 5. Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down). 6. Fatigue or loss of energy nearly every day. 7. Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick). 8. Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others). 9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide. B. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. C. The episode is not attributable to the physiological effects of a substance or another medical condition.
• Persistent Depressive Disorder (Dysthymia)	This disorder represents a consolidation of DSM-IV-defined chronic major depressive disorder and dysthymic disorder. A. Depressed mood for most of the day, for more days than not, as indicated by either subjective account or observation by others, for at least 2 years. **Note:** In children and adolescents, mood can be irritable and duration must be at least 1 year. B. Presence, while depressed, of two (or more) of the following: 1. Poor appetite or overeating. 2. Insomnia or hypersomnia. 3. Low energy or fatigue.

	4. Low self-esteem. 5. Poor concentration or difficulty making decisions. 6. Feelings of hopelessness. C. During the 2-year period (1 year for children or adolescents) of the disturbance, the individual has never been without the symptoms in Criteria A and B for more than 2 months at a time. D. Criteria for a major depressive disorder may be continuously present for 2 years. E. There has never been a manic episode or a hypomanic episode, and criteria have never been met for cyclothymic disorder. F. The disturbance is not better explained by a persistent schizoaffective disorder, schizophrenia, delusional disorder, or other specified or unspecified schizophrenia spectrum and other psychotic disorder. G. The symptoms are not attributable to the physiological effects of a substance (e.g., a drug of abuse, a medication) or another medical condition (e.g., hypothyroidism). H. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
• Panic Disorder	A. Recurrent unexpected panic attacks. A panic attack is an abrupt surge of intense fear or intense discomfort that reaches a peak within minutes, and during which time four (or more) of the following symptoms occur: **Note**: The abrupt surge can occur from a calm state or an anxious state. 1. Palpitations, pounding heart, or accelerated heart rate. 2. Sweating. 3. Trembling or shaking. 4. Sensations of shortness of breath or smothering. 5. Feelings of choking. 6. Chest pain or discomfort. 7. Nausea or abdominal distress. 8. Feeling dizzy, unsteady, light-headed, or faint. 9. Chills or heat sensations. 10. Paresthesias (numbness or tingling sensations). 11. Derealization (feelings of unreality) or depersonalization (being detached from oneself). 12. Fear of losing control or "going crazy." 13. Fear of dying. **Note**: Culture-specific symptoms (e.g., tinnitus, neck soreness, headache, uncontrollable screaming or crying) may be seen. Such symptoms should not count as one of the four required symptoms. B. At least one of the attacks has been followed by 1 month (or more) of one or both of the following: 1. Persistent concern or worry about additional panic attacks or their consequences (e.g., losing control, having a heart attack, "going crazy"). 2. A significant maladaptive change in behavior related to the attacks (e.g., behaviors designed to avoid having panic attacks, such as avoidance of exercise or unfamiliar situations).

	C. The disturbance is not attributable to the physiological effects of a substance (e.g., a drug of abuse, a medication) or another medical condition (e.g., hyperthyroidism, cardiopulmonary disorders). D. The disturbance is not better explained by another mental disorder (e.g., the panic attacks do not occur only in response to feared social situations, as in social anxiety disorder; in response to circumscribed phobic objects or situations, as in specific phobia; in response to obsessions, as in obsessive-compulsive disorder; in response to reminders of traumatic events, as in posttraumatic stress disorder; or in response to separation from attachment figures, as in separation anxiety disorder).
• Alcohol Use Disorder	A. A problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period: 1. Alcohol is often taken in larger amounts or over a longer period than was intended. 2. There is a persistent desire or unsuccessful efforts to cut down or control alcohol use. 3. A great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects. 4. Craving, or a strong desire or urge to use alcohol. 5. Recurrent alcohol use resulting in a failure to fulfil major role obligations at work, school, or home. 6. Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol. 7. Important social, occupational, or recreational activities are given up or reduced because of alcohol use 8. Recurrent alcohol use in situations in which it is physically hazardous 9. Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol 10. Tolerance, as defined by either of the following: a. A need for markedly increased amounts of alcohol to achieve intoxication or desired effect. b. A markedly diminished effect with continued use of the same amount of alcohol 11. Withdrawal, as manifested by either of the following: a. The characteristic withdrawal syndrome for alcohol (refer to DSM-5 for further details). b. Alcohol (or a closely related substance, such as a benzodiazepine) is taken to relieve or avoid withdrawal symptoms.
• Cannabis Use Disorder	A. A problematic pattern of cannabis use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period: 1. Cannabis is often taken in larger amounts or over a longer period than was intended.

	2. There is a persistent desire or unsuccessful efforts to cut down or control cannabis use. 3. A great deal of time is spent in activities necessary to obtain cannabis, use cannabis, or recover from its effects. 4. Craving, or a strong desire or urge to use cannabis. 5. Recurrent cannabis use resulting in a failure to fulfil major role obligations at work, school, or home. 6. Continued cannabis use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of cannabis. 7. Important social, occupational, or recreational activities are given up or reduced because of cannabis use. 8. Recurrent cannabis use in situations in which it is physically hazardous. 9. Cannabis use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by cannabis. 10. Tolerance, as defined by either of the following: a. A need for markedly increased amounts of cannabis to achieve intoxication or desired effect. b. A markedly diminished effect with continued use of the same amount of cannabis. 11. Withdrawal, as manifested by either of the following: a. The characteristic withdrawal syndrome for cannabis (refer to DSM-5 for further details). b. Cannabis (or a closely related substance) is taken to relieve or avoid withdrawal symptoms.
• Tobacco Use Disorder	A. A problematic pattern of tobacco use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period: 1. Tobacco is often taken in larger amounts or over a longer period than was intended. 2. There is a persistent desire or unsuccessful efforts to cut down or control tobacco use. 3. A great deal of time is spent in activities necessary to obtain or use tobacco. 4. Craving, or a strong desire or urge to use tobacco. 5. Recurrent tobacco use resulting in a failure to fulfill major role obligations at work, school, or home. 6. Continued tobacco use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of tobacco (e.g., arguments with others about tobacco use). 7. Important social, occupational, or recreational activities are given up or reduced because of tobacco use. 8. Recurrent tobacco use in situations in which it is physically hazardous (e.g., smoking in bed). 9. Tobacco use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by tobacco. 10. Tolerance, as defined by either of the following:

	a. A need for markedly increased amounts of tobacco to achieve the desired effect. b. A markedly diminished effect with continued use of the same amount of tobacco. 11. Withdrawal, as manifested by either of the following: a. The characteristic withdrawal syndrome for tobacco (refer to Criteria A and B of the criteria set for tobacco withdrawal). b. Tobacco (or a closely related substance, such as nicotine) is taken to relieve or avoid withdrawal symptoms.
• Sedative, Hypnotic, or Anxiolytic Use Disorder	A. A problematic pattern of sedative, hypnotic, or anxiolytic use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period: 1. Sedatives, hypnotics, or anxiolytics are often taken in larger amounts or over a longer period than was intended. 2. There is a persistent desire or unsuccessful efforts to cut down or control sedative, hypnotic, or anxiolytic use. 3. A great deal of time is spent in activities necessary to obtain the sedative, hypnotic, or anxiolytic; use the sedative, hypnotic, or anxiolytic; or recover from its effects. 4. Craving, or a strong desire or urge to use the sedative, hypnotic, or anxiolytic. 5. Recurrent sedative, hypnotic, or anxiolytic use resulting in a failure to fulfill major role obligations at work, school, or home (e.g. - repeated absences from work or poor work performance related to sedative, hypnotic, or anxiolytic use; sedative-, hypnotic-, or anxiolytic-related absences, suspensions, or expulsions from school; neglect of children or household). 6. Continued sedative, hypnotic, or anxiolytic use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of sedatives, hypnotics, or anxiolytics (e.g. -arguments with a spouse about consequences of intoxication; physical fights). 7. Important social, occupational, or recreational activities are given up or reduced be cause of sedative, hypnotic, or anxiolytic use. 8. Recurrent sedative, hypnotic, or anxiolytic use in situations in which it is physically hazardous (e.g. - driving an automobile or operating a machine when impaired by sedative, hypnotic, or anxiolytic use). 9. Sedative, hypnotic, or anxiolytic use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the sedative, hypnotic, or anxiolytic. 10. Tolerance, as defined by either of the following; a. A need for markedly increased amounts of the sedative, hypnotic, or anxiolytic to achieve intoxication or desired effect.

	b. A markedly diminished effect with continued use of the same amount of the sedative, hypnotic, or anxiolytic. **Note:** This criterion is not considered to be met for individuals taking sedatives, hypnotics, or anxiolytics under medical supervision. 11. Withdrawal, as manifested by either of the following: a. The characteristic withdrawal syndrome for sedatives, hypnotics, or anxiolytics (refer to Criteria A and B of the criteria set for sedative, hypnotic, or anxiolytic withdrawal). b. Sedatives, hypnotics, or anxiolytics (or a closely related substance, such as alcohol) are taken to relieve or avoid withdrawal symptoms.
• Posttraumatic Stress Disorder	**Note:** The following criteria apply to adults, adolescents, and children older than 6 years. For children 6 years and younger, see corresponding criteria below. A. Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways: 1. Directly experiencing the traumatic event(s). 2. Witnessing, in person, the event(s) as it occurred to others. 3. Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental. 4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse). **Note:** Criterion A4 does not apply to exposure through electronic media, television, movies, or pictures, unless this exposure is work related. B. Presence of one (or more) of the following intrusion symptoms associated with the traumatic event(s), beginning after the traumatic event(s) occurred: 1. Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s). **Note:** In children older than 6 years, repetitive play may occur in which themes or aspects of the traumatic event(s) are expressed. 2. Recurrent distressing dreams in which the content and/or affect of the dream are related to the traumatic event(s). **Note:** In children, there may be frightening dreams without recognizable content. 3. Dissociative reactions (e.g., flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. (Such reactions may occur on a continuum, with the most extreme expression being a complete loss of awareness of present surroundings.) **Note:** In children, trauma-specific re-enactment may occur in play. 4. Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).

	5. Marked physiological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s). C. Persistent avoidance of stimuli associated with the traumatic event(s), beginning after the traumatic event(s) occurred, as evidenced by one or both of the following: 1. Avoidance of or efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s). 2. Avoidance of or efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s). D. Negative alterations in cognitions and mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following: 1. Inability to remember an important aspect of the traumatic event(s) (typically due to dissociative amnesia, and not to other factors such as head injury, alcohol, or drugs). 2. Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (e.g., "I am bad," "No one can be trusted," "The world is completely dangerous," "My whole nervous system is permanently ruined"). 3. Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame themself or others. 4. Persistent negative emotional state (e.g., fear, horror, anger, guilt, or shame). 5. Markedly diminished interest or participation in significant activities. 6. Feelings of detachment or estrangement from others. 7. Persistent inability to experience positive emotions (e.g., inability to experience happiness, satisfaction, or loving feelings). E. Marked alterations in arousal and reactivity associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following: 1. Irritable behavior and angry outbursts (with little or no provocation), typically expressed as verbal or physical aggression toward people or objects. 2. Reckless or self-destructive behavior. 3. Hypervigilance. 4. Exaggerated startle response. 5. Problems with concentration. 6. Sleep disturbance (e.g., difficulty falling or staying asleep or restless sleep). F. Duration of the disturbance (Criteria B, C, D and E) is more than 1 month. G. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

	H. The disturbance is not attributable to the physiological effects of a substance (e.g., medication, alcohol) or another medical condition.
• Specific Phobia	A. Marked fear or anxiety about a specific object or situation (e.g., flying, heights, animals, receiving an injection, seeing blood). **Note:** In children, the fear or anxiety may be expressed by crying, tantrums, freezing, or clinging. B. The phobic object or situation almost always provokes immediate fear or anxiety. C. The phobic object or situation is actively avoided or endured with intense fear or anxiety. D. The fear or anxiety is out of proportion to the actual danger posed by the specific object or situation and to the sociocultural context. E. The fear, anxiety, or avoidance is persistent, typically lasting for 6 months or more. F. The fear, anxiety, or avoidance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning. G. The disturbance is not better explained by the symptoms of another mental disorder, including fear, anxiety, and avoidance of situations associated with panic-like symptoms or other incapacitating symptoms (as in agoraphobia); objects or situations related to obsessions (as in obsessive-compulsive disorder); reminders of traumatic events (as in posttraumatic stress disorder); separation from home or attachment figures (as in separation anxiety disorder); or social situations (as in social anxiety disorder).
• Adjustment Disorder	A. The development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s). B. These symptoms or behaviors are clinically significant, as evidenced by one or both of the following: 1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation. 2. Significant impairment in social, occupational, or other important areas of functioning. C. The stress-related disturbance does not meet the criteria for another mental disorder and is not merely an exacerbation of a pre-existing mental disorder. D. The symptoms do not represent normal bereavement. E. Once the stressor (or its consequences) has terminated, the symptoms do not persist for more than an additional 6 months.
• Generalized Anxiety Disorder	A. Excessive anxiety and worry (apprehensive expectation), occurring more days than not for at least 6 months, about a number of events or activities (such as work or school performance). B. The person finds it difficult to control the worry. C. The anxiety and worry are associated with three (or more) of the following six symptoms (with at least some symptoms having been present for more days than not for the past 6 months):

	Note: Only one item is required in children. 1. Restlessness or feeling keyed up or on edge. 2. Being easily fatigued. 3. Difficulty concentrating or mind going blank. 4. Irritability. 5. Muscle tension. 6. Sleep disturbance (difficulty falling or staying asleep, or restless unsatisfying sleep). D. The anxiety, worry, or physical symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. E. The disturbance is not attributable to the physiological effects of a substance (e.g., a drug of abuse, a medication) or another medical condition (e.g., hyperthyroidism). F. The disturbance is not better explained by another mental disorder (e.g., anxiety or worry about having panic attacks in panic disorder, negative evaluation in social anxiety disorder [social phobia], contamination or other obsessions in obsessive-compulsive disorder, separation from attachment figures in separation anxiety disorder, reminders of traumatic events in posttraumatic stress disorder, gaining weight in anorexia nervosa, physical complaints in somatic symptom disorder, perceived appearance flaws in body dysmorphic disorder, having a serious illness in illness anxiety disorder, or the content of delusional beliefs in schizophrenia or delusional disorder).

SCHEDULE I

CLAIMS FORM

See attached.

[●Settlement Website URL]

DRINKING WATER CLASS ACTION CLAIMS FORM

Caution:

Filling out this Claims Form may be emotionally difficult or traumatic for some people.

If you are experiencing emotional distress or need assistance completing this Claims Form, **please contact the Hope for Wellness Help Line** toll-free at 1-855-242-3310 or connect to the online chat at hopeforwellness.ca.

Free assistance with the Claims Form is available from the Administrator. Please contact [●].

This is the Claims Form for **individuals** claiming personal compensation**.**

First Nations governments that want compensation for the community as a whole must give notice that they accept the Settlement and should not complete this form. Please visit [●URL] or contact [●] for more information.

DRINKING WATER CLASS ACTION CLAIMS FORM

You may be eligible for compensation if:

1. you are a member of a First Nation; and
2. for at least one year between November 20, 1995, and June 20, 2021, you ordinarily resided on First Nation lands that were subject to a drinking water advisory that lasted at least one year while the drinking water advisory was in effect.

Additionally:

1. You may claim compensation on behalf of an eligible family member who died after November 20, 2017.
2. You may be eligible even if your First Nation does not accept the Settlement.

If you meet the above criteria, please complete this Claims Form to the best of your ability.

Free assistance with the Claims Form is available from the Administrator. Please contact [●].

You must submit your Claims Form by [● Date].

INSTRUCTIONS

1. Please

    a. ensure that you complete all sections of the Claims Form that apply to you;

    b. read all questions carefully before answering; and

    c. write clearly and legibly.

2. You may submit additional documents and information with this Claims Form to support your claim. If you need assistance submitting additional documents or information—or want to make an oral statement—please contact the Administrator at [●].

3. If you need to make changes to any information in your Claims Form after you have sent it to the Administrator, please do so as soon as possible. Examples of important changes include a change of address and corrections to any information.

4. Do not send original documents to the Administrator. Clear photocopies will be accepted.

5. If your Claims Form is incomplete or does not contain all of the required information, you will be asked to provide more details. This may delay the processing of your claim. The information you provide in your Claims Form is a very important part of what will be considered when deciding whether to pay you money and if so, how much money.

6. You may submit your Claims Form

    a. online at [● URL]

    b. by mail at [● Address]

Part 1: Identifying Information Everyone must complete this part	
Information about the Claimant	
First Name:	
Middle Name(s):	
Last Name:	
Other Names:	
Date of Birth	
If Claimant has died, Date of Death	
Indian Status Card number or Beneficiary Number	
Social Insurance Number:	
Contact Information	
Street Address	
City/Town/Community	
Province/Territory	
Postal Code	
Country	
Telephone Number	
Email Address (if any)	

Part 2: Eligibility Information
Everyone must complete this part

What First Nations have you been a member of?

Use additional rows only if you have been a member of more than one First Nation.

First Nation		Dates of Membership	
First Nation		Dates of Membership	
First Nation		Dates of Membership	

When did you live on a Reserve during a Long-Term Drinking Water Advisory?

A temporary absence from your ordinary residence does not end a period of ordinary residence. Your ordinary residence changes only if you spend more time living somewhere else in a given year. If you were 18 years old or younger and ordinarily resided on a Reserve during a Long-Term Drinking Water Advisory, but were away from that Reserve for a portion of the year to attend an educational facility, you can still count that Reserve as your ordinary residence. Complete the dates below for the time that you were ordinarily resident on a Reserve during a Long-Term Drinking Water Advisory on that Reserve. Use additional rows if you were ordinarily resident on more than one Reserve that was subject to a Long-Term Drinking Water Advisory.

Reserve		Dates of Residence	
Reserve		Dates of Residence	
Reserve		Dates of Residence	
Reserve		Dates of Residence	

Part 3: Representation Information Everyone must complete this part			
Are you representing someone else? Are you making a claim on behalf of someone else as their legally authorized representative? Please mark the appropriate box.			
	Yes, I'm making a claim on behalf of someone else.		No, this is my claim.
If you are making a claim on behalf of someone else, please complete this section and attach any documents you may have that confirm your ability to represent the Claimant.			
Representative Name			
Basis of Representation			

Part 5: Declaration and Consent
Everyone must complete this part

I acknowledge and agree that:

1. the Administrator may contact me to obtain information;
2. the Administrator may provide the information I submit in this Claims Form to Canada, Class Counsel, and the Settlement Implementation Committee to evaluate my Claim;
3. Canada may provide information about me to the Administrator for the purpose of evaluating my claim.

I confirm that all the information provided in this Claims Form is true to the best of my knowledge. Where someone helped me complete this Claims Form, that person has read to me everything they wrote and included with this Claims Form.

I understand that free legal advice is available from Class Counsel at [●].

I understand that by signing this Claims Form and submitting it to the Administrator, I am consenting to the above, and to the disclosure of my personal information to be used and disclosed in accordance with the settlement.

Signature	
Name of Person Signing	
Date of Signature	

Consent to Contact (Optional)

The Administrator may try to contact you for more information. The Administrator will try to contact you using the information you provide above. If the Administrator does not reach you, is there someone else the Administrator should contact who can get in touch with you?

Contact Person's Name	
Contact Person's Contact Information (Phone, Email, Address, etc.)	

Part 6: Specified Injuries Compensation
This part is optional

Eligibility for Specified Injuries Compensation

You are eligible for additional compensation if you have suffered one of the Specified Injuries on the list below. To receive money for those injuries, you must establish that your Specified Injury caused by:

1. using treated or tap water in accordance with a Long-Term Drinking Water Advisory; or
2. by restricted access to treated or tap water caused by a Long-Term Drinking Water Advisory.

List of Specified Injuries:
[●]

You may establish your claim through this Claims Form or through additional documents or records of the Specified Injury or its cause, such as medical records. If you want to provide an oral statement about your Specific Injury and its cause, please contact the Administrator at [●].

You must complete an additional declaration with a witness at the end of this Claims Form to be eligible for Specific Injuries Compensation.

It is optional to claim Specified Injuries Compensation. You may be eligible for compensation just for living through a Long-Term Drinking Water Advisory on a Reserve. But if you do not claim Specified Injuries Compensation now, you will not have another chance.

Class Counsel can help you claim Specified Injuries Compensation. There is no charge to you. Please contact [●].

The Specified Injuries eligible for compensation are serious and the symptoms must persist for at least one month. Specified Injuries Compensation is paid in addition to Individual Damages for the ordinary hardships of living through a Long-Term Drinking Water Advisory.

Do you want to claim Specified Injuries Compensation?

Check the appropriate box.

	Yes, I want to claim Specified Injuries Compensation and will		No, I do not want to claim Specified Injuries Compensation.

	complete the rest of the Claims Form.		I will not complete the rest of this Claims Form.

Part 6: Specified Injuries Compensation This part is optional but required to claim Specified Injuries Compensation	
Instructions Please complete this form once for each Specified Injury you suffered. To support your Specified Injury Claim, you may attach any relevant documents to this Claims Form, including a further written statement. You may also tell your story to the Administrator by contacting [●].	
Specified Injury (must be on the list)	
When did you start suffering from the Specified Injury?	
When did you stop suffering from the Specified Injury?	
What symptoms did you have from the Specified Injury?	
What, if any, treatment did you seek or receive for the Specified Injury?	
What caused the Specified Injury? How do you know that it caused the Specified Injury?	
What, if any, records do you have of the Specified Injury or its cause? Relevant records include photographs and videos.	

Part 6: Specified Injuries Compensation
This part is optional

Instructions

Please complete this form once for each Specified Injury you suffered. This form is a duplicate of the previous page. If you only have one Specified Injury to claim and you completed the previous page, you do not need to complete this page. To support your Specified Injury Claim, you may attach any relevant documents to this Claims Form, including a further written statement. You may also tell your story to the Administrator by contacting [●].

Specified Injury (must be on the list)	
When did you start suffering from the Specified Injury?	
When did you stop suffering from the Specified Injury?	
What symptoms did you have from the Specified Injury?	
What, if any, treatment did you seek or receive for the Specified Injury?	
What caused the Specified Injury? How do you know that it caused the Specified Injury?	
What, if any, records do you have of the Specified Injury or its cause? Relevant records include photographs and videos.	

Part 7: Specified Injuries Sworn Declaration
You must complete this part only if applying for Specified Injuries

Instructions

You must swear this declaration before anyone of the following Guarantors:

1. the Administrator;
2. a Notary Public or Commissioner of Oaths (including Class Counsel);
3. an elected official or community leader, including a Chief or Councillor; or
4. another professional (*e.g.*, a lawyer, doctor, accountant, or police officer).

Declaration

I declare that the information I have provided is true to the best of my knowledge.

Signature	
Name of Person Signing	
Date of Signature	

Guarantor

The Guarantor needs to see the Claimant sign this page and verify the Claimant's identity. The Guarantor does not need to read this Claims Form or verify the information in it. The Guarantor must complete the rest of this section.

Signature	
Name of Guarantor	
Date	
Guarantor Title/Position	
Address	
Telephone Number	
Email Address	

SCHEDULE J

INDIGENOUS SERVICES CANADA'S LONG-TERM DRINKING WATER ADVISORY ACTION PLAN

See attached.

Long-Term Drinking Water Advisory Action Plan: Bi-Weekly Status Update

Updated: September 8, 2021

Long-term DWA Progress Since November 2015							
Region	LT DWAs in effect	No. of Communities affected by LTDWAS	LT DWAs added since Nov. 2015	LT DWAs lifted since Nov. 2015	No. of LT DWAs Deactivated since November 2015	DWAs that have been in effect for 2-12 months	Lifted DWAs that had been in effect for 2-12 months
ATL	0	0	2	2	0	0	0
QC	0	0	9	9	0	0	5
ON	24	25	36	48	3	4	16
MB	2	2	13	13	0	1	13
SK	5	5	15	10	2	4	12
AB	0	0	1	1	0	0	11
BC	0	0	8	8	0	1	12
YK	0	0	0	0	0	0	0
Total	32	32	84	129	5	10	102

Long-Term Drinking Water Advisories in Effect on Public System on Reserve

*Number of homes and community buildings affected are estimates only.

**Target dates by which the advisory may be lifted are rough estimates only and subject to change as impacts from the pandemic evolve. In some cases, target dates are to be determined (TBD) due the nature of the issue or the early stage of the project. Target dates will be re-assessed as projects progress. All efforts are being made to address all remaining LT DWAs as soon as possible.

Region	First Nation	System Name	Date Set (YYYY/MM/DD)	Date Advisory Became a Long-Term DWA (YYYY/MM/DD)	Number of homes affected*	Number of community buildings affected*	Issue	Corrective Measure(s)	Current Status	Target Date**
ON	Bearskin Lake	Bearskin Lake Community Centre/Youth Centre Semi-Public Water System (#17218) *Do Not Consume Since March 2006*	2006/03/21	2007/03/21	0	1	Uranium levels exceed Ontario guidelines.	Long-term: Major plant upgrades, extension of piped network Short-term: Truck to cistern at the community centre	- First Nation has agreed to interim solution (installation of cistern at community centre) - COVID-19 restrictions limited implementation of interim solution - ISC was advised by Council on Jan 18, 2021 that new cistern was installed at arena; delivery of cistern for Youth Centre delayed; equipment delivered in Feb 2021 - On April 27, 2021 contractor advised that new tankage is on-site, at request of community, contractor mobilized to site June 8, 2021 - All work completed early August 2021 - ISC continues outreach, respecting community's other priorities including public health through pandemic and public safety due to nearby forest fire activity; Windigo Hub and First Nation Contractor both confirmed work is complete and existing well connection decommissioned; Windigo working with environmental public health officer to confirm testing requirements to recommend lift of advisory, however delays experienced due to forest fire activity - Long-term solution will address water, wastewater and servicing recommendations; currently estimated at 3 - 4 years to complete; discussions in April / May 2021 with community leadership agreed on multi-phase approach; Project Management Team, with Windigo Tribal Council as lead, working to develop approval documentation for detailed design of water treatment plant upgrades and wastewater lagoon; draft project documentation developed and shared with community leadership in August 2021 for review and approval - Operational supports provided to community through ISC funded Hub being delivered by Windigo Tribal Council	2021/09

ON	Bearskin Lake	Bearskin Lake Nursing Station Semi Private Water *DWA since February 2020*	2020/02/26	2021/02/26	0	1	Groundwater well with no treatment or disinfection	Long-term: Installation of a treatment system for the building Short-term: n/a	- Bearskin Lake declared a State of Emergency due to COVID-19 with subsequent restrictions on travel into the community - An initial meeting between ISC and Windigo Tribal Council occurred July 28, 2020 - ISC working with the First Nation and Windigo Tribal Council Water Hub for design, installation and operation of a standalone water treatment system for the Nursing Station and Residence - ISC received funding submission from First Nation with scope, schedule and cost of proposed project; funding has been approved and engineering firm engaged to begin work to define the treatment system for the existing groundwater source - Project Management Team has been established; funding has been provided; on-site assessment occurred on June 17, 2021; revised project schedule will be developed based on findings and recommendations; during assessment issues with well pumps were identified, affecting water supply to Health Centre and Nurses' Residences; an interim solution was implemented, and permanent repairs were completed on June 24, 2021 - ISC informed by Windigo First Nations' Council that options analysis and design of treatment system is underway; report is pending; forest fires in the area may affect timeline	2021/12
ON	Chippewas of Georgina Island	Georgina Island Public Water System (#2157) *DWA since April 2017*	2017/04/24	2018/04/24	81	1	Disinfection is inadequate.	Long-term: Upgrades to the existing water treatment plant Short-term: N/A	- Upgrades to water treatment plant completed Dec 2015; treated water meets requirements - Certified overall responsible operator (ORO) contracted to provide operational oversight - In Feb 2021, First Nation advised that the local operator achieved site specific Class 2 certification; ORO advised regular monitoring and maintenance of operational records required prior to lift recommendation - Additional funding issued in Feb 2021 for upgrades to the existing distribution system - Jan 2021, ISC discussed lift plan with First Nation who requested an expansion of the distribution system - Feasibility Study (funded by First Nation) determined piped water is the most cost-effective solution over 20 years; design (funded by First Nation) underway, and will not be tendered until ISC funding is confirmed; approval documentation is under development; consultant targeting September 2021 for completion of design and construction tendering, which will incorporate upgrades to existing distribution system along with extension; construction activities planned for Spring 2022 - Operational supports available through ISC funded Hub delivered by Ogemawahj Tribal Council	TBD
ON	Chippewas of Nawash	Cape Croker Public Water System *DWA since January 2019*	2019/01/21	2020/01/21	164	20	System does meet minimum treatment requirements.	Long-term: New treatment plant and distribution system extension Short-term: Not preferred by First Nation	- Design of distribution work and water treatment plant complete, treatment supplier selected, pre-qualification for General Contractors for distribution system and water treatment plant complete - ISC and Chief met in Feb 2021 to discuss First Nation's request for project elements outside ISC level of service standards (LOSS); community advised that they support partial cost-share for scope outside of LOSS - Project approved by ISC - Tenders for distribution system and water treatment plant closed end of August 2021; Consultant completing bid analysis, with project management team scheduled to meet in September 2021 to discuss findings and options	2023/10
ON	Deer Lake	Deer Lake Public Water System *DWA since October 2019*	2019/10/15	2020/10/15	225	5	Inconsistent sampling	Long-term: To be determined through feasibility study Short-term: Improved operations and monitoring	- DWA in place due to operational inconsistencies - Community receives operational support through ISC funded Hub delivered by Keewaytinook Okimakanak (K/O) Tribal Council - ISC met with Chief and Council in Sept 2020 to encourage improved operations - K/O Hub provided training in sampling techniques - K/O Hub advised on May 12, 2021 that there are no technical issues in short-term, filter media and flow control valve successfully replaced, testing April 29, 2021 indicated water meeting guidelines - Community fully evacuated July 16, 2021 due to nearby forest fire; - K/O Hub on site July 22, 2021 to address water system issues; K/O ordered parts and equipment and returned to site August 1, 2021 to complete repairs and monitor operations; as of August 20, 2021 repairs to treatment unit complete as well as new plant instrumentation; water quality reported as good; K/O Hub remained on-site until community returned from evacuations - ISC working with community to advance feasibility study for long-term needs; funding for this and immediate repairs to existing system (filter media replacement) approved by ISC in Dec 2020, competitive procurement completed; kick-off meeting held April 20, 2021; delays to Needs Report experienced due to community evacuations - ISC working with Hub to discuss with community the need for monitoring and to offer support	TBD

ON	Eabametoong First Nation	Eabametoong Public Water System (#7132) *DWA since August 2001*	2001/08/01	2002/08/01	267	12	Treatment process and distribution system are unreliable and do not meet guidelines.	Long-term: Expansion and upgrades to water treatment plant Short-term: N/A	- Expansion, upgrades, commissioning complete - MECP inspection conducted Oct 2019; operational deficiencies addressed - First Nation requested funding for additional water treatment plant work and to clean existing wastewater system; funding approved Oct 2020 - Warranty inspection conducted Nov 2020; portions of wastewater work completed prior to Jan 2021; restrictions due to COVID hindered work; work on final deficiencies (bag breaker, hoist, minor civil works) needed - Matawa environmental public health officer advised May 7, 2021 that back to back samples and resolution of operational issues needed before recommendation will be issued - Meeting May 10, 2021 to discuss wastewater issues; funding request for Wastewater System Assessment received July 2021 - Correspondence to ISC indicates interest in resolving LTDWA once a plan to address operations and construction deficiencies established; contractor unable to mobilize to community until November 2021 to address deficiencies; Project Manager has requested a project update meeting in September 2021 - Operational supports provided through ISC funded Hub being delivered by Matawa Tribal Council	TBD
ON	Marten Falls	Marten Falls Public Water System (#7135) *DWA since July 2005*	2005/07/18	2006/07/18	91	6	Treatment system produces water that does not meet guidelines.	Long-term: Treatment system replacement at existing plant and upgrades to facility. Short-term: N/A	- Construction complete March 2019; third round of commissioning successfully completed June 2019 - Distribution system flushing completed July 2019 - MECP assessment report (July 2019) identified operational deficiencies; issues addressed Nov 2019 - Sampling meets requirements, however lift not yet recommended by Matawa environmental public health officer - Warranty inspection completed; as of March 29, 2021, all water treatment plant deficiencies confirmed as addressed, completion report submitted March 19, 2021 - Correspondence from Matawa environmental public health officer dated Mar 5, 2021, First Nation was advised DWA would remain until two consecutive bacteriological water samples taken 24 hours apart to comply with applicable requirements; Hub following up with Chief and Council to gain support - Through Community Centered Approach, ISC working to meet with Chief and Council for in-person meeting, expected to occur in September 2021 pending COVID situation; discussions on lift-plan on agenda - Operational supports provided through ISC funded Centralized Water and Wastewater Hub delivered by Matawa Tribal Council	TBD
ON	Mishkeegogamang	Mishkeegogamang Ten Houses Systems (634) (#7189) *DWA since June 2019*	2019/06/10	2020/06/10	30	2	Treatment system does not meet requirements for GUDI. Operation and maintenance issues.	Long-term: New water treatment plant Short-term: Upgrades to treatment system	- **Interim** - New UV system and backup power completed Nov 2020 - Environmental public health officer (EPHO) advised 4 weeks of sampling needed to confirm safety; Overall Responsible Operator (ORO) supporting operators - Sample results in January 2021 indicated adverse results for manganese; OFNTSC ORO was on-site for 3 weeks; May 2021, ORO confirmed manganese levels in conformance - through treatment adjustments very good results achieved - Chief advised staff in March 2021 of importance of regular monitoring; operational supports through ISC funded Hub delivered by OFNTSC with regular monthly site-visits - ORO submitted in-house testing to EPHO June 15-16, 2021; OFNTSC Hub ORO on-site July 5 to 26, 2021 to provide support for all water systems in community; EPHO visited community on July 21, 2021, EPHO reported that following discussions with local operator, and Chief and Council, operations have improved, and that both operator and Chief agreed that should sampling show water meeting applicable requirements, a recommendation to lift would be supported; EPHO collected samples; test results received, chlorine residual at one point in distribution insufficient; EPHO advised on August 19, 2021, that operator no longer comfortable with lifting DWA - Operational issues improving with support from OFNTSC Hub - **Long-Term** - Design phase of long-term water treatment plant upgrade complete; First Nation received funding approval for construction phase - Construction underway; expected completion August 2022; construction delays experienced due to supply chain issues, with pre-fabricated building scheduled for delivery in September and installation to occur in October	TBD

ON	Mishkeegogamang	Ace Lake Public Water System *DWA since September 2020*	2020/09/08	2021/09/08	unknown	unknown	Treatment system does not meet log removal requirements; inadequate sampling and testing.	Long-term: Upgrades to treatment system Short-term: n/a	- Boil water advisory in place as treatment system does not meet log removal requirements - Long-term design of upgrades to treatment system completed as part of the Mishkeegogamang Ten Houses System project - Initial construction schedule identified upgrades to be completed by July 2021; contractor provided updated schedule on May 28, 2021 indicating the date for completion of the Ace Lake system remains the same; as of June 25, 2021, construction was reported to remain on-track, with work on mechanical systems underway, back-up generator delivered to site and installation pending - Sub contractor delays have been incurred with completion now anticipated in September 2021; a revised schedule has yet to be issued - ISC has engaged the environmental public health officer (EPHO) to establish testing requirements, and anticipated scheduling of those activities; EPHO visited community on July 21, 2021 reporting improvement in operations - Test results showed water meeting requirements, however, local operator not confident to lift DWA - Operational supports provided through ISC funded Hub delivered by OFNTSC	2021/10
ON	Mississaugas of Scugog Island First Nation	Scugog Community Water System 1 Public Water System (#15899) *DWA since October 2008*	2008/10/23	2009/10/23	9	0	Treatment systems do not meet requirements for GUDI.	Long-term: New treatment plant, elevated storage and distribution system Short-term: N/A	- Construction of new wells and treatment plant, elevated storage, pump house upgrades, and distribution system complete; minor landscaping and other deficiencies remain outstanding; consultant working to engage contractor to fulfill contractual obligations - Environmental public health officer (EPHO) engaged and commissioning samples meet contractual requirements - First Nation requires 55 homes to be connected to new system; involves work inside homes; COVID-related delays have hindered completion of this work - Construction began, contractor conducted directional drilling at various properties in community and installed water service connections to curb stops - On April 22, 2021 Chief and Council advised contractor that due to Provincial COVID restrictions, no work can be performed in homes until stay-at-home lockdown lifted; due to previous contractual commitments, contractor's return to site could not occur until August 2021 - Contractor began work to complete connections on August 16th with all servicing connections expected to be completed by the end of September 2021; expected total contract completion in October 2021; given Chief and Council's preference for all work to be completed prior to resolving the DWA, target dates to resolve may slip into October - Operational supports are being provided through the ISC funded Hub being delivered by the Ogemawahj Tribal Council	2021/09
ON	Mississaugas of Scugog Island First Nation	Scugog Community Water System 2 Public Water System (#15900) *DWA since October 2008*	2008/10/23	2009/10/23	6	0				2021/09
ON	Mississaugas of Scugog Island First Nation	Scugog Band Office Semi-Public Water System (#17224) *DWA since October 2008*	2008/10/23	2009/10/23	0	1				2021/09
ON	Mississaugas of Scugog Island First Nation	Scugog Health Centre Semi-Public Water System (#17225) *DWA since October 2008*	2008/10/23	2009/10/23	0	1				2021/09
ON	Mohawks of the Bay of Quinte	All MBQ Semi-Public Water System (#17226) *DWA since June 2008*	2008/06/06	2009/06/06	64	6	Groundwater supply at risk of contamination.	Long-term: Upgrades to Deseronto water treatment plant, water main extension and water tower (Phase 2), water main extension (Phase 3) Short-term: N/A	- First Nation considers all affected systems as one system - Deseronto plant upgrades meet municipal-type service agreement (MTSA) requirements - Phase 2 water main extension and water tower complete; system commissioned Nov 10, 2020; substantial completion issued to contractor - Phase 3 (water main extension) tender for construction closed Sept 2020; cost exceeded approved budget - In Oct 2020, First Nation advised delays were impacting MTO Skyway Bridge Project and requested project advance with securing ISC funding approval; project approved and contract awarded; construction underway; Phase 3 work will address all 5 LTDWAs in the community - Soil contamination (fuel) found on construction route; contractor to install water main with insulating plastic wrapping around pipe; negotiations with polluter underway to reclaim project costs associated with contamination - Following some delays, boring and pipe work at Salmon River and Hwy 2 were completed - Consultant/contractor concerned regarding condition of existing Johnson's Lane watermain; in early July 2021 options analysis completed calling for replacement of all iron sections of pipe; replacement work is now complete - As of September 3, 2021, construction continues, however contractor has issued a revised schedule calling for completion on October 31, 2021; delays are in part due to unforeseen soil conditions (drilling, hydrocarbon contamination etc.)	2021/11
ON	Mohawks of the Bay of Quinte	MBQ Airport Public Water System (#17227) *DWA since October 2003*	2003/10/17	2004/10/17	10	0	Insufficient disinfection.			2021/11
ON	Mohawks of the Bay of Quinte	MBQ Bayview Variety Apartments Public Water System (#17228) *DWA since June 2008*	2008/06/06	2009/06/06	6	0	Groundwater supply at risk of contamination.			2021/11
ON	Mohawks of the Bay of Quinte	MBQ Clifford Maracle's Well Public Water Supply (#17229) *DWA since January 2012*	2012/01/20	2013/01/20	unknown	unknown	E. Coli and total coliforms are present. Treatment system not being maintained.			2021/11
ON	Mohawks of the Bay of Quinte	MBQ Trailer Park Public Water System (#17230) *DWA since June 2008*	2008/06/06	2009/06/06	6	0	Groundwater supply at risk of contamination.			2021/11

ON	Muskrat Dam Lake	Muskrat Dam Public Water System (#6142) *DWA since October 2003*	2003/10/24	2004/10/24	88	5	Filtration system inadequate and plant has insufficient capacity.	Long-term: Upgrades to filtration and disinfection systems Short-term: N/A	- Water treatment plant commissioning halted March 2020 due to COVID; re-started and completed July 2020 - In Sept 2020, environmental public health officer (EPHO) issued letter recommending resolution of LTDWA; in Oct 2020 Chief indicated support; new Chief elected shortly after and provided with lift recommendation and related information - Dec 16, 2020, at request of First Nation, ISC discussed resolution of DWA; community tested previous concerns related to potential soil contamination in the vicinity of the treatment plant - Previous ISC-funded project to remediate contaminated soils successfully completed - ISC offered congratulations and support of resolution of DWA; in response to follow-up by ISC in March 2021, community advised that they will contact ISC when ready; as of September 2021, no change in status - May 28, 2021 EPHO advised test results not received since fall 2020; recommendation to lift from September 2020 requires another round of testing - June 7, 2021, 24/7 Technical Support requested by First Nation and approved by ISC; local operator experiencing issues - 24/7 Service Provider noted operational issues; ISC working with IFNA Hub to establish work plan for additional training supports - Warranty phase expired July 27, 2021; Consultant advised that Warranty Inspection and Training Sessions completed August 4 to 8, water samples collected with test results showing that water quality meets all applicable requirements from plant and throughout distribution - ISC requested guidance from EPHO on whether or not test results support a new letter of recommendation to resolve; response pending - Operational supports provided through ISC funded Hub delivered by IFNA Tribal Council	TBD
ON	Neskantaga	Neskantaga Public Water System (#7107) *DWA since February 1995*	1995/02/01	1996/07/01	79	9	Treatment system does not meet guidelines; chlorine residual inadequate.	Long-term: Upgrade and expansion of existing treatment plant Short-term: N/A	- Due to delays, First Nation terminated contract for upgrades Feb 2019; new contractor hired - Construction completed, First Nation to operate 1 year prior to lifting - Distribution system and wastewater work required; approved Oct 7, 2020 - Oct 19, 2020 sheen on reservoir water noted; concluded mineral oil (non-toxic) from pump; distribution system flushed; water sampling confirmed no traces of oil/grease remain - Community evacuated; returned Dec 20, 2020; new system operational since Nov 12, 2020 - Testing Dec 13, 2020; water meets requirements; ISC funding full-time on-site support delivered by OCWA - Work on lift station completed, pumps replaced; airlocks flushed, lift station able to pump to lagoon; Consultant recommended replacement of forcemain; funding approved; replacement forcemain pipe is in community - Due to lock-down in April 2021, all contractors departed except OCWA; on June 16, 2021 ISC received updated COVID-19 protocol established by community; contractors required to have proof of full vaccinations, and proof of negative test; both water and wastewater projects were halted due to this new requirement - Contractor for sewage forcemain replacement now on site, work is underway and expected completion in September 2021; treatment supplier scheduled to return to site end of September 2021 to confirm system meets design specifications - Contractors to address deficiencies at water treatment plant yet to return citing issues with meeting First Nation's vaccination requirements - Cost overrun submitted; ISC preparing to advance to appropriate approval authorities once any concerns are addressed	TBD
ON	Nibinamik	Nibinamik Public Water System (#7118) *DWA since February 2013*	2013/02/05	2014/02/05	101	5	System is inadequate and does not meet Ontario guidelines: Capacity, upgrades required.	Long-term: Upgrade and expansion of the existing plant, and distribution work Short-term: Not preferred by First Nation	- Design of plant upgrade and expansion complete; design change in Nov 2019 delayed completion - Equipment pre-purchased; construction contract awarded; materials and equipment shipped to site in winter 2020 - First Nation closed borders in March 2020 due to COVID-19 - First Nation notified contractor in July 2020 that construction would be delayed until Spring 2021 due to community access restrictions and availability of accommodations - Accommodations related materials and equipment mobilized over the 2021 Winter Road - Construction kick-off meeting held May 6, 2021; Contractor indicated that foundation construction was to begin on May 14, 2021 - First Nation was in full lockdown in response to COVID in April / May 2021; contractor scheduled to return May 19, 2021, however under direction of First Nation postponed return - Construction resumed June 14, 2021; excavation is on-going (reservoir, watermain re-routing); revised schedule submitted (now) substantial completion anticipated for April 29, 2022 - Contractor has advised project management team of potential for delay in the completion as a result of previous suspension of work (COVID lockdown/revised preventative measures) - Operational supports provided to community through ISC funded Hub being delivered by Matawa Tribal Council	2022/07

ON	North Caribou Lake	North Caribou Lake Public Water System *DWA since March 2020*	2020/03/03	2021/03/01	291	7	System cannot meet demand and does not meet treatment requirements.	Long-term: Plant expansion and replacement of treatment system Short-term: TBD	- Feasibility study for long-term needs for water and wastewater completed, no interim solutions provided; main issue is capacity; difficult to fix due to age and inability to repair equipment - First Nation completed distribution system leak detection and repair including residential plumbing repairs to reduce consumption; community repaired 3 sections of distribution system; leak detection did not identify further issues; water treatment plant operating 24/7 to produce quantity to meet demands; with distribution repairs executed by community, no longer required to shut-down distribution to allow reservoirs to fill - First Nation requires commitment for water and wastewater long-term solution in order to consider a potential interim solution for the water treatment plant - Work to advance design of long-term solution for water based on the Feasibility Study's recommendations is underway with approval pending; project documentation has been shared with the First Nation, for their review and endorsement - Interim options have been identified, recommending rental of containerized treatment system(s), however increasing reservoir storage capacity has been deemed not technically or financially feasible through an interim solution - First Nation has not yet confirmed willingness to lift advisory through an interim approach - First Nation and Windigo Hub reviewing project approval documentation - Approval documentation for interim solution is under development in partnership with Windigo; currently awaiting information on costing from First Nation's consultant	TBD - Project schedule not yet defined
ON	North Spirit Lake	North Spirit Lake Public Water System (#7128) *DWA since April 2019*	2019/04/05	2020/04/05	90	5	Water distribution system leaks; water plant failure and capacity issues. Operation and maintenance issues.	Long-term: Plant and distribution system maintenance and repairs; operational improvements Short-term: N/A	- In Oct 2019 community issued state of emergency citing significant social challenges - Difficulty retaining local operators; First Nation hired new uncertified water operator; Hub increased frequency of visits and remote support - Three new high-lift pumps installed in October 2020; installation of transfer switch for back-up power delayed due to availability of contractor (result of COVID) - Work includes commissioning two chlorine trim units and fire protection system for community's school; K/O Hub reported automation of 3 high lift pumps and PLC programming completed - In Feb 2021, no access to community due to COVID - On April 28, 2021 community indicated would like feasibility study on long-term solution; funding submission for water and wastewater feasibility study under review by Chief and Council, delayed due to forest fires - K/O Hub advised transfer switch and back-up generator work completed week of May 19, 2021; ozone generators received and installed; distribution flushing program completed week of July 5, 2021; all wastewater lift stations functioning through work completed by local operators, with tele-support from Hub; Hub collected samples for compliance testing however was unable to get to lab due to forest fires. - K/O Hub advised forest fire activity in the region forced cancellations of sampling; in-house testing over 2 days showed water meeting all applicable requirements; community executing partial evacuations due to forest fire smoke and risk; lift plan placed on hold pending end of forest fire emergencies and ability for K/O Hub to safely return to community; local operators remained in place as essential workers - K/O Hub on-site in early September to collect samples for testing by accredited lab; results pending - K/O continues to advise Chief and Council that operational issues need to be addressed	TBD
ON	Northwest Angle No. 33	East Pump house Plant Public Water System (part of Angle Inlet Public Water System) (#7126) *DWA since April 2021*	2011/04/11	2012/04/11	17	3	East Pumphouse: insufficient disinfection.	Long-term: New centralized water treatment plant at Angle Inlet Short-term: N/A.	- Interim options to alleviate advisory explored and determined to be neither feasible, nor cost-effective - Design and tendering for new plant complete, equipment pre-purchased and mobilized to site - Community closed in March 2020; construction halted due to COVID-19; limited re-opening in May 2020 & construction resumed - Construction continues to progress on water treatment plant - April 2021, contractor issued revised schedule for substantial completion in Oct 2021; Contractor cited non-performance of sub-contractors (concrete) as well as other issues not at fault of the First Nation or COVID as reasons for delays - At April 26, 2021 project management team meeting contractor advised of new site safety coordinator and site supervisor; contract administrator advised that production and on the ground organization has improved - July 13, 2021, contractor reported larger crews on-site performing work, and that schedule remains on-track - Based on work remaining, there is a risk that LT DWAs will not be lifted in November as currently targeted; ISC continues to monitor, and adjustments to target dates will be made, if and when necessary - Operational supports are being provided to the community through the ISC funded Centralized Water and Wastewater Hub being delivered by the AKRC Tribal Council; Community working with Hub to train primary operator to advance from Class II to Class III certification, and 2 other candidates to achieve Operator-in-Training (OIT)	2021/11
ON	Northwest Angle No. 33	West Pump house Plant Public Water System (part of Angle Inlet Public Water System) (#7126) *DNC since February 2016*	2016/02/12	2017/02/12	unknown	unknown	West Pumphouse: radionuclides above guidelines.			2021/11
ON	Northwest Angle No. 33	Elsie Blackhawk Pump house Public Water System (#17223) *DWA since April 2021*	2011/04/11	2012/04/11	5	0	Does not meet the minimum recommendations for disinfection.			2021/11

ON	Ojibway Nation of Saugeen	Saugeen Health Clinic Semi-Public Water System *DWA since April 2018*	2018/04/26	2019/04/26	0	1	Turbidity levels exceed guidelines.	Long-term: Point-of-entry treatment units on the two wells Short-term: N/A	- Training and physical work to rehabilitate/repair wells completed through the Circuit Rider Training Program (CRTP) in March 2019; sampling showed bacteriological presence (possible impact by septic) - Consultant assessment Nov 2019 recommended new well and treatment units for each affected building; detailed design completed January 2021. - February 19, 2021, *contract awarded; some materials delayed; supply chain issues hindered schedule of construction work* - May 13, 2021, contractor awaiting arrival of key materials, including needed tankage that must be installed first; other parts, including a pump are a month overdue, little information on delivery provided by supplier - Contractor completed installation of Health Centre Water System June 14, 2021, equipment (chlorine contact tanks) required to complete School and Multiplex point-of-entry systems on backorder. - July 6, 2021, ISC was advised that delivery of mixing tanks remains unknown; delay is reflective of supply chain issues due to COVID and other factors; other options explored, however none meet design parameters - Contractor confirmed mixing tanks arrived on site; Contractor returned to site week of August 9th and completed equipment installation- mixing tank for Health Centre determined to have manufacturing defect, new tank installed during the week of August 23, 2021; inspection of newly installed systems occurred August 26, 2021 with samples collected for full chemical analysis; results and inspection report pending from consulting engineer - Operational supports provided to community through the ISC funded Hub being delivered by OFNTSC	2021/09
ON	Ojibway Nation of Saugeen	Saugeen School Semi-Public Water System *DWA since April 2018*	2018/04/27	2019/04/27	0	1	Total coliform and e-coli present in water from the well.			2021/09
ON	Oneida of the Thames	Oneida Public Water System (#7176) *DWA since September 2019*	2019/09/26	2020/09/26	146	22	Treatment system does not meet requirements for GUDI	Long-term: To be determined through feasibility study Short-term: Interim options to be assessed	- Feasibility Study kick-off meeting held in Sept 2020; interim option(s) could not be designed and constructed prior to March 2021 - Project cost increases approved to determine long-term viability of current groundwater source, results indicated groundwater well/aquifer cannot meet forecasted demand - Consultant initiated investigations of municipal-type service agreements (MTSAs); advanced investigations into interim solutions; options include rental of mobile membrane system, concerns related to wastewater system capacity to handle backwash and significant electrical and mechanical retrofits required at existing water treatment facility; interim solution may not be technically or financially feasible - At project management team meeting Feb 3, 2021 consultant advised that municipal connection could be constructed as quickly as an interim solution. First Nation expressed support for connection, there are two options, one has potential to support needs for some homes in other nearby First Nation communities - Community project representatives advised that Chief and Council are leaning toward an MTSA solution; meeting held June 24, 2021 to discuss technical comments with First Nation and their consulting engineers - Final Report submitted August 30, 2021 to First Nation and ISC for final review. ISC requested a meeting date from First Nation to discuss next steps - First Nation has indicated reluctance to consider an interim solution without confirmation of funding for long-term solution	TBD – Project schedule not yet defined

ON	Sachigo Lake	Sachigo Lake Public Water System *DWA since October 2018*	2018/10/15	2019/10/19	165	5	Water treatment plant tank is leaking; safety of the water cannot be guaranteed.	Long-term: Expansion of existing plant Short-term: Installation of new treatment units in existing plant as early as possible.	-Long-term solution: expansion and upgrade of existing water treatment plant; treatment unit shipped via 2019 winter road - Interim solution: install one treatment train early in existing plant -Restricted access March 2020 due to COVID-19; August 19, 2020, First Nation supported return to site -Nov 24, 2020; contractor present; membranes damaged during idle time - First Nation, under advisement from Hub, informed project management team that LTDWA cannot be resolved until second treatment train installed - Environmental public health officer (EPHO) advised exceedances of manganese MAC from new treatment train; unit functioning as designed, with support from Overall Responsible Operator (ORO), pH adjustment effective to manage seasonal manganese fluctuations - May 26, 2021, contractor issued new schedule for DWA to be resolved in Sept 2021, due to delays with operation of 1st treatment train; substantial completion of water treatment plant upgrades and expansion expected in Feb 2022 - Samples from new treatment train show water meets requirements - June 29, 2021 water from new treatment train directed to reservoir and distribution and work has begun to decommission existing treatment train and install second new treatment train; contractor advised work expected to occur over 8 weeks - Second treatment train scheduled for commissioning in early September; following this work, first train will be positioned in its final location; ISC has been advised of concerns from Chief and Council on lifting DWA following commissioning of second train, citing potential for intermittent DWAs providing disruption and negatively impacting community confidence in water; preference voiced to resolve DWA once all work is completed and target date has been adjusted accordingly; - Operational support provided through ISC funded Hub delivered by Windigo Tribal Council	2021/12
ON	Sandy Lake	Sandy Lake Public Water System (#7179) *DWA since October 2002*	2002/10/10	2003/10/10	400	15	System is inadequate and does not meet guidelines. Capacity upgrades required.	Long-term: Water treatment plant upgrades and expansion Short-term: Repairs and optimization of the plant, repairs and cleaning of distribution system; operational improvements	- Interim solution (repairs and optimization of water treatment plant and distribution system) complete; additional repairs completed July 2020 - Operational challenges preventing environmental public health officer (EPHO) from recommending lift; DFNTSC Hub providing support - Chief indicated lifting DWA is priority; ISC letter week of Dec 14, 2020 encouraged site of operational support; - Construction of long-term solution began Jan 2020; access restrictions due to COVID March 2020; contractor re-mobilized Sept 2020; completion date of long-term project revised to June 2022 (COVID impacts) - Construction has resumed, production slowed due to COVID, materials for construction mobilized to community via winter road network - DFNTSC has been advised that staff can enter community, negative COVID test result required prior to flying via charter and isolation prior to working. First Nation yet to confirm permission for DFNTSC to attend site; DFNTSC has encouraged local operators to partake in virtual Circuit Rider Training Program (CRTP) training and continues to seek permission to mobilize to site - ISC-EPHO engaged to complete analysis on sampling and testing to better understand operational trends in 2021	2022/07

ON	Shoal Lake No. 40	Pump house No. 1 Public Water System (#6914) *DWA since February 1997*	1997/02/18	1998/02/18	16	1	Treatment processes are inadequate and produce water that does not meet guidelines.	Long-term: New centralized water treatment plant and distribution system Short-term: N/A	- Detailed design from 2010 was updated to meet current regulatory requirements and community's long-term needs - Indigenous Specific Tendering Pilot Project enabled competitive procurement of Indigenous-owned qualified contractor - Construction meetings held monthly, June 23, 2021 project management team meeting, contractor advised of schedule delay due to late delivery of functioning motor control systems; schedule called for manual start-up on July 12, 2021 and all work anticipated to be completed by August 23, 2021; consulting team working with contractor to accelerate where possible; other issues affecting commissioning include coordination of various suppliers and sub-contractors to be present on-site for target start-up date (due to COVID-19 protocols and overwhelmed marketplace), and delays by Bell Canada to install broadband internet connections to new water treatment plant; Bell has advised that broadband construction work not expected to be completed until end of September 2021 - ISC was advised that due to various deficiencies, manual start-up has been difficult, limited testing has occurred, performance testing set to begin early September 2021; current sampling and testing shows plant producing and distributing water meeting all applicable requirements -Total contract completion expected end of September / early October - Operational supports provided through the ISC funded Hub being delivered by the Bimose Tribal Council	2021/09
ON	Shoal Lake No. 40	Pump house No. 2 Public Water System (#17125) *DWA since February 1997*	1997/02/18	1998/02/18	16	1				2021/09
ON	Shoal Lake No. 40	Pump house No. 3 Public Water System (#17126) *DWA since February 1997*	1997/02/18	1998/02/18	20	3				2021/09
ON	Shoal Lake No. 40	Pump house No. 4 Public Water System (#17127) *DWA since February 1997*	1997/02/18	1998/02/18	8	4				2021/09
ON	Shoal Lake No. 40	Pump house No. 5 Public Water System (#17128) *DWA since February 1997*	1997/02/19	1998/02/18	10	0				2021/09
ON	Shoal Lake No. 40	Pump house No. 9 Public Water System (#17129) *DWA since February 1997*	1997/02/18	1998/02/18	10	0				2021/09
ON	Shoal Lake No. 40	School Pump house Public Water System (#17217) *DWA since February 1997*	1997/02/18	1998/02/18	15	0				2021/09
ON	Washagamis Bay	Washagamis Bay East Public Water System (#6531) *DWA since December 2008*	2008/12/19	2009/12/19	34	2	Poor groundwater quality, insufficient treatment; inadequate capacity.	Long-term: New treatment plant and distribution system upgrades Short-term: New well and interim repairs to plant, distribution system cleaning and repairs	-New wells drilled; interim plant repairs complete, plant producing potable water - Distribution system cleaning complete; damage from pressure testing occurred; repairs completed - Intake work to address quantity issues completed - Work halted due to community lock-down Oct 1 2020 (confirmed COVID case), lock-down lifted Oct 6, 2020 - Environmental public health officer (EPHO) sampled week of December 14, 2020 and provided recommendation to lift LTDWA on January 4, 2021 - Sodium levels in treated water slightly elevated, causing concern for community - EPHO provided information session to Chief and Council. Chief advised ISC that community will not accept recommendations to resolve the DWAs until long-term solution completed -Construction of new water treatment plant completed. following several delays from May to June 2021, performance testing successfully completed June 30, 2021; First Nation worked with contractor to establish COVID-19 protocols that allowed construction activities to continue - Full chemical analysis and bacteriological testing of plant production met all requirements; EPHO collected bacteriological samples for testing on July 19, and 20, 2021, results acceptable, letter of recommendation to resolve LTDWAs issued by EPHO on July 27, 2021 for consideration of Chief and Council - Work and commissioning on decentralized units completed, test results showed all meeting requirements except one (high turbidities); Consultant to re-review and inspect, then identify options/deficiencies; EPHO has issued recommendation to lift advisory for new plant and decentralized systems as of August 23, 2021 - Community hired two operators from Bimose WaterFirst initiative (working with construction team to achieve OIT certification); Community receives operational supports through ISC funded Bimose Hub;	2021/09
ON	Washagamis Bay	Washagamis Bay West Public Water System (#17132) *DWA since December 2008*	2008/12/19	2009/12/19	6	0			- Interim solution (pump house upgrades) complete - Sampling and testing lift plan developed in collaboration with environmental public health officer (EPHO) - EPHO collected samples on June 2, 2020; chlorine residuals not within required parameters - Corrective measures have been completed - Kenora Chiefs Association EPHO collected samples for testing July 23 and 24, 2020; testing showed water meeting all regulatory requirements and a letter was issued on August 12, 2020 by the EPHO to Chief and Council recommending resolution of the DWA at this system; Chief and Council deferred acceptance of the recommendation until the East System is also producing safe drinking water - Long-term solution and operator support as above for the East system - EPHO provided recommendation to rescind LTDWA on July 27, 2021	2021/09

MB	Shamattawa	Shamattawa Public Water System (#6601) *DWA since December 2018*	2018/12/06	2019/12/06	163	14	Plant beyond lifecycle and capacity upgrades required. Operation and maintenance issues.	Long-term: Upgrade / expansion of plant Short-term: Interim repairs and operational improvements	- Repairs to plant completed; work was on hold due to COVID; resumed April 23, 2020 - Enhanced operator support provided through Circuit Rider Training Program (CRTP); two back-up operators being trained - Numerous issues experienced at existing plant and distribution system; repairs completed; CRTP, environmental public health officer (EPHO) providing support - Low chlorine residuals persist whenever main operator absent - CRTP in community Feb 19, 2021 to work with operator; met with Chief to discuss importance of having trained and committed back-up operators - Issues with total coliform and chlorine residual at school and nursing station in April-July; June 28, 2021 elevated turbidity and lack of chlorine residual in distribution system continue; bacteriological sample results good - CRTP on site late August 2021; discovered fire damaged the waterline, repairs underway; heavy rains knocked out one of two raw water pumps; electrician to go to site to address - Work ongoing on long-term solution; construction of major upgrades, expansion and new intake to the water treatment plant to be completed Fall 2022; target date to lift LTDWA aligns with long-term solution given on-going issues with existing plant - Region met with Chief and Council August 4, 2021; operator to provide oversight of reservoir at school; water treatment plant project will install additional telemetry at school reservoir, will allow operator to see chlorine levels remotely from existing plant; CRTP to provide additional training and change valve orientation at school and nursing station (in conjunction with long-term solution); this should provide chlorine residual at school and nursing station in interim; once water treatment plant is expanded should alleviate pressure issue at nursing station - Meeting planned with Chief for October 2021 where operations for updated and expanded water treatment plant will be discussed.	2022/09
MB	Tataskweyak Cree Nation	Tataskweyak Cree Public Water System (#6602) *DWA since May 2017*	2017/05/17	2018/05/17	361	5	First Nation issued advisory due to contamination concerns during spring flooding, not based on EPHO recommendation.	Long-term: Upgrades to water treatment plant (Filtration and UV), Source water assessment and THM study; update to feasibility study underway for longer-term solution; design and construction of a pipeline to source water from Assean Lake Short-term: N/A	- Water quality meets guidelines, repairs and upgrades completed to enhance treatment, source water study completed in January 2019, recommending Assean Lake as the preferred source and an upgrade to the treatment plant; extra THM study completed - Letters provided to First Nation regarding good quality of water (most recent sent Feb. 2019) but First Nation has not lifted - Funding being provided for bottled water and to conduct further assessment of current source water with respect to cyanotoxins; Cyanotoxin assessment goes beyond testing requirements of Canadian guidelines and provincial regulations - A source water study has been completed and an update to the 2019 feasibility study is being contracted to assess the options to meet the community's long-term drinking water needs; following the feasibility study, the project to source water from Assean Lake will proceed to design and construction - ISC is committed to funding design and construction of pipeline to source First Nation's water from Assean Lake	TBD
SK	Little Pine	Little Pine Public Water System *DWA since November 2018*	2018/11/14	2019/11/14	300	10	Plant is in poor condition and beyond its lifecycle. Operation and maintenance issues.	Long-term: Upgrade water treatment plant Short-term: Repairs to plant; operational improvements	- Short-term repairs complete, plant is producing adequate supply of safe drinking water - In early August 2020 E.Coli was reported in one of the raw water wells, and the Advisory was updated to an Order; the affected well was super-chlorinated on August 10th, 2020; the advisory has now been downgraded to a Boil Water Order - Initially there were some water supply issues; however, some wells were serviced and new wells have been drilled and connected - First Nation is currently without a certified operator; ISC working closely with the First Nation to secure another operator, in the meantime circuit rider trainers will be providing support; operator is experiencing difficulty completing the necessary training due to the COVID-19 pandemic; DWA is expected to remain in place until the operator is certified; operator training continues with logging hours towards certification - Long-term solution is the construction of a new water treatment plant; project is currently in construction	TBD
SK	Peepeekisis	Peepeekisis Main Public Water System (#6669) *DWA since February 2015*	2015/02/05	2016/02/05	174	10	Treatment processes for both systems require maintenance and upgrades. Operation and maintenance issues.	Long-term: Upgrade water treatment plant; expand distribution system Short-term: Repairs complete; EPHO has recommended advisories be revoked	- Repairs complete; lift recommended in July 2018, but First Nation reluctant to lift advisory until long-term upgrades to water treatment plant are complete, and possibly until a piped distribution system extension is constructed - ISC offered to cost share a low-pressure distribution system, to date First Nation has not agreed to this approach - Construction of long-term upgrades is substantially complete and the upgraded water treatment plant is producing potable water and is now servicing the community	TBD
SK	Peepeekisis	Poitras Well (#17166) *DWA since April 2013*	2013/04/10	2014/04/10	6	0				TBD

Short-Term Drinking Water Advisories on Public Systems on Reserve (i.e. Advisories that have been in effect for 2 to 12 months)										
Region	First Nation	System Name	Date Set (YYYY/MM/DD)	Date Advisory Could Become a Long-Term DWA (YYYY/MM/DD)	Number of homes affected*	Number of community buildings affected*	Issue	Corrective Measure(s)	Current Status	Target Date?*
ON	Animakee Wa Zhing #37	Windigo Island Public Water System *DWA since June 2021*	2021/06/22	2022/06/22	12	4	Adverse bacteriological test results and failure of disinfection equipment	Long-term: Complete construction (already underway) of new water treatment plant and distribution upgrades Short-term: n/a	- Adverse bacteriological test results and failure of disinfection triggered the issuance of the DWA; at the direction of Chief and Council, no further investments in interim solutions were to be made, as the long-term solution is near completion - Long-term solution to construct a new water treatment plant and to complete distribution upgrades is well underway with performance testing scheduled to be completed in early September 2021 and substantial completion of the contract expected in late-September 2021; KCA environmental public health officer (EPHO) is aware of project status and prepared to support sampling and testing - Operational supports being provided through ISC funded Hub being delivered by the AKRC Tribal Council	2021/10
ON	Big Grassy	Big Grassy Public Water System *DWA since March 2021*	2021/03/09	2022/03/09	90	7	Water loss and distribution pressure loss	Long-term: Upgrades and expansion to existing treatment plant Short-term: n/a	- Challenges with current plant, experienced 3 DWAs in the past 10 months; current DWA due to pressure loss in distribution, suspected leak - Leak detection completed, and leaks addressed, however other issues as a result of upgrade work and tie-ins of new treatment equipment and systems continue to present unforeseen challenges - First Nation leadership decided to keep DWA in place until upgrades and expansion project is complete; under construction since March 2020 - Contractor advised in June 2021 that supply chain delays due to COVID have affected their commissioning plan; MCC is with manufacturer to address wiring issues and has yet to be delivered to site; startup and commissioning was not expected to commence until late July 2021; commissioning plan yet to be provided by contractor to consultant for review - Contractor advised in July 2021 of delays to planned start-up as a result of supply chain challenges due to COVID; revised schedule issued called for performance testing to begin at the end of August 2021, with all work to be completed by end of September 2021; Consultant estimated that the contractor is approximately 1 month behind this schedule - ISC continues to monitor project and support the community; new schedule expected to be issued in September 2021 - Operational issues exist and First Nation advised they are working on a succession plan with aim to have new operators hired in time for commissioning - Operational supportz being provided through ISC funded Hub being delivered by the AKRC Tribal Council	2021/10
ON	Mishkeegogamang	Mishkeegogamang 63B Public Water System *DWA since January 2021*	2021/01/07	2022/01/07	77	6	No plant or water quality monitoring - operational issues	Long-term: Upgrade and expansion of plant Short-term: Address maintenance deficiencies identified through plant assessment (pumps, filters, electrical and automation) and improve operations	- Operational challenges, inconsistent plant and water quality monitoring are reason for DWA - Assessment of plant identified maintenance deficiencies (pumps, electrical, automation, filter); ISC has approved funding to support estimated costs to address these maintenance issues - Call for proposals for a consulting engineer completed, and contract awarded; on-site visit by consultant occurred during the week of March 20, 2021; Engineer's Assessment report received noting issues with nano-filtration membranes; treatment supplier assessed May 2021; updated assessment report that includes findings and recommendations of treatment supplier shared with ISC; 99% Design expected to be issued in September 2021 - Repair work was anticipated to be complete by end of August 2021, however delays have hindered progress; new target date will be established once a revised construction schedule provided - Operational supports provided by ISC-funded Centralized Water and Wastewater Hub delivered by OFNTSC - Long-term solution determined through feasibility study; ISC working with First Nation to develop project approval documents to advance project to design phase	2021/12

OTHER RELATED INITIATIVES			
Region	First Nation	Project	Current Status
ON	Curve Lake First Nation	Curve Lake New Water Treatment Plant	- Curve Lake First Nation does not currently have a drinking water advisory in effect. In June 2018, the LTDWA on the Curve Lake Seniors Administration Building was lifted. - Curve Lake is serviced with groundwater drawn from roughly 308 individual wells for each home, plus the Nishnawbeke Subdivision that is serviced with a communal groundwater supply system (Curve Lake (Nishnawbeke) Water Supply Treatment System - serving 59 homes); this system will be demolished once the new water treatment plant it operational and the existing water distribution system for the Nishnawbeke Subdivision will be incorporated into the new system. There are 208 rental income properties on the reserve also serviced by individual wells. These units will not be served through the new water treatment and distribution system. - Individual wells in Curve Lake are unreliable in both quantity and quality with poor yields/water shortages and contamination from on-site septic systems. Previous test results show that high levels of sodium, turbidity, iron and nitrate were present in numerous groundwater supplies. The National Assessment (Neegan Burnside Ltd., December 2010) assessed four private wells and noted water quality issues concerning coliforms, nitrates and nitrites, hardness and total dissolved solids. A hydrogeological report issued November 2018 (Oakridge Environmental Ltd.) noted that four wells that had originally been intended to supply a communal water treatment plant exhibited high concentrations of total dissolved solids (TDS), hardness and sodium, as well as variable dissolved organic carbon (DOC) concentrations. - The Nishnawbeke Subdivision pumphouse runs short of water frequently and does not have the capacity to meet current demands. The latest Asset Condition Reporting System (ACRS) Report (year 2018-2019) recommended major renovation or replacement. A new water treatment and distribution system capable of conforming to Ontario drinking water regulations is needed to ensure that the First Nation is supplied with safe, potable water, for at least the next 20 years. - ISC provided funding to Curve Lake First Nation to update an existing feasibility study. The updated study recommended, and the community prefers, a surface water treatment plant with membrane filtration and extended distribution system with fire flow. - ISC is committed to funding construction of the Curve Lake water treatment system as defined in the Project Approval Request approved by Chief and Council on June 2, 2020 and ISC on June 22, 2020, subject to further growth identified in the design study in the First Nation membership living on reserve. - ISC received the final feasibility study on May 29, 2020. The design phase of the project was approved on July 16, 2020. The First Nation is working with a Project Manager and a Design Consultant to complete the design by end of March 2022.
ON	Nestaamaga	Trust the Tapo	- FNIHB ON region funded the "Trust the Tapo" proposal for $200,000 in Nestaamaga, which is a Community Wellness/Healing Plan that focused on collective healing, cultural education, building self esteem, and identifying other community appropriate wellness strategies. This proposal arose from the need to address psychological and physical impact of the LTDWA which only compounds the ongoing trauma and mental health challenges experienced by the community. - FNIHB ON's initial funding will be used mainly for community engagement and capacity support to develop the Community Wellness/Healing Plan, as well as direct mental health support for the community engagement and issues that may arise from those sessions. - The initial community engagement (approved in February 2021) will be implemented by the First Nation; FNIHB continues to be available to support the First Nation as they advance the implementation of the project. - FNIHB ON is committed to funding the implementation and delivery of the Community Wellness/Healing Plan that is developed through the community engagement process in consultation with FNIHB.

SCHEDULE K

COMMITMENT DISPUTE RESOLUTION PROCESS
(AND APPENDIX)

See attached.

1. Fixing Things Together: Commitment Dispute Resolution Process

1.1. General

1.1.1. This Schedule applies to disagreements that arise between Canada and Underserviced First Nations about whether Canada is meeting its Commitment under the Agreement and about proposed plans for meeting the Commitment (collectively, "**Disagreements**").

1.1.2. Canada and the Class share the following objectives:

1.1.2.1. to cooperate with each other to ensure that the Commitment is always met;

1.1.2.2. to strive for consensus and harmony;

1.1.2.3. to agree on plans to meet the Commitment in a timely and expeditious fashion ("**Remediation Plans**");

1.1.2.4. to identify Disagreements quickly and resolve them in the most expeditious and cost-effective manner possible;

1.1.2.5. to resolve Disagreements in a non-adversarial, collaborative and informal atmosphere;

1.1.2.6. to resolve Disagreements in a manner which reflects and incorporates the legal traditions and protocols of the Underserviced First Nation;

1.1.2.7. to locate the process for resolving Disagreements within the communities of the Underserviced First Nations and conduct those processes in a way that is accessible to and respectful of those communities.

1.1.3. Except as otherwise provided, Canada and any Underserviced First Nation may agree to vary a procedural requirement contained in this Schedule, as it applies to a particular Disagreement.

1.1.4. Canada and the Class desire and expect that most Disagreements will be resolved by informal discussions without the necessity of invoking this Schedule.

1.1.5. Except as otherwise provided in this Agreement, Disagreements not resolved informally will progress, until resolved, through the following stages:

1.1.5.1. Stage One: formal, unassisted efforts to reach agreement on a Remediation Plan between Canada and the Underserviced First Nation, in collaborative negotiations in accordance with Appendix K-1;

1.1.5.2. Stage Two: structured efforts to reach agreement between or among the Canada and the Underserviced First Nation in a mediation in accordance with Appendix K-2; and

1.1.5.3. Stage Three: final adjudication in arbitral proceedings in accordance with Appendix K-3.

1.1.6. Except as otherwise provided in this Agreement, no one may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and Stage Two as required in this Schedule.

1.1.7. Nothing in this Schedule prevents Canada or an Underserviced First Nation from commencing arbitral proceedings on an urgent basis at any time:

1.1.7.1. to address an urgent loss of regular access to water; and/or

1.1.7.2. to obtain interlocutory or interim relief that is otherwise available pending resolution of the Disagreement under this Schedule,

and the Arbitrator shall have the power to hear such hearings on an urgent basis and grant such interlocutory or interim relief.

1.2. Stage One: Collaborative Negotiations

1.2.1. If a Disagreement is not resolved by informal discussion and an Underserviced First Nation wishes to invoke this Schedule, that Underserviced First Nation will deliver a notice to Canada, requiring the commencement of collaborative negotiations.

1.2.2. Upon receiving the notice, Canada and the Underserviced First Nation shall participate in the collaborative negotiations.

1.2.3. Collaborative negotiations must be conducted in a manner which:

1.2.3.1. is in good faith;

1.2.3.2. creates a safe and respectful space for members of the Underserviced First Nation participating;

1.2.3.3. promotes mutual understanding and transparency about the issues in the Disagreement, by, among other things, Canada providing sufficient information and sufficiently explaining those issues in a way that is accessible to members of the Underserviced First Nation;

1.2.3.4. enables and promotes the use of Indigenous languages;

1.2.3.5. is located within the community of the Underserviced First Nation and is accessible to its members;

1.2.3.6. respects the legal traditions and protocols of the Underserviced First Nation, including:

1.2.3.6.1. seating arrangements;

1.2.3.6.2. order of speaking;

1.2.3.6.3. prayers, speeches and acknowledgments;

1.2.3.6.4. exchange of gifts;

1.2.3.6.5. the wisdom of elders;

1.2.3.6.6. the importance of traditional teachings;

1.2.3.6.7. the experience of the community;

1.2.3.6.8. the community's understanding of the issues in the Disagreement; and

1.2.3.6.9. the community's protocols for decision-making.

1.2.4. Collaborative negotiations terminate in the circumstances described in Appendix K-1.

1.3. Stage Two: Mediation

1.3.1. Within fifteen (15) days of termination of collaborative negotiations that have not resolved the Disagreement, an Underserviced First Nation may require the commencement of a facilitated process by delivering a notice describing the Disagreement and including any Remediation Plans from Canada and the Underserviced First Nation.

1.3.2. Within thirty (30) days after delivery of a notice, the Canada and the Underserviced First Nation engaged in the Disagreement (the "**Participating Parties**") will use mediation to attempt to resolve the Disagreement.

1.3.3. The Parties shall establish a Roster of Mediators available to facilitate negotiations who have knowledge of:

1.3.3.1. The conditions of life on First Nations reserves; and

1.3.3.2. First Nations languages, customs and legal traditions.

1.3.4. The mediator and the Participating Parties must conduct the facilitated process in a manner which:

1.3.4.1. creates a safe and respectful space for members of the Underserviced First Nation participating;

1.3.4.2. promotes mutual understanding and transparency about the issues in the Disagreement, by, among other things, Canada providing sufficient information and sufficiently explaining those issues in a way that is accessible to members of the Underserviced First Nation;

1.3.4.3. enables and promotes the use of Indigenous languages throughout the process;

1.3.4.4. is located within the community of the Underserviced First Nation and is accessible to its members;

1.3.4.5. respects the legal traditions and protocols of the Underserviced First Nation, including:

1.3.4.5.1. seating arrangements;

1.3.4.5.2. order of speaking;

1.3.4.5.3. prayers, speeches and acknowledgments;

1.3.4.5.4. exchange of gifts;

1.3.4.5.5. the wisdom of elders;

1.3.4.5.6. the importance of traditional teachings;

1.3.4.5.7. the experience of the community;

1.3.4.5.8. the community's understanding of the issues in the Disagreement;

1.3.4.5.9. the community's protocols for decision-making.

1.3.5. The Underserviced First Nation may designate a representative knowledge keeper or elder to provide guidance to the mediator on legal traditions and protocols.

1.3.6. The Underserviced First Nation may develop guidelines outlining its legal traditions and protocols for use by the mediator and the Parties.

1.3.7. The Participating Parties may or may not request a report from the mediator.

1.3.8. A mediation terminates in the circumstances described in Appendix K-2.

1.4. Stage Three: Adjudication – Arbitration

1.4.1. After the later of termination of collaborative negotiations, or of a required facilitated process, the Disagreement will, on the delivery of a notice to arbitrate in accordance with Appendix K-3, be referred to and finally resolved by arbitration in accordance with that Appendix.

1.4.2. Accompanying the notice to arbitrate shall be:

1.4.2.1. any Remediation Plans prepared by the Participating Parties;

1.4.2.2. any neutral evaluation report;

1.4.2.3. any mediator's report that the Parties have agreed may be provided to the Arbitrator.

1.4.3. The Parties shall establish a Roster of Arbitrators available to hear arbitration of Disagreements.

1.4.4. Arbitrators on the Roster of Arbitrators shall have knowledge of:

1.4.4.1. The conditions of life on First Nations reserves; and

1.4.4.2. First Nations languages, customs and legal traditions.

1.4.5. The Arbitrator shall consider the Remediation Plans proposed and the reasonableness of Canada's efforts to ensure regular access as defined in the Commitment. Relevant factors include:

1.4.5.1. the views of the Underserviced First Nation, including:

1.4.5.1.1. the physical, social and cultural importance of water;

1.4.5.1.2. the legal traditions of the Underserviced First Nation as they relate to water use, protection and access;

1.4.5.1.3. the historic and ongoing effects of lack of access to water within the Underserviced First Nation;

1.4.5.1.4. the history of Canada's efforts with respect to ensuring regular access to water;

1.4.5.1.5. the urgency of the Underserviced First Nation's water needs.

1.4.5.2. any federal requirements or provincial standards and protocols relating to water;

1.4.5.3. whether monitoring and testing are performed on the water system; and

1.4.5.4. the physical location of the home, including proximity to centralized water systems and remoteness.

1.4.6. The Arbitrator shall conduct the arbitration proceedings in a manner which:

1.4.6.1. creates a safe and respectful space for members of the Underserviced First Nation participating;

1.4.6.2. promotes mutual understanding and transparency about the issues in the Disagreement;

1.4.6.3. enables and promotes the use of Indigenous languages throughout the process;

1.4.6.4. is located within the community of the Underserviced First Nation and is accessible to its members;

1.4.6.5. respects the legal traditions and protocols of the Underserviced First Nation, including:

1.4.6.5.1. seating arrangements;

1.4.6.5.2. order of speaking;

1.4.6.5.3. prayers, speeches and acknowledgments;

1.4.6.5.4. exchange of gifts;

1.4.6.5.5. the admissibility and relevance of evidence, including:

1.4.6.5.5.1. the wisdom of elders;

1.4.6.5.5.2. traditional teachings;

1.4.6.5.5.3. the experience of the community;

1.4.6.5.5.4. the community's understanding of the issues in the Disagreement; and

1.4.6.5.5.5. the community's protocols for decision-making.

1.4.7. The Underserviced First Nation may recommend a representative knowledge keeper or elder, who may, at the discretion of the Arbitrator, sit with the Arbitrator to provide guidance on legal traditions and protocols.

1.4.8. The Underserviced First Nation may develop guidelines outlining its legal traditions and protocols for use by the Arbitrator and the Parties.

1.4.9. After reviewing the Remediation Plans proposed and hearing from the Participating Parties, the Arbitrator shall make an arbitral award as follows:

1.4.9.1. ordering the Underserviced First Nation's Remediation Plan if it is reasonable in all the circumstances;

1.4.9.2. ordering Canada's Remediation Plan if it is reasonable and the Underserviced First Nation's Remediation Plan is not reasonable; or

1.4.9.3. remitting the matter back to the Participating Parties with directions in the event that neither Remediation Plan is reasonable.

1.4.10. An Arbitral Award, as defined in Appendix K-3, is final and binding on all Participating Parties whether or not a Participating Party has participated in the arbitration.

1.4.11. The Parties shall maintain a public registry of arbitral decisions for use by Canada, Underserviced First Nations, and Arbitrators.

Dispute Resolution Procedures

GENERAL

(1) If, in the circumstances set out in Section 9.07 of the Agreement, an Underserviced First Nation wishes to invoke the dispute resolution process set out in this Schedule in respect of an applicable dispute (each a "**Disagreement**"), the Underserviced First Nation may give Canada a Negotiation Notice, and the Parties shall resolve the Disagreement using the procedure set out in this Schedule.

(2) The **"Schedule"** means this Schedule K**:** Dispute Resolution.

APPENDIX K-1
Collaborative Negotiations

GENERAL

(3) Collaborative negotiations commence on the date of delivery of a written notice by an Underserviced First Nation requiring the commencement of collaborative negotiations (a "**Negotiation Notice**").

NOTICE

(4) A Negotiation Notice will include the following:

(a) the names of the Participating Parties

(b) a summary of the particulars of the Disagreement;

(c) a description of the efforts made to date to resolve the Disagreement;

(d) the names of the individuals involved in those efforts; and

(e) any other information that will help the Participating Parties.

REPRESENTATION

(5) A Participating Party may attend collaborative negotiations with or without legal counsel or other advisors.

(6) At the commencement of the first negotiation meeting, each Participating Party will advise the other Participating Parties of any limitations on the authority of its representatives.

NEGOTIATION PROCESS

(7) The Participating Parties will convene their first negotiation meeting in collaborative negotiations within twenty-one (21) days after the commencement of the collaborative negotiations.

(8) Before the first scheduled negotiation meeting, the Participating Parties will attempt to agree on any procedural issues that will facilitate the collaborative negotiations.

(9) The Participating Parties will make a serious attempt to resolve the Disagreement by:

(a) identifying underlying interests;

(b) isolating points of agreement and disagreement;

(c) exploring alternative solutions;

(d) considering compromises or accommodations; and

(e) taking any other measures that will assist in resolution of the Disagreement.

(10) No transcript or recording will be kept of collaborative negotiations, but this does not prevent an individual from keeping notes of the negotiations.

CONFIDENTIALITY

(11) In order to assist in the resolution of a Disagreement, collaborative negotiations will not be open to the public, but this paragraph does not prevent leadership of the Underserviced First Nation and their representatives from attending.

(12) The Participating Parties, and all persons, will keep confidential:

(a) all oral and written information disclosed in the collaborative negotiations; and

(b) the fact that the information has been disclosed.

(13) The collaborative negotiations will be without prejudice to the rights of the Participating Parties, and nothing disclosed in the collaborative negotiations may be used outside of the collaborative negotiations.

RIGHT TO WITHDRAW

(14) A Participating Party may withdraw from collaborative negotiations at any time.

TERMINATION OF COLLABORATIVE NEGOTIATIONS

(15) Collaborative negotiations are terminated when any of the following occurs:

(a) the expiration of sixty (60) days;

(b) a Participating Party withdraws from the collaborative negotiations under paragraph (14);

(c) the Participating Parties agree in writing to terminate the collaborative negotiations; or

(d) the Participating Parties sign a written agreement resolving the Disagreement.

COSTS

(16) Canada shall pay the reasonable costs of collaborative negotiations conducted under this Appendix in accordance with Section 9.08 of the Agreement.

APPENDIX K-2
Mediation

GENERAL

(17) A mediation may commence at any time after the conclusion of collaborative negotiations, in accordance with Appendix K-1, when an Underserviced First Nation delivers written notice requiring the commencement of mediation (a "**Mediation Notice**").

(18) A mediation begins on the date the Participating Parties directly engaged in the Disagreement have agreed in writing to commence mediation in accordance with 1.3.2 of the Schedule.

NOTICE

(19) A Mediation Notice will include the following:

(a) the names of the Participating Parties

(b) a summary of the particulars of the Disagreement;

(c) a description of the efforts made to date to resolve the Disagreement;

(d) the names of the individuals involved in those efforts; and

(e) any other information that will help the Participating Parties.

APPOINTMENT OF MEDIATOR

(20) A mediation will be conducted by one mediator selected by the Underserved First Nation from the Roster of Mediators established in accordance with the Schedule.

(21) Subject to any limitations agreed to by the Participating Parties, a mediator may employ reasonable and necessary administrative or other support services.

REQUIREMENT TO WITHDRAW

(22) At any time a Participating Party may give the mediator and the other Participating Parties a written notice, with or without reasons, requiring the mediator to withdraw from the mediation on the grounds that the Participating Party has justifiable doubts as to the mediator's independence or impartiality.

(23) On receipt of a written notice in accordance with paragraph (22), the mediator will immediately withdraw from the mediation.

END OF APPOINTMENT

(24) A mediator's appointment terminates if:

(a) the mediator is required to withdraw in accordance with paragraph (23);

(b) the mediator withdraws from office for any reason; or

(c) the Participating Parties agree to the termination.

(25) If a mediator's appointment terminates, a replacement mediator will be appointed in accordance with paragraph (20).

REPRESENTATION

(26) A Participating Party may attend a mediation with or without legal counsel or other advisor.

(27) If a mediator is a lawyer, the mediator will not act as legal counsel for any Participating Party.

(28) At the commencement of the first meeting of a mediation, each Participating Party will advise the mediator and the other Participating Parties of any limitations on the authority of its representatives.

CONDUCT OF MEDIATION

(29) The Participating Parties will:

(a) make a serious attempt to resolve the Disagreement by:

(i) identifying underlying interests;

(ii) isolating points of agreement and disagreement;

(iii) exploring alternative solutions; and

(iv) considering compromises or accommodations; and

(b) cooperate fully with the mediator and give prompt attention to, and respond to, all communications from the mediator.

(30) A mediator shall conduct a mediation with reference to Indigenous legal traditions and protocols, as set out in the Schedule, and may otherwise take any steps

the mediator considers necessary and appropriate to assist the Participating Parties to resolve the Disagreement in a fair, efficient and cost-effective manner.

(31) Within seven (7) days of appointment of a mediator, each Participating Party may deliver a written summary to the mediator of the relevant facts, the issues in the Disagreement, and its viewpoint in respect of them and the mediator will deliver copies of the summaries to each Participating Party at the end of the seven-day period.

(32) A mediator may conduct a mediation in joint meetings or private caucus convened at locations the mediator designates after consulting the Participating Parties.

(33) Disclosures made by any Participating Party to a mediator in private caucus will not be disclosed by the mediator to any other Participating Party without the consent of the disclosing Participating Party.

(34) No transcript or recording will be kept of a mediation meeting but this does not prevent a person from keeping notes of the negotiations.

CONFIDENTIALITY

(35) In order to assist in the resolution of a Disagreement, mediations will not be open to the public, but this paragraph does not prevent leadership of the Underserviced First Nation and their representatives from attending.

(36) The Parties, and all persons, will keep confidential:

(a) all oral and written information disclosed in the mediation; and

(b) the fact that this information has been disclosed.

(37) The Participating Parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the mediation, any oral or written information disclosed in or arising from the mediation, including:

(a) any documents of other Participating Parties produced in the course of the mediation that are not otherwise produced or producible in that proceeding;

(b) any views expressed, or suggestions, or proposals made in respect of a possible settlement of the Disagreement;

(c) any admissions made by any Participating Party in the course of the mediation, unless otherwise stipulated by the admitting Participating Party;

(d) any recommendations for settlement made by the mediator; and

(e) the fact that any Participating Party has indicated a willingness to make or accept a proposal or recommendation for settlement.

(38) A mediator, or anyone retained or employed by the mediator, is not compellable in any proceeding to give evidence about any oral and written information acquired or opinion formed by that person as a result of the mediation, and all

Participating Parties will oppose any effort to have that person or that information subpoenaed.

(39) A mediator, or anyone retained or employed by the mediator, is disqualified as a consultant or expert in any proceeding relating to the Disagreement, including any proceeding that involves persons not a Participating Party to the mediation.

REFERRAL OF ISSUES TO OTHER PROCESSES

(40) During a mediation the Participating Parties may agree to refer particular issues in the Disagreement to independent fact-finders, expert panels or other processes for opinions or findings that may assist them in the resolution of the Disagreement, and in that event, the Participating Parties will specify:

(a) the terms of reference for the process;

(b) the time within which the process will be concluded; and

(c) how the costs of the process are to be allocated to the Participating Parties.

(41) The time specified for concluding a mediation will be extended for fifteen (15) days following receipt of the findings or opinions rendered in a process described in paragraph (40).

RIGHT TO WITHDRAW

(42) A Participating Party may withdraw from a mediation at any time by giving notice of its intent to the mediator.

(43) Before a withdrawal is effective, the withdrawing Participating Party will:

(a) speak with the mediator;

(b) disclose its reasons for withdrawing; and

(c) give the mediator the opportunity to discuss the consequences of withdrawal.

TERMINATION OF MEDIATION

(44) A mediation is terminated when any of the following occurs:

(a) subject to paragraph (41), the expiration of sixty (60) days after the appointment of the last mediator appointed to assist the Parties in resolving the Disagreement, or any longer period agreed by the Participating Parties;

(b) the Participating Parties have agreed in writing to terminate the mediation or not to appoint a replacement mediator in accordance with paragraph (25);

(c) a Participating Party withdraws from the mediation in accordance with paragraph (42); or

(d) the Participating Parties sign a written agreement resolving the Disagreement.

MEDIATOR RECOMMENDATION

(45) If a mediation is terminated without an agreement between the Participating Parties, they may jointly request that the mediator give a written non-binding recommendation for settlement, but the mediator may decline the request without reasons.

(46) Within fifteen (15) days after delivery of a mediator's recommendation in accordance with paragraph (45), the Participating Parties will meet with the mediator to attempt to resolve the Disagreement.

COSTS

(47) Subject to paragraph (40), Canada shall pay for the reasonable costs of mediations conducted under this Appendix in accordance with Section 9.08 of the Agreement.

APPENDIX K-3
Arbitration

DEFINITIONS

(48) In this Appendix:

(a) "**Court**" means the superior court of the province where the Reserve of the Underserviced First Nation underlying the Disagreement is located;

(b) "**Applicant**" means the Participating Party that delivered the notice of arbitration;

(c) "**Arbitral Award**" means any decision of the Arbitrator on the substance of the Disagreement submitted to it, and includes:

(i) an interim award; and

(ii) an award of interest;

(d) "**Arbitral Agreement**" includes

(i) the requirement to refer to arbitration Disagreements in accordance with this Schedule; and

(ii) an agreement of the Participating Parties to arbitrate a Disagreement;

(e) "**Arbitrator**" means a single arbitrator appointed in accordance with this Appendix;

(f) "**Respondent**" means a Participating Party other than the Applicant;

(49) A reference in this Appendix, other than in paragraph (96) or (118)(a), to a claim, applies to a counterclaim, and a reference in this Appendix to a defence, applies to a defence to a counterclaim.

(50) Notwithstanding any other provision in the Schedule, the Participating Parties may not vary paragraphs (63) or (108) of this Appendix.

COMMUNICATIONS

(51) Except in respect of administrative details, the Participating Parties will not communicate with the Arbitrator:

(a) orally, except in the presence of all other Participating Parties; or

(b) in writing, without immediately sending a copy of that communication to all other Participating Parties.

EXTENT OF JUDICIAL INTERVENTION

(52) In matters governed by this Appendix:

(a) no court will intervene except as provided in this Appendix or the Schedule; and

(b) no arbitral proceeding of an Arbitrator, or an order, ruling or Arbitral Award made by an Arbitrator will be appealed, questioned, reviewed, or restrained by a proceeding under any law except to the extent provided in this Appendix.

(c) the Participating Parties, to the greatest extent permitted by law, waive any right to appeal, question, review, or restrain arbitral proceeding of an Arbitrator, or an order, ruling or Arbitral Award made by an Arbitrator.

COMMENCEMENT OF ARBITRAL PROCEEDINGS

(53) The arbitral proceedings in respect of a Disagreement commences on delivery of the notice of arbitration by the Applicant to the Respondents ("**Arbitration Notice**").

NOTICE OF ARBITRATION

(54) An Arbitration Notice will be in writing and contain the following information:

(a) a statement of the subject matter or issues of the Disagreement;

(b) a requirement that the Disagreement be referred to arbitration;

(c) the remedy sought; and

(d) any preferred qualifications of the arbitrators.

(55) An Arbitration Notice may contain the names of any proposed arbitrators, including the information specified in paragraph (58).

ARBITRATOR

(56) In each arbitration, there will be one arbitrator.

APPOINTMENT OF ARBITRATORS

(57) The Participating Parties will make good faith efforts to agree on the Arbitrator from the Roster of Arbitrators. If the Participating Parties fail to agree on the Arbitrator within fifteen (15) days after the commencement of the arbitration, the Participating Parties will ask the Courts or any one of them to appoint an arbitrator form the Roster of Arbitrators.

(58) In appointing an Arbitrator, the Courts will have due regard to:

(a) any qualifications required of the Arbitrator as set out in the Arbitration Notice or as otherwise agreed in writing by the Participating Parties; and

(b) any other considerations that are likely to secure the appointment of an independent and impartial Arbitrator.

TERMINATION OF MANDATE AND SUBSTITUTION OF ARBITRATOR

(59) The mandate of an Arbitrator terminates:

(a) if the Arbitrator withdraws from office for any reason; or

(b) by, or pursuant to, agreement of the Participating Parties.

(60) If the mandate of an Arbitrator terminates, a replacement arbitrator will be appointed in accordance with paragraph (57).

INTERIM MEASURES ORDERED BY ARBITRAL TRIBUNAL

(61) Unless otherwise agreed by the Participating Parties, the Arbitrator may, at the request of a Participating Party, order a Participating Party to take any interim measure of protection as the Arbitrator may consider necessary in respect of the subject matter of the Disagreement.

EQUAL TREATMENT OF PARTIES

(62) The Participating Parties will be treated with equality and each Participating Party will be given a full opportunity to present its case.

DETERMINATION OF RULES OF PROCEDURE

(63) Subject to the Schedule and this Appendix, the Participating Parties may agree on the procedure to be followed by the Arbitrator in conducting the proceedings.

(64) Failing any agreement in accordance with paragraph (63), the Arbitrator, subject to the Schedule and this Appendix, may conduct the arbitration in the manner they consider appropriate with due regard to the Indigenous legal traditions and protocols of the Underserviced First Nation.

(65) The Arbitrator is not required to apply the legal rules of evidence, and may determine the admissibility, relevance, materiality and weight of any evidence. In accordance with the Schedule, the Arbitrator shall have due regard to the Indigenous legal traditions and protocols of the Underserviced First Nation in determining the presentation and admission of evidence.

(66) Subject only to the Schedule and the Indigenous laws and protocols of the Underserviced First Nation, the Arbitrator will make all reasonable efforts to conduct the arbitral proceedings in the most efficient, expeditious and cost effective manner as is appropriate in all the circumstances of the case.

(67) The Arbitrator may extend or abridge a period of time:

(a) set in this Appendix, except the period specified in paragraph (109); or

(b) established by the Arbitrator.

PRE-HEARING MEETING

(68) Within ten (10) days after the Arbitrator is appointed, the Arbitrator will convene a pre-hearing meeting of the Participating Parties to reach agreement and to make any necessary orders on

(a) any procedural issues arising in accordance with this Appendix;

(b) the procedure and community protocols to be followed in the arbitration;

(c) any elders or knowledge keepers who will sit with and advise the Arbitrator on community protocol and Indigenous law;

(d) the time periods for taking steps in the arbitration;

(e) the scheduling of hearings or meetings, if any;

(f) any preliminary applications or objections; and

(g) any other matter which will assist the arbitration to proceed in an efficient and expeditious manner.

(69) The Arbitrator will prepare and distribute promptly to the Participating Parties a written record of all the business transacted, and decisions and orders made, at the pre-hearing meeting.

(70) The pre-hearing meeting may be conducted by conference or videoconference call.

PLACE OF ARBITRATION

(71) As far as practicable the place of the arbitration shall be on or near the reserve of the Underserviced First Nation.

(72) An Arbitrator may

(a) with the consent of the Participating Parties, may meet at any other place it considers, for hearing witnesses, experts or the Participating Parties; and

(b) attend any place for inspection of documents, goods or other personal property, or for viewing physical locations.

LANGUAGE

(73) As far as practicable the conduct of the arbitration will promote the use of the Indigenous language of the Underserviced First Nation.

(74) Canada shall bear the costs of translation of oral presentations and proceedings, and of such documents as the Arbitrator may direct in the circumstances of a particular Disagreement.

STATEMENTS OF CLAIM AND DEFENCE

(75) Within twenty-one (21) days after the Arbitrator is appointed, the Underserviced First Nation, as Applicant will deliver its Remediation Plan and a written statement to Canada, the Respondent, stating the facts supporting its claim or position, the points at issue and the relief or remedy sought.

(76) Within fifteen (15) days after receipt of the Applicant's statement, the Respondent will deliver a written statement to all the Participating Parties stating its defence or position in respect of those particulars.

(77) Each Participating Party will attach to its statement a list of documents:

(a) upon which the Participating Party intends to rely; and

(b) which describes each document by kind, date, author, addressee and subject matter.

(78) The Participating Parties may amend or supplement their statements, including the list of documents, unless the Arbitrator considers it inappropriate to allow the amendment, supplement or additional pleadings having regard to:

(a) the delay in making it; and

(b) any prejudice suffered by the other Participating Parties.

(79) The Participating Parties will deliver copies of all amended, supplemented or new documents delivered in accordance with paragraph (78) to all the Participating Parties.

DISCLOSURE

(80) The Arbitrator may order a Participating Party to produce, within a specified time, any documents that:

(a) have not been listed in accordance with paragraph (77);

(b) the Participating Party has in its care, custody or control; and

(c) the Arbitrator considers to be relevant.

(81) Each Participating Party will allow the other Participating Parties the necessary access at reasonable times to inspect and take copies of all documents that the Participating Party has listed in accordance with paragraph (77), or that the Arbitrator has ordered to be produced in accordance with paragraph (80).

(82) The Participating Parties will prepare and send to the Arbitrator an agreed statement of facts within the time specified by the Arbitrator, failing which the Parties will identify their differences and ask the arbitrator to decide the facts.

(83) Not later than twenty-one (21) days before a hearing commences, each Participating Party will give the other Participating Party:

(a) the name and address of any witness and a written summary or statement of the witness's evidence; and

(b) in the case of an expert witness, a written statement or report prepared by the expert witness.

(84) Not later than fifteen (15) days before a hearing commences, each Participating Party will give to the other Participating Party and the Arbitrator an assembly of all documents to be introduced at the hearing.

HEARINGS AND WRITTEN PROCEEDINGS

(85) Unless the Participating Parties have agreed that no hearings will be held, the Arbitrator will convene a hearing if so requested by a Participating Party.

(86) The Arbitrator will give the Participating Parties sufficient advance notice of any hearing and of any meeting of the Arbitrator for the purpose of inspection of documents, goods or other property or viewing any physical location.

(87) All statements, documents or other information supplied to, or applications made to, the Arbitrator by one Participating Party will be communicated to the other Participating Parties, and any expert report, evidentiary document or case law on which the Arbitrator may rely in making its decision will be communicated to the Participating Parties.

(88) Unless ordered by the Arbitrator, all hearings and meetings in arbitral proceedings, other than the Arbitrator’s meetings, are open to the public.

(89) The Arbitrator will schedule hearings to be held on consecutive days until completion.

(90) All oral evidence will be taken in the presence of the Arbitrator and all the Participating Parties unless a Participating Party is absent by default or has waived the right to be present.

(91) The Arbitrator may order any individual to be examined by the Arbitrator under oath or on affirmation in relation to the Disagreement and to produce before the Arbitrator all relevant documents within the individual's care, custody or control.

(92) The document assemblies delivered in accordance with paragraph (84) will be deemed to have been entered into evidence at the hearing without further proof and without being read out at the hearing, but a Participating Party may challenge the admissibility of any document so introduced.

(93) If the Arbitrator considers it just and reasonable to do so, the Arbitrator may permit a document that was not previously listed in accordance with paragraph (77), or produced in accordance with paragraph (80) or (84), to be introduced at the hearing.

(94) If the Arbitrator permits the evidence of a witness to be presented as a written statement, the other Participating Party may require that witness to be made available for cross examination at the hearing.

(95) The Arbitrator may order a witness to appear and give evidence, and, in that event, the Participating Parties may cross examine that witness and call evidence in rebuttal.

DEFAULT OF A PARTY

(96) If, without explanation, the Applicant fails to communicate its statement of claim in accordance with paragraph (75), the Arbitrator may terminate the proceedings. If, without explanation, a Respondent fails to communicate its statement of defence in accordance with paragraph (76), the Arbitrator will continue the proceedings without treating that failure in itself as an admission of the Applicant's allegations.

(97) If, without showing sufficient cause, a Participating Party fails to appear at the hearing or to produce documentary evidence, the Arbitrator may continue the proceedings and make the Arbitral Award on the evidence before it.

(98) Before terminating the proceedings contemplated by paragraph (96), the Arbitrator will give all Parties written notice providing an opportunity to provide an explanation and to file a statement of claim in respect of the Disagreement within a specified period of time.

(99) For greater clarity, termination under paragraph (96) is without prejudice to the Applicant’s ability to initiate new arbitration proceedings, without first returning to Stage 1 and 2 processes.

EXPERT APPOINTED BY ARBITRAL TRIBUNAL

(100) After consulting the Participating Parties, the Arbitrator may:

(a) appoint one or more experts to report to it on specific issues to be determined by the Arbitrator; and

(b) for that purpose, require a Participating Party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other personal property or land for inspection or viewing.

(101) The Arbitrator will give a copy of the expert's report to the Participating Parties who will have an opportunity to reply to it.

(102) If a Participating Party so requests, or if the Arbitrator considers it necessary, the expert will, after delivery of a written or oral report, participate in a hearing where the Participating Parties will have the opportunity to cross-examine the expert and to call any evidence in rebuttal.

(103) The expert will, on the request of a Participating Party:

(a) make available to that Participating Party for examination all documents, goods or other property in the expert's possession, and provided to the expert in order to prepare a report; and

(b) provide that Participating Party with a list of all documents, goods or other personal property or land not in the expert's possession but which were provided to or given access to the expert, and a description of the location of those documents, goods or other personal property or lands.

LAW APPLICABLE TO SUBSTANCE OF DISPUTE

(104) An Arbitrator will decide the Disagreement in accordance with the law, including Indigenous law, and the Schedule.

(105) If the Participating Parties have expressly authorized it to do so, an Arbitrator may decide the Disagreement based upon equitable considerations.

(106) In all cases, an Arbitrator will make its decisions in accordance with the spirit and intent of the Agreement.

SETTLEMENT

(107) If, during arbitral proceedings, the Participating Parties settle the Disagreement, the Arbitrator will terminate the proceedings and, if requested by those Participating Parties, will record the settlement in the form of an Arbitral Award on agreed terms.

(108) An Arbitral Award on agreed terms:

(a) will be made in accordance with paragraphs (110) to (112);

(b) will state that it is an Arbitral Award; and

(c) has the same status and effect as any other Arbitral Award on the substance of the Disagreement.

FORM AND CONTENT OF ARBITRAL AWARD

(109) An Arbitrator will make its final Arbitral Award as soon as possible and, in any event, not later than sixty (60) days after:

(a) the hearings have been closed; or

(b) the final submission has been made, whichever is the later date.

(110) An Arbitral Award will be made in writing, and be signed by the Arbitrator.

(111) An Arbitral Award will state the reasons upon which it is based, unless:

(a) the Participating Parties have agreed that no reasons are to be given; or

(b) the award is an Arbitral Award on agreed terms contemplated by paragraphs (107) and(108).

(112) A signed copy of an Arbitral Award will be delivered to all the Participating Parties and the Joint Committee by the Arbitrator.

(113) At any time during the arbitral proceedings, an Arbitrator may make an interim Arbitral Award on any matter with respect to which it may make a final Arbitral Award.

(114) An Arbitrator may award interest.

(115) Unless an Arbitrator orders otherwise, Canada shall pay for the costs of an arbitration under this Appendix in accordance with Section 9.08 of the Agreement.

TERMINATION OF PROCEEDINGS

(116) An Arbitrator will close any hearings if:

(a) the Participating Parties advise they have no further evidence to give or submissions to make; or

(b) the Arbitrator considers further hearings to be unnecessary or inappropriate.

(117) A final Arbitral Award, or an order of the Arbitrator in accordance with paragraph (118), terminates arbitral proceedings.

(118) An Arbitrator will issue an order for the termination of the arbitral proceedings if:

(a) the Applicant withdraws its claim, unless the Respondent objects to the order and the Arbitrator recognizes a legitimate interest in obtaining a final settlement of the Disagreement;

(b) the Participating Parties agree on the termination of the proceedings; or

(c) the Arbitrator finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(119) Subject to paragraphs (120) to (125), the mandate of an Arbitrator terminates with the termination of the arbitral proceedings.

CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

(120) Within thirty (30) days after receipt of an Arbitral Award:

(a) a Participating Party may request the Arbitrator to correct in the Arbitral Award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and

(b) a Participating Party may, if agreed by all the Participating Parties, request the Arbitrator to give an interpretation of a specific point or part of the Arbitral Award.

(121) If an Arbitrator considers a request made in accordance with paragraph (120) to be justified, it will make the correction or give the interpretation within thirty (30) days after receipt of the request and the interpretation will form part of the Arbitral Award.

(122) An Arbitrator, on its own initiative, may correct any error of the type referred to in sub-paragraph (120)(a) within thirty (30) days after the date of the Arbitral Award.

(123) A Participating Party may request, within thirty (30) days after receipt of an Arbitral Award, the Arbitrator to make an additional Arbitral Award respecting claims presented in the arbitral proceedings but omitted from the Arbitral Award.

(124) If the Arbitrator considers a request made in accordance with paragraph (123) to be justified, it will make an additional Arbitral Award within thirty (30) days.

(125) Paragraphs (110) to (112), and paragraphs (114) to (115), apply to a correction or interpretation of an Arbitral Award made in accordance with paragraph (121) or(122), or to an additional Arbitral Award made in accordance with paragraph (124).

NO APPEAL

(126) An Arbitral Award shall be final and binding on the Participating Parties and not subject to any appeal or review.

RECOGNITION AND ENFORCEMENT

(127) An Arbitral Award will be recognized as binding and, upon application to the Court, will be recognized and enforced.

(128) Unless the Court orders otherwise, the Participating Party relying on an Arbitral Award or applying for its enforcement will supply the duly authenticated original Arbitral Award or a duly certified copy of it.

SCHEDULE L

NOTICE PLAN

I. OVERVIEW

Objective:

To provide clear, concise, plain-language information to the greatest practicable number of Class Members and their family members regarding:

a. the Settlement Agreement and their rights to receive compensation under it; and

b. the Claims Process and timeline.

Class Members:

The Class Consists of the following:

- Individual Class Members, consisting of an estimated 142,300 individuals who are members of the Class and have not Opted Out of the Actions.

- First Nation Class Members, consisting of First Nations that are members of the Class and provide the Administrator with notice of Acceptance. There are up to a total of 258 Impacted First Nations that could deliver notices of Acceptance and become First Nation Class Members.

Known Factors:

Known factors considered in designing this Notice Plan include:

1. The Reserves subject to Long-Term Drinking Water Advisories during the Class Period include Reserves in remote areas, posing additional communication challenges (for example, delays or limitations in delivery of mailed notice materials).

2. Education levels of Class Members vary widely, from members who have not completed high school to members with graduate-level university education.

3. Class Members speak a variety of languages, including English, French, and a number of Indigenous languages.

4. Impacted First Nations are geographically dispersed across Canada's provinces, with particular concentration in Ontario, British Columbia, and Manitoba.

5. 2016 census data indicates that approximately two thirds of First Nation people do not reside on Reserves.[1] Class Members who lived on impacted Reserves during the Class

[1] Aboriginal Identity (9), Residence by Aboriginal Geography (10), Registered or Treaty Indian Status (3), Age (20) and Sex (3) for the Population in Private Households of Canada, Provinces and Territories, 2016 Census - 25% Sample Data (table), Statistics Canada, 2016 Census- of Population, Statistics Canada Catalogue no. 98-400-X2016154. Ottawa: Released October 25, 2017.

Period may no longer reside on the Reserve with which their Claim is associated or in the same province or territory. Some Class Members may reside outside of Canada.

Strategies:

1. CA2 will give the "**Settlement Notice**" using the same notice plan that it used to give Certification Notice, as particularized further below. The form of the Settlement Notice will be substantially as set out in Schedule M, with such reasonable modifications as CA2 may suggest, and as approved by the Courts. CA2 will disseminate the Settlement Notice in a manner that is substantially similar to the way in which it disseminated the notice of certification of the Actions.

2. The Administrator will give the "**Settlement Approval Notice**" substantially in the form set out in Schedule N, with such reasonable amendments as the Administrator may suggest, and as approved by the Courts. The Settlement Approval Notice will advise Individual Class Members of the Claims Deadline and First Nation Class Members of the need to accept the settlement agreement. The Settlement Approval Notice will be disseminated by the following methods, as particularized further below:

    a. Direct mailed notice to Class member First Nations;

    b. A national press release;

    c. Live in-person and virtual community meetings for interested First Nation Class Members;

    d. Creation of an informational website providing access to copies of the Settlement Agreement, Claims Form, FAQs, and other informational resources, to be referenced in all notice materials and advertisements;

    e. Establishment of a national toll-free support line for Class Members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class Members to call for further information and support with Claims, to be cited in all notice materials and advertisements.

    f. Publication in newspapers and First Nation publications across the country

    g. Placement of 30- and 60-second television advertisements on APTN;

    h. Placement of 30- and 60-second radio advertisements on leading First Nation radio stations in all relevant regions;

    i. Social media/online advertisements to run on popular platforms, including Facebook, Twitter, and YouTube;

    j. Translation of the notice into French, and all reasonable efforts to translate notice into Indigenous languages, as requested by Class Members; and

    k. Toll-free support line to assist members in making Claims.

3. The Administrator will give a "**Reminder Notice**" eight months after first publication of Settlement Approval Notice, using the same notice plan. The Reminder Notice will be in a form to be agreed by the Parties, acting reasonably, on the advice of the Administrator, and approved by the Courts.

4. The Administrator will give a "**Late Claims Notice**" in the event that late claims are permitted. The Late Claims Notice, if any, will use the same notice plan as the Settlement Approval Notice and the Reminder Notice, modified as the Administrator advises and the Courts approve to target those First Nations where participation has fallen below expectations.

5. Canada will be responsible for the cost of giving notice in accordance with this Notice Plan.

II. SETTLEMENT NOTICE PLAN

Websites

Class Counsel, the Defendant, and CA2 shall post on their respective websites the Short Form Notice set out in Schedule M and the Long Form Notice set out in Schedule M, and the French language translations of these documents, as agreed upon by the parties;

Print Media Advertising

CA2 shall publish the Short Form Notice set out in Schedule M, in the following publications in ¼ of a page size in the weekend edition of each newspaper, if possible: Globe and Mail; National Post; Winnipeg Free Press; Vancouver Sun; Edmonton Sun; Calgary Herald; Saskatoon Star Phoenix; Regina Leader Post; Thunder Bay Chronicle-Journal; Toronto Star; Ottawa Citizen; Montreal Gazette; Montreal La Presse (digital edition); Halifax Chronicle-Herald; Moncton Times and Transcript; First Nations Drum.

Direct Mailed Notices

CA2 shall forward the Short Form Notice set out in Schedule M and Long Form Notice set out in Schedule M to the Assembly of First Nations and the Chiefs of every Impacted First Nation identified in accordance with, except for Excluded Persons;

CA2 shall CA2 shall forward the Short Form Notice set out in Schedule M and Long Form Notice set out in Schedule M to the band office or similar office of every Impacted First Nation, except for Excluded Persons, together with a request that they be posted in a prominent place.

Toll-Free Support Line

CA2 shall establish a national toll-free support line, to provide assistance to Class Members, their family, their guardians, or other persons who make inquiries on their own behalf or on behalf of Class members.

III. SETTLEMENT APPROVAL NOTICE PLAN

Direct Mailed Notices

Print notices to be mailed by regular postal mail to each of the following:

- The band office or similar office of all Impacted First Nations, requesting that the notices be posted in prominent locations, with sufficient copies of notice materials to distribute to community residents;
- The Chief of each Impacted First Nation;
- Friendship Centres associated with Impacted First Nations;
- Tribal council or similar for each Impacted First Nation;
- Head office and regional offices of the Assembly of First Nations;
- To the extent that their addresses are known, all Individual Class Members who are identified to the Administrator by a First Nation in a Band Council Confirmation or otherwise; and
- Any person who requests a copy of the Settlement Approval Notices,

Where mailed to a community hub, mailer to be accompanied by request to post the notice in a prominent location.

Print Media Advertising

Print notices in Court-approved short form to run twice, 60 days apart, on the best circulation day, in 1/4 page size and placed to maximize visibility and readership, in each of the following publications, or such reasonable substitutions as the Administrator may advise:

Publication	**Geographical Scope**
Globe & Mail	National
National Post	National
Vancouver Sun	British Columbia
Vancouver Province	British Columbia
Calgary Sun	Alberta
Calgary Herald	Alberta
Edmonton Journal	Alberta
Edmonton Sun	Alberta

Saskatoon Star Phoenix	Saskatchewan
Winnipeg Free Press	Manitoba
Winnipeg Sun	Manitoba
Regina Leader Post	Manitoba
Thunder Bay Chronicle-Journal	Northwestern Ontario
Toronto Star	Ontario
Ottawa Citizen	Southeastern Ontario
Montreal Gazette	Québec
Montreal La Presse (digital edition)	Québec
Halifax Chronicle-Herald	Nova Scotia and Atlantic Canada
Moncton Times and Transcript	New Brunswick and Atlantic Canada
First Nations Drum	National
NationTalk	National
Turtle Island News	National
Windspeaker	National
BC Raven's Eye	British Columbia
Alberta Sweetgrass	Alberta
Saskatchewan Sage	Saskatchewan
Ontario Birchbark	Ontario

Radio and Television Advertisements and Public Service Announcements

Radio advertisements providing content substantially similar to the Court-approved Short Form Notice in Schedule N, to be run on the following radio stations serving areas in which Impacted First Nations are situated, with ads to be run at times of high listenership (e.g., morning and afternoon drive times):

Station	Language	Approximate Duration	Number of Broadcasts per Week	Total Number of Spots
CBC	English	0:60	1	52
Radio-Canada	French	0:60	1	52
CKUR-FM 106.3 (Terrace, BC)	English	0:30	2	52
CFNR Network (BC)	English	0:30	2	52
CJWE-FM 88.1 FM (Calgary)	English	0:30	2	52
CIWE-FM 89.3 FM (Edmonton)	English	0:30	2	52
ELMNT Radio 106.5 (Toronto)	English	0:60	2	52
ELMNT Radio 95.7 FM (Ottawa)	English	0:60	2	52
Administrator to identify additional targeted radio stations	[●]	[●]	[●]	[●]

Television advertisements providing content substantially similar to the Court-approved Short Form Notice in Schedule N, to be run on the following national networks focused on First Nations audiences and local television stations serving regions in which Impacted First Nations are located, at times of high viewership (e.g., evening news time, prime time, or CBC News Indigenous):

Station	Language	Approximate Duration	Number of Broadcasts per Week	Total Number of Spots
APTN	English	0:60	2	104
CBC News Indigenous	English/French	0:30	2	104
Administrator to identify additional	[●]	[●]	[●]	[●]

targeted television stations				

Websites

- Administrator to create informational website providing access to copies of the Settlement Agreement, Claims Form, FAQs, and other informational resources. Website to be referenced in all notice materials and advertisements.
- Notice materials to be posted on websites of Class Counsel, Canada, and the Administrator.

Social Media Advertising

- Targeted online advertisements, including short videos, to run on popular social media platforms, including Facebook, Instagram, Twitter, Google Ads, TikTok, YouTube.
- Impressions to be geo-targeted to Class Members and persons searching for information about drinking water class actions.
- Minimum 3.5 million impressions, to be allocated as advised by the Administrator.

Community Meetings

- Administrator to host in-person and online community meetings, both independently, and in collaboration with First Nation Class Members.
- Administrator to offer a meeting to any First Nation Class Member that requests it.
- Meetings to provide details of Settlement Agreement and Claims Process and provide time for attendee Q&A.
- Printed notice materials and Claims Forms to be made available at all in-person community meetings.

Press Release

- Administrator will issue a national press release by Canadian Newswire (CNW) to press outlets across Canada announcing settlement approval, if granted, to attract unpaid news coverage.
- The press release will include the toll-free number and website information.

Toll-Free Support Line

The Administrator shall establish a national toll-free support line, to provide assistance to Class members, their families, their representatives, and other who make inquiries about the Agreement, or who request assistance in making Claims.

SCHEDULE M

NOTICE OF SETTLEMENT APPROVAL HEARING
(LONG AND SHORT FORMS)

See attached.

Short Form Notice of Settlement

Affected by Drinking Water Advisories on a Reserve?

A proposed settlement may affect you. Please read this notice carefully.
Pour lire cet avis en français: [●Settlement Website URL]

The Court of Queen's Bench of Manitoba and the Federal Court of Canada approved this notice. This is not a solicitation from a lawyer.

First Nations and their members affected by drinking water advisories since November 20, 1995 sued Canada for compensation in two class actions. The representative plaintiff First Nations and their members and Canada have reached a proposed settlement.

If approved by the courts, the proposed settlement would compensate eligible First Nations and their members. Eligible individuals may receive a payment for the years they ordinarily resided on First Nations Lands during a long-term drinking water advisory. It is expected that the per-year amount will vary from approximately $1,300 to $2,000 for eligible years. Additional amounts may be available to eligible individuals who suffered certain specified injuries as a result of using treated or tap water in accordance with a long-term drinking water advisory, or by restricted access to treated or tap water caused by a long-term drinking water advisory.

Each eligible First Nation that accepts the settlement will receive $500,000 plus half the amount paid to eligible individuals who ordinarily resided on that First Nation's reserve during a long-term drinking water advisory. Additionally, Canada will commit to make reasonable efforts to help ensure that eligible individuals have regular access to safe drinking water in their homes, and Canada will spend at least $6 billion on water and wastewater infrastructure on reserves.

If the settlement is approved by the courts, individuals and First Nations will give up their right to sue Canada for failing to provide safe drinking water on their reserves. Subject to court approval, the lawyers will be paid by Canada from a separately negotiated fund and not the money available for compensation.

The courts must approve the proposed settlement before there is any money or any other benefit available.

If you are eligible for compensation, your legal rights will be affected even if you do nothing.

You have three options:

1. **Object in writing:** Write to the courts if you do not like the proposed settlement or the lawyers' fees and do not want them approved. If the settlement is not approved, no one will get any benefits under the settlement.

2. **Object in person:** Ask to speak in court about why you do not like the proposed settlement or the lawyers' fees on [●date] by [●videoconference]. If the settlement is not approved, no one will get any benefits.

3. **Do Nothing:** Give up any right you have to object to the proposed settlement.

If you want to object or go to a hearing, you must act by [●date].

If you are a resident of the following First Nations: Oneida of the Thames; Deer Lake; Mitaanjigaming First Nation; North Caribou Lake; and Ministikwan Lake Cree Nation you my be able to exclude yourself from these class actions by writing to the Settlement Administrator by [●date].

To learn more about your options and determine if you or your First Nation is included, please visit: [●Settlement Website URL] or call [●Administrator phone number]

Additional Information for First Nations:

Eligible First Nations will not receive compensation unless they accept the proposed settlement by [●date]. First Nations who do not accept the proposed settlement by [●date] are not eligible for any benefits under the settlement agreement.

For more information about how to a First Nation can accept the settlement agreement, please visit [●Settlement Website URL] or call [●Administrator phone number].

Long Form Notice of Settlement

Affected by Drinking Water Advisories on First Nations Lands?

A proposed settlement may affect you. Please read this notice carefully.
Pour lire cet avis en français: [●Settlement Website URL]

The Court of Queen's Bench of Manitoba and the Federal Court of Canada approved this notice. This is not a solicitation from a lawyer.

First Nations and their members affected by drinking water advisories since November 20, 1995 sued Canada for compensation in two class actions. The representative plaintiff First Nations and their members and Canada have reached a proposed settlement.

If approved the courts, the proposed settlement would compensate eligible First Nations and their members. Eligible individuals may receive a payment for the years they ordinarily resided on First Nations Lands during a long-term drinking water advisory. It is expected that the per-year amount will vary from approximately $1,300 to $2,000 for eligible years. Additional amounts may be available to eligible individuals who suffered certain specified injuries as a result of using treated or tap water in accordance with a long-term drinking water advisory, or by restricted access to treated or tap water caused by a long-term drinking water advisory.

Each eligible First Nation that accepts the settlement will receive $500,000 plus half the amount paid to eligible individuals who ordinarily resided on that First Nation's reserve during a long-term drinking water advisory. Additionally, Canada will commit to make reasonable efforts to help ensure that eligible individuals have regular access to safe drinking water in their homes, and Canada will spend at least $6 billion on water and wastewater infrastructure on reserves.

If the settlement is approved by the courts, individuals and First Nations will give up their right to sue Canada for failing to provide safe drinking water on their reserves. Subject to court approval, the lawyers will be paid by Canada from a separately negotiated fund and not the money available for compensation.

The courts must approve the proposed settlement before there is any money or any other benefit available.

If you are eligible for compensation, your legal rights will be affected even if you do nothing.

You have three options:

1. **Object in writing:** Write to the courts if you do not like the proposed settlement or the lawyers' fees and do not want them approved. If the settlement is not approved, no one will get any benefits under the settlement.

2. **Object in person:** Ask to speak in court about why you do not like the proposed settlement or the lawyers' fees on [●date] by [●videoconference]. If the settlement is not approved, no one will get any benefits.

3. **Do Nothing:** Give up any right you have to object to the proposed settlement.

If you want to object or go to a hearing, you must act by [●date].

If you are a resident of the following First Nations: Oneida of the Thames; Deer Lake; Mitaanjigaming First Nation; North Caribou Lake; and Ministikwan Lake Cree Nation you can exclude yourself from these class actions by writing to the Settlement Administrator by [●date].

Additional Information for First Nations:

Eligible First Nations will not receive compensation unless they accept the proposed settlement by [●date]. First Nations who do not accept the propose settlement by [●date] are not eligible for any benefits under the settlement agreement.

This notice explains your rights and options and how to exercise them.

BASIC INFORMATION

WHY DID I GET NOTICE OF THIS PROPOSED SETTLEMENT?

The Court of Queen's Bench of Manitoba and the Federal Court of Canada approved this notice to let you know about the proposed settlement and your options before the courts decide whether to approve the settlement. Notice was provided to First Nations and their members who may be affected by the proposed settlement.

WHAT IS A CLASS ACTION?

In a class action, one or more people called "**Plaintiffs**" or "**Representative Plaintiffs**" sue on behalf of people who have similar claims. All of those people are called a "Class" or "Class Members". The courts resolve the issues for everyone affected.

The Representative Plaintiffs in the Court of Queen's Bench of Manitoba are Tataskweyak Cree Nation and Chief Doreen Spence.

The Representative Plaintiffs in the Federal Court of Canada are (i) Curve Lake First Nation and Chief Emily Whetung and (ii) Neskantaga First Nation, Chief Wayne Moonias and Former Chief Christopher Moonias.

Canada is the defendant in both class actions. Canada is represented by the Attorney General of Canada.

WHAT ARE DRINKING WATER ADVISORIES?

Drinking water advisories mean that something is unsafe about drinking water. Drinking water advisories include boil water advisories, do not consume advisories, and do not use advisories.

WHAT ARE THE CLASS ACTIONS ABOUT?

The representative plaintiffs allege that Canada failed to address long-term drinking water advisories on First Nations reserves across Canada. The key allegation is that Canada breached its obligations to First Nations and their members by failing to ensure that reserve communities have safe water.

WHY IS THERE A PROPOSED SETTLEMENT?

The Representative Plaintiffs and Canada have agreed to a proposed settlement. By agreeing to a proposed settlement, the parties avoid the costs and uncertainties of a trial and delays in obtaining judgment and Class members receive the benefits described in this notice (if the courts approve the proposed settlement).

The Representative Plaintiffs and their lawyers believe that the proposed settlement is in the best interests of all Class Members.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

WHICH INDIVIDUALS ARE INCLUDED?

Individuals are included in the Class if:

1. they were alive on November 20, 2017;

2. they are members of a band, as defined in the *Indian Act*, or aboriginal peoples of Canada, other than the Inuit or Métis aboriginal peoples of Canada, who are parties to a modern treaty (a "**First Nation**"), the disposition of whose lands is subject to that Act, the *First Nations Land Management Act*, or a modern treaty ("**First Nations Lands**"); and

3. for at least one year between November 20, 1995, and June 30, 2021, they ordinarily resided on First Nations Lands that were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year between November 20, 1995, and June 30, 2021 ("**Impacted First Nations**") while such a drinking water advisory of at least one year was in effect.

Individuals who are included are eligible for compensation even if their First Nation, or the First Nation on whose First Nation Lands they resided, does not accept the settlement.

WHO SHOULD INDIVIDUALS WITH QUESTIONS CONTACT?

The Settlement Administrator at [●Administrator email] or [●Administrator phone].

WHICH FIRST NATIONS ARE INCLUDED?

Impacted First Nations are eligible for compensation only if they accept the proposed settlement. Every Impacted First Nation that wants to participate must approve the settlement in a band council acceptance resolution and provide a copy of that resolution to the Settlement Administrator at [●Administrator email] or [●Administrator mailing address].

First Nations must accept the proposed settlement by [●date for Acceptance Deadline] to participate. The Settlement Administrator can provide you with the form of band council acceptance resolution that is required to accept the proposed settlement.

WHO SHOULD FIRST NATIONS WITH QUESTIONS CONTACT?

The Settlement Administrator at [●Administrator email] or [●Administrator phone].

WHAT ARE THE BENEFITS OF THE SETTLEMENT?

WHAT COMPENSATION WILL BE PAID UNDER THE PROPOSED SETTLEMENT IF THE COURTS APPROVE IT?

Individuals may receive a payment for each year they ordinarily resided on First Nations Lands while under a drinking water advisory. The per-year amount is expected to vary from $1,300 to $2,000 depending on the type of advisory and the remoteness of the First Nation Lands. These amounts are subject to limitation periods: individuals who reached the age of 18 before November 20, 2013, are eligible for compensation only back to November 20, 2013, unless they were incapable of commencing a proceeding in respect of their claim before November 20, 2013, because of their physical, mental or psychological condition.

Individuals with specific injuries may be eligible for additional compensation.

Impacted First Nations who accept the proposed settlement will receive $500,000 plus 50% of the amounts paid to individuals for drinking water advisories on their reserves.

For more details, please consult the proposed settlement available here: [●URL].

WHAT ARE THE OTHER BENEFITS FOR FIRST NATIONS AND THEIR MEMBERS IN THE PROPOSED SETTLEMENT?

1. Canada has agreed to make all reasonable efforts to support the removal of long-term drinking water advisories that affect the Class.

2. Canada has agreed to make all reasonable efforts to ensure that class members living on reserves have regular access to drinking water in their homes. Canada will spend at least $6 billion by March 31, 2030 to implement that commitment by funding the actual cost of construction, upgrading, operation, and maintenance of water infrastructure on reserves.

3. Canada has agreed to an alternative dispute resolution framework to decide what additional measures are reasonably required to help individuals get regular access to safe drinking water in their homes.

4. Canada has agreed to make all reasonable efforts to repeal the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21 by March 31, 2022 and replace it with legislation that improves drinking water on First Nations reserves.

5. Canada has agreed to provide $20 million to create the First Nations Advisory Committee on Safe Drinking Water.

6. Canada has agreed to make available $9 million to fund First Nations governance initiatives and by-law developments.

For more details, please consult the proposed settlement available here: [●URL].

WHEN WILL INDIVIDUALS AND FIRST NATIONS RECEIVE COMPENSATION?

Nothing will be paid unless the courts approve the proposed settlement. Payment of the base payment to First Nations will be made within 90 days of the settlement approval order becoming

final. The remaining payments to individuals and First Nations will begin to be paid one year after the settlement approval order becomes final.

HOW WILL INDIVIDUALS AND FIRST NATIONS RECEIVE COMPENSATION?

Individuals and First Nations eligible for compensation must submit their claims to the Settlement Administrator to receive payment. No claims forms will be available until the courts approve the proposed settlement.

HOW WILL THE LAWYERS BE PAID?

The lawyers who represent the plaintiffs will ask the courts to agree that Canada can pay them from a separately-negotiated fund that will not be deducted from the money available to pay individuals or First Nations. The amount of the fund is $53 million for fees and disbursements, inclusive of taxes, plus $5 million for ongoing legal services.

The lawyers will not be paid until the courts decide that the fees requested are fair and reasonable. The courts will decide how much the lawyers should be paid.

WHAT AM I GIVING UP IN THE PROPOSED SETTLEMENT?

If the courts approve the settlement, you will give up your right to sue Canada for the claims resolved by the proposed settlement. That means you will not be able to sue Canada for damages incurred before June 20, 2021 that arise from Canada's failure to provide safe drinking water on your reserve.

First Nations who do not accept the proposed settlement are not bound by it (though their Members will be).

CAN I REMOVE MYSELF FROM THE PROPOSED SETTLEMENT?

Individuals cannot remove themselves from the settlement without court approval. Class counsel will not help individuals opt out. Individuals who want to opt out should consult a different lawyer.

However, if you are a resident of the following First Nations: Oneida of the Thames; Deer Lake; Mitaanjigaming First Nation; North Caribou Lake; and Ministikwan Lake Cree Nation you may be able to exclude yourself from these class actions by writing to the Settlement Administrator by [●date].

First Nations do not need to agree to the proposed settlement. If a First Nation does not accept the proposed settlement, the proposed settlement will not affect that First Nation.

WHO REPRESENTS ME?

WHO ARE THE LAWYERS REPRESENTING ME?

The Representative Plaintiffs and the Class are represented by McCarthy Tétrault LLP and Olthuis Kleer Townsend LLP ("**Class Counsel**"). You may contact class counsel at [● contact address].

DO I HAVE TO PAY CLASS COUNSEL?

No. Class counsel will ask the courts to approve their fees.

WHAT IF I WANT MY OWN LAWYER?

If you want to hire your own lawyer, you may do so at your own expense.

HOW DO I OBJECT TO THE PROPOSED SETTLEMENT?

HOW DO I TELL THE COURTS I DO NOT LIKE THE PROPOSED SETTLEMENT?

If you do not like some part of the proposed settlement, including the lawyers' fees, you may object. The courts will consider your views. To object, your must submit an objection form that includes the following:

1. your name, address, phone number, and email address;
2. a statement saying you object to the proposed settlement;
3. the reasons you object to the proposed settlement;
4. the First Nation you are a member of and the reserve on which you ordinarily reside; and
5. your signature.

You must mail or email your objection by [●date] to [●Administrator email address] or [●Administrator mailing address].

WHEN AND WHERE WILL THE COURTS DECIDE WHETHER TO APPROVE THE PROPOSED SETTLEMENT?

The courts will hold a joint hearing on [●date] at [●time]. You may attend by [●videoconference or teleconference].

DO I HAVE TO ATTEND COURT TO OBJECT?

No. If you send an objection you do not have to talk about it in court. The courts will consider objections received in time even if you do not attend the hearing. You or your lawyer may attend by [●videoconference or teleconference] at your own expense.

MAY I SPEAK AT THE HEARING?

You may ask the courts for permission to speak at the approval hearings. To do so, you must file a notice of objection and indicate you wish to speak.

WHAT IF I DO NOTHING?

Individuals who are eligible for the proposed settlement who do nothing will be bound by the settlement if the courts approve it. Those individuals will be eligible for compensation but will give up their right to object to the settlement.

First Nations who are eligible for the proposed settlement who do nothing will not be bound by the proposed settlement if the courts approve it. Those First Nations will not be eligible for compensation and will give up their right to object to the settlement.

If the settlement is approved, individuals, together with First Nations that accept the settlement, will give up their right to sue Canada for failing to provide safe drinking water on their reserves.

HOW DO FIRST NATIONS ACCEPT THE PROPOSED SETTLEMENT?

HOW DO FIRST NATIONS ACCEPT THE PROPOSED SETTLEMENT?

First Nations who are eligible for the proposed settlement must approve it in a Band Council Acceptance Resolution and provide a copy to the Settlement Administrator by [●date].

More information—including a draft Band Council Acceptance Resolution is available here: [●URL].

You may also consult Class Counsel at [● contact address].

WHO DO FIRST NATIONS CONTACT TO JOIN THE PROPOSED SETTLEMENT?

First Nations with questions should ask Class Counsel at [● contact address].

First Nations who have a Band Council Acceptance Resolution should provide a copy to the Settlement Administrator by [●date] at [●Administrator email address] or [●Administrator mailing address].

WHAT IF I NEED MORE INFORMATION?

WHO DO I CONTACT FOR MORE INFORMATION?

You may contact the Settlement Administrator at [●Administrator email address] or [●phone number].

You may also contact Class Counsel at [● contact address].

SCHEDULE N
NOTICE OF SETTLEMENT APPROVAL
(LONG AND SHORT FORMS)

See attached.

Short Form Notice of Settlement Approval

Settlement of First Nation Drinking Water Advisory Class Actions

You may be eligible for compensation. Please read this notice carefully.
Pour lire cet avis en français: [●Settlement Website URL]

The courts have approved a settlement between Canada and certain First Nations and their members who were subjected to long-term drinking water advisories from 1995 to 2021.

Who is included?

Individuals are included in the Class if:

1. they were alive on November 20, 2017;

2. they are members of a band, as defined in the *Indian Act*, or aboriginal peoples of Canada, other than the Inuit or Métis aboriginal peoples of Canada, who are parties to a modern treaty (a "**First Nation**"), the disposition of whose lands is subject to that Act, the *First Nations Land Management Act*, or a modern treaty ("**First Nations Lands**"); and

3. for at least one year between November 20, 1995, and June 30, 2021, they ordinarily resided on First Nations Lands that were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year between November 20, 1995, and June 30, 2021 ("**Impacted First Nations**") while such a drinking water advisory of at least one year was in effect.

Individuals who are included are eligible for compensation even if their First Nation, or the First Nation on whose First Nation Lands they resided, does not accept the settlement.

Impacted First Nations are included if they accept the settlement by [●date]. Impacted First Nations who do not accept the settlement by then will not be compensated.

What does the settlement provide?

Individuals will receive a payment for each year they ordinarily resided on First Nations Lands while under a drinking water advisory. The per-year amount is expected to vary from $1,300 to $2,000 for eligible years, depending on the type of advisory and the remoteness of the First Nation Lands. These amounts are subject to limitation periods. Individuals with specific injuries may be eligible for additional compensation.

Impacted First Nations who accept the proposed settlement will receive $500,000 plus 50% of the amounts paid to individuals for drinking water advisories on their reserves.

Canada must also take other steps to lift long-term drinking water advisories and help individuals get regular access to safe drinking water in their homes. Canada will spend at least $6 billion on water and wastewater infrastructure on reserves. There is an alternative dispute resolution process available where individuals are unhappy with Canada's efforts.

How do I claim money?

Individuals must submit a claims form, or their band council can submit a resolution, confirming that they were ordinarily resident on that First Nation's First Nations Lands during a long-term drinking water advisory. First Nations must accept the settlement and inform the Settlement Administrator. To view and submit claims forms please visit [●URL].

For more information, please visit [●Settlement Website URL] or call [●Administrator phone number].

Long Form Notice of Settlement Approval

Settlement of First Nation Drinking Water Advisory Class Actions

You may be eligible for compensation. Please read this notice carefully.
Pour lire cet avis en français: [●Settlement Website URL]

The courts have approved a settlement between Canada and certain First Nations and their members who were subjected to long-term drinking water advisories from 1995 to 2021.

First Nations and their members affected by drinking water advisories since November 20, 1995 sued Canada for compensation in two class actions. The Court of Queen's Bench of Manitoba and the Federal Court of Canada approved a settlement in the class actions. The settlement compensates eligible First Nations and their members.

This notice explains who is eligible for compensation and how to claim it. Individuals who do not claim compensation by [●date] and First Nations who do not accept the settlement by [●date] will not be compensated.

BASIC INFORMATION

WHY DID I GET NOTICE OF THE SETTLEMENT?

The Court of Queen's Bench of Manitoba and the Federal Court of Canada approved the settlement on [●date]. They also approved this notice to let you know about the settlement and how to claim compensation.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

WHICH INDIVIDUALS ARE INCLUDED?

Individuals are included in the Class if:

1. they were alive on November 20, 2017;

2. they are members of a band, as defined in the *Indian Act*, or aboriginal peoples of Canada, other than the Inuit or Métis aboriginal peoples of Canada, who are parties to a modern treaty (a "**First Nation**"), the disposition of whose lands is subject to that Act, the *First Nations Land Management Act* or a modern treaty ("**First Nations Lands**"); and

3. for at least one year between November 20, 1995, and June 30, 2021, they ordinarily resided on First Nations Lands that were subject to a drinking water advisory (whether a boil water, do not consume, or do not use advisory, or the like) that lasted at least one year between November 20, 1995, and June 30, 2021 ("**Impacted First Nations**") while such a drinking water advisory of at least one year was in effect.

Individuals who are included are eligible for compensation even if their First Nation, or the First Nation on whose First Nation Lands they resided, does not accept the settlement.

WHO SHOULD INDIVIDUALS WITH QUESTIONS CONTACT?

The Settlement Administrator at [●Administrator email] or [●Administrator phone].

WHICH FIRST NATIONS ARE INCLUDED?

Impacted First Nations are eligible for compensation only if they accept the proposed settlement. Every Impacted First Nation that wants to participate must accept the settlement in a Band Council Acceptance Resolution and provide a copy of that resolution to the Settlement Administrator at [●Administrator email] or [●Administrator mailing address].

Impacted First Nations must accept the proposed settlement by [●date] to participate. The Settlement Administrator can provide you with the form of Band Council Acceptance Resolution that is required to accept the proposed settlement.

WHO SHOULD FIRST NATIONS WITH QUESTIONS CONTACT?

Class Counsel at [● contact address].

HOW DO I GET COMPENSATION?

WHAT CAN CLASS MEMBERS GET?

Individuals may receive a payment for each year they ordinarily resided on First Nations Lands while under a long-term drinking water advisory. It is expected that the amount will vary from approximately $1,300 to $2,000 for each eligible year, depending on the type of advisory and the remoteness of the First Nation Lands. These amounts are subject to limitation periods: individuals who reached the age of 18 before November 20, 2013, are only eligible for compensation going back to November 20, 2013, unless they were incapable of commencing a proceeding in respect of their claim before November 20, 2013, because of their physical, mental or psychological condition.

Individuals with specific injuries may be eligible for additional compensation.

Impacted First Nations who accept the proposed settlement will receive $500,000 plus 50% of the amounts paid to individuals for drinking water advisories on their reserves.

For more details, please consult the proposed settlement available here: [●URL].

WHAT ARE THE OTHER BENEFITS FOR FIRST NATIONS AND THEIR MEMBERS IN THE PROPOSED SETTLEMENT?

1. Canada has agreed to make all reasonable efforts to support the removal of long-term drinking water advisories that affect the Class.

2. Canada has agreed to make all reasonable efforts to ensure that class members living on reserves have regular access to drinking water in their homes. Canada will spend at least $6 billion by March 31, 2030 to implement that commitment by funding the actual cost of construction, upgrading, operation, and maintenance of water infrastructure on reserves.

3. Canada has agreed to an alternative dispute resolution framework to decide what additional measures are reasonably required to help individuals get regular access to safe drinking water in their homes.

4. Canada has agreed to make all reasonable efforts to repeal the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21 by March 31, 2022 and replace it with legislation that improves drinking water on First Nations reserves.

5. Canada has agreed to provide $20 million to create the First Nations Advisory Committee on Safe Drinking Water.

6. Canada has agreed to make available $9 million to fund First Nations governance initiatives and by-law developments.

For more details, please consult the proposed settlement available here: [●URL].

WHEN WILL INDIVIDUALS AND FIRST NATIONS RECEIVE COMPENSATION?

Individuals can submit claims forms until [● date]. After the claims period ends, the Settlement Administrator will pay valid claims for compensation.

First Nations will be paid the $500,000 base payment within 90 days of their acceptance or the Courts' approval of the settlement agreement, whichever comes first. Every six months, each First Nation will receive an installment of 50% of the amounts paid to eligible individuals who ordinarily resided on that First Nation's reserve during a long-term drinking water advisory.

HOW WILL INDIVIDUALS AND FIRST NATIONS RECEIVE COMPENSATION?

Individuals must submit a claims form, or their band council can submit a resolution, confirming that they were ordinarily resident on that First Nation's First Nations Lands during a long-term drinking water advisory.

First Nations must accept the settlement and inform the Settlement Administrator. To view and submit claims forms please visit [●URL].

Individuals can receive compensation even if their First Nation, or the First Nation on whose First Nation Lands they resided, does not accept the settlement agreement.

Claims forms are available here [●URL] and may be submitted to the Settlement Administrator at [●Administrator email] or [●Administrator mailing address].

DO I NEED MY OWN LAWYER TO MAKE A CLAIM?

No. Class Counsel represent you. You may contact class counsel at [● contact address].

HOW WILL THE LAWYERS BE PAID?

Canada, rather than class members, will pay the Class Counsel's fees for prosecuting the class actions and continuing to assist individuals and First Nations. The courts have approved the lawyers' fees and you do not have to pay any money to make a claim.

WHAT AM I GIVING UP IN THE PROPOSED SETTLEMENT?

Class members are giving up their right to sue Canada for the claims resolved by the proposed settlement. That means you will not be able to sue Canada for damages incurred before June 20, 2021 that were caused by Canada's failure to provide safe drinking water on your reserve.

First Nations that do not accept the proposed settlement will not be not bound by it, although their members' individual claims will be covered by the settlement.

CAN I REMOVE MYSELF FROM THE PROPOSED SETTLEMENT?

Individuals generally cannot remove themselves from the settlement without court approval. Class Counsel are not able to help individuals opt out. Individuals who want to seek leave of the Courts to opt out should consult a different lawyer.

First Nations do not need to agree to the settlement. If a First Nation does not accept the settlement, the settlement will not resolve the collective or communal claims of that First Nation.

You are not required to submit a claim but if you do not opt out and do not submit a claim, and a band does not provide the Settlement Administrator with confirmation of your residence, you will not receive compensation and you will still give up your right to sue Canada.

WHO REPRESENTS ME?

WHO ARE THE LAWYERS REPRESENTING ME?

The Representative Plaintiffs and the Class are represented by McCarthy Tétrault LLP and Olthuis Kleer Townsend LLP ("**Class Counsel**"). You may contact Class Counsel at [●contact address].

DO I HAVE TO PAY CLASS COUNSEL?

No. The courts approved Class Counsel's fees.

WHAT IF I WANT MY OWN LAWYER?

If you want to hire your own lawyer, you may do so at your own expense.

HOW DO FIRST NATIONS ACCEPT THE SETTLEMENT?

First Nations who are eligible for the settlement must accept it in a Band Council Acceptance Resolution and provide a copy to the Settlement Administrator by [●date].

More information—including a draft Band Council Acceptance Resolution is available here: [●URL].

You may also direct questions to Class Counsel at [● contact address].

WHO DO FIRST NATIONS CONTACT TO ACCEPT THE SETTLEMENT?

First Nations with questions should contact Class Counsel at [● contact address].

First Nations who have a Band Council Acceptance Resolution accepting the settlement agreement should provide a copy to the Settlement Administrator by [●date] at [●Administrator email address] or [●Administrator mailing address].

WHO DO I CONTACT FOR MORE INFORMATION?

You may contact the Settlement Administrator at [●Administrator email address] or [●phone number].

You may also contact Class Counsel at [● contact address].

SCHEDULE O

FORM OF FEDERAL COURT APPROVAL ORDER AND MANITOBA COURT APPROVAL ORDER

See attached.

FEDERAL COURT

Date: [●]

Docket: T-1673-19

Ottawa, Ontario, [●date]

Present: The Honourable Mr. Justice Favel

BETWEEN:

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

ORDER

(Class Proceeding commenced under Part 5.1 of the *Federal Courts Rules*, SOR/98/106)

THIS MOTION made by the Plaintiffs for judgment approving the settlement of this action in accordance with the terms of the Settlement Agreement entered into on [●date] was heard on [●date] at [●location]

UPON READING the Motion Record of the parties and the facta of the parties;

AND UPON HEARING the motion made by the Plaintiffs for an order approving the terms of the Settlement Agreement dated [●date] and attached to this Order as **Schedule "A"** (the "**Settlement Agreement**") including the oral submissions of counsel for the Plaintiffs and the Defendant as well as the oral submissions of Class Member supporters and Class Member objectors or in the case of the latter, counsel designated by such objectors to make oral submissions on their behalf;

THIS COURT ORDERS that:

1. For the purposes of this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order.

2. The Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the Class.

3. The Settlement Agreement (including all of its Schedules) is expressly incorporated by reference into this Order and has the full force and effect of an order of this Court.

4. The Settlement Agreement shall be and hereby is approved and shall be implemented in accordance with this Order and such further orders of this Court.

5. Notice of settlement approval shall be given in accordance with the Notice Plan attached to this Order as **Schedule "B"** which will constitute adequate notice, and which is the best practicable notice that can be given in the circumstances.

6. The persons listed in **Schedule "C"** have Opted Out and shall have no further participation in this action.

7. First Nation Class Members and Individual Class Members who have not Opted Out are bound by the releases in s. 10.03(1) of the Settlement Agreement and this Court declares that:

> Except as set forth in the Settlement Agreement, and in consideration for Canada's obligations and liabilities under the Settlement Agreement, each Individual Class Member or their Estate Executor, Estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate and each First Nation Class Member (hereinafter collectively the "**Releasors**") has fully, finally and forever released Canada and its servants, agents, officers and employees, predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasors had, now have or may in the future have against the Releasees in respect of or arising from Canada's failure to provide, or fund the provision of, safe drinking water on the Reserve or Reserves of such First Nation Class Member, or on which such Individual Class Member was Ordinarily Resident

during a Long-Term Drinking Water Advisory, in each case prior to the conclusion of the Class Period.

8. This Order and the Settlement Agreement, including the releases referred to in paragraph 7 above are binding on all Individual Class Members who have not Opted Out, including those persons who are under a disability.

9. This Order and Settlement Agreement, including the releases referred to in paragraph 7 above are binding on all First Nation Class Members who have provided notice of Acceptance.

10. This Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this action, the Plaintiffs, all Individual Class Members who have not Opted Out, all First Nations Class Members that have provided notice of Acceptance, and the Defendant for the purpose of implementing the Settlement Agreement.

11. Save as set out above, this action is discontinued against the Defendant without costs and with prejudice.

12. This court may issue such further and ancillary orders, from time to time, as are necessary to implement the Settlement Agreement and this Order.

[●date]

The Honourable Justice Favel

Court File No. T-1673-19

FEDERAL COURT

BETWEEN:

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

ORDER

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Lawyers for the Plaintiffs

Court File No.: CI-19-01-24661

THE QUEEN'S BENCH

Winnipeg Centre

THE HONOURABLE	)		[●]	, THE	[●]
	)				
	)				
CHIEF JUSTICE JOYAL	)	DAY OF	[●]	,	[●]

B E T W E E N :

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK REE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under *The Class Proceedings Act*, CCSM. c. C. 130

ORDER

THIS MOTION, made by the Plaintiffs for made by the Plaintiffs for judgment approving the settlement of this action in accordance with the terms of the Settlement Agreement entered into on [●date] was heard on [●date], at [●location] attached to this Order as **Schedule "A"** (the "**Settlement Agreement**").

ON READING the Motion Record of the parties and the facta of the parties and on hearing the submissions of counsel for the Plaintiffs and the Defendant as well as the oral submissions of class member supports and class member objects or in the case of the latter, counsel designated by such objectors to make oral submissions on their behalf;

AND UPON HEARING the oral submissions of counsel for the Plaintiffs and the Defendant as well as the oral submissions of Class Member supporters and Class Member objectors or in the case of the latter, counsel designated by such objectors to make oral submissions on their behalf;

THIS COURT ORDERS that:

1. For the purposes of this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order.

2. The Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the Class.

3. The Settlement Agreement (including all of its Schedules) is expressly incorporated by reference into this Order and has the full force and effect of an order of this Court.

4. The Settlement Agreement shall be and hereby is approved and shall be implemented in accordance with this Order and such further orders of this Court.

5. Notice of settlement approval shall be given in accordance with the Notice Plan attached to this Order as **Schedule "B"** which will constitute adequate notice, and which is the best practicable notice that can be given in the circumstances.

6. The persons listed in **Schedule "C"** have Opted Out and shall have no further participation in this action.

7. First Nation Class Members and Individual Class Members who have not Opted Out are bound by the releases in s. 10.03(1) of the Settlement Agreement and this Court declares that:

> Except as set forth in the Settlement Agreement, and in consideration for Canada's obligations and liabilities under the Settlement Agreement, each Individual Class Member or their Estate Executor, Estate Claimant, or Personal Representative on behalf of such Individual Class Member or their estate and each First Nation Class Member (hereinafter collectively the "**Releasors**") has fully, finally and forever released Canada and its servants, agents, officers and employees, predecessors, successors, and assigns (hereinafter collectively the "**Releasees**"), from any and all actions, causes of action, claims, and demands of every nature or kind available, whether or not known or anticipated, which the Releasors had, now have or may in the future have against the Releasees in respect of or arising from Canada's failure to provide, or fund the provision of, safe drinking water on the Reserve or Reserves of such First Nation Class Member, or on which such Individual

Class Member was Ordinarily Resident during a Long-Term Drinking Water Advisory, in each case prior to the conclusion of the Class Period.

8. This Order and the Settlement Agreement, including the releases referred to in paragraph 7 above are binding on all Individual Class Members who have not Opted Out, including those persons who are under a disability.

9. This Order and Settlement Agreement, including the releases referred to in paragraph 7 above are binding on all First Nation Class Members who have provided notice of Acceptance.

10. This Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this action, the Plaintiffs, all Individual Class Members who have not Opted Out, all First Nations Class Members that have provided notice of Acceptance, and the Defendant for the purpose of implementing the Settlement Agreement.

11. Save as set out above, this action is discontinued against the Defendant without costs and with prejudice.

12. This court may issue such further and ancillary orders, from time to time, as are necessary to implement the Settlement Agreement and this Order.

[●date]

The Honourable Chief Justice Joyal

Court File No. CI-19-01-24661

MANITOBA COURT OF QUEEN'S BENCH

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION
Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA
Defendant

Class Proceeding commenced under *The Class Proceedings Act*, CCSM. c. C. 130

ORDER

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Lawyers for the Plaintiffs

SCHEDULE P

FORM OF BAND COUNCIL ACCEPTANCE RESOLUTION APPROVING PRIVATE WATER SYSTEMS ON RESERVE

See attached.

[Name of First Nation]

Band Council Resolution

Approving Private Water Systems on Reserve

WHEREAS certain plaintiffs commenced a lawsuit styled as Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Wayne Moonias and Former Chief Christopher Moonias on their own behalf and on behalf of all members of Neskantaga First Nation v Attorney General of Canada, Court File No. T-1673-19, in the Federal Court on October 11, 2019 (the "**Federal Action**");

AND WHEREAS certain plaintiffs commenced a court action styled Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation v Attorney General of Canada, Court File No. CI-19-01-24661, in the Manitoba Court of Queen's Bench on November 20, 2019 (the "**Manitoba Action**", and together with the Federal Action, the "**Actions**");

AND WHEREAS the Actions were certified by the respective courts as class proceedings;

AND WHEREAS the Attorney General of Canada and the plaintiffs in the Actions have negotiated a settlement agreement (the "**Settlement Agreement**") in respect of the Actions;

AND WHEREAS the Settlement Agreement provides that Canada shall make all reasonable efforts to ensure that Individual Class Members (as defined in the Settlement Agreement) living on Reserves (as defined in the Settlement Agreement have regular access to drinking water in their homes, whether from a public water system or a private water system approved by a Band Council resolution including on-site systems, that meets the stricter of the federal requirements or provincial standards governing residential water quality (the "**Commitment**");

AND WHEREAS [Name of First Nation Council] (the "**Council**") wishes to approve the private water systems listed below for the purposes of the Commitment by passing this Band Council Resolution;

AND WHEREAS this Band Council Resolution is not an acknowledgment that the Council is responsible in any way for the private water systems listed below;

BE IT HEREBY RESOLVED THAT:

1. For the purposes of the Commitment only, and without hereby confirming or accepting responsibility, the Council hereby approves the following water systems:

    a. **[Identify or describe private water systems, including wells]**

2. The Council hereby delares that the approval set out in Paragraph 1, above, may be revoked by the Council at any time.
3. The Council hereby declares that the approval set out in Paragraph 1, above, may be supplemented by the Council at any time to incorporate additional water systems.
4. These resolutions may be signed by the Chief and Council members in as many counterparts as may be necessary, in original or electronic form, each of which so signed

shall be deemed to be an original, and such counterparts together shall constitute one and the same resolution.

The signatories below hereby certify and warrant that a quorum of Council has signed this Band Council Resolution as evidenced by their signatures below.

DATED as of the ____ day of _____, 202__.

_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	_____
[insert name]	**[insert name]**
_____	
[insert name]	

SCHEDULE Q

ELIGIBLE CLASS MEMBER ADDRESS SEARCH PLAN

1. If the Administrator receives a Band Council Confirmation or a Claims Form that does not provide a legible mailing address for an Individual Class Member, or an Individual Class Member has not deposited a cheque or claimed a payment made in accordance with the Agreement within one hundred and eighty (180) days of such cheque or payment being issued, such Individual Class Member will be a "**Missing Eligible Class Member"**, and the date of becoming a Missing Eligible Class Member will be the "**Search Commencement Date**".

2. For each Missing Eligible Class Member, the Administrator will conduct or cause to be conducted all of the following searches in order to find the Missing Eligible Class Member's current contact information:

(a) Canadian national change of address database;

(b) reverse phone number lookup;

(c) Canada 411;

(d) consult any contact information for such Missing Eligible Class Member in a Band Council Confirmation, if any, and make a written or telephonic request for such Missing Eligible Class Member's contact information from the band office of the First Nation where such Missing Eligible Class Member ordinarily resides or last resided, if any; and

(e) make a written or telephonic request for such Missing Eligible Class Member's contact information from the band office of the First Nation of which such Missing Eligible Class Member is a member, if different than paragraph 2(d), above.

3. The searches identified in paragraph 2, above, will be conducted within forty-five (45) days of the Search Commencement Date.

4. If the Administrator locates more than one new mailing address for a Missing Eligible Class Member, the Administrator will make reasonable inquiries to determine which address is correct.

5. If the Administrator locates a new mailing address for a Missing Eligible Class Member, the Administrator will issue and mail a new cheque or other form of payment to the Missing Eligible Class Member for any amount payable in accordance with this Agreement, which cheque or payment will be stale dated within ninety (90) days of issuance. If a cheque or other form of payment had been previously issued to the Missing Eligible Class Member but not deposited or claimed, the Administrator will cancel or rescind such prior payment prior to issuance of the new cheque or other payment.

6. If the Administrator does not locate a new mailing address for a Missing Eligible Class Member, but such Missing Eligible Class Member's Claims Form indicates that they are currently resident on a Reserve, the Administrator will issue and mail to such Missing Eligible Class Member, care of the band office or similar place on such Reserve, a new cheque or other form of payment for any amount payable in accordance with this Agreement, which cheque or payment will be stale dated within ninety (90) days of issuance. If a cheque or other form of

payment had been previously issued to the Missing Eligible Class Member but not deposited or claimed, the Administrator shall cancel or rescind such prior payment prior to issuance of the new cheque or other payment.

8. If the Administrator remains unable to locate a Missing Eligible Class Member despite complying with this Eligible Class Member Search Plan, and any cheque or payment to such Missing Eligible Class Member has become stale dated, the Administrator shall wait for a period of one hundred and eighty (180) days (the conclusion of which is the "**Search Cancellation Date)**". If the Administrator is still unable to locate the Missing Eligible Class Member on the Search Cancellation Date, the Missing Eligible Class Member's Claim will be fully and finally extinguished and discharged, the Administrator shall have no obligation to make any payment to such Missing Eligible Class Member, and the Administrator, Canada, counsel for Canada, Class Counsel, the Joint Committee and its members, the Settlement Implementation Committee and its Members, the Trustee, and the FNAC will be released from any liability.

Manitoba Court of Queen's Bench File No.: CI-19-01-24661

Federal Court File No.: T-1673-19

FIRST ADDENDUM TO THE SETTLEMENT AGREEMENT

THE QUEEN'S BENCH, Winnipeg Centre

BETWEEN:

TATASKWEYAK CREE NATION and CHIEF DOREEN SPENCE, on her own behalf and on behalf of all members of TATASKWEYAK CREE NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under *The Class Proceedings Act*, CCSM. c. C. 130

- and -

FEDERAL COURT

BETWEEN:

CURVE LAKE FIRST NATION and CHIEF EMILY WHETUNG on her own behalf and on behalf of all members of CURVE LAKE FIRST NATION and NESKANTAGA FIRST NATION and CHIEF CHRISTOPHER MOONIAS on his own behalf and on behalf of all members of NESKANTAGA FIRST NATION

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under Part 5.1 of the *Federal Court Rules*, SOR/98-106

FIRST ADDENDUM TO THE SETTLEMENT AGREEMENT

This addendum (the "**Addendum**") is made as of October 8, 2021.

WHEREAS:

A. Tataskweyak Cree Nation and Chief Doreen Spence, on their own behalf and on behalf of all Individual Class Members (together, the "**Manitoba Action Plaintiffs**"), Curve Lake First Nation and Chief Emily Whetung, on their own behalf and on behalf of all Individual Class Members(together, the "**Curve Lake First Nation Plaintiffs**"), Neskantaga First Nation and Chief Wayne Moonias and Former Chief Christopher Moonias, each on his own behalf and on behalf of all Individual Class Members (together, the "**Neskantaga First Nation Plaintiffs**", and collectively with the Curve Lake First Nation Plaintiffs, the "**Federal Action Plaintiffs**") and Her Majesty the Queen in Right of Canada (all of the foregoing, collectively, the "**Parties**") entered into a settlement agreement dated September 15, 2021 (the "**Settlement Agreement**"); and

B. The Parties wish to amend the Settlement Agreement to clarify the availability of Specified Injuries Compensation;

NOW THEREFORE the Parties agree to amend the Settlement Agreement as follows:

1. Capitalized terms used but not defined herein shall have the meanings set out in the Settlement Agreement.

2. Section 8.02(2) of the Settlement Agreement is hereby amended to add the words "Specified Injuries Compensation shall only be paid if the Individual Class Member experienced a Specified Injury or the continuing symptoms of an earlier Specified Injury, as set out in Schedule H, during a year for which Individual Damages would be payable to the Individual Class Member in accordance with the Individual Damages Formula in Section 8.01(2) if it were an Advisory Year (but which, for greater certainty, is not required to have been an Advisory Year)." at the end of the paragraph, as follows:

> Confirmed Individual Class Members will be entitled to compensation for Specified Injuries in the amount set out in Schedule H (the "**Specified Injuries Compensation**"), provided that the Claimant establishes that the injury was caused by using treated or tap water in accordance with a Long-Term Drinking Water Advisory, or by restricted access to treated or tap water caused by a Long-Term Drinking Water Advisory, in accordance with the Claims Process and Schedule H. Specified Injuries Compensation shall only be paid if the Individual Class Member experienced a Specified Injury or the continuing symptoms of an earlier Specified Injury, as set out in Schedule H, during a year for which Individual Damages would be payable to the Individual Class Member in accordance with the Individual Damages Formula in Section 8.01(2) if it were an Advisory Year (but which, for greater certainty, is not required to have been an Advisory Year).

3. Sections 1.12, 1.13, 1.14, 1.15, 2.01 and 2.02 of the Settlement Agreement are incorporated by reference herein and shall apply to this Addendum.

4. Section 16.12(1) of the Settlement Agreement is hereby amended to replace the words "section 81(g.3) of the Income Tax Act" with "section 81(1)(g.3) of the Income Tax Act".

5. The Parties, by their counsel, agree that this Addendum shall be incorporated into the Settlement Agreement.

IN WITNESS WHEREOF the undersigned have executed this Addendum on behalf of the Parties as of the date first written above.

FOR THE MANITOBA ACTION PLAINTIFFS
AND THE FEDERAL ACTION PLAINTIFFS

By: _____

Michael Rosenberg
Partner, McCarthy Tétrault LLP
Counsel for the Manitoba Action Plaintiffs
and the Federal Action Plaintiffs

FOR HER MAJESTY
THE QUEEN IN THE RIGHT OF CANADA

By: _____

Scott Farlinger
Senior Counsel, Department of Justice
Counsel for the Defendant

APPENDIX 2

FRENCH VERSION OF PROPOSED SETTLEMENT AGREEMENT

N° de dossier de la Cour du Banc de la Reine du Manitoba : CI-19-01-24661

N° de dossier de la Cour fédérale : T-1673-19

ENTENTE DE RÈGLEMENT

BANC DE LA REINE, Winnipeg-Centre

ENTRE

NATION DES CRIS DE TATASKWEYAK et CHEFFE DOREEN SPENCE, pour son propre compte et pour le compte de tous les membres de la NATION DES CRIS DE TATASKWEYAK,

demandeurs,

– et –

PROCUREUR GÉNÉRAL DU CANADA,

défendeur.

Recours collectif introduit en vertu de la *Loi sur les recours collectifs*, C.P.L.M. ch. C130

– et –

COUR FÉDÉRALE

ENTRE

PREMIÈRE NATION DE CURVE LAKE et CHEFFE EMILY WHETUNG, pour son propre compte et pour le compte de tous les membres de la PREMIÈRE NATION DE CURVE LAKE et PREMIÈRE NATION DE NESKANTAGA et CHEF CHRISTOPHER MOONIAS, pour son propre compte et pour le compte de tous les membres de la PREMIÈRE NATION DE NESKANTAGA,

demandeurs,

– et –

PROCUREUR GÉNÉRAL DU CANADA,

défendeur.

Recours collectif introduit en vertu de la partie 5.1 des *Règles des Cours fédérales*, DORS/98-106

ENTENTE DE RÈGLEMENT

LA PRÉSENTE ENTENTE intervient le 15 septembre 2021

ENTRE

NATION DES CRIS DE TATASKWEYAK et CHEFFE DOREEN SPENCE, pour son propre compte et pour le compte de toutes les PERSONNES MEMBRES DU GROUPE (au sens des présentes),

(collectivement, les « **demandeurs de l'action au Manitoba** »),

ET

PREMIÈRE NATION DE CURVE LAKE et CHEFFE EMILY WHETUNG, pour son propre compte et pour le compte de toutes les PERSONNES MEMBRES DU GROUPE (au sens des présentes),

(collectivement, les « **demandeurs de la Première Nation de Curve Lake** »),

ET

PREMIÈRE NATION DE NESKANTAGA et CHEF WAYNE MOONIAS et ANCIEN CHEF CHRISTOPHER MOONIAS, chacun pour son propre compte et pour le compte de toutes les PERSONNES MEMBRES DU GROUPE (au sens des présentes),

(collectivement, les « **demandeurs de la Première Nation de Neskantaga** » et collectivement avec les demandeurs de la Première Nation de Curve Lake, les « **demandeurs de l'action devant la Cour fédérale** »),

ET

SA MAJESTÉ LA REINE DU CHEF DU CANADA,

(le « **Canada** »).

ATTENDU QUE :

A. Le 11 octobre 2019, les demandeurs de l'action devant la Cour fédérale ont introduit l'action intitulée *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation c. Attorney General of Canada*, portant le numéro de dossier T-1673-19 devant la Cour fédérale (l'« **action devant la Cour fédérale** »);

B. Le 20 novembre 2019, les demandeurs de l'action au Manitoba ont introduit l'action intitulée *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation c. Attorney General of Canada*, portant le numéro de dossier CI-19-01-24661 devant la Cour du Banc de la Reine du Manitoba (l'« **action au Manitoba** » et, collectivement avec l'action devant la Cour fédérale, les « **actions** »);

C. Le 14 juillet 2020, la Cour du Banc de la Reine du Manitoba a attesté l'action au Manitoba à titre de recours collectif et le 8 octobre 2020, la Cour fédérale a autorisé l'action devant la Cour fédérale à titre de recours collectif;

D. Le « **groupe** » de chacune des actions est ainsi défini :

a) toutes les personnes, sauf les personnes exclues :

(i) qui sont membres d'une Première Nation;

(ii) qui n'étaient pas décédées avant le 20 novembre 2017; et

(iii) qui au cours de la période visée ont résidé habituellement pendant au moins un an dans une Première Nation touchée alors visée par un avis concernant la qualité de l'eau potable à long terme; et

b) la Nation des Cris de Tataskweyak, la Première Nation de Curve Lake, la Première Nation de Neskantaga et toute autre Première Nation qui donne un avis d'acceptation conformément aux conditions de la présente entente;

E. L'avis d'autorisation des actions a été donné en la forme approuvée par les tribunaux et de la manière ordonnée par les tribunaux. Les personnes membres du groupe ont eu la possibilité de s'exclure du groupe pendant une période de cent vingt (120) jours après la première publication de l'avis d'autorisation (la « **période d'exclusion** »);

F. La période d'exclusion a expiré le 29 mars 2021. Aucune personne membre du groupe ne s'est exclue des actions;

G. Le groupe a subi d'énormes préjudices en étant privé d'eau potable salubre et les personnes et collectivités touchées en ont gravement souffert;

H. Le Canada reconnaît les préjudices dont ont souffert les membres du groupe et souhaite aider les membres du groupe à assurer un accès à une source fiable d'eau potable salubre;

I. Les avocats du groupe et le Canada ont conclu une entente de principe intervenue le 20 juin 2021, qui énonce en principe les conditions auxquelles le Canada est disposé à régler les actions et auxquelles les avocats du groupe recommanderaient aux demandeurs de l'action au Manitoba et aux demandeurs de l'action devant la Cour fédérale (collectivement, les « **représentants demandeurs** »);

J. Le chef Wayne Moonias a succédé à Christopher Moonias en tant que chef de la Première Nation de Neskantaga et demandera à la Cour fédérale l'autorisation de le remplacer en tant que représentant;

K. Les représentants demandeurs et le Canada ont conclu une entente de principe intervenue le 29 juillet 2021, qui énonce les principales conditions de leur entente de règlement des actions et qui constitue le fondement de la présente entente;

L. Dans le cadre de la rédaction de la présente entente, les parties :

a) ont l'intention d'en faire un règlement juste, global et durable des réclamations relatives à la privation d'eau potable salubre des membres du groupe et aux préjudices connexes dont ils ont souffert;

b) souhaitent la mise en œuvre de mesures concrètes pour empêcher que les membres du groupe ne souffrent de nouveau de ces préjudices;

c) reconnaissent l'importance de fournir aux Premières Nations des fonds pour des projets liés à l'approvisionnement en eau et au traitement des eaux usées, au développement économique et aux activités culturelles, et respectent l'autonomie des Premières Nations quant à l'utilisation de ces fonds;

d) souhaitent promouvoir la guérison, l'éducation, la commémoration et la réconciliation; et

e) ont l'intention d'inclure les Premières Nations signataires d'un traité moderne, selon le cas, mais reconnaissent le caractère unique de chaque Première Nation signataire d'un traité moderne, de ses terres, de ses peuples et de ses relations avec le Canada, et conviennent par conséquent que les modalités précises de la participation d'une Première Nation signataire d'un traité moderne seront élaborées en consultation avec les parties et la Première Nation signataire d'un traité moderne visée.

PAR CONSÉQUENT, en contrepartie des ententes, des accords et des engagements réciproques énoncés dans les présentes, les parties conviennent de ce qui suit :

ARTICLE 1 – INTERPRÉTATION

1.01 **Définitions**

Les définitions ci-dessous s'appliquent à la présente entente.

« **acceptation** » L'acceptation de la présente entente par une Première Nation membre du groupe :

a) par voie d'une résolution d'acceptation du conseil de bande qui est remise à l'administrateur; ou

b) par ailleurs conformément aux ordonnances d'approbation du règlement.

« **action au Manitoba** » L'action au Manitoba au sens du préambule.

« **action devant la Cour fédérale** » L'action devant la Cour fédérale au sens du préambule.

« **actions** » Les actions au sens du préambule, et « **action** » l'une ou l'autre d'entre elles.

« **administrateur** » L'administrateur nommé par les tribunaux, et ses successeurs le cas échéant nommés conformément aux dispositions de l'article 3.01.

« **année de l'avis** » L'année de l'avis au sens du paragraphe 8.01(1).

« **auditeur** » L'auditeur nommé par les tribunaux, et ses successeurs le cas échéant nommés conformément aux dispositions de l'article 17.01.

« **audition de l'approbation du règlement** » Une audition conjointe des tribunaux en vue de de statuer sur une demande d'approbation de la présente entente et des honoraires des avocats du groupe.

« **avis concernant la qualité de l'eau potable** » Un avis d'ébullition de l'eau, un avis de ne pas boire, un avis de non-utilisation, ou un avis analogue concernant l'utilisation de l'eau potable.

« **avis concernant la qualité de l'eau potable à long terme** » Un avis concernant la qualité de l'eau potable pour une réserve ou une partie d'une réserve qui a duré au moins un (1) an.

« **avis d'ébullition de l'eau** » Un avis émis par un organisme émetteur d'avis visant à avertir le public de faire bouillir l'eau du robinet avant de la boire ou d'en faire usage à d'autres fins, notamment la cuisson, l'alimentation des animaux domestiques, le brossage des dents et des activités analogues, et de ne pas utiliser l'eau du robinet pour donner un bain aux personnes ayant besoin d'aide, comme les bébés, les jeunes enfants et les personnes âgées, et de les laver plutôt à la débarbouillette pour éviter qu'elles avalent de l'eau, ou un avis analogue.

« **avis de ne pas boire** » Un avis émis par un organisme émetteur d'avis visant à avertir le public de ne pas utiliser l'eau du robinet pour la cuisson, les boissons, l'alimentation des animaux domestiques, le brossage des dents et/ou des activités analogues, et de ne pas utiliser l'eau du robinet pour donner un bain aux personnes ayant besoin d'aide, comme les bébés, les jeunes enfants et les personnes âgées, et de les laver plutôt à la débarbouillette pour éviter qu'elles avalent de l'eau, ou un avis analogue.

« **avis de non-utilisation** » Un avis émis par un organisme émetteur d'avis visant à avertir le public de ne pas utiliser l'eau du robinet, quelle qu'en soit la raison, ou un avis analogue.

« **avocats du groupe** » Collectivement, McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP.

« **banque canadienne de l'annexe I** » Une banque à charte canadienne visée à l'annexe I de la *Loi sur les banques*, L.C. (1991), ch. 46.

« **bénéficiaires de quittance** » Les bénéficiaires de quittance au sens du paragraphe 10.03(1).

« **Canada** » Le Canada au sens du préambule.

« **comité consultatif des Premières Nations sur l'eau potable salubre** » ou « **CCPNEPS** » Le comité consultatif des Premières Nations sur l'eau potable salubre au sens du paragraphe 9.04(1).

« **comité de mise en œuvre du règlement** » ou « **comité de mise en œuvre du règlement et ses membres** » Le comité créé conformément à l'article 14.01 et les personnes qui y sont nommées membres, soit deux (2) représentants du comité mixte, deux (2) représentants du Canada et deux (2) représentants du CCPNEPS.

« **comité mixte** » Un comité de trois (3) personnes nommées par les tribunaux conformément à l'article 15.01 et composé d'un (1) représentant des avocats du groupe de Olthuis Kleer

Townshend LLP et de deux (2) représentants des avocats du groupe de McCarthy Tétrault S.E.N.C.R.L., s.r.l.

« **compte d'indemnisation pour préjudices déterminés** » Le compte d'indemnisation pour préjudices déterminés au sens du paragraphe 5.01(1).

« **compte du Fonds de relance** » Le compte du Fonds de relance au sens du paragraphe 6.01(1).

« **compte en fiducie** » Le compte en fiducie au sens du paragraphe 4.01(1).

« **confirmation du conseil de bande** » Une déclaration facultative d'une Première Nation membre du groupe qui identifie des personnes membres du groupe et qui indique les dates au cours de la période visée où ces personnes résidaient habituellement dans une réserve d'une Première Nation membre du groupe alors visée par un avis concernant la qualité de l'eau potable à long terme en vigueur, essentiellement selon le modèle reproduit en ANNEXE E, ou un autre modèle que le Canada et les avocats du groupe jugent acceptable, et qui est remise à l'administrateur.

« **date de mise en œuvre** » La dernière des éventualités suivantes à survenir : a) le jour qui suit le dernier jour où un membre du groupe peut interjeter appel ou demander l'autorisation d'interjeter appel des ordonnances d'approbation du règlement; b) la date à laquelle le dernier de tous les appels des ordonnances d'approbation du règlement est définitivement tranché.

« **date limite pour l'acceptation** » La date qui tombe deux cent soixante-dix (270) jours après la date de mise en œuvre ou toute autre date dont les parties peuvent convenir.

« **date limite pour les réclamations** » La date qui tombe un (1) an après la date de mise en œuvre ou toute autre date dont les parties conviennent et que les tribunaux approuvent, et tout renvoi à la date limite pour les réclamations comprend tout report de celle-ci.

« **décision quant à l'admissibilité** » La décision quant à l'admissibilité au sens du paragraphe 7.02(1).

« **décision relative aux préjudices déterminés** » La décision relative aux préjudices déterminés au sens du paragraphe 7.02(1).

« **déclaration de représentation successorale** » La déclaration de représentation successorale au sens du paragraphe 13.02(1).

« **demandeur d'indemnité** » Soit a) une personne qui fait une réclamation en remplissant et en soumettant un formulaire de réclamation à l'administrateur, ou pour le compte de laquelle une réclamation est faite par l'exécuteur testamentaire, le demandeur d'indemnité successoral ou le représentant personnel du membre du groupe, soit b) une personne identifiée comme une personne membre du groupe dans une confirmation du conseil de bande.

« **demandeur d'indemnité successoral** » Un demandeur d'indemnité successoral au sens du paragraphe 13.02(1).

« **demandeurs de l'action au Manitoba** » Les demandeurs de l'action au Manitoba au sens du préambule.

« **demandeurs de l'action devant la Cour fédérale** » Les demandeurs de l'action devant la Cour fédérale au sens du préambule.

« **demandeurs de la Première Nation de Curve Lake** » Les demandeurs de la Première Nation de Curve Lake au sens du préambule.

« **demandeurs de la Première Nation de Neskantaga** » Les demandeurs de la Première Nation de Neskantaga au sens du préambule.

« **dépenses dans le cadre de l'engagement** » Les dépenses dans le cadre de l'engagement au sens du paragraphe 9.02(2).

« **dernière date limite pour les réclamations** » La dernière date limite pour les réclamations au sens du paragraphe 13.02(1).

« **différend** » Un différend au sens du paragraphe 19.01(1).

« **dommages-intérêts de Première Nation** » Les dommages-intérêts de Première Nation au sens de l'alinéa b).

« **dommages-intérêts individuels** » Les dommages-intérêts individuels au sens du paragraphe 8.01(2).

« **donneurs de quittance** » Les donneurs de quittance au sens du paragraphe 10.03(1).

« **eau de source** » L'eau non traitée provenant de sources d'eau de surface comme des lacs, des étangs ou des rivières.

« **engagement** » Un engagement au sens du paragraphe 9.02(1).

« **entente de principe** » L'entente de principe intervenue le 29 juillet 2021, jointe aux présentes en ANNEXE A.

« **entente** » La présente entente de règlement, y compris ses annexes.

« **excédent du Fonds en fiducie** » Un excédent du Fonds en fiducie au sens du paragraphe 4.03(1).

« **exclusion** » Soit a) la remise par une personne membre du groupe à CA2 Inc., en sa qualité d'administrateur pour l'avis d'autorisation et l'avis de règlement, d'un coupon d'exclusion ou d'une demande écrite d'exclusion des actions au cours de la période d'exclusion; soit b) après la période d'exclusion, l'obtention par une personne membre du groupe d'une autorisation des tribunaux de s'exclure des actions; soit c) une exclusion tardive, ayant dans chaque cas pour effet d'exclure une personnes membre du groupe des actions, et le verbe « **s'exclure** » a un sens correspondant.

« **exclusion tardive** » Le droit de s'exclure conformément à l'article 12.02.

« **exécuteur testamentaire** » L'exécuteur, l'administrateur, le fiduciaire ou le liquidateur de la succession d'une personne membre du groupe décédée.

« **fiduciaire** » Le fiduciaire nommé par les tribunaux aux fins de la présente entente.

« **Fiducie pour de l'eau potable salubre** » La Fiducie pour de l'eau potable salubre au sens de l'article 16.01.

« **Fonds** » Un Fonds au sens de l'alinéa 16.02a).

« **fonds d'indemnisation pour préjudices déterminés** » Le fonds d'indemnisation pour préjudices déterminés au sens du paragraphe 5.01(2).

« **fonds détenus en fiducie à l'égard de frais continus** » Les fonds détenus en fiducie à l'égard de frais continus au sens du paragraphe 18.02(1).

« **Fonds en fiducie** » Le Fonds en fiducie au sens du paragraphe 4.01(2).

« **Fonds pour la gouvernance de l'eau** » Le Fonds pour la gouvernance de l'eau au sens du paragraphe 9.05(1).

« **Fonds pour la relance économique et culturelle des Premières Nations** » Le Fonds pour la relance économique et culturelle des Premières Nations au sens du paragraphe 6.01(2).

« **formulaire de réclamation** » Une déclaration écrite simplifiée à l'égard d'une réclamation par une personne membre du groupe, selon le modèle reproduit en ANNEXE I, ou tout autre modèle que l'administrateur peut recommander et dont les parties conviennent, sans pièces justificatives, sauf celles dont les parties conviennent.

« **formule de calcul des dommages-intérêts individuels** » La formule de calcul des dommages-intérêts individuels au sens du paragraphe 8.01(2).

« **frais continus** » Les frais continus au sens du paragraphe 18.02(1).

« **grille d'indemnisation pour préjudices déterminés** » La grille d'indemnisation pour préjudices déterminés jointe aux présentes en **Error! Reference source not found.** ou toute autre grille d'indemnisation des préjudices déterminés que les tribunaux peuvent approuver.

« **groupe** » Le groupe au sens du préambule.

« **indemnité de base** » L'indemnité de base au sens de l'alinéa 8.03(1)a).

« **indemnité pour préjudices déterminés** » L'indemnité pour préjudices déterminés au sens du paragraphe 8.02(2).

« **jour ouvrable** » Un jour sauf un samedi, un dimanche ou un jour férié en vertu de la législation de la province ou du territoire dans lequel la personne qui doit prendre des mesures aux termes de la présente entente réside habituellement ou un jour férié en vertu de législation fédérale du Canada applicable dans cette province ou dans ce territoire.

« **Loi constitutionnelle de 1982** » La *Loi constitutionnelle de 1982*, annexe B de la *Loi de 1982 sur le Canada* (R.-U.), 1982, ch. 11.

« **Loi de l'impôt sur le revenu** » La *Loi de l'impôt sur le revenu*, L.R.C. (1985), ch. 1 (5e suppl.).

« **loi remplaçante** » La loi remplaçante au sens de l'alinéa 9.03(1)b).

« **Loi sur la gestion des finances publiques** » La *Loi sur la gestion des finances publiques*, L.R.C. (1985), ch. F-11.

« **Loi sur la gestion des terres des premières nations** » La *Loi sur la gestion des terres des premières nations*, L.C. 1999, ch. 24.

« **Loi sur les Indiens** » La *Loi sur les Indiens*, L.R.C. (1985), ch. I-5.

« **LSEPPN** » La LSEPPN au sens de l'alinéa 9.03(1)a).

« **Manuel de la classification des bandes** » Le Manuel de la classification des bandes de 2005 publié par la Direction générale de la gestion de l'information de la Direction de la gestion de l'information ministérielle, Affaires indiennes et du Nord Canada.

« **membre** » Une membre au sens du paragraphe 14.01(1).

« **membre du groupe** » Une personne membre du groupe ou une Première Nation membre du groupe, selon le cas, et « **membres du groupe** » tous les membres du groupe, collectivement.

« **membre du groupe admissible disparu** » Un membre du groupe admissible disparu au sens de l'ANNEXE Q.

« **montant total de l'indemnité pour préjudices déterminés** » Le montant total de l'indemnité pour préjudices déterminés au sens du paragraphe 8.02(4).

« **ordonnance d'attestation du Manitoba** » L'ordonnance de la Cour du Banc de la Reine du Manitoba datée du 14 juillet 2020, attestant l'action du Manitoba à titre de recours collectif, dont une copie est jointe en ANNEXE C.

« **ordonnance d'autorisation de la Cour fédérale** » L'ordonnance d'autorisation de la Cour fédérale datée du 8 octobre 2020, autorisant l'action devant la Cour fédérale à titre de recours collectif, dont une copie est jointe en ANNEXE B.

« **ordonnances d'approbation du règlement** » Les ordonnances des tribunaux approuvant la présente entente, essentiellement selon le modèle reproduit en ANNEXE O.

« **organisme émetteur d'avis**» Un gouvernement ou un organisme fédéral, provincial, territorial, régional, municipal ou d'une Première Nation, un chef, un conseil de bande, une autorité sanitaire ou un organisme exécutif, judiciaire, réglementaire ou administratif ou un organisme analogue ou un organisme délégataire, dans chaque cas qui émet des avis concernant la qualité de l'eau potable.

« **parties** » Se dit a) avant la date de mise en œuvre, des demandeurs de l'action au Manitoba et des demandeurs de l'action devant la Cour fédérale, pour le compte du groupe, et du Canada; et b) après la date de mise en œuvre, des membres du groupe, représentés par le comité mixte, et du Canada.

« **période d'exclusion** » La période d'exclusion au sens du préambule et qui a expiré le 29 mars 2021.

« **période de réclamation tardive** » La période de réclamation tardive au sens de l'alinéa 4.03(3)c).

« **période visée** » La période allant du 20 novembre 1995 au 20 juin 2021, inclusivement.

« **personne exclue** » Un membre de la Nation des Tsuu T'ina, de la Première Nation de Sucker Creek, de la Nation des Cris d'Ermineskin, de la Tribu des Gens-du-Sang et de la Bande d'Okanagan, et Michael Darryl Isnardy.

« **personne frappée d'incapacité** » Soit a) un mineur au sens de la législation de sa province ou de son territoire de résidence; soit b) une personne qui n'est pas en mesure de gérer ses affaires ou de prendre des décisions raisonnables à l'égard de ses affaires en raison de son incapacité mentale et pour laquelle un représentant personnel a été nommé en vertu de la législation provinciale ou fédérale applicable;

« **personne membre du groupe** » Une personne physique qui est membre du groupe et qui ne s'est pas exclue des actions, et « **personnes membres du groupe** » l'ensemble de ces personnes, collectivement.

« **personne membre du groupe confirmée** » Une personne membre du groupe confirmée au sens du paragraphe 7.02(5).

« **personne membre du groupe décédée** » Une personne membre du groupe décédée au sens du paragraphe 13.01(1).

« **plan d'action** » Le plan d'action de Services aux Autochtones Canada visant à lever tous les avis concernant la qualité de l'eau potable à long terme, qui décrit en détail les mesures correctives que le Canada doit prendre pour mettre fin aux avis concernant la qualité de l'eau potable à long terme, joint en ANNEXE J, en sa version le cas échéant modifiée compte tenu de l'ajout de nouveaux engagements ou de la réalisation d'engagements existants.

« **plan de mesures correctrices** » Un plan de mesures correctrices au sens du paragraphe 9.06(4).

« **plan de notification** » Le plan de notification, essentiellement selon le modèle reproduit en ANNEXE L, ou que l'administrateur peut recommander et dont les parties conviennent.

« **plan de recherche d'adresse de membres du groupe admissibles** » Le plan de recherche d'adresse de membres du groupe admissibles joint aux présentes en ANNEXE Q.

« **préambule** » Le préambule de la présente entente.

« **préjudices déterminés** » Les préjudices déterminés au sens du paragraphe 8.02(1).

« **Première Nation** » Une bande, au sens du paragraphe 2(1) de la *Loi sur les Indiens*, dont l'aliénation des terres est régie par cette loi ou de la *Loi sur la gestion des terres des premières nations*, ou une Première Nation signataire d'un traité moderne.

« **Première Nation éloignée** » Une réserve qui est classée dans la zone 3 ou dans la zone 4 au sens du Manuel de la classification des bandes, c'est-à-dire une réserve réputée soit « isolée », soit « isolée et nécessitant un accès spécial », respectivement, ou si une réserve

n'est pas classée dans le Manuel de la classification des bandes, i) elle est située à plus de 350 kilomètres d'un centre de service relié par une route d'accès à l'année longue; ou ii) elle n'a pas de route d'accès ouverte reliée à l'année longue à un centre de service.

« **Première Nation insuffisamment desservie** » Une Première Nation insuffisamment desservie au sens du paragraphe 9.06(1).

« **Première Nation membre du groupe** » Une Première Nation touchée qui remet à l'administrateur un avis d'acceptation conformément à la présente entente.

« **Première Nation non éloignée** » Une réserve qui n'est pas une Première Nation éloignée.

« **Premières Nations signataires d'un traité moderne** » Les peuples autochtones du Canada, sauf les peuples autochtones inuit ou métis du Canada, signataires d'un traité moderne.

« **Premières Nations touchées** » Les Premières Nations dont les terres des Premières Nations ont été visées par un avis concernant la qualité de l'eau potable qui a duré au moins un an entre le 20 novembre 1995 et le 20 juin 2021.

« **procédure de règlement des différends relatifs à l'engagement** » La procédure de règlement des différends relatifs à l'engagement au sens de l'article 9.07.

« **procédure de règlement des réclamations** » La procédure décrite dans la présente entente, y compris dans l'ANNEXE F et dans les formulaires connexes, ou toute autre procédure que l'administrateur peut recommander et dont les parties conviennent, aux fins de l'établissement de la composition du groupe, de la soumission des réclamations et de l'évaluation, de l'établissement et du paiement de l'indemnité aux membres du groupe.

« **réclamation** » Une réclamation d'indemnisation soumise a) par une personne membre du groupe, ou par un exécuteur testamentaire, un demandeur d'indemnité successoral ou un représentant personnel pour le compte d'une personne membre du groupe ou de sa succession, moyennant la remise d'un formulaire de réclamation à l'administrateur conformément à la présente entente, ou b) par un conseil de bande pour le compte d'une personne membre du groupe, moyennant l'identification de cette personne membre du groupe dans une confirmation du conseil de bande.

« **représentants demandeurs** » Les représentants demandeurs au sens du préambule.

« **représentant personnel** » La personne nommée en vertu de la législation provinciale ou fédérale applicable pour gérer les affaires ou prendre des décisions raisonnables à l'égard des affaires d'une personne frappée d'incapacité et comprend un administrateur de biens.

« **réseaux d'approvisionnement en eau et de traitement des eaux usées des Premières Nations** » Les réseaux d'approvisionnement en eau et de traitement des eaux usées dans des réserves.

« **réserve** » Une parcelle distincte de terres des Premières Nations que Sa Majesté la Reine du chef du Canada a réservé à l'usage et au profit d'une ou de plusieurs Premières Nations, ou une parcelle de terre distincte analogue visée par un traité moderne.

« **résident habituel** » Un résident habituel au sens du paragraphe 8.01(1) et l'expression « **résider habituellement** » a un sens correspondant.

« **résolution d'acceptation du conseil de bande** » Une résolution du conseil de bande d'une Première Nation membre du groupe confirmant l'acceptation, essentiellement selon le modèle reproduit en ANNEXE D, ou un autre modèle que le Canada et les avocats du groupe jugent acceptable.

« **terres des Premières Nations** » Les terres d'une Première Nation, dont l'aliénation est régie par la *Loi sur les Indiens* ou la *Loi sur la gestion des terres des premières nations*, ou un traité moderne.

« **tiers évaluateur** » Une ou plusieurs personnes nommées par les tribunaux pour s'acquitter des fonctions de tiers évaluateur décrites dans la présente entente et dans la procédure de règlement des réclamations et leurs successeurs le cas échéant nommés conformément aux dispositions de l'article 3.03.

« **traité moderne** » Un accord sur des revendications territoriales au sens de l'article 35 de la *Loi constitutionnelle de 1982*, conclu après le 1er janvier 1973, inclusivement.

« **tribunaux** » Collectivement, la Cour fédérale et la Cour du Banc de la Reine du Manitoba.

1.02 **Titres**

La division de la présente entente en articles et en paragraphes et l'utilisation de titres ne visent qu'à en faciliter la consultation et ne sauraient influer sur son interprétation.

1.03 **Sens large**

Dans la présente entente, le singulier s'entend du pluriel et inversement, le masculin s'entend du féminin et inversement, et le terme « personnes » s'entend, également des Premières Nations. Le terme « y compris » s'entend au sens de « y compris, sans que soit limitée la portée générale de ce qui précède ». Tout renvoi à un ministère ou à un poste du gouvernement s'entend également de tout ministère ou poste du gouvernement remplaçant.

1.04 **Interprétation**

Les parties reconnaissent qu'elles ont examiné les conditions de la présente entente et ont participé à leur établissement et conviennent qu'il n'existe aucune règle d'interprétation par inférence selon laquelle toute ambiguïté dans la présente entente doit être interprétée en faveur d'une partie en particulier.

1.05 **Législation citée**

À moins que l'objet ou le contexte ne s'y oppose ou sauf disposition contraire, dans la présente entente, un renvoi à une législation et à son règlement d'application renvoie à cette législation et à son règlement d'application en leur version alors en vigueur et non pas en leur version le cas échéant modifiée, remise en vigueur ou remplacée.

1.06 **Date prévue d'une mesure à prendre**

Si une mesure doit être prise aux termes des présentes un jour ou au plus tard un jour qui n'est pas un jour ouvrable, cette mesure peut être prise le jour ouvrable suivant.

1.07 **Monnaie**

Dans la présente entente, le numéraire est exprimé en monnaie légale du Canada.

1.08 **Indemnisation inclusive**

Les montants payables aux membres du groupe aux termes de la présente entente comprennent les intérêts avant jugement ou après jugement.

1.09 **Annexes**

Les annexes suivantes de la présente entente sont intégrées dans la présente entente et en font partie intégrante :

ANNEXE A	Entente de principe
ANNEXE B	Ordonnance d'autorisation de la Cour fédérale
ANNEXE C	Ordonnance d'attestation du Manitoba
ANNEXE D	Modèle de résolution d'acceptation du conseil de bande
ANNEXE E	Modèle de confirmation du conseil de bande
ANNEXE F	Procédure de règlement des réclamations
ANNEXE G	Grille d'indemnisation des préjudices individuels
Error! Reference source not found.	Grille d'indemnisation des préjudices déterminés
ANNEXE I	Formulaire de réclamations
ANNEXE J	Plan d'action de Services aux Autochtones Canada visant à lever tous les avis concernant la qualité de l'eau potable à long terme
ANNEXE K	Procédure de règlement des différends relatifs à l'engagement (et appendices)
ANNEXE L	Plan de notification
ANNEXE M	Avis d'audition de l'approbation du règlement (formulaires détaillé et simplifié)
ANNEXE N	Avis d'approbation de l'entente de règlement (formulaires détaillé et simplifié)

ANNEXE O Modèle de l'ordonnance d'autorisation de la Cour fédérale et de l'ordonnance d'attestation du Manitoba

ANNEXE P Modèle de résolution d'acceptation du conseil de bande approuvant des réseaux d'approvisionnement en eau privés dans la réserve

ANNEXE Q Plan de recherche d'adresse de membres du groupe admissibles

1.10 **Aucun effet sur les traités ou les accords existants**

Aucune disposition de la présente entente n'annule ni ne remplace un traité entre le Canada et un ou plusieurs membres du groupe, ou un accord existant entre le Canada et un ou plusieurs membres du groupe à l'égard des réseaux d'approvisionnement en eau et de traitement des eaux usées des Premières Nations, des avis concernant la qualité de l'eau potable à long terme ou de questions analogues, à l'exception de l'entente de principe, que la présente entente remplace.

1.11 **Aucune dérogation aux droits constitutionnels**

La présente entente doit être interprétée comme une entente confirmant les droits des peuples autochtones reconnus et affirmés par l'article 35 de la *Loi constitutionnelle de 1982*, et non pas comme une entente les abrogeant ou y dérogeant.

1.12 **Avantage de l'entente**

La présente entente lie les parties, et dans le cas du Canada et des Premières Nations membres du groupe, leurs successeurs respectifs et, dans le cas des personnes membres du groupe, leurs successions, héritiers, exécuteurs testamentaires, demandeurs d'indemnité successoraux et représentants personnels, et elle est faite à leur avantage.

1.13 **Droit applicable**

La présente entente est régie par la législation du Canada et par la législation du Manitoba, selon le cas, ou encore, au choix d'un membre, par la législation du Canada et par la législation de la province ou du territoire où le membre réside habituellement, selon le cas.

1.14 **Exemplaires**

La présente entente peut être signée par voie électronique et en plusieurs exemplaires, dont chacun est réputé être un original et dont l'ensemble est réputé constituer une seule et même entente.

1.15 **Langues officielles**

Comme il est indiqué dans la version anglaise de la présente entente, les avocats du groupe préparent la présente traduction française aux fins d'audition de l'approbation du règlement. Après le prononcé des ordonnances d'approbation du règlement, la présente version française a le même poids et la même force exécutoire que la version anglaise.

1.16 **Rôle de supervision continue des tribunaux**

Par dérogation à toute autre disposition contraire de la présente entente, les tribunaux restent compétents quant à la supervision de la mise en œuvre de la présente entente conformément à ses conditions, y compris, notamment l'adoption de protocoles et d'énoncés de procédure, et les parties reconnaissent la compétence des tribunaux à cette fin. Les tribunaux peuvent donner les directives ou rendre les ordonnances nécessaires pour l'application du présent article.

ARTICLE 2 – DATE DE PRISE D'EFFET DE L'ENTENTE

2.01 **Date à laquelle l'entente prend effet et devient exécutoire**

À la date de mise en œuvre, la présente entente devient exécutoire pour toutes les personnes membres du groupe. La présente entente devient exécutoire pour toutes les Premières Nations membres du groupe a) à la date de son acceptation par les Premières Nations ou, si elle est postérieure b) à la date de mise en œuvre. Si une Première Nation membre du groupe ne donne pas un avis d'acceptation au plus tard à la date limite pour l'acceptation, la présente entente n'est pas exécutoire pour la Première Nation membre du groupe et la Première Nation membre du groupe n'a droit à aucun avantage aux termes des présentes, à moins que les tribunaux n'en décident autrement.

2.02 **Prise d'effet au moment de l'approbation**

Sous réserve de l'article 2.03, aucune des dispositions de la présente entente ne prend effet tant que les tribunaux n'ont pas approuvé la présente entente.

2.03 **Frais de justice dissociés**

Les honoraires des avocats du groupe dans le cadre des actions ont été négociés séparément de la présente entente et demeurent assujettis à l'approbation des tribunaux. Le refus des tribunaux d'approuver les honoraires des avocats du groupe n'a aucune incidence sur la mise en œuvre de la présente entente. Dans l'éventualité où les tribunaux refusent d'approuver les honoraires des avocats du groupe prévus à l'article 18.01, a) les autres dispositions de la présente entente demeurent pleinement en vigueur et ne sont aucunement modifiées ou invalidées, et b) l'article 18.01 est modifié compte tenu des honoraires des avocats du groupe approuvés par les tribunaux et par ailleurs de l'intention originale des parties.

ARTICLE 3 – ADMINISTRATION

3.01 **Nomination de l'administrateur**

Sur la recommandation des parties, les tribunaux nomment un administrateur chargé d'administrer la procédure de règlement des réclamations et investi des pouvoirs, des droits, des attributions et des responsabilités énoncés à l'article 3.02 et des autres pouvoirs, droits, attributions et responsabilités déterminés par le comité mixte et approuvés par les tribunaux. Sur la recommandation des parties, ou de leur propre chef, les tribunaux peuvent à tout moment remplacer l'administrateur.

3.02 **Attributions de l'administrateur**

L'administrateur est notamment investi des attributions et des responsabilités suivantes :

a) élaborer, mettre en place et mettre en œuvre des systèmes, des formulaires, de l'information, des lignes directrices et des procédures pour le traitement des réclamations et prendre des décisions concernant les réclamations conformément à la présente entente;

b) élaborer, mettre en place et mettre en œuvre des systèmes et des procédures de paiement des indemnités conformément à la présente entente;

c) recevoir des fonds de la Fiducie pour de l'eau potable salubre et du fiduciaire pour effectuer des paiements aux membres du groupe conformément à la présente entente;

d) fournir le personnel en nombre raisonnable requis pour l'exercice de ses fonctions aux termes de la présente entente, et former et diriger ce personnel;

e) conserver des liaisons avec les collectivités des Premières Nations touchées et des liaisons avec les conseils tribaux afin de faciliter la mise en œuvre du plan de notification et de la procédure de règlement des réclamations;

f) tenir ou veiller à ce que soient tenus des comptes exacts de ses activités et de son administration et établir les états financiers, rapports et dossiers exigés par les tribunaux;

g) rendre compte chaque mois au comité de mise en œuvre du règlement de ce qui suit :

(i) les réclamations reçues et ayant fait l'objet d'une décision;

(ii) les réclamations réputées non admissibles et les raisons de cette décision; et

(iii) les appels des décisions de l'administrateur et les résultats de ces appels;

h) répondre aux demandes de renseignements concernant les réclamations et les formulaires de réclamation;

i) examiner les formulaires de réclamation et les confirmations du conseil de bande et déterminer, sous réserve du paragraphe 7.02(2) dans le cas d'une confirmation du conseil de bande :

(i) l'adhésion au groupe d'un demandeur d'indemnité;

(ii) les dates auxquelles et les endroits où le demandeur d'indemnité était un résident habituel;

(iii) le droit d'un demandeur d'indemnité à des dommages-intérêts individuels, le cas échéant; et

(iv) le droit d'un demandeur d'indemnité à une indemnisation pour préjudices déterminés, le cas échéant;

j) examiner les acceptations et déterminer si une Première Nation qui soumet une acceptation est admissible à titre de Première Nation membre du groupe et le droit de chaque Première Nation membre du groupe à des dommages-intérêts de Première Nation, le cas échéant;

k) donner avis des décisions prises conformément à la présente entente;

l) communiquer avec les demandeurs d'indemnité soit en anglais soit en français, au choix du demandeur d'indemnité, et si un demandeur d'indemnité exprime le désir de communiquer dans une autre langue que l'anglais ou le français, faire de son mieux pour l'accommoder; et

m) exercer les autres attributions et responsabilités que les tribunaux ou les parties peuvent de temps à autre demander.

3.03 **Nomination du tiers évaluateur**

Sur la recommandation des parties, les tribunaux nomment un ou plusieurs tiers évaluateurs. Sur la recommandation des parties, ou de leur propre chef, les tribunaux peuvent remplacer un tiers évaluateur à tout moment. Le tiers évaluateur exerce les fonctions de tiers évaluateur énoncées dans la présente entente.

3.04 **Responsabilité des frais**

Le Canada paie :

a) les frais de remise d'un avis conformément au plan de notification et de tout autre avis ordonné par les tribunaux;

b) les frais et débours raisonnables de l'administrateur, du tiers évaluateur, du fiduciaire, de l'auditeur et du comité de mise en œuvre du règlement (sauf les membres du comité mixte), jusqu'à concurrence de cinquante millions de dollars au total (50 000 000 $), et par la suite, l'administrateur paie ces frais sur le Fonds en fiducie sous réserve de l'approbation des tribunaux;

c) les frais du comité consultatif des Premières Nations sur l'eau potable salubre, conformément à l'article 9.04;

d) les frais du Fonds pour la gouvernance de l'eau conformément à l'article 9.05;

e) les frais des conseils techniques relatifs à l'engagement conformément au paragraphe 9.06(3); et

f) les frais de la procédure de règlement des différends relatifs à l'engagement conformément à l'article 9.08.

ARTICLE 4 – FONDS EN FIDUCIE

4.01 **Création du Fonds en fiducie**

(1) Dans les meilleurs délais après sa nomination et après l'établissement de la Fiducie pour de l'eau potable salubre conformément à l'article 16.01, le fiduciaire ouvre un compte en fiducie portant intérêt auprès d'une banque canadienne de l'annexe I aux fins du Fonds en fiducie (le « **compte en fiducie** »).

(2) Au plus tard soixante (60) jours après la date de mise en œuvre, et conformément aux conditions de l'Article 16 , le Canada fait une contribution à la Fiducie pour de l'eau potable salubre en versant un milliard quatre cent trente-huit millions de dollars (1 438 000 000 $) dans le compte en fiducie, ce paiement constituant un fonds distinct (le « **Fonds en fiducie** ») dans la Fiducie pour de l'eau potable salubre.

4.02 **Distribution du Fonds en fiducie**

Le fiduciaire autorise l'administrateur à distribuer et l'administrateur distribue le Fonds en fiducie au bénéfice des membres du groupe conformément à la présente entente, y compris, notamment aux fins du paiement des dommages-intérêts individuels conformément à l'alinéa 8.01(2)a).

4.03 **Excédent du Fonds en fiducie**

(1) Sur l'avis d'un actuaire ou d'un conseiller analogue, le comité mixte peut à tout moment décider qu'il est plus probable qu'improbable qu'il y ait des fonds non affectés ou excédentaires dans le Fonds en fiducie (un « **excédent du Fonds en fiducie** »).

(2) Le comité mixte propose une distribution de tout excédent du Fonds en fiducie pour le bénéfice direct ou indirect des membres du groupe conformément au présent article 4.03.

(3) Une distribution d'un excédent du Fonds en fiducie comprend notamment des distributions à une ou plusieurs des fins suivantes, par ordre de priorité décroissant, et aux autres fins que le comité mixte peut déterminer en consultation avec le CCPNEPS :

a) transférer jusqu'à quatre cents millions de dollars (400 000 000 $) au Fonds pour la relance économique et culturelle des Premières Nations, au besoin;

b) payer une indemnité pour préjudices déterminés si le fonds d'indemnisation pour préjudices déterminés est insuffisant pour payer le montant total de l'indemnité pour préjudices déterminés;

c) payer les dommages-intérêts individuels ou les dommages-intérêts de Première Nation aux demandeurs d'indemnité qui ont déposé des réclamations valables pendant une période déterminée après la date limite pour les réclamations, s'il y a lieu (une « **période de réclamation tardive** »), à l'appréciation du comité mixte;

d) payer les dommages-intérêts individuels ou les dommages-intérêts de Première Nation, à l'appréciation du comité mixte; et

e) financer des programmes visant à promouvoir l'éducation, les pratiques traditionnelles ou spirituelles, l'enseignement ou la guérison eu égard aux avis concernant la qualité de l'eau potable à long terme, à l'appréciation du comité mixte.

(4) Le comité mixte propose toute distribution de l'excédent du Fonds en fiducie et saisit les tribunaux des demandes d'approbation de la distribution proposée de l'excédent du Fonds en fiducie.

(5) L'affectation d'un excédent du Fonds en fiducie doit être approuvée par les deux tribunaux et prend effet

a) le lendemain du dernier jour où un membre du groupe peut interjeter appel ou demander l'autorisation d'interjeter appel de l'une ou l'autre des ordonnances d'approbation à l'égard de cette affectation, ou, si elle est postérieure,

b) à la date à laquelle le dernier des appels de l'une ou l'autre des ordonnances d'approbation à l'égard de cette affectation est définitivement tranché.

(6) Il est entendu qu'en aucun cas un montant provenant du Fonds en fiducie, y compris un excédent du Fonds en fiducie, n'est restitué au Canada, et que le Canada n'est pas un bénéficiaire admissible de tout excédent du Fonds en fiducie.

ARTICLE 5 – FONDS D'INDEMNISATION POUR PRÉJUDICES DÉTERMINÉS

5.01 **Établissement du Fonds d'indemnisation pour préjudices déterminés**

(1) Dans les meilleurs délais après sa nomination et après l'établissement de la Fiducie pour de l'eau potable salubre conformément à l'article 16.01, le fiduciaire ouvre un compte en fiducie portant intérêt auprès d'une banque canadienne de l'annexe I aux fins du Fonds d'indemnisation pour préjudices déterminés (le « **compte d'indemnisation pour préjudices déterminés** »).

(2) Au plus tard soixante (60) jours après la date de mise en œuvre, et conformément aux modalités de l'articleArticle 16 , le Canada fait une contribution à la Fiducie pour de l'eau potable salubre en versant cinquante millions de dollars (50 000 000 $) dans le compte d'indemnisation pour préjudices déterminés, ce paiement constituant un fonds distinct (le « **Fonds d'indemnisation pour préjudices déterminés** » dans la Fiducie pour de l'eau potable salubre.

5.02 **Distribution du Fonds d'indemnisation pour préjudices déterminés**

(1) Le fiduciaire autorise l'administrateur à payer et l'administrateur paie l'indemnité pour préjudices déterminés sur le Fonds d'indemnisation pour préjudices déterminés, conformément à l'article 8.02.

(2) Si, après la dernière date limite pour les réclamations et le paiement de l'indemnité pour préjudices déterminés comme il est prévu à l'article 8.02, il reste des fonds dans le Fonds d'indemnisation pour préjudices déterminés, le fiduciaire transfère ces fonds restants au Fonds en fiducie.

(3) Il est entendu qu'en aucun cas un montant provenant du Fonds d'indemnisation pour préjudices déterminés n'est restitué au Canada, et que le Canada n'est pas un bénéficiaire admissible des fonds provenant du Fonds d'indemnisation pour préjudices déterminés.

ARTICLE 6 – FONDS POUR LA RELANCE ÉCONOMIQUE ET CULTURELLE DES PREMIÈRES NATIONS

6.01 **Création du Fonds pour la relance économique et culturelle des Premières Nations**

(1) Dans les meilleurs délais après sa nomination et après l'établissement de la Fiducie pour de l'eau potable salubre conformément à l'article 16.01, le fiduciaire ouvre un compte en fiducie portant intérêt auprès d'une banque canadienne de l'annexe I aux fins du Fonds pour la relance économique et culturelle des Premières Nations (le « **compte du Fonds de relance** »).

(2) Au plus tard soixante (60) jours après la date de mise en œuvre, et conformément aux modalités de l'Article 16 , le Canada fait une contribution à la Fiducie pour de l'eau potable salubre en versant quatre cents millions de dollars (400 000 000 $) dans le compte du Fonds de relance, ce paiement constituant un fonds distinct (le « **Fonds pour la relance économique et culturelle des Premières Nations** ») dans la Fiducie pour de l'eau potable salubre.

(3) Le Fonds pour la relance économique et culturelle des Premières Nations a pour but de fournir aux Premières Nations membres du groupe des fonds pour financer des projets liés à l'approvisionnement en eau et au traitement des eaux usées, au développement économique et aux activités culturelles. Les parties respectent l'autonomie des Premières Nations quant à l'utilisation des fonds distribués provenant du compte du Fonds de relance.

6.02 **Distribution du Fonds pour la relance économique et culturelle des Premières Nations**

(1) Le fiduciaire autorise l'administrateur à payer et l'administrateur paie les dommages-intérêts de Première Nation sur le Fonds pour la relance économique et culturelle des Premières Nations, conformément au paragraphe 8.03(1).

(2) Si, après la dernière date limite pour les réclamations et le paiement des dommages-intérêts de Première Nation comme il est prévu au paragraphe 8.03(1), il reste des fonds dans le Fonds pour la relance économique et culturelle des Premières Nations, le fiduciaire transfère ces fonds restants au Fonds en fiducie.

(3) Il est entendu qu'en aucun cas un montant provenant du Fonds pour la relance économique et culturelle des Premières Nations n'est restitué au Canada, et que le Canada n'est pas un bénéficiaire admissible des fonds provenant du Fonds pour la relance économique et culturelle des Premières Nations.

ARTICLE 7 – PROCÉDURE DE RÈGLEMENT DES RÉCLAMATIONS

7.01 **Principes régissant l'administration des réclamations**

(1) La procédure de règlement des réclamations est censée être rapide, économique, conviviale, adaptée aux différences culturelles et non traumatisante, compte tenu des traumatismes subis. L'administrateur détermine et met en œuvre les délais de service pour la procédure de règlement des réclamations au plus tard soixante (60) jours après la date de mise en œuvre.

(2) Sauf preuve raisonnable contraire, l'administrateur, le tiers évaluateur et le comité de mise en œuvre du règlement et ses membres supposent qu'un demandeur d'indemnité agit honnêtement et de bonne foi à l'égard d'une réclamation.

(3) Dans l'examen d'un formulaire de réclamation ou d'une confirmation du conseil de bande, l'administrateur, le tiers évaluateur et le comité de mise en œuvre du règlement et ses membres tirent toutes les conclusions raisonnables et favorables qu'ils peuvent tirer en faveur du demandeur d'indemnité.

7.02 **Décisions quant à l'admissibilité et décisions quant aux préjudices déterminés**

(1) L'administrateur examine chaque formulaire de réclamation, confirmation du conseil de bande et/ou tout autre renseignement qu'il juge pertinent pour établir, sous réserve du paragraphe 7.02(2) dans le cas d'une confirmation du conseil de bande, pour chaque demandeur d'indemnité si ce dernier est ou non une personne membre du groupe et la période pendant laquelle il a résidé habituellement dans une réserve alors visée par un avis concernant la qualité de l'eau potable à long terme (une « **décision quant à l'admissibilité** ») et, s'il y lieu, la validité d'une réclamation d'indemnité pour préjudices déterminés (une « **décision quant aux préjudices déterminés** »). Il est entendu que l'administrateur peut communiquer à un demandeur d'indemnité une décision quant à l'admissibilité ou une décision quant aux préjudices déterminés avant que l'administrateur n'ait calculé l'indemnité pour préjudices individuels ou l'indemnité pour préjudices déterminés, le cas échéant, à laquelle le demandeur d'indemnité peut avoir droit.

(2) Une confirmation du conseil de bande est facultative. Dans les cas où elle est fournie, et sauf preuve contraire, une confirmation du conseil de bande constitue une preuve suffisante que les personnes membres du groupe qui y sont identifiées résidaient habituellement dans une réserve alors visée par un avis concernant la qualité de l'eau potable à long terme aux fins d'une décision quant à l'admissibilité et est suffisante pour faire une demande d'indemnité pour préjudices individuels pour le compte de ces personnes membres du groupe sans que ces personnes membres du groupe ne soient tenues de soumettre des formulaires de réclamation. Par dérogation à ce qui précède, une personne membre du groupe identifiée dans une confirmation du conseil de bande, ou un exécuteur testamentaire, un demandeur d'indemnité successoral ou un représentant personnel pour son compte, a le droit de soumettre un formulaire de réclamation, et une confirmation du conseil de bande n'est pas censée remplacer un formulaire de réclamation soumis par une personne membre du groupe ou pour son compte, que cette personne membre du groupe soit ou non identifiée dans une confirmation du conseil de bande. En cas de conflit entre une confirmation du conseil de bande et un formulaire de réclamation, le formulaire de réclamation prévaut. Tout demandeur d'indemnité qui souhaite présenter une demande d'indemnité pour préjudices déterminés est tenu de soumettre un formulaire de réclamation à l'égard de ses préjudices déterminés.

(3) L'administrateur donne à chaque demandeur d'indemnité un avis énonçant les résultats de sa décision quant à l'admissibilité et, s'il y a lieu, de sa décision quant aux préjudices déterminés. Si l'administrateur établit que le demandeur d'indemnité est une personne membre du groupe, la décision quant à l'admissibilité précise la période pendant laquelle il résidait habituellement dans une réserve applicable alors visée par un avis concernant la qualité de l'eau potable à long terme, le type d'avis concernant la qualité de l'eau potable applicable et s'il s'agit d'une réserve située dans une Première Nation éloignée.

(4) L'administrateur communique au demandeur d'indemnité ses motifs écrits dans les cas suivants :

a) une décision quant à l'admissibilité selon laquelle un demandeur d'indemnité n'est pas une personne membre du groupe, ou le demandeur d'indemnité n'a pas résidé habituellement dans une réserve applicable pendant toute la période indiquée dans le formulaire de réclamation du demandeur d'indemnité; ou

b) une décision quant aux préjudices déterminés selon laquelle un demandeur d'indemnité n'est pas admissible à l'indemnité pour préjudices déterminés réclamée dans le formulaire de réclamation du demandeur d'indemnité.

(5) Seul un demandeur d'indemnité dont une décision quant à l'admissibilité (y compris, pour plus de certitude, identifié comme une personne membre du groupe dans une confirmation du conseil de bande) confirme qu'il est une personne membre du groupe (une « **personne membre du groupe confirmée** ») peut avoir droit à une indemnité en vertu de l'article 8.01 et, le cas échéant, de l'article 8.02.

(6) Le demandeur d'indemnité dispose d'un délai de soixante (60) jours pour interjeter appel devant le tiers évaluateur conformément à la procédure de règlement des réclamations après avoir reçu :

a) une décision quant à l'admissibilité selon laquelle un demandeur d'indemnité n'est pas une personne membre du groupe ou le demandeur d'indemnité n'a pas résidé habituellement dans une réserve applicable pendant toute la période indiquée dans le formulaire de réclamation du demandeur d'indemnité ou une confirmation du conseil de bande; ou

b) une décision quant aux préjudices déterminés selon laquelle un demandeur d'indemnité n'est pas admissible à l'indemnité pour préjudices déterminés réclamée dans le formulaire de réclamation du demandeur d'indemnité.

(7) La décision du tiers évaluateur dans un appel interjeté en vertu du paragraphe 7.02(6) est définitive et n'est pas susceptible d'appel ou de révision.

(8) Les avocats du groupe aident les demandeurs d'indemnité ou leurs représentants qui en font raisonnablement la demande à soumettre des demandes d'indemnité pour préjudices déterminés ou à interjeter appel d'une décision quant aux préjudices déterminés sans frais pour le Canada ou le demandeur d'indemnité, si ce n'est, pour plus de certitude, des honoraires des avocats du groupe négociés séparément ou approuvés par les tribunaux et payables conformément à l'article 18.02.

7.03 **Décisions quant aux dommages-intérêts de Première Nation**

Dans les trente (30) jours qui suivent la réception par une Première Nation membre du groupe de la décision de l'administrateur quant à son admissibilité à une indemnité de base ou quant au calcul par l'administrateur de ses dommages-intérêts de Première Nation conformément à la procédure de règlement des réclamations, la Première Nation membre du groupe peut interjeter appel devant le tiers évaluateur de cette décision conformément à la procédure de règlement des réclamations. La décision du tiers évaluateur dans un tel appel est définitive et n'est pas susceptible d'appel ou de révision.

7.04 **Renvois au comité de mise en œuvre du règlement**

(1) L'administrateur renvoie un formulaire de réclamation au comité de mise en œuvre du règlement lorsque les préjudices qui y sont décrits ne sont pas prévus dans la grille d'indemnisation pour préjudices déterminés et que le comité de mise en œuvre du règlement n'a pas déjà refusé d'accorder l'indemnité pour préjudices déterminés dans des circonstances essentiellement analogues.

(2) La décision du comité de mise en œuvre du règlement à l'égard d'un formulaire de réclamation qui lui est renvoyé en vertu du présent article 7.04 est définitive et n'est pas susceptible d'appel ou de révision.

7.05 **Caractère définitif des décisions**

Sous réserve de ce qui est énoncé dans le présent Article 7 et dans la procédure de règlement des réclamations, toutes les décisions de l'administrateur sont définitives et lient un demandeur d'indemnité et ne sont pas susceptibles d'appel ou de révision.

ARTICLE 8 – INDEMNISATION RÉTROSPECTIVE

8.01 **Dommages-intérêts individuels**

(1) Lorsqu'il détermine où résidait habituellement un demandeur d'indemnité aux fins de la présente entente, l'administrateur tient compte de chaque année au cours de la période visée où une réserve était visée par un avis concernant la qualité de l'eau potable à long terme, depuis la date de l'imposition de l'avis (individuellement, une « **année de l'avis** »), et où un demandeur d'indemnité a été un « **résident habituel** » dans une réserve touchée, aux fins de la présente entente, si :

a) le demandeur d'indemnité a vécu dans la réserve touchée pendant une plus grande partie d'une année de l'avis (ou, après la première année de l'avis, la partie applicable de l'année de l'avis subséquente où un avis concernant la qualité de l'eau potable à long terme était en vigueur si l'avis concernant la qualité de l'eau potable à long terme a été levé avant la fin de l'année de l'avis) qu'il n'a vécu ailleurs; et

b) par dérogation à ce qui précède, dans le cas d'un demandeur d'indemnité âgé de dix-huit (18) ans ou moins au moment applicable, le demandeur d'indemnité vivait habituellement dans une réserve touchée, mais a vécu ailleurs pendant une partie de l'année de l'avis pour fréquenter un établissement d'enseignement.

(2) L'administrateur calcule les dommages-intérêts pour chaque personnes membre du groupe confirmée (les « **dommages-intérêts individuels** ») selon la formule suivante (la « **formule de calcul des dommages-intérêts individuels** ») :

a) dans le cas d'une personne membre du groupe confirmée qui n'avait pas encore atteint l'âge de dix-huit (18) ans le 20 novembre 2013 :

(i) pour chaque année de l'avis; et

(ii) après la première année de l'avis, pour chaque partie d'une année de l'avis conformément au paragraphe 8.01(4);

au cours de la période visée pendant laquelle la personne membre du groupe confirmée était un résident habituel dans une réserve alors visée par un avis concernant la qualité de l'eau potable à long terme en vigueur;

b) dans le cas d'une personne membre du groupe confirmée qui avait atteint l'âge de dix-huit (18) ans avant le 20 novembre 2013, mais qui était incapable en raison de son état physique, mental ou psychologique d'introduire une instance à l'égard de sa réclamation :

(i) pour chaque année de l'avis (et, après la première année de l'avis, pour chaque partie d'une année de l'avis conformément au paragraphe 8.01(4)) antérieure au 20 novembre 2019, dans laquelle la personne membre du groupe confirmée avait atteint l'âge de dix-huit (18) ans et avait été en mesure d'introduire une instance à l'égard de cette année de l'avis (ou d'une partie de celle-ci) pour une période cumulative de moins de six (6) années en date du 20 novembre 2019; et

(ii) pour chaque année de l'avis (et, après la première année de l'avis, pour chaque partie d'une année de l'avis conformément au paragraphe 8.01(4)) postérieure au 20 novembre 2019,

au cours de la période visée pendant laquelle la personne membre du groupe confirmée était un résident habituel dans une réserve alors visée par un avis concernant la qualité de l'eau potable à long terme en vigueur; ou

c) dans le cas d'une personne membre du groupe confirmée qui avait atteint l'âge de dix-huit (18) ans avant le 20 novembre 2013, sauf une personne visée à l'alinéa 8.01(2)b) :

(i) pour chaque année de l'avis; et

(ii) après la première année de l'avis, pour chaque partie d'une année de l'avis conformément au paragraphe 8.01(4),

entre le 20 novembre 2013 et la fin de la période visée au cours de laquelle la personne membre du groupe confirmée était un

résident habituel dans une réserve alors visée par un avis concernant la qualité de l'eau potable à long terme en vigueur.

(3) Le comité mixte, agissant sur l'avis d'un actuaire ou d'un conseiller analogue, détermine les taux auxquels les dommages-intérêts individuels sont payés. Sous réserve a) de la disponibilité de fonds suffisants dans le Fonds en fiducie et b) de la disponibilité de fonds suffisants dans le Fonds pour la relance économique et culturelle des Premières Nations pour payer des dommages-intérêts de Première Nation d'un montant égal à cinquante pour cent (50 %) des dommages-intérêts individuels, les dommages-intérêts individuels sont payés aux taux indiqués à l'ANNEXE G, ou à des taux se rapprochant de ceux que permettent les fonds dans le Fonds en fiducie et dans le Fonds pour la relance économique et culturelle des Premières Nations.

(4) Les dommages-intérêts individuels pour toute année de l'avis partielle postérieure à la première année de l'avis sont calculés pour chaque personne membre du groupe confirmée en multipliant :

a) les dommages-intérêts individuels auxquels aurait eu droit la personne membre du groupe confirmée pour une année de l'avis complète, calculés conformément au paragraphe 8.01(2); par

b) une fraction, dont le numérateur est le nombre de jours de l'année de l'avis partielle applicable après la première année de l'avis au cours de laquelle un avis concernant la qualité de l'eau potable à long terme était encore en vigueur dans une réserve où la personne membre du groupe confirmée était un résident habituel, et dont le dénominateur est trois cent soixante-cinq (365).

(5) Sauf disposition contraire dans la présente entente, dans les cent vingt (120) jours qui suivent la date limite pour les réclamations, l'administrateur paie les dommages-intérêts individuels conformément à la présente entente. L'administrateur demande ces fonds au fiduciaire, le fiduciaire fournit ces fonds à l'administrateur et l'administrateur paie ces fonds conformément à la présente entente.

8.02 **Indemnité pour préjudices déterminés**

(1) En plus des dommages-intérêts individuels, une personne membre du groupe peut indiquer dans son formulaire de réclamation qu'elle demande des dommages-intérêts pour un ou plusieurs problèmes de santé indiqués à l'**Error! Reference source not found.** qui ont été causés par une utilisation d'eau traitée ou d'eau du robinet conformément à un avis concernant la qualité de l'eau potable à long terme dans une réserve dans laquelle la personne membre du groupe était un résident habituel, ou par un accès restreint à de l'eau traitée ou à de l'eau du robinet en raison d'un avis concernant la qualité de l'eau potable à long terme dans une réserve dans laquelle la personne membre du groupe était un résident habituel (les « **préjudices déterminés** »). Il est entendu que les problèmes de santé causés par une utilisation de l'eau d'une manière qui est contraire à un avis concernant la qualité de l'eau potable à long terme ou par une utilisation d'eau de source ne constituent pas des préjudices déterminés.

(2) Les personnes membres du groupe confirmées ont droit à une indemnité pour préjudices déterminés d'un montant indiqué à l'**Error! Reference source not found.** (l'« **indemnité pour préjudices déterminés** »), pour peu que le demandeur d'indemnité

établisse que le préjudice a été causé par une utilisation d'eau traitée ou d'eau du robinet conformément à un avis concernant la qualité de l'eau potable à long terme, ou par un accès restreint à de l'eau traitée ou de l'eau du robinet en raison d'un avis concernant la qualité de l'eau potable à long terme, conformément à la procédure de règlement des réclamations et à l'**Error! Reference source not found.**.

(3) À moins que le comité de mise en œuvre du règlement ne l'ordonne autrement, les personnes membres du groupe confirmées doivent établir un préjudice déterminé de la manière prévue dans l'**Error! Reference source not found.** et dans la procédure de règlement des réclamations. Chaque montant indiqué à l'**Error! Reference source not found.** n'est versé qu'une seule fois à un demandeur d'indemnité en particulier, même s'il a subi plusieurs préjudices déterminés de même nature ou type.

(4) Dans les cent vingt (120) jours qui suivent la date limite pour les réclamations, l'administrateur détermine s'il y a suffisamment de fonds dans le Fonds d'indemnisation pour préjudices déterminés pour payer la totalité de l'indemnité pour préjudices déterminés pour chaque réclamation valide et établie d'une indemnité pour préjudices déterminés (le « **montant total de l'indemnité pour préjudices déterminés** ») établie conformément à la procédure de règlement des réclamations, et :

a) s'il y a suffisamment de fonds dans le Fonds d'indemnisation pour préjudices déterminés pour payer le montant total de l'indemnité pour préjudices déterminés, l'administrateur paie l'indemnité pour préjudices déterminés conformément à la présente entente; ou

b) s'il n'y a pas suffisamment de fonds dans le Fonds d'indemnisation pour préjudices déterminés pour payer le montant total de l'indemnité pour préjudices déterminés, l'administrateur paie à chaque personne membre du groupe confirmée, conformément à la présente entente, sa quote-part du Fonds d'indemnisation pour préjudices déterminés proportionnelle à l'indemnité pour préjudices déterminés à laquelle la personne membre du groupe confirmée aurait droit si le montant total de l'indemnité pour préjudices déterminés était égal au Fonds d'indemnisation pour préjudices déterminés; et

c) dans l'un ou l'autre cas, l'administrateur demande ces fonds au fiduciaire, le fiduciaire fournit ces fonds à l'administrateur et l'administrateur paie ces fonds conformément à la présente entente.

8.03 **Dommages-intérêts de Première Nation membre du groupe**

(1) L'administrateur calcule les dommages-intérêts de Première Nation membre du groupe selon les indemnités suivantes auxquelles a droit chaque Première Nation membre du groupe :

a) une indemnité de base de cinq cent mille dollars (500 000 $) (l'« **indemnité de base** »); et

b) une indemnité d'un montant correspondant à 50 pour cent (50 %) des dommages-intérêts individuels payés aux personnes membres du groupe confirmées qui résidaient habituellement dans la réserve ou les réserves de la Première Nation membre du groupe alors visées par un avis concernant la

qualité de l'eau potable à long terme (les « **dommages-intérêts de Première Nation** »).

(2) L'administrateur paie l'indemnité de base à chaque Première Nation membre du groupe sur le Fonds pour la relance économique et culturelle des Premières Nations dans les quatre-vingt-dix (90) jours qui suivent a) la date de mise en œuvre ou, si elle postérieure, b) la date à laquelle la Première Nation membre du groupe remet un avis d'acceptation écrit aux avocats du groupe. L'administrateur demande ces fonds au fiduciaire, le fiduciaire fournit ces fonds à l'administrateur et l'administrateur paie ces fonds conformément à la présente entente.

(3) Tous les six (6) mois après le paiement de l'indemnité de base conformément au paragraphe 8.03(2), l'administrateur paie à chaque Première Nation membre du groupe sur le Fonds pour la relance économique et culturelle des Premières Nations, sans double emploi, les dommages-intérêts de Première Nation alors accumulés, mais impayés payables à la Première Nation membre du groupe. L'administrateur demande ces fonds au fiduciaire, le fiduciaire fournit ces fonds à l'administrateur et l'administrateur paie ces fonds conformément à la présente entente.

ARTICLE 9 – MESURES DE REDRESSEMENT POTENTIELLES

9.01 Plan d'action pour les Premières Nations membres du groupe

(1) Le Canada déploie tous les efforts raisonnables pour contribuer à l'élimination des avis concernant la qualité de l'eau potable à long terme qui touchent les membres du groupe, notamment en prenant les mesures décrites dans le plan d'action dans les délais de projet qui y sont prévus.

(2) Le Canada met à jour régulièrement, et au moins chaque trimestre, le plan d'action compte tenu des progrès réalisés par rapport au plan d'action.

(3) Le plan d'action est modifié pour tenir compte des engagements supplémentaires pris par le Canada, y compris les engagements prévus dans les plans de mesures correctrices.

(4) Dans les trente (30) jours ouvrables qui suivent une mise à jour ou une modification du plan d'action, le Canada remet au comité mixte une copie du plan d'action mis à jour ou modifié.

(5) Il est entendu qu'aucune disposition de la présente entente ne limite le Canada qu'aux mesures à prendre énoncées dans le plan d'action ni n'empêche le Canada de prendre des mesures additionnelles qui ne sont pas prévues dans le plan d'action au bénéfice des membres du groupe.

9.02 Engagement à prendre d'autres mesures

(1) En plus des mesures énoncées dans le plan d'action, le Canada déploie tous les efforts raisonnables pour veiller à ce que les personnes membres du groupe qui vivent dans des réserves aient un accès à une source fiable d'eau potable dans leurs foyers, que ce soit à partir d'un réseau d'approvisionnement en eau public ou d'un réseau d'approvisionnement en eau privé approuvé par voie d'une résolution du conseil de bande conforme essentiellement selon le modèle reproduit en ANNEXE P, ou une autre modèle que le Canada et les avocats du

groupe jugent acceptable, y compris, notamment des réseaux sur place, qui respectent les exigences fédérales ou les normes provinciales les plus rigoureuses en matière de qualité de l'eau à domicile (l'« **engagement** »). Il est entendu que :

a) l'« accès à une source fiable d'eau potable » doit être de nature et en quantité suffisantes pour permettre toute utilisation habituelle et nécessaire de l'eau dans un foyer canadien semblable, y compris, notamment, l'eau potable, le bain et l'hygiène personnelle, la préparation et le lavage des aliments, l'assainissement et la lessive;

b) l'engagement se limite aux efforts raisonnables du Canada, y compris, notamment le financement des coûts réels, la formation, la planification et l'assistance technique;

c) si, malgré tous les efforts raisonnables déployés par le Canada, l'accès à une source fiable d'eau potable ne peut être assuré, le Canada n'est pas tenu de garantir l'accès à une source fiable d'eau potable dans le foyer d'une personne membre du groupe; et

d) les facteurs qui peuvent être pris en compte pour déterminer le caractère raisonnable des efforts déployés comprennent, notamment :

(i) les opinions de la Première Nation visée;

(ii) les exigences fédérales ou les normes et protocoles provinciaux en matière de qualité de l'eau;

(iii) la surveillance et les essais effectués ou non à l'égard du réseau d'approvisionnement en eau; et

(iv) l'emplacement physique du foyer, y compris la proximité des réseaux d'approvisionnement en eau centralisés et l'éloignement.

(2) Le Canada dépensera au moins six milliards de dollars (6 000 000 000 $) entre le 20 juin 2021 et le 31 mars 2030 pour respecter l'engagement, à raison d'au moins quatre cents millions de dollars (400 000 000 $) par exercice se terminant le 31 mars, en finançant les coûts réels de la construction, de l'amélioration, de l'exploitation et de l'entretien de l'infrastructure d'approvisionnement en eau dans les réserves pour les Premières Nations (les « **dépenses dans le cadre de l'engagement** »).

(3) Le Canada remet au comité mixte un état annuel de toutes les dépenses dans le cadre de l'engagement effectivement engagées au cours de chaque exercice jusqu'au 31 mars 2030, lequel état doit être fourni au plus tard quatre-vingt-dix (90) jours après la fin de l'exercice visé.

(4) Le Canada fournit sans délai à toute Première Nation membre du groupe qui en fait la demande un état des dépenses dans le cadre de l'engagement à l'égard des réserves de la Première Nation membre du groupe.

9.03 **Abrogation et remplacement de la *Loi sur la salubrité de l'eau potable des Premières Nations***

(1) Le Canada déploie tous les efforts raisonnables :

a) pour déposer une loi abrogeant la *Loi sur la salubrité de l'eau potable des Premières Nations*, L.C. 2013, ch. 21 (la « **LSEPPN** ») au plus tard le 31 mars 2022;

b) pour élaborer et déposer une loi remplaçant la LESPPN (la « **loi remplaçante** »), en consultation avec les Premières Nations; et

c) pour déposer la loi remplaçante au plus tard le 31 décembre 2022.

(2) La loi remplaçante vise les objectifs suivants :

a) assurer la viabilité des réseaux d'approvisionnement en eau et de traitement des eaux usées des Premières Nations, en fonction des prémisses suivantes :

(i) définir des normes minimales de qualité de l'eau pour les réseaux d'approvisionnement en eau et de traitement des eaux usées des Premières Nations, compte tenu des normes qui s'appliquent directement aux collectivités des Premières Nations; et

(ii) définir des normes minimales de capacité pour l'approvisionnement en eau des collectivités des Premières Nations, quant au volume par personne membre de la collectivité;

b) élaborer une approche transparente pour la construction, l'amélioration et la prestation de services d'approvisionnement en eau potable et de traitement des eaux usées pour les Premières Nations;

c) confirmer le financement adéquat et durable des réseaux d'approvisionnement en eau et de traitement des eaux usées des Premières Nations; et

d) appuyer la prise en charge volontaire de l'infrastructure d'approvisionnement en eau et de traitement des eaux usées par les Premières Nations.

(3) Malgré l'engagement du Canada de déposer la loi remplaçante, le Canada appuie l'élaboration d'initiatives en matière de gouvernance des Premières Nations, comme il est décrit à l'article 9.05, ci-après.

9.04 **Comité consultatif des Premières Nations sur l'eau potable salubre**

(1) Le Canada fournit vingt millions de dollars (20 000 000 $) de financement jusqu'à l'exercice se terminant le 31 mars 2026, pour la création du comité consultatif des Premières Nations sur l'eau potable salubre (le « **CCPNEPS** »).

(2) La composition du CCPNEPS est représentative de la diversité des collectivités, des langues, des genres, des territoires, des compétences, des connaissances et de

l'expérience de la précarité de l'approvisionnement en eau des Premières Nations membres du groupe au Canada.

(3) Les membres du CCPNEPS sont nommés d'un commun accord entre les parties, sur la recommandation du comité mixte, et à défaut d'un accord, les membres sont nommés par les tribunaux. Les parties peuvent convenir de destituer un membre du CCPNEPS, et cette destitution prend effet dès son approbation par les tribunaux.

(4) Le CCPNEPS est investi des fonctions principales suivantes :

a) travailler avec les Premières Nations membres du groupe à assurer une supervision et un encadrement et à faire des recommandations à Services aux Autochtones Canada propres à favoriser l'élaboration et la mise en œuvre d'initiatives stratégiques prospectives, notamment :

(i) l'élaboration de la stratégie à long terme pour l'approvisionnement en eau et le traitement des eaux usées de Services aux Autochtones Canada dans les réserves des Premières Nations membres du groupe; et

(ii) l'élaboration de la loi remplaçante;

b) fournir à Services aux Autochtones Canada des conseils et des perspectives stratégiques propres à favoriser la viabilité à long terme pour de l'eau potable salubre dans les collectivités des Premières Nations; et

c) appuyer l'établissement des besoins et des priorités du financement pour l'approvisionnement en eau et le traitement des eaux usées dans les collectivités des Premières Nations.

(5) Les parties établissent conjointement le mandat du CCPNEPS.

9.05 **Initiatives en matière de gouvernance des Premières Nations**

(1) Le Canada fournit neuf millions de dollars (9 000 000 $) de financement aux Premières Nations pour qu'elles élaborent leurs propres règlements et initiatives en matière de gouvernance jusqu'à l'exercice se terminant le 31 mars 2026 (le « **Fonds pour la gouvernance de l'eau** »). Services aux Autochtones Canada administre le Fonds pour la gouvernance de l'eau conformément à son mandat.

(2) La capitalisation du Fonds pour la gouvernance de l'eau s'effectue jusqu'à l'exercice se terminant le 31 mars 2026, que la loi remplaçante soit ou non adoptée, notamment dans les délais prévus.

(3) Le Fonds pour la gouvernance de l'eau aide les Premières Nations membres du groupe qui souhaitent élaborer leurs propres initiatives en matière de gouvernance de l'eau, notamment au moyen de financement pour :

a) la recherche :

b) l'obtention de conseils techniques;

c) la rédaction de règlements; et

d) la mise en œuvre de projets pilotes dans les réserves.

(4) Les parties établissent conjointement le mandat du Fonds pour la gouvernance de l'eau.

9.06 **Accord sur les mesures requises**

(1) Si une Première Nation établit que l'engagement n'est pas ou n'est plus respecté dans sa ou ses réserves ou si une Première Nation établit que le Canada ne se conforme pas à un plan de mesures correctrices (chacune de ces Premières Nations, une « **Première Nation insuffisamment desservie** »), elle en donne un avis écrit au Canada, adressé au sous-ministre des Services aux Autochtones Canada, décrivant la manière dont l'engagement n'est pas ou n'est plus respecté ou dont le Canada ne se conforme pas à un plan de mesures correctrices.

(2) Le Canada consulte sans délai chaque Première Nation insuffisamment desservie afin de respecter l'engagement dans les meilleurs délais.

(3) Le Canada paie les frais raisonnables qu'une Première Nation insuffisamment desservie doit engager pour obtenir des conseils techniques afin de déterminer quelles mesures sont nécessaires pour respecter l'engagement dans la ou les réserves de la Première Nation insuffisamment desservie.

(4) Le Canada déploie tous les efforts raisonnables pour parvenir à un accord avec la Première Nation insuffisamment desservie précisant les mesures qui sont nécessaires pour respecter l'engagement (un « **plan de mesures correctrices** »).

(5) Le Canada et la Première Nation insuffisamment desservie se conforment au plan de mesures correctrices.

9.07 **Règlement des différends concernant les mesures requises**

Si le Canada ne se conforme pas à un plan de mesures correctrices en vigueur ou si le Canada et une Première Nation insuffisamment desservie ne peuvent convenir d'un plan de mesures correctrices dans les trois (3) mois qui suivent la remise de l'avis de la Première Nation insuffisamment desservie prévu à l'article 9.06 ou dans tout autre délai dont les parties peuvent convenir, la Première Nation insuffisamment desservie peut recourir à la procédure de règlement des différends décrite à l'ANNEXE K (la « **procédure de règlement des différends relatifs à l'engagement** »), auquel cas le Canada et la Première Nation insuffisamment desservie soumettent le plan de mesures correctrices alors en vigueur ou leur projet de plan de mesures correctrices respectif à la procédure de règlement des différends relatifs à l'engagement.

9.08 **Frais de la procédure de règlement des différends relatifs à l'engagement**

(1) Le Canada paie cinquante pour cent (50 %) des frais et débours raisonnables de la participation d'une Première Nation membre du groupe insuffisamment desservie à la procédure de règlement des différends relatifs à l'engagement, y compris les honoraires et débours juridiques raisonnables, étant entendu que le Canada paie cent pour cent (100 %) des frais raisonnables d'une convocation à quelque négociation, médiation et arbitrage collaboratifs

conformément à la procédure de règlement des différends relatifs à l'engagement, ainsi que les honoraires et les débours raisonnables du médiateur et de l'arbitre nommé conformément à la procédure de règlement des différends relatifs à l'engagement; et

(2) Il est entendu que les frais et débours dont il est question au paragraphe 9.08(1) sont distincts et en sus des frais et débours payables aux avocats du groupe et au comité mixte en vertu de l'Article 18 .

ARTICLE 10 – EFFET DE L'ENTENTE

10.01 **Aucune disposition quant aux préjudices continus**

La présente entente ne prévoit aucune disposition quant aux préjudices dont les membres du groupe pourraient en raison d'avis concernant la qualité de l'eau potable à long terme qui commencent ou qui sont maintenus après le 20 juin 2021, et les membres du groupe ne peuvent pas réclamer une indemnité à l'égard de ces préjudices.

10.02 **Responsabilité du Canada**

Les parties conviennent expressément qu'une fois que le Canada a respecté les conditions de la présente entente, le Canada n'a aucune autre responsabilité envers les membres du groupe à l'égard des préjudices dont ils ont souffert avant le 20 juin 2021 en raison de l'omission du Canada d'assurer ou de financer l'approvisionnement en eau potable salubre dans la ou les réserves alors visées par un avis concernant la qualité de l'eau potable à long de ces Premières Nations membres du groupe, ou dans lesquelles ces personnes membres du groupe étaient des résidents habituels.

10.03 **Quittances**

(1) Les ordonnances d'approbation du règlement rendues par les tribunaux stipulent que, sauf comme il est prévu aux articles 10.01 et 10.04, et en contrepartie des obligations et des responsabilités du Canada qui lui incombent en vertu de la présente entente, chaque personne membre du groupe ou son exécuteur testamentaire, demandeur d'indemnité successoral ou représentant personnel pour le compte de la personne membre du groupe ou de sa succession, et chaque Première Nation membre du groupe (collectivement ci-après, les « **donneurs de quittance** ») dégage entièrement et définitivement le Canada et ses fonctionnaires, mandataires, dirigeants et employés, prédécesseurs, successeurs et ayants cause (collectivement ci-après, les « **bénéficiaires de quittance** »), de quelque action, cause d'action, réclamation et demande de quelque nature ou type, qu'elle soit ou non connue ou prévue, que les donneurs de quittance avaient, ont aujourd'hui ou pourraient avoir à l'avenir contre les bénéficiaires de quittance à l'égard ou en raison de l'omission du Canada d'assurer ou de financer l'approvisionnement en eau potable salubre dans la ou les réserves alors visées par un avis concernant la qualité de l'eau potable à long de ces Premières Nations membres du groupe, ou dans lesquelles ces personnes membres du groupe étaient des résidents habituels, dans chaque cas avant la fin de la période visée.

(2) Les donneurs de quittance sont réputés convenir que s'ils font une réclamation ou une demande ou introduisent une action ou une instance contre d'autres personnes qui donne lieu à une réclamation contre les bénéficiaires de quittance pour une contribution, une indemnité ou une autre réparation, que ce soit en vertu d'une loi, de la common law ou du droit civil du Québec, à l'égard de réclamations visées par la quittance prévue au

paragraphe 10.03(1), ci-dessus, les donneurs de quittance limitent expressément leurs réclamations de manière à exclure toute partie de responsabilité du Canada.

(3) Après une décision définitive relative à une réclamation faite en vertu de la procédure de règlement des réclamations et conformément à ses modalités, les donneurs de quittance sont également réputés dégager libérer entièrement et définitivement :

a) les parties, les avocats du groupe, les avocats du Canada, le comité de mise en œuvre du règlement et ses membres, le CCPNEPS et ses membres, le comité mixte et ses membres, l'administrateur et le tiers évaluateur à l'égard de quelque réclamation qui a découlé, qui découle ou qui pourrait découler de l'application de la procédure de règlement des réclamations, y compris, notamment quelque réclamation quant au calcul des dommages-intérêts individuels, de l'indemnité pour préjudices déterminés et des dommages de Première Nation, au caractère suffisant de l'indemnité reçue et à la répartition et à la distribution de l'excédent du Fonds en fiducie;

b) tout conseil de bande qui a soumis une confirmation du conseil de bande à l'égard de quelque réclamation qui a découlé, qui découle ou qui pourrait découler de la confirmation du conseil de bande, y compris, notamment quelque réclamation quant à l'exhaustivité ou à l'exactitude de celle-ci; et

c) tout conseil de bande qui adopte une résolution du conseil de bande approuvant des réseaux d'approvisionnement en eau privés, essentiellement selon le modèle reproduit en ANNEXE P ou un autre modèle que le Canada et les avocats du groupe jugent acceptable à l'égard de quelque réclamation qui a découlé, qui découle ou qui pourrait découler de la résolution du conseil de bande approuvant des réseaux d'approvisionnement en eau privés, y compris, notamment quelque réclamation quant à l'exhaustivité ou à l'exactitude de celle-ci, et l'adoption d'une résolution du conseil de bande ou l'omission d'adopter une résolution du conseil de bande approuvant des réseaux d'approvisionnement en eau privés ne saurait avoir pour effet de rendre une Première Nation ou son conseil de bande responsable ou imputable à l'égard des réseaux d'approvisionnement en eau qui y sont décrits.

(4) Les parties, les avocats du groupe, les avocats du Canada, le comité de mise en œuvre du règlement et ses membres, le CCPNEPS et ses membres, le comité mixte et ses membres, l'administrateur et le tiers évaluateur n'ont aucune responsabilité envers un membre du groupe admissible disparu à l'égard de quelque réclamation qui a découlé, qui découle ou qui pourrait découler du paiement ou du non-paiement d'un montant conformément à la présente entente, lorsque l'administrateur s'est conformé au plan de recherche d'adresse de membres du groupe admissibles prévu à l'ANNEXE Q.

(5) Il est entendu :

a) qu'une personne membre du groupe vivante qui ne soumet pas un formulaire de réclamation valide à l'administrateur, ou pour le compte de laquelle une réclamation valide n'est pas faite au moyen d'une confirmation du conseil de bande, ou, dans le cas d'une personne membre du groupe qui est une personne frappée d'incapacité, pour le compte de laquelle son représentant personnel n'a pas soumis de formulaire de réclamation valide; et

b) qu'une personne membre du groupe décédée qui n'a pas soumis un formulaire de réclamation valide avant son décès, ou dont l'exécuteur testamentaire ou le demandeur d'indemnité successoral ne soumet pas un formulaire de réclamation valide pour le compte de la personne membre du groupe décédée, avec les autres renseignements requis par la présente entente,

dans chaque cas, au plus tard à la dernière date limite pour les réclamations, n'a pas droit à des dommages-intérêts individuels ni à une indemnité pour préjudices déterminés en vertu de la présente entente, et l'administrateur rejette toute réclamation soumise après la dernière date limite pour les réclamations. Chaque personne membre du groupe continue d'être liée par la quittance prévue dans le présent article 10.03, même si elle ne soumet pas un formulaire de réclamation valide au plus tard à la dernière date limite pour les réclamations.

(6) Il est entendu que toute Première Nation touchée qui ne donne pas un avis d'acceptation au plus tard à la date limite pour l'acceptation perd tout droit à quelque avantage en vertu de la présente entente, y compris, notamment les dommages-intérêts de Première Nation, et l'administrateur rejette tout avis d'acceptation soumis après la date limite pour l'acceptation.

10.04 **Recours permanents**

(1) Les parties reconnaissent et conviennent que, par dérogation à l'article 10.03 ou à toute autre disposition contraire de la présente entente, les membres du groupe n'abandonnent pas et conservent expressément leurs réclamations ou causes d'action en cas de violation de la présente entente par le Canada.

(2) Les Parties reconnaissent et conviennent qu'il y aurait préjudice irréparable pour lequel des dommages-intérêts ne constitueraient pas une réparation appropriée en droit si le Canada devait manquer à ses obligations qui lui incombent en vertu de l'article 3.04, de l'Article 4 , de l'Article 5 , de l'Article 6 ou de l'Article 9 . Il est donc convenu que, sous réserve de la *Loi sur la responsabilité civile de l'État et le contentieux administratif*, L.R.C. (1985), ch. C-50, les parties ont le droit de recourir à une mesure injonctive et à une autre mesure de redressement équitable pour prévenir toute violation réelle ou imminente de la présente entente, et pour faire respecter les conditions de la présente entente, sans qu'il ne soit nécessaire d'obtenir ou de déposer un cautionnement dans le cadre de l'obtention d'une telle mesure injonctive ou autre mesure de redressement équitable, en plus des autres dommages-intérêts et mesures de redressement dont les parties peuvent bénéficier en droit ou en équité.

10.05 **Impôt sur le revenu canadien et avantages sociaux**

(1) Le Canada fait de son mieux pour veiller à ce que la réception d'un paiement conformément à la présente entente ne porte pas atteinte au droit d'un membre du groupe à des prestations sociales ou à des prestations d'assistance sociale fédérales, et aucun pareil paiement ne saurait être considéré comme un revenu imposable au sens de la *Loi de l'impôt sur le revenu*.

(2) Le Canada fait de son mieux pour obtenir une entente avec les gouvernements provinciaux et territoriaux aux termes de laquelle la réception d'un paiement conformément à la présente entente ne porte pas atteinte au montant, à la nature ou à la durée des prestations sociales ou des prestations d'assistance sociale offertes ou payables à un membre du groupe.

ARTICLE 11 – MISE EN ŒUVRE DE LA PRÉSENTE ENTENTE

11.01 **Ordonnances d'approbation du règlement**

(1) Les parties conviennent de solliciter les ordonnances d'approbation du règlement aux tribunaux essentiellement selon le modèle reproduit en ANNEXE O.

(2) Les parties consentent à l'inscription des ordonnances d'approbation du règlement.

(3) Les parties prennent toutes les mesures raisonnables pour coopérer en vue de saisir les tribunaux d'une demande d'ordonnances d'approbation de règlement.

(4) Les parties planifient l'audition de l'approbation du règlement dans les meilleurs délais compte tenu des exigences du plan de notification et de la disponibilité des tribunaux.

11.02 **Plan de notification**

(1) Les parties conviennent de saisir conjointement les tribunaux d'une demande d'approbation du plan de notification comme moyen permettant aux membres du groupe de recevoir les avis de règlement et les avis d'approbation du règlement, et les avis d'exclusion tardive, selon le cas.

(2) Le Canada convient de financer la mise en œuvre du plan de notification et de tout avis ultérieur ordonné par les tribunaux.

ARTICLE 12 – EXCLUSION

12.01 **Exclusion**

Aucune personne membre du groupe ne peut s'exclure des actions sans l'autorisation des tribunaux, et chaque personne membre du groupe est liée par la présente entente si elle est approuvée par les tribunaux.

12.02 **Exclusion tardive**

Par dérogation à l'article 12.01, les personnes membres du groupe qui résident habituellement dans la Première Nation de Mitaanjigamiing, la North Caribou Lake, la Nation crie de Ministikwan Lake, la Nation des Oneidas de la Thames et la Bande de Deer Lake ont le droit de s'exclure des actions moyennant la remise à l'administrateur d'un avis écrit dans les quarante-cinq (45) jours qui suivent la date de la première publication de l'avis de règlement. Les Premières Nations visées dans le présent article 12.02 ont reçu un premier avis concernant la qualité de l'eau potable à long terme après le commencement de la période d'exclusion. Sauf en ce qui a trait à l'exclusion tardive prévue dans le présent article 12.02, les personnes membres du groupe n'ont pas le droit de s'exclure aux termes de la présente entente et ne peuvent s'exclure des actions qu'avec l'autorisation des tribunaux conformément à l'article 12.01**Error! Reference source not found.**.

12.03 **Exclusion automatique pour les réclamations individuelles**

Toute personne membre du groupe qui n'abandonne pas, avant l'expiration du délai pour s'exclure des actions, quelque instance qui soulève des questions de droit ou de fait qui sont communes aux actions, est réputée s'être exclue des actions.

ARTICLE 13 – PAIEMENTS AUX PERSONNES MEMBRES DU GROUPE DÉCÉDÉES ET FRAPPÉES D'INCAPACITÉ

13.01 **Indemnisation d'une personne décédée; octroi d'une autorisation ou d'un pouvoir analogue**

(1) Si une personne membre du groupe est décédée ou décède après le 20 novembre 2017, inclusivement (cette personne membre du groupe, une « **personne membre du groupe décédée** »), et :

a) que la personne membre du groupe décédée a été identifiée dans une confirmation du conseil de bande;

b) que la personne membre du groupe décédée, ou son représentant personnel, a soumis un formulaire de réclamation à l'administrateur avant son décès; ou

c) que l'exécuteur testamentaire de la personne membre du groupe décédée a soumis un formulaire de réclamation à l'administrateur après le décès de cette dernière,

et que l'exécuteur testamentaire de la personne membre du groupe décédée a soumis à l'administrateur la preuve exigée par le paragraphe 13.01(2), l'administrateur paie à l'exécuteur testamentaire de la personne membre du groupe décédée l'indemnité à laquelle la personne membre du groupe décédée avait droit aux termes de la procédure de règlement des réclamations, ce paiement étant payable à « la succession » de la personne membre du groupe décédée.

(2) Au soutien d'une réclamation soumise conformément au paragraphe 13.01(1), l'exécuteur testamentaire de la personne membre du groupe décédée soumet à l'administrateur, dans chaque cas, selon le modèle que l'administrateur juge acceptable :

a) un formulaire de réclamation (si un formulaire de réclamation n'a pas été soumis par la personne membre du groupe décédée, ou son représentant personnel, avant son décès et que la personne membre du groupe décédée n'a pas été identifiée dans une confirmation du conseil de bande);

b) la preuve et la date du décès de la personne membre du groupe décédée;

c) la preuve de l'autorisation légale du représentant de recevoir l'indemnité pour le compte de la succession de la personne membre du groupe décédée, ainsi établie :

(i) si la réclamation est fondée sur un testament ou un autre titre testamentaire ou une succession ab intestat, une copie de l'acte d'homologation ou des lettres d'homologation ou d'un autre

document de même nature ou des lettres d'administration ou d'un autre document de même nature, étant censés être délivrés par un tribunal ou une autorité au Canada; ou

(ii) si la réclamation est fondée sur un testament notarié au Québec, une copie certifiée conforme du testament.

13.02 **Indemnisation d'une personne décédée; sans octroi d'une autorisation ou d'un pouvoir analogue**

(1) Si un formulaire de réclamation a été soumis à l'administrateur par une personne membre du groupe décédée, ou par son représentant personnel, avant son décès, ou par son exécuteur testamentaire ou un autre représentant de la personne membre du groupe décédée (un « **demandeur d'indemnité successoral** »), après son décès, mais que la succession de la personne membre du groupe décédée n'a pas soumis à l'administrateur tous les éléments de la preuve requise aux termes du paragraphe 13.01(2), l'exécuteur testamentaire ou le demandeur d'indemnité successoral doit soumettre à l'administrateur la preuve requise aux termes de l'alinéa a) et de l'alinéa b), ainsi qu'une preuve de l'autorisation ou du pouvoir d'agir de l'exécuteur testamentaire ou du demandeur d'indemnité successoral de la personne membre du groupe décédée conformément au paragraphe 13.02(3) (collectivement, une « **déclaration de représentation successorale** »), au plus tard à la date limite pour les réclamations ou, si elle est postérieure, à l'expiration de la période de réclamation tardive (la « **dernière date limite pour les réclamations** ») et par ailleurs conformément à la présente entente, et :

a) si une seule déclaration de représentation successorale a été soumise à l'égard de la personne membre du groupe décédée au plus tard à la dernière date limite pour les réclamations, l'administrateur paie l'indemnité à laquelle la personne membre du groupe décédée a droit à l'exécuteur testamentaire ou au demandeur d'indemnité successoral indiqué dans la déclaration de représentation successorale pour le compte de la succession; ou

b) si plus d'une déclaration de représentation successorale a été soumise à l'égard de la personne membre du groupe décédée au plus tard à la dernière date limite pour les réclamations, l'administrateur :

(i) si les exécuteurs testamentaires ou les demandeurs d'indemnité successoraux indiqués dans toutes les déclarations de représentation successorale soumettent à l'administrateur une convention signée ordonnant le paiement de l'indemnité à laquelle la personne membre du groupe décédée a droit et donnent une quittance que l'administrateur juge acceptable quant à la forme, paie l'indemnité à la succession conformément à cette convention; ou

(ii) si les exécuteurs testamentaires ou les demandeurs d'indemnité successoraux indiqués dans toutes les déclarations de représentation successorale ne soumettent pas à l'administrateur une convention conformément au sous-alinéa 13.02(1)b)(i), demande à l'un des exécuteurs testamentaires ou des demandeurs d'indemnité successoraux de soumettre à l'administrateur la preuve requise aux termes de

l'alinéa 13.01(2)c) et paie à cette personne pour le compte de la succession l'indemnité à laquelle a droit la personne membre du groupe décédée, étant entendu que si personne ne soumet à l'administrateur la preuve requise aux termes de l'alinéa 13.01(2)c) dans les deux (2) ans qui suivent la dernière date limite pour les réclamations, la réclamation pour le compte de la personne membre du groupe décédée et de sa succession s'éteint, l'administrateur n'a plus aucune autre obligation de faire quelque paiement à la personne membre du groupe décédée ou à sa succession et toutes les réclamations de ou pour le compte de la personne membre du groupe décédée et de sa succession sont réputées avoir fait l'objet d'une quittance conformément à l'article 10.03.

(2) Si un formulaire de réclamation est soumis à l'administrateur par une personne membre du groupe décédée, ou pour son compte, mais qu'aucune déclaration de représentation successorale n'est soumise à l'administrateur à l'égard de la personne membre du groupe décédée conformément au paragraphe 13.01(1) dans les quatre-vingt-dix (90) jours qui suivent la réception du formulaire de réclamation, l'administrateur déploie des efforts raisonnables pour envoyer un avis à la dernière adresse connue de la personne membre du groupe décédée ou à l'exécuteur testamentaire ou au demandeur d'indemnité successoral de la personne membre du groupe décédée, selon le cas, demandant la soumission d'une déclaration de représentation successorale. Si personne ne soumet à l'administrateur une déclaration de représentation successorale à l'égard de la personne membre du groupe décédée dans les deux (2) ans qui suivent la dernière date limite pour les réclamations, la réclamation pour le compte de la personne membre du groupe décédée et de sa succession s'éteint, l'administrateur n'a plus aucune autre obligation de faire quelque paiement à la personne membre du groupe décédée ou à sa succession et toutes les réclamations de ou pour le compte de la personne membre du groupe décédée et de sa succession sont réputées avoir fait l'objet d'une quittance conformément à l'article 10.03.

(3) Au soutien d'une déclaration de représentation successorale soumise en vertu du paragraphe 13.02(1), l'exécuteur testamentaire ou le demandeur d'indemnité successoral de la personne membre du groupe décédée, selon le cas, soumet à l'administrateur la preuve suivante qu'il représente la succession de la personne membre du groupe décédée, dans chaque cas, selon le modèle que l'administrateur juge acceptable :

a) si la personne membre du groupe décédée avait un testament :

(i) une copie du testament nommant l'exécuteur testamentaire ou le demandeur d'indemnité successoral, selon le cas, pour représenter la succession de la personne membre du groupe décédée; et

(ii) une attestation ou une déclaration signée par l'exécuteur testamentaire ou le demandeur d'indemnité successoral, et par une autre personne qui connaissait personnellement la personne membre du groupe décédée, confirmant qu'ils croient que le testament est valide, n'ont pas connaissance que le testament a été révoquée, n'ont pas connaissance de quelque testament ultérieur de la personne membre du groupe décédée, et n'ont pas

connaissance de quelque exécuteur, administrateur, fiduciaire ou liquidateur nommé par un tribunal; ou

b) si la personne membre du groupe décédée n'avait pas de testament :

(i) une attestation ou une déclaration signée par l'exécuteur testamentaire ou le demandeur d'indemnité successoral, et par une autre personne qui connaissait personnellement la personne membre du groupe décédée, confirmant qu'ils n'ont pas connaissance de quelque testament de la personne membre du groupe décédée et n'ont pas connaissance de quelque exécuteur, administrateur, fiduciaire ou liquidateur nommé par un tribunal;

(ii) une preuve de la relation entre l'exécuteur testamentaire ou le demandeur d'indemnité successoral, selon le cas, et la personne membre du groupe décédée, selon le modèle que l'administrateur juge raisonnablement acceptable;

(iii) une attestation ou une déclaration signée par l'exécuteur testamentaire ou le demandeur d'indemnité successoral, et par une autre personne qui connaissait personnellement la personne membre du groupe décédée :

A. confirmant qu'ils n'ont pas connaissance de quelque héritier ayant priorité de rang de la personne membre du groupe décédée conformément au paragraphe 13.02(4); et

B. soit :

(I) confirmant qu'ils n'ont pas connaissance de quelque héritier de rang égal de la personne membre du groupe décédée conformément au paragraphe 13.02(4), ou

(II) s'il existe un héritier de rang égal de la personne membre du groupe décédée conformément au paragraphe 13.02(4), énumérant les personnes ayant un rang égal; et

(iv) s'il existe des héritiers de la personne membre du groupe décédée qui ont un rang égal par rapport à l'exécuteur testamentaire ou au demandeur d'indemnité successoral conformément au paragraphe 13.02(4), le consentement signé de toutes ces personnes quant au pouvoir de l'exécuteur testamentaire ou du demandeur d'indemnité successoral, selon le cas, d'agir pour la succession de la personne membre du groupe décédée.

(4) Pour l'application de l'alinéa b), la priorité de rang des héritiers est établie conformément aux dispositions de la *Loi sur les Indiens* quant à la distribution des biens ab intestat, et cette priorité de rang des héritiers de la plus élevée à la plus basse s'établit comme suit :

a) l'époux ou conjoint de fait survivant;

b) les enfants;

c) les petits-enfants;

d) les parents;

e) les frères et sœurs; et

f) les enfants des frères et sœurs.

Les termes et expressions utilisés dans le présent paragraphe 13.02(4), mais qui ne sont pas définis dans la présente entente s'entendent au sens qui leur est attribué dans la *Loi sur les Indiens*.

13.03 **Personne frappée d'incapacité**

Si une personne membre du groupe qui a soumis un formulaire de réclamation à l'administrateur avant la date limite pour les réclamations, ou qui a été identifiée dans une confirmation du conseil de bande, est ou devient une personne frappée d'incapacité avant la réception de son indemnité, et que l'administrateur est avisé que cette personne membre du groupe est une personne frappée d'incapacité avant le paiement de son indemnité, l'administrateur paie au représentant personnel de la personne membre du groupe l'indemnité à laquelle elle aurait eu droit aux termes de la procédure de règlement des réclamations, et si l'administrateur n'en est pas ainsi avisé, l'administrateur paie l'indemnité payable à la personne membre du groupe. Si une personne membre du groupe est ou devient une personne frappée d'incapacité avant de soumettre un formulaire de réclamation à l'administrateur, le représentant personnel de la personne membre du groupe peut soumettre un formulaire de réclamation pour le compte de la personne membre du groupe avant la date limite pour les réclamations et l'indemnité à laquelle la personne membre du groupe aurait eu droit aux termes de la procédure de règlement des réclamations est payée au représentant personnel de la personne membre du groupe.

13.04 **Clause de dégagement de responsabilité du Canada, de l'administrateur, des avocats du groupe, du comité mixte, du tiers évaluateur, du comité de mise en œuvre du règlement et du CCPNEPS**

Le Canada et ses avocats, l'administrateur, les avocats du groupe, le comité mixte et ses membres, le tiers évaluateur, le comité de mise en œuvre du règlement et ses membres et le CCPNEPS sont tenus indemnes et à couvert quant à l'ensemble des réclamations, des demandes reconventionnelles, des poursuites, des actions, des causes d'action, des demandes, des dommages, des pénalités, des préjudices, des compensation, des jugements, des dettes, des frais (y compris les honoraires et frais d'avocats) ou des autres responsabilités de quelque nature que ce soit en raison ou par suite d'un paiement ou d'un non-paiement à un à une personne membre du groupe décédée ou à une personne frappée d'incapacité ou pour son compte, ou à un exécuteur testamentaire, à un demandeur d'indemnité successoral, à la succession ou à un représentant personnel aux termes de la présente entente, et la présente entente constitue un moyen de défense péremptoire.

ARTICLE 14 – COMITÉ DE MISE EN ŒUVRE DU RÈGLEMENT

14.01 **Comité de mise en œuvre du règlement**

(1) Les tribunaux instituent un comité de mise en œuvre du règlement composé de deux (2) membres du comité mixte, de deux (2) représentants du Canada et de deux (2) membres du CCPNEPS, chacun d'eux étant appelé aux présentes un « **membre** » pour l'application de la présente entente. Un des membres du comité mixte est nommé président du comité de mise en œuvre du règlement.

(2) Le comité de mise en œuvre du règlement s'efforce de parvenir à un consensus. Si un consensus n'est pas possible, le comité de mise en œuvre du règlement prend ses décisions à la majorité des voix. En cas de partage des voix, le président a voix prépondérante.

(3) Les tribunaux ou les parties, d'un commun accord, peuvent remplacer un membre du comité de mise en œuvre du règlement, pour peu que la composition du comité de mise en œuvre du règlement demeure conforme à celle prévue au paragraphe 14.01(1) ci-dessus.

(4) Le comité de mise en œuvre du règlement est un organe de surveillance institué en vertu de la présente entente et investi des responsabilités suivantes :

a) surveiller le travail de l'administrateur et la procédure de règlement des réclamations;

b) recevoir et examiner les rapports de l'administrateur, y compris, notamment les rapports sur les frais d'administration;

c) donner à l'administrateur ou au tiers évaluateur les directives qui peuvent alors être nécessaires conformément au mandat du comité de mise en œuvre du règlement;

d) recevoir et accepter ou rejeter les demandes de report de la date limite pour les réclamations, étant entendu qu'un report nécessite une ordonnance des tribunaux;

e) proposer à l'approbation des tribunaux les protocoles qui peuvent être nécessaires à la mise en œuvre de la présente entente;

f) examiner les formulaires de réclamation dont il est saisi par l'administrateur; et

g) traiter toute autre question soumise au comité de mise en œuvre du règlement par les tribunaux ou l'un d'eux.

(5) Il est entendu que le comité de mise en œuvre du règlement n'a pas compétence pour examiner les appels, les demandes ou les recours analogues d'un demandeur d'indemnité ou d'une personne membre du groupe. Aucune personne membre du groupe ni aucune autre personne ne peut solliciter des mesures de redressement de quelque nature auprès du comité de mise en œuvre du règlement et le comité de mise en œuvre du règlement ne peut être saisi de toute pareille demande ou procédure analogue.

14.02 **Décisions définitives et exécutoires**

Les décisions du comité de mise en œuvre du règlement seront définitives et exécutoires et ne sont pas susceptibles d'appel ou de révision.

14.03 **Frais du comité de mise en œuvre du règlement**

Conformément au paragraphe b), le Canada assume les frais de participation au comité de mise en œuvre du règlement des membres qui ne sont pas aussi membres du comité mixte. Les frais des membres du comité mixte sont payés conformément au paragraphe 15.01(8). Le Canada paie les débours raisonnables que tous les membres engagent pour participer au comité de mise en œuvre du règlement.

ARTICLE 15 – COMITÉ MIXTE

15.01 **Comité mixte**

(1) Les tribunaux instituent un comité mixte qui est composé de trois (3) membres recommandés par les avocats du groupe et qui est investi des pouvoirs, des droits, des attributions et des responsabilités nécessaires à l'exécution des obligations qui lui incombent aux termes de la présente entente. Le comité mixte est composé d'un (1) représentant des avocats du groupe de Olthuis Kleer Townshend LLP et de deux (2) représentants des avocats du groupe de McCarthy Tétrault S.E.N.C.R.L., s.r.l.

(2) Sous réserve du paragraphe 15.01, sur la recommandation du comité mixte, ou de leur propre chef, les tribunaux peuvent remplacer un membre du comité mixte dans l'intérêt véritable du groupe.

(3) Le comité mixte s'efforce raisonnablement de parvenir à un consensus. Si un consensus n'est pas possible, le comité mixte prend ses décisions à la majorité des voix.

(4) Le comité mixte représente les membres du groupe et agira dans l'intérêt véritable de l'ensemble des membres du groupe dans l'exercice de ses fonctions prévues dans la présente entente.

(5) Le comité mixte consulte le CCPNEPS et les membres du groupe, ou un sous-ensemble d'entre eux, conformément à la présente entente ou comme le comité mixte le juge approprié.

(6) Le comité mixte peut présenter les requêtes ou répondre aux requêtes ou engager les procédures qu'il juge nécessaires pour faire valoir les intérêts des membres du groupe.

(7) Le comité mixte peut répartir ses travaux entre ses membres et leurs cabinets d'avocats ou retenir les services d'autres conseillers juridiques, auquel cas les honoraires et débours de ces autres conseillers juridiques, ainsi que les taxes applicables, sont à la charge du comité mixte.

(8) Les frais et débours raisonnables du comité mixte sont payés conformément à l'article 18.02, sauf s'il n'y a pas suffisamment de fonds détenus en fiducie à l'égard des frais

continus, auquel cas l'administrateur paie les frais et débours raisonnables du comité mixte et les débours sur Fonds en fiducie avec l'approbation des tribunaux.

(9) Si un membre du comité mixte estime que la majorité du comité mixte a pris une décision qui n'est pas dans l'intérêt véritable du groupe, le membre peut soumettre la décision à un arbitrage confidentiel et exécutoire pour déterminer, selon la prépondérance des probabilités, si la décision de la majorité n'est pas dans l'intérêt véritable du groupe. L'arbitre rend sa décision rapidement et sommairement et sans droit d'appel. Si les membres du comité mixte ne parviennent pas à s'entendre sur un arbitre, ils peuvent demander aux tribunaux d'en nommer un. Les frais de l'arbitrage sont à la charge du comité mixte.

(10) Le comité mixte se réunit tous les trimestres ou plus fréquemment au besoin.

ARTICLE 16 – FIDUCIAIRE ET FIDUCIE

16.01 **Fiducie**

Au plus tard trente (30) jours après la nomination du fiduciaire par les tribunaux, le Canada établit une seule fiducie (la « **Fiducie pour de l'eau potable salubre** ») d'un capital de dix dollars (10 $), que le fiduciaire détient conformément aux conditions de la présente entente.

16.02 **Fiduciaire**

Sur la recommandation du comité mixte, les tribunaux nomment le fiduciaire de la Fiducie pour de l'eau potable salubre, investi des pouvoirs, des droits, des attributions et des responsabilités que les tribunaux ordonnent. Sans que soit limitée la portée générale de ce qui précède, le fiduciaire est notamment investi des attributions et des responsabilités suivantes :

a) détenir le Fonds en fiducie, le Fonds d'indemnisation pour préjudices déterminés et le Fonds pour la relance économique et culturelle des Premières Nations (chacun, un « **Fonds** ») dans la Fiducie pour de l'eau potable salubre;

b) si le fiduciaire juge qu'il est dans l'intérêt véritable des membres du groupe d'investir les fonds de chaque Fonds (ou de l'un d'eux) en vue d'atteindre un taux de rendement maximal sans risque de perte important, eu égard à la capacité de la Fiducie pour de l'eau potable salubre et de chaque Fonds de respecter ses obligations financières;

c) payer à l'administrateur et à toute autre personne visée à l'article 3.04 et au paragraphe 15.01(8) sur la Fiducie pour de l'eau potable salubre au besoin, les montants alors nécessaires pour donner effet à quelque disposition de la présente entente, y compris le paiement des dommages-intérêts individuels, de l'indemnité pour préjudices déterminés et des dommages-intérêts de Première Nation;

d) retenir les services de professionnels pour l'aider dans l'exercice de ses attributions;

e) faire preuve du même degré de soin, de diligence et de compétence dont ferait preuve une personne raisonnablement prudente dans des circonstances comparables;

f) tenir les livres, registres et comptes nécessaires ou appropriés pour documenter l'actif détenu dans la Fiducie pour de l'eau potable salubre et dans chaque Fonds, ainsi que chaque opération de la Fiducie pour de l'eau potable salubre et de chaque Fonds;

g) prendre toutes les mesures raisonnables requises aux termes de la *Loi de l'impôt sur le revenu*, comme le prévoit la présente entente;

h) faire rapport à l'administrateur et au Canada et au comité mixte, trimestriellement, sur l'actif détenu dans la Fiducie pour de l'eau potable salubre et dans chaque Fonds à la fin de chaque trimestre, ou de façon intermédiaire, si une demande lui en est faite; et

i) prendre les autres mesures qui sont accessoires à ce qui précède et exercer tous les pouvoirs qui sont nécessaires ou utiles à l'exercice des activités de la Fiducie pour de l'eau potable salubre ou à l'application des dispositions de la présente entente.

16.03 **Frais des fiduciaires**

Le Canada paie les honoraires, débours et autres frais du fiduciaire conformément à l'alinéa b).

16.04 **Nature de la Fiducie pour de l'eau potable salubre**

La Fiducie pour de l'eau potable salubre est établie aux fins suivantes :

a) acquérir les fonds applicables payables par le Canada;

b) détenir le Fonds en fiducie, le Fonds d'indemnisation pour préjudices déterminés et le Fonds pour la relance économique et culturelle des Premières Nations, en tant que fonds distincts dans la Fiducie pour de l'eau potable salubre;

c) effectuer les décaissements nécessaires;

d) investir des fonds dans des placements dans l'intérêt véritable des membres du groupe, comme le prévoit la présente entente; et

e) prendre les autres mesures qui sont accessoires à ce qui précède et exercer tous les pouvoirs qui sont nécessaires ou utiles à l'application des dispositions de la présente entente.

16.05 **Droits légaux**

La propriété légale de l'actif de la Fiducie pour de l'eau potable salubre, y compris chaque Fonds, et le droit d'exercer les activités de la Fiducie pour de l'eau potable salubre, y compris les activités relatives à chaque Fonds, sont, sous réserve des restrictions et des autres conditions énoncées dans les présentes, dévolus exclusivement au fiduciaire, et les membres du groupe et autres bénéficiaires de la Fiducie pour de l'eau potable salubre n'ont pas le droit d'exiger ou d'imposer un partage, une division ou une distribution de quelque élément d'actif de la Fiducie pour de l'eau potable salubre, sauf dans le cadre d'une action visant à faire respecter

les dispositions de la présente entente. Aucun membre du groupe ni aucun autre bénéficiaire de la Fiducie pour de l'eau potable salubre n'a ni n'est réputé avoir un droit de propriété sur l'actif de la Fiducie pour de l'eau potable salubre.

16.06 **Dossiers**

Le fiduciaire tient les livres, registres et comptes nécessaires ou appropriés pour documenter l'actif de la Fiducie pour de l'eau potable salubre et chaque opération de la Fiducie pour de l'eau potable salubre. Sans que soit limitée la portée générale de ce qui précède, le fiduciaire tient, à son bureau principal, des registres de toutes les opérations de la Fiducie pour de l'eau potable salubre et une liste des éléments d'actif détenus en fiducie, y compris chaque Fonds, et un registre du solde du compte de chaque Fonds de temps à autre.

16.07 **Rapports trimestriels**

Le fiduciaire remet à l'administrateur, au Canada et au comité mixte, dans les trente (30) jours qui suivent la fin de chaque trimestre civil, un rapport trimestriel indiquant les éléments d'actif détenus à la fin de ce trimestre dans la Fiducie pour de l'eau potable salubre et dans chaque Fonds (y compris la durée, le taux d'intérêt ou le rendement et la date d'échéance de ceux-ci) et un relevé du solde du compte de la Fiducie pour de l'eau potable salubre au cours de ce trimestre.

16.08 **Rapports annuels**

L'auditeur remet à l'administrateur, au fiduciaire, au Canada, au comité mixte et aux tribunaux, dans les soixante (60) jours qui suivent la fin de chaque anniversaire de la date de capitalisation de la Fiducie pour de l'eau potable salubre, laquelle date est la fin de l'exercice de la Fiducie pour de l'eau potable salubre :

a) les états financiers audités de la Fiducie pour de l'eau potable salubre, segmentés pour chaque Fonds, pour le dernier exercice terminé, avec le rapport de l'auditeur s'y rapportant; et

b) un rapport présentant un sommaire des éléments d'actif détenus en fiducie à la fin de l'exercice pour chaque Fonds et les décaissements effectués par la Fiducie pour de l'eau potable salubre au cours de l'exercice précédent.

16.09 **Mode de paiement**

Le fiduciaire a le pouvoir discrétionnaire exclusif de déterminer si une somme payée ou payable sur la Fiducie pour de l'eau potable salubre est payée ou payable sur le revenu de la Fiducie pour de l'eau potable salubre ou sur le capital de la Fiducie pour de l'eau potable salubre.

16.10 **Ajouts de capital**

Tout revenu de la Fiducie pour de l'eau potable salubre qui n'a pas été versé au cours d'un exercice s'ajoute à son capital à la fin de cet exercice.

16.11 **Choix fiscaux**

Pour chaque année d'imposition de la Fiducie pour de l'eau potable salubre, le fiduciaire produit les choix et désignations qu'il peut produire en vertu de la *Loi de l'impôt sur le revenu* et des dispositions équivalentes de la législation en matière d'impôt sur le revenu d'une province ou d'un territoire et prend toutes les autres mesures raisonnables de façon à ce que ni la Fiducie pour de l'eau potable salubre ni aucune autre personne ne soient assujetties à l'impôt sur le revenu de la Fiducie pour de l'eau potable salubre, y compris, notamment le choix en vertu du paragraphe 104(13.1) de la *Loi de l'impôt sur le revenu* et des dispositions équivalentes de la législation en matière d'impôt sur le revenu d'une province ou d'un territoire pour chaque année d'imposition de la Fiducie pour de l'eau potable salubre et le montant à préciser dans le cadre de ce choix correspond au maximum autorisé en vertu de la *Loi de l'impôt sur le revenu* ou de la législation en matière d'impôt sur le revenu d'une province ou d'un territoire, selon le cas.

16.12 **Impôt sur le revenu canadien**

(1) Le Canada fait de son mieux pour exonérer de l'impôt fédéral tout revenu gagné par la Fiducie pour de l'eau potable salubre, et le Canada tient compte des mesures qu'il a prises dans des circonstances analogues pour les conventions de règlements de recours collectifs visés à l'alinéa 81g.3) de la *Loi de l'impôt sur le revenu*.

(2) Les parties conviennent que les paiements aux membres du groupe sont de la nature de dommages-intérêts pour préjudice personnel et ne constituent pas un revenu imposable et le Canada fait de son mieux pour obtenir une décision anticipée en matière d'impôt en ce sens, ou à défaut une interprétation technique ayant le même effet, dans l'un ou l'autre cas auprès de la Direction des décisions en impôt de l'Agence du revenu du Canada.

16.13 **Conseillers en placement**

Sur demande du fiduciaire, le comité mixte peut demander aux tribunaux de nommer des conseillers en placement pour donner au fiduciaire des conseils sur le placement des fonds détenus dans chaque Fonds de la Fiducie pour de l'eau potable salubre. Le fiduciaire paie les honoraires et frais raisonnables de tous les conseillers en placement sur le Fonds applicable de la Fiducie pour de l'eau potable salubre.

ARTICLE 17 – AUDITEUR

17.01 **Nomination de l'auditeur**

Sur la recommandation du comité mixte, les tribunaux nomment l'auditeur investi des pouvoirs, des droits, des attributions et des responsabilités que les tribunaux ordonnent. Sur la recommandation des parties, ou de leur propre chef, les tribunaux peuvent remplacer l'auditeur en tout temps. Sans que soit limitée la portée générale de ce qui précède, l'auditeur est notamment investi des attributions et des responsabilités suivantes :

a) vérifier annuellement les comptes de la Fiducie pour de l'eau potable salubre conformément aux normes d'audit généralement reconnues;

b) fournir les rapports prévus à l'article 16.08; et

c) déposer les états financiers de la Fiducie pour de l'eau potable salubre, avec le rapport de l'auditeur s'y rapportant auprès des tribunaux et en remettre un exemplaire au Canada, au comité mixte, à l'administrateur et au fiduciaire dans les soixante (60) jours qui suivent la fin de chaque exercice de la Fiducie pour de l'eau potable salubre.

17.02 **Paiement de l'auditeur**

Le Canada paie les honoraires, débours et autres frais raisonnables de l'auditeur conformément à l'alinéa 3.04b).

ARTICLE 18 – FRAIS JURIDIQUES

18.01 **Honoraires et frais des avocats du groupe**

Sous réserve de l'approbation des tribunaux et dans les soixante (60) jours qui suivent la date de mise en œuvre, le Canada paie aux avocats du groupe la somme de cinquante-trois millions de dollars (53 000 000 $), taxes applicables en sus, au titre de leurs honoraires et frais juridiques dans le cadre de la poursuite des actions jusqu'à la date de l'audition de l'approbation du règlement, et des conseils aux membres du groupe concernant l'entente et l'acceptation.

18.02 **Frais continus**

(1) Sous réserve de l'approbation des tribunaux, dans les soixante (60) jours qui suivent la date de mise en œuvre, le Canada paie aux avocats du groupe la somme additionnelle de cinq millions de dollars (5 000 000 $), taxes applicables en sus, en fiducie (les « **fonds détenus en fiducie à l'égard des frais continus** ») au titre de leurs honoraires et frais pour des services devant être rendus par les avocats du groupe et le comité mixte conformément à la présente entente, y compris la mise en œuvre et l'administration de la présente entente, pour une période de quatre (4) ans après l'audition de l'approbation du règlement (les « **frais continus** »).

(2) Les avocats du groupe tiennent des registres appropriés et demandent l'approbation des tribunaux pour le paiement des frais continus sur les fonds détenus en fiducie à l'égard des frais continus.

(3) Les avocats du groupe déclarent semestriellement au Canada et aux tribunaux le solde des fonds détenus en fiducie à l'égard des frais continus.

(4) Les avocats du groupe demandent aux tribunaux d'ordonner le paiement des fonds détenus en fiducie à l'égard des frais continus qui demeurent en fiducie quatre (4) ans après l'audition de l'approbation du règlement.

18.03 **Services juridiques continus**

(1) Les avocats du groupe se partagent le travail de la prestation de services juridiques continus aux membres du groupe entre eux, ou par ailleurs selon les directives du comité mixte.

(2) Dans la mesure où les honoraires et frais des avocats du groupe, et les taxes applicables, sont payés conformément au paragraphe 18.01 ou au paragraphe 18.02, les

avocats du groupe s'abstiennent de facturer aux membres du groupe quelque montant additionnel pour les services juridiques rendus conformément à la présente entente.

(3) Après la date de mise en œuvre, la responsabilité de représenter les intérêts de du groupe dans son ensemble (à l'exclusion de l'aide apporter à un ou plusieurs membres du groupe en particulier qui leur est raisonnablement demandée) passe des avocats du groupe au comité mixte, et les avocats du groupe n'ont aucune autre obligation à cet égard.

(4) Il est entendu que le comité mixte et ses membres, ainsi que les avocats nommés par le comité mixte, reçoivent leurs honoraires, frais et taxes applicables conformément au paragraphe 15.01(8).

(5) Ni les avocats du groupe ni le comité mixte n'ont la responsabilité de représenter les Premières Nations membres du groupe dans le cadre de la procédure de règlement des différends relatifs à l'engagement, à moins que leurs services ne soient retenus séparément à cette fin, auquel cas ils peuvent représenter des Premières Nations membres du groupe dans le cadre de la procédure de règlement des différends relatifs à l'engagement, étant entendu que leurs honoraires et frais ne sont dans ce cas pas payés conformément à l'article 18.01 ou à l'article 18.02.

18.04 **Choix d'un autre avocat**

Aucune disposition de la présente entente n'empêche un membre du groupe de retenir à ses frais les services d'un autre avocat que les avocats du groupe, étant entendu, toutefois, que cet autre avocat n'a droit à aucun paiement en vertu du présent Article 18 . Cet autre avocat n'a en outre pas le droit de recevoir quelque paiement de quelque nature de la part d'un membre du groupe relativement à la présente entente, que ce soit directement ou indirectement, à moins que le paiement ne soit approuvé par les tribunaux.

ARTICLE 19 – PROCÉDURE GÉNÉRALE DE RÈGLEMENT DES DIFFÉRENDS

19.01 **Renvoi initial au tiers évaluateur**

(1) Sous réserve de l'article 19.03, en cas de différend quant à un droit ou à une obligation aux termes de la présente entente, sauf un différend concernant la procédure de règlement des réclamations ou un différend visé à l'article 9.07 (chacun de ces différends sauf un différend concernant la procédure de règlement des réclamations ou un différend visé à l'article 9.07, un « **différend** »), les parties déploient de bonne foi des efforts raisonnables pour régler le différend dans les trente (30) jours.

(2) Si un différend ne peut être résolu dans les trente (30) jours, le Canada, le comité mixte ou un membre du groupe peut le renvoyer au tiers évaluateur

(3) Le tiers évaluateur tranche le différend dont il est ainsi saisi sommairement et fournit les motifs de sa décision par écrit.

19.02 **Renvoi devant les tribunaux**

(1) Le Canada et le comité mixte peuvent interjeter appel d'une décision rendue par application du paragraphe 19.01(3) devant les tribunaux, et les tribunaux révisent la décision du tiers évaluateur selon une norme de décision raisonnable.

(2) Une décision des tribunaux peut être portée en appel conformément aux règles de chaque tribunal.

19.03 **Exclusion des décisions relatives à la procédure de règlement des réclamations et des plans de mesures correctrices**

Il est entendu que l'Article 19 ne s'applique pas aux différends concernant la procédure de règlement des réclamations, y compris, notamment l'admissibilité au groupe et l'indemnité payable à un membre du groupe, ni à l'égard d'un plan de mesures correctrices, y compris, notamment son contenu ou la conformité du Canada, et que ces différends sont réglés conformément à la présente entente.

ARTICLE 20 – RÉSILIATION ET AUTRES CONDITIONS

20.01 **Résiliation de l'entente**

(1) Sauf comme il prévu au paragraphe 20.01(2), la présente entente demeure pleinement en vigueur jusqu'à ce que toutes les obligations qui y sont prévues soient honorées.

(2) Par dérogation à toute autre disposition contraire de la présente entente :

a) l'engagement demeure en vigueur et continue de s'appliquer après à la résiliation de la présente entente, de même que l'article 9.06, l'article 9.07 et l'article 9.08 et la procédure de règlement des différends relatifs à l'engagement; et

b) l'article 10.02 et l'article 10.03 demeurent en vigueur après la résiliation de la présente entente; et

c) l'Article 21 demeure en vigueur après la résiliation de la présente entente.

20.02 **Modifications**

Sauf disposition expresse contraire dans la présente entente, des modifications ne peuvent être apportées à la présente entente qu'avec l'accord écrit des parties, et si les tribunaux ont rendu les ordonnances d'approbation du règlement, toute modification apportée à la présente entente ne prend effet qu'après avoir été approuvée par les tribunaux.

20.03 **Aucune cession**

(1) Sauf disposition expresse contraire dans la présente entente, aucune somme payable aux termes de la présente entente ne peut faire l'objet d'une cession et toute pareille cession est nulle et sans effet.

(2) Sauf ordonnance contraire d'un tribunal compétent et sous réserve du paragraphe 20.03(3) et de l'article 18.04, tout paiement auquel un demandeur d'indemnité a droit est versé au demandeur d'indemnité conformément aux directives que le demandeur d'indemnité donne à l'administrateur.

(3) Les paiements à l'égard d'une personne membre du groupe décédée ou d'une personne frappée d'incapacité seront versés conformément à l'Article 13 .

ARTICLE 21 – CONFIDENTIALITÉ

21.01 **Confidentialité**

À moins que les parties n'en conviennent autrement, l'information donnée, créée ou obtenue dans le cadre de la mise en œuvre de la présente entente est gardée confidentielle et ne saurait être utilisée à une autre fin que celle de la présente entente.

21.02 **Destruction de l'information et des dossiers des membres du groupe**

Deux (2) ans après avoir effectué le paiement des dommages-intérêts individuels, de l'indemnité pour préjudices déterminés et des dommages-intérêts de Première Nation, l'administrateur détruit l'ensemble de l'information et des documents de tous les membres du groupe qu'il détient, à moins qu'un membre du groupe ou son exécuteur testamentaire ou demandeur d'indemnité successoral ne demande expressément la restitution de l'information le concernant dans le délai de deux (2) ans. Dès réception d'une demande en ce sens, l'administrateur transmet l'information concernant le membre du groupe de la manière qui lui est indiquée. Avant de détruire quelque information ou document conformément au présent article, l'administrateur prépare une analyse statistique anonymisée du groupe conformément à l'article 39 de la procédure de règlement des réclamations.

21.03 **Confidentialité des négociations**

À moins que les parties n'en conviennent autrement, l'engagement de confidentialité quant aux discussions et à toutes les communications, écrites ou verbales, dans le cadre et à l'égard des négociations menant à l'entente de principe et à la présente entente demeure en vigueur.

ARTICLE 22 – COOPÉRATION

22.01 **Coopération quant à l'approbation et à la mise en œuvre du règlement**

Dès la signature de la présente entente, les représentants demandeurs dans les actions, les avocats du groupe et le Canada font de leur mieux pour obtenir l'approbation de la présente entente par les tribunaux et pour favoriser et faciliter la participation des membres du groupe à tous les aspects de la présente entente. Si la présente entente n'est pas approuvée par les tribunaux, les parties négocient de bonne foi pour remédier aux lacunes indiquées par les tribunaux.

22.02 **Annonces publiques**

Dès le prononcé des ordonnances d'approbation du règlement, les parties publient une déclaration publique conjointe annonçant le règlement selon un modèle dont les parties doivent convenir et, au moment convenu d'un commun accord, font des annonces publiques en faveur de la présente entente. À la demande raisonnable de l'une d'entre elles, les parties continuent de se prononcer publiquement en faveur de la présente entente.

[Le reste de cette page est laissé en blanc intentionnellement. Suivent les pages de signature.]

EN FOI DE QUOI, les parties ont signé la présente entente le 15 septembre 2021.

POUR LES DEMANDEURS NATION DES CRIS DE TATASKWEYAK ET CHEFFE DOREEN SPENCE

Par : _____
Doreen Spence
Cheffe

POUR LES DEMANDEURS PREMIÈRE NATION DE CURVE LAKE ET CHEFFE EMILY WHETUNG

Par : _____
Emily Whetung
Cheffe

POUR LES DEMANDEURS PREMIÈRE NATION DE NESKANTAGA, CHEF WAYNE MOONIAS et ANCIEN CHEF CHRISTOPHER MOONIAS

Par : _____
Wayne Moonias
Chef

Par : _____
Christophe Moonias
Ancien chef

POUR LE DÉFENDEUR SA MAJESTÉ LA REINE DU CHEF DU CANADA

Par : _____
Christiane Fox
Sous-ministre des Services aux Autochtones Canada

POUR LES AVOCATS DU GROUPE

Par : _____
Michael Rosenberg
Associé, McCarthy Tétrault S.E.N.C.R.L., s.r.l.

Par : _____
Harry LaForme
Avocat principal, Olthuis Kleer Townshend LLP

ANNEXE A

ENTENTE DE PRINCIPE

Voir ci-joint.

[Traduction]

N° de dossier de la Cour du Banc de la Reine du Manitoba : CI-19-01-24661

N° de dossier de la Cour fédérale : T-1673-19

LE BANC DE LA REINE

Winnipeg Centre

ENTRE :

NATION DES CRIS DE TATASKWEYAK et CHEFFE DOREEN SPENCE pour son propre compte et pour le compte de tous les membres de la NATION DES CRIS DE TATASKWEYAK

demandeurs

–et–

PROCUREUR GÉNÉRAL DU CANADA

défendeur

Recours collectif introduit
en vertu de la *Loi sur les recours collectifs*, CPLM. ch. C. 130

–et–

COUR FÉDÉRALE

ENTRE :

PREMIÈRE NATION DE CURVE LAKE et CHEFFE EMILY WHETUNG pour son propre compte et pour le compte de tous les membres de la PREMIÈRE NATION DE CURVE LAKE et PREMIÈRE NATION DE NESKANTAGA et CHEF CHRISTOPHER MOONIAS pour son propre compte et pour le compte de tous les membres de la PREMIÈRE NATION DE NESKANTAGA

demandeurs

–et–

PROCUREUR GÉNÉRAL DU CANADA

défendeur

Recours collectif introduit en vertu de
la partie 5.1 des *Règles des Cours fédérale*, DORS/98-106

ENTENTE DE PRINCIPE (l'« ENTENTE »)

ATTENDU QUE les demandeurs ont introduit l'action intitulée *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation v Attorney General of Canada*, nº dossier de la Cour 1-1673-19 devant la Cour fédérale le 11 octobre 2019 (l' « **action de Curve Lake** ») et l'action intitulée *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation v Attorney General of Canada*, nº de dossier de la Cour CI 19-01-24661 devant la Cour du Banc de la Reine du Manitoba le 20 novembre 2019 (l'« **action de Tataskweyak** » et, collectivement avec l'action de Curve Lake, les « **actions** »);

ET ATTENDU QUE la Cour du Banc de la Reine du Manitoba a attesté l'action de Tataskweyak à titre de recours collectif le 14 juillet 2020 et que la Cour fédérale a autorisé l'action de Curve Lake à titre de recours collectif le 8 octobre 2020;

ET ATTENDU QUE le « **groupe** » dans les actions est défini comme suit :

a) Toutes les personnes qui :

i) sont membres d'une bande, au sens du paragraphe 2(1) de la *Loi sur les Indiens*, L.R.C. 1985, ch. 1-5 (« **Première Nation** »), dont l'aliénation des terres est assujettie à cette loi ou à la *Loi sur la gestion des terres des premières nations*, L.C. 1999, ch. 24 (les « **terres des Premières Nations** »), et dont les terres des Premières Nations ont fait l'objet d'un avis concernant la qualité de l'eau potable (soit un avis d'ébullition de l'eau, un avis de non-consommation ou de non-utilisation ou un avis similaire) qui a duré au moins un an du 20 novembre 1995 au 20 juin 2021 (« **Premières Nations touchées** »);

ii) n'étaient pas décédées avant le 20 novembre 2017; et

iii) ont résidé habituellement dans une Première Nation touchée alors qu'elle était visée par un avis concernant la qualité de l'eau potable d'une durée d'au moins un an; et

b) la Nation des Cris de Tataskweyak, la Première Nation de Curve Lake, la Première Nation de Neskantaga et toute autre Première Nation qui choisit de se joindre à la présente action à titre de représentant;

Les « **personnes exclues** » sont des membres de la Tsuu T'ina Nation, de la Sucker Creek First Nation, de la Ermineskin Cree Nation, de la Tribu des Blood et de la Okanagan Indian Band, et Michael Darryl Isnardy.

ET ATTENDU QUE le groupe a subi d'énormes préjudices en étant privé d'eau potable salubre et que les personnes et les collectivités touchées en ont gravement souffert;

ET ATTENDU QUE le groupe a demandé un jugement sommaire sur la première question commune concernant l'existence et la portée de l'obligation du Canada de fournir de l'eau potable salubre aux membres du groupe;

ET ATTENDU QU'aucune personne membre du groupe ne s'est retirée des actions et que quelques cent vingt-deux (122) Premières Nations membres du groupe se sont jointes aux actions;

ET ATTENDU QUE le défendeur (« **Canada** ») reconnaît les difficultés auxquelles sont confrontés les membres du groupe et souhaite les aider à obtenir un accès courant à de l'eau potable salubre;

ET ATTENDU QUE le Canada est disposé à régler les actions aux conditions énoncées ci-après, sous réserve de la négociation d'une entente de règlement définitive (l'« **entente de règlement** »);

ET ATTENDU QUE la cheffe Doreen Spence, la Nation des Cris de Tataskweyak, la cheffe Emily Whetung, la Première Nation de Curve Lake, l'ancien chef Christopher Moonias et la Première Nation de Neskantaga (collectivement, les « **représentants demandeurs** ») sont disposés à régler les actions selon les modalités énoncées ci-après, sous réserve que ces dernières soient intégrées dans l'entente de règlement, et recommandent aux Premières Nations membres du groupe d'accepter ces modalités;

PAR CONSÉQUENT, le Canada et les demandeurs négocient de bonne foi et déploient tous les efforts raisonnables pour signer l'entente de règlement au plus tard le 27 août 2021, sous réserve de l'accord des parties à une prolongation.

ARTICLE 1 GÉNÉRALITÉS

1.01 **Définitions**

(1) **Acceptation** : L'indication de l'acceptation de l'entente de règlement par une Première Nation membre du groupe sous une forme dont les parties peuvent convenir et avant une date dont les parties peuvent convenir.

(2) **Plan d'action** : Le plan d'action de Services aux Autochtones Canada visant à lever tous les avis concernant la qualité de l'eau potable à long terme, qui décrit en détail les mesures correctives que le Canada doit prendre pour mettre fin aux avis concernant la qualité de l'eau potable à long terme, joint en **annexe A**.

(3) **Administrateur** : Un administrateur de réclamations dûment qualifié choisi d'un commun accord par les parties, ou à défaut, par les tribunaux, pour s'acquitter des obligations énoncées dans l'entente.

(4) **Confirmation du conseil de bande** : Une déclaration d'une Première Nation membre du groupe identifiant les personnes membres du groupe qui résident habituellement dans sa réserve et les dates auxquelles ces personnes membres du groupe ont résidé habituellement dans sa réserve alors qu'un avis concernant la qualité de l'eau potable à long terme était en vigueur.

(5) **Indemnité de base** : Cinq cent mille dollars (500 000 $).

(6) **Canada** : Le défendeur.

(7) **Avocats du groupe** : McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP.

(8) **Date limite pour les réclamations** : Deux (2) ans après la résolution des appels ou toute autre date convenue par les parties.

(9) **Formulaire de réclamation** : Une déclaration écrite simplifiée que les personnes membres du groupe doivent remplir et soumettre à l'administrateur, sans pièces justificatives, sauf comme les parties peuvent en convenir.

(10) **Groupe** :

a) Toutes les personnes qui :

i) sont membres d'une bande, au sens du paragraphe 2(1) de la *Loi sur les Indiens*, L.R.C. 1985, ch. 1-5 (« **Première Nation** »), dont l'aliénation des terres est assujettie à cette loi ou à la *Loi sur la gestion des terres des premières nations*, L.C. 1999, ch. 24 (les « **terres des Premières Nations** »), et dont les terres des Premières Nations ont fait l'objet d'un avis concernant la qualité de l'eau potable (qu'il s'agisse d'un avis d'ébullition de l'eau, d'un avis de non-consommation ou de non-utilisation ou d'un avis similaire) qui a duré au moins un an du 20 novembre 1995 jusqu'à aujourd'hui (« **Premières Nations touchées** »)

ii) n'étaient pas décédées avant le 20 novembre 2017; et

iii) ont résidé habituellement dans une Première Nation touchée alors qu'elle était visée par un avis concernant la qualité de l'eau potable d'une durée d'au moins un an; et

b) la Nation des Cris de Tataskweyak, la Première Nation de Curve Lake, la Première Nation de Neskantaga et toute autre Première Nation qui choisit de se joindre à cette action à titre de représentant.

(11) **Période visée** : Du 20 novembre 1995 au 20 juin 2021.

(12) **Engagement** : Un engagement au sens de l'alinéa 3.02(1).

(13) **Procédure de règlement des différends relatifs à l'engagement** : Une procédure de règlement des différends relatifs à l'engagement au sens de l'article 3.07.

(14) **Dépenses dans le cadre de l'engagement** : Les dépenses dans le cadre de l'engagement au sens de l'alinéa 3.02(1)d)iv).

(15) **Tribunaux** : La Cour du Banc de la Reine du Manitoba et la Cour fédérale.

(16) **Action de Curve Lake** : L'action portant l'intitulé *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation v Attorney General of Canada*, nº de dossier de la Cour 1-1679 introduite devant la Cour fédérale le 11 octobre 2019.

(17) **Décision quant à l'admissibilité** : Une décision quant à l'admissibilité au sens du paragraphe 1.05(1).

(18) **Fonds excédentaires** : S'entend au sens du paragraphe 1.04(4).

(19) **Première Nation** : Une bande, au sens du paragraphe 2(1) de la *Loi sur les Indiens*, L.R.C. 1985, ch. 1-5, dont l'aliénation des terres est assujettie à cette loi ou à la *Loi sur la gestion des terres des premières nations*, L.C. 1999, ch. 24.

(20) **Première Nation membre du groupe** : Une Première Nation qui satisfait à la définition de statut de membre du groupe et qui fournit un avis d'acceptation aux avocats du groupe.

(21) **Dommages-intérêts de Première Nation** : Les dommages-intérêts de Première Nation au sens de l'article 2.04.

(22) **Formule de calcul des dommages-intérêts de Première Nation** : La formule de calcul des dommages-intérêts de Première Nation au sens de l'article 2.04.

(23) **Comité consultatif des Premières Nations sur l'eau potable salubre ou CCPNEPS** : Le Comité consultatif des Premières Nations sur l'eau potable salubre ou le CCPNEPS au sens de l'article 3.03(3).

(24) **Fonds pour la relance économique et culturelle des Premières Nations** : Le Fonds pour la relance économique et culturelle des Premières Nations au sens de l'article 1.04.

(25) **Transfert de fonds** : Sommes transférées des fonds en fiducie au Fonds pour la relance économique et culturelle des Premières Nations.

(26) **Terres des Premières Nations** : Les terres assujetties à la *Loi sur les Indiens*, L.R.C. 1985, ch. 1-5 ou à la *Loi sur la gestion des terres des premières nations*, L.C. 1999, ch. 24.

(27) **Personnes membres du groupe** : Les personnes physiques qui sont membres du groupe et qui n'ont pas choisi de s'exclure des actions.

(28) **Dommages-intérêts individuels** : Les dommages-intérêts individuels au sens de l'alinéa 2.01(2).

(29) **Formule de calcul des dommages-intérêts individuels** : La Formule de calcul des dommages-intérêts individuels au sens de l'article 2.01.

(30) **Avis concernant la qualité de l'eau potable à long terme** : Un avis concernant la qualité de l'eau potable pour une réserve ou une partie d'une réserve qui dure plus d'un (1) an.

(31) **Parties** : Les demandeurs, au nom du groupe, et le Canada, chacun d'entre eux étant une « **partie** ».

(32) **Demandeurs** : Doreen Spence, Nation des Cris de Tataskweyak, Emily Whetung, Première Nation de Curve Lake, Christopher Moonias et Première Nation de Neskantaga.

(33) **Accord de réparation** : Un accord de réparation au sens de l'alinéa 3.06(2).

(34) **Première Nation éloignée** : Chaque réserve qui est classée dans la zone 3 ou dans la zone 4 par Affaires autochtones et du Nord Canada dans le Manuel de classification des bandes de 2005 publié par la Direction générale de la gestion de l'information ministérielle, c'est-à-dire les réserves réputées être, soit « éloignées » (*Remote*), soit « isolées et nécessitant un accès spécial » (*Isolated and require Special Access*).

(35) **Loi remplaçante** : La loi remplaçante au sens de l'alinéa 3.03(2).

(36) **Réserve** : Les terres dont l'aliénation est assujettie à la *Loi sur les Indiens*, L.R.C. 1985, ch. 1-5 ou la *Loi sur la gestion des terres des premières nations*, L.C. 1999, ch. 24.

(37) **Compte du Fonds de relance** : Le compte du Fonds de relance au sens de l'article 1.04(2).

(38) **Entente de règlement** : Une entente de règlement définitive et juridiquement contraignante devant être signée par le défendeur et les demandeurs au plus tard le 27 août 2021, ou à

toute autre date dont les parties peuvent convenir, qui comprend les modalités de l'entente, sauf si les parties en conviennent autrement.

(39) **Préjudices déterminés** : Les préjudices déterminés au sens de l'alinéa 2.03(1).

(40) **Indemnité pour préjudices déterminés** : L'indemnité pour préjudices déterminés au sens de l'alinéa 2.03(2).

(41) **Compte d'indemnisation pour préjudices déterminés** : Le compte d'indemnisation pour préjudices déterminés au sens du paragraphe 2.03(3).

(42) **Fonds d'indemnisation pour préjudices déterminés** : Le Fonds d'indemnisation pour préjudices déterminés au sens du paragraphe 2.03(4).

(43) **Décision relative aux préjudices déterminés** : Une décision relative aux préjudices déterminés au sens de l'alinéa 2.03(5)b).

(44) **Excédent** : L'excédent au sens du paragraphe 1.03(3).

(45) **Action de Tataskweyak** : L'action intitulée *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation v Attorney General of Canada*, nº de dossier de la Cour CI 19-01-24661 de la Cour du Banc de la Reine du Manitoba introduite le 20 novembre 2019.

(46) **Compte en fiducie** : Le compte en fiducie au sens du paragraphe 1.03(1).

(47) **Fonds en fiducie** : Le Fonds en fiducie au sens de l'alinéa 1.03(2).

(48) **Première Nation insuffisamment desservie** : Une Première Nation insuffisamment desservie au sens du paragraphe 3.06(1).

(49) **Fonds pour la gouvernance de l'eau** : Le Fonds pour la gouvernance de l'eau au sens du paragraphe **Error! Reference source not found.**.

1.02 **Administration**

(1) Les parties conviennent du choix de l'administrateur. Si les parties ne parviennent pas à une entente, toute partie peut présenter une requête pour obtenir des directives devant les tribunaux.

(2) L'administrateur est nommé par les tribunaux.

(3) Le Canada est seul responsable du paiement des honoraires et débours raisonnables de l'administrateur, y compris les taxes applicables.

1.03 **Fonds en fiducie**

(1) Dès que possible après sa nomination, l'administrateur doit établir un compte en fiducie portant intérêt à une Banque canadienne de l'annexe I (le « **compte en fiducie** »).

(2) Le Canada réglera le fonds en fiducie en versant un milliard quatre cent trente-huit millions de dollars (1 438 000 000 $) dans le compte en fiducie dans les soixante (60) jours suivant la

date à laquelle les ordonnances approuvant l'entente de règlement deviennent définitives, compte tenu des appels.

(3) Si les avocats du groupe, de l'avis d'un actuaire expert, déterminent qu'il y a des fonds non affectés dans le fonds en fiducie (l' « **excédent** »), ces fonds sont distribués au profit direct ou indirect du groupe.

(4) Les avocats du groupe, suivant les conseils des membres du groupe ou d'un comité représentatif de ceux-ci, proposeront une répartition de l'excédent, qui pourra comprendre ce qui suit :

i) le transfert d'un maximum de quatre cents millions de dollars (400 000 000 $) au Fonds pour la relance économique et culturelle des Premières Nations;

ii) l'augmentation des dommages-intérêts individuels ou des dommages-intérêts de Première Nation;

iii) des dommages-intérêts individuels ou des dommages-intérêts de Première Nation pour les demandeurs en retard qui ont présenté des réclamations valides après la date limite pour les réclamations;

iv) l'indemnisation pour préjudices déterminés si le Fonds d'indemnisation pour préjudices déterminés était insuffisant pour verser l'indemnité pour préjudices déterminés pour toutes les réclamations valides; ou

v) de la programmation visant à promouvoir l'éducation, les pratiques culturelles ou spirituelles, l'étude ou la guérison relative aux avis concernant la qualité de l'eau potable à long terme.

b) Les avocats du groupe présentent des requêtes pour obtenir des directives devant les tribunaux en vue de l'approbation de la distribution proposée de l'excédent.

(5) Il est entendu qu'il n'y aura pas de réversion au Canada des fonds en fiducie et que le Canada ne sera pas un bénéficiaire admissible de l'excédent.

1.04 **Fonds pour la relance économique et culturelle des Premières Nations**

(1) Les parties reconnaissent l'importance de fournir aux Premières Nations des fonds pour des projets liés à l'eau et aux eaux usées, au développement économique et aux activités culturelles. Les parties respectent l'autonomie des Premières Nations quant à l'utilisation des fonds.

(2) Dès que possible après sa nomination, l'administrateur doit établir un compte en fiducie portant intérêt à une Banque canadienne de l'annexe I (le « **compte du Fonds de relance** »).

(3) Le Canada finance le **Fonds pour la relance économique et culturelle des Premières Nations** en versant quatre cents millions de dollars (400 000 000 $) dans le compte du Fonds de relance dans les soixante (60) jours suivant la date à laquelle les ordonnances approuvant l'entente de règlement deviennent définitives, compte tenu des appels.

(4) Si des fonds demeurent dans le compte du Fonds de relance après l'expiration de la date limite pour les réclamations et que l'administrateur a payé tous les dommages-intérêts de Première Nation (les « **fonds excédentaires** »), ces fonds sont distribués au profit direct ou indirect du groupe.

(5) Les avocats du groupe, suivant les conseils des membres du groupe, proposeront une répartition des fonds excédentaires, qui pourra comprendre ce qui suit :

i) l'augmentation des dommages-intérêts individuels ou des dommages-intérêts de Première Nation;

ii) des dommages-intérêts individuels ou des dommages-intérêts de Première Nation pour les demandeurs en retard qui ont présenté des réclamations valides après la date limite pour les réclamations;

iii) l'indemnité pour préjudices déterminés si le Fonds d'indemnisation pour préjudices déterminés était insuffisant pour verser l'indemnité pour préjudices déterminés pour toutes les réclamations valides; ou

iv) de la programmation visant à promouvoir l'éducation, les pratiques culturelles ou spirituelles, l'étude ou la guérison relative aux avis concernant la qualité de l'eau potable à long terme.

b) Les avocats du groupe présentent des requêtes pour obtenir des directives devant les tribunaux en vue de l'approbation de la distribution proposée des fonds excédentaires.

(6) Il n'y aura pas de réversion au Canada du Fonds pour la relance économique et culturelle des Premières Nations et le Canada ne sera pas un bénéficiaire admissible des fonds excédentaires.

1.05 **Admissibilité**

(1) L'administrateur doit examiner chaque formulaire de réclamation, confirmation du conseil de bande ou tout autre renseignement qu'il juge pertinent pour identifier les membres admissibles du groupe (la « **décision quant à l'admissibilité** »). L'administrateur doit donner des motifs écrits lorsqu'il établit qu'un demandeur n'est pas un membre du groupe.

(2) Dans les trente (30) jours suivant la réception d'une décision quant à l'admissibilité refusant l'adhésion au groupe, le demandeur et toute partie peuvent interjeter appel de la décision d'admissibilité.

(3) La procédure d'appel à l'égard d'une décision quant à l'admissibilité est décidée par les parties.

ARTICLE 2 INDEMNISATION RÉTROSPECTIVE

2.01 **Calcul des dommages-intérêts des personnes membres du groupe**

(1) L'administrateur calculera les dommages-intérêts des personnes membres du groupe conformément à l'information présentée dans un formulaire de réclamation valide, une confirmation du conseil de bande ou tout autre renseignement qu'il juge pertinent, conformément à la formule énoncée ci-après (la « **formule de calcul des dommages-intérêts individuels** »).

(2) Les personnes membres du groupe recevront des dommages-intérêts (les « **dommages-intérêts individuels** ») :

a) Si la personne membre du groupe n'avait pas encore atteint l'âge de 18 ans le 20 novembre 2013, pour chaque année, au cours de la période visée, durant laquelle elle résidait habituellement dans une réserve pendant qu'un avis concernant la qualité de l'eau potable à long terme était en vigueur; ou

b) Si la personne membre du groupe avait atteint l'âge de 18 ans avant le 20 novembre 2013, pour chaque année du 20 novembre 2013 jusqu'à la fin de la période visée, durant laquelle elle résidait habituellement dans une réserve alors qu'un avis concernant la qualité de l'eau potable à long terme était en vigueur.

(3) Les dommages-intérêts individuels seront payés environ aux taux suivants, les taux réels devant être déterminés par les avocats du groupe sur avis d'un actuaire expert :

a) Mille trois cents dollars (1 300 $) par année pour un avis d'ébullition de l'eau qui vise une Première Nation qui n'est pas une Première Nation éloignée;

b) Mille six cent cinquante (1 650 $) par année pour un avis de non-consommation qui vise une Première Nation qui n'est pas une Première Nation éloignée;

c) Deux mille dollars (2 000 $) par année pour un avis de non-utilisation qui vise une Première Nation qui n'est pas une Première Nation éloignée; et

d) Deux mille dollars (2 000 $) par année pour tout avis concernant la qualité de l'eau potable d'une Première Nation éloignée.

(4) Les dommages-intérêts individuels seront payés au prorata de toute partie d'une année pour laquelle ils sont exigibles.

2.02 **Paiement des dommages-intérêts individuels des membres du groupe**

(1) Dans un délai raisonnable que les parties doivent fixer en consultation avec l'administrateur, l'administrateur doit verser à chaque personne membre du groupe les dommages-intérêts individuels des fonds en fiducie conformément à la formule de calcul des dommages-intérêts individuels.

2.03 **Fonds d'indemnisation pour préjudices déterminés**

(1) En plus des dommages-intérêts individuels, les personnes membres du groupe peuvent indiquer sur leur formulaire de réclamation qu'ils réclament des dommages-intérêts pour des conditions médicales précises qui ont été causées par un avis concernant la qualité de l'eau potable à long terme dans une réserve où elles résidaient habituellement (les « **préjudices déterminés** »). Il est entendu que le demandeur doit établir que le préjudice a été causé par l'utilisation d'eau, autre que l'eau de source, conformément à un avis concernant la qualité de l'eau potable à long terme ou par le manque d'eau propre pendant un avis concernant la qualité de l'eau potable à long terme.

(2) Les parties déterminent la liste des préjudices déterminés, ainsi que l'indemnité pour chaque préjudice déterminé (l'« **indemnité pour préjudices déterminés** »).

(3) L'administrateur doit établir un compte en fiducie portant intérêt à une Banque canadienne de l'annexe I (le « **compte d'indemnisation pour préjudices déterminés** »).

(4) Le Canada réglera le **Fonds d'indemnisation pour préjudices déterminés** en versant cinquante millions de dollars (50 000 000 $) dans le compte d'indemnisation pour préjudices déterminés dans les soixante (60) jours suivant la date à laquelle les ordonnances approuvant l'entente de règlement deviennent définitives, compte tenu des appels.

(5) Les parties conviennent de ce qui suit :

a) Les moyens de prouver un préjudice déterminé d'une manière non conflictuelle et culturellement sensible de manière à ne pas traumatiser de nouveau les demandeurs;

b) Un délai approprié pour que l'administrateur détermine la validité d'une demande d'indemnisation pour des préjudices déterminés (une « **décision relative aux préjudices déterminés** »); et

c) Un mécanisme d'appel et un calendrier appropriés;

(6) Les avocats du groupe aident les personnes membres du groupe ou leurs représentants, sur demande, à présenter une demande d'indemnisation pour préjudices déterminés ou à faire appel d'une décision relative aux préjudices déterminés sans frais pour le Canada ou la personne membre du groupe.

(7) Dans les quatre-vingt-dix (90) jours suivant la date limite pour les réclamations, l'administrateur doit déterminer s'il y a suffisamment de fonds dans le Fonds d'indemnisation pour préjudices déterminés pour payer l'indemnité pour chaque réclamation valide.

a) S'il y a suffisamment de fonds dans le Fonds d'indemnisation pour préjudices déterminés, l'administrateur doit verser à chaque membre du groupe l'indemnité pour préjudices déterminés; ou

b) En cas d'insuffisance de fonds dans le Fonds d'indemnisation pour préjudices déterminés, l'administrateur verse aux personnes membres du groupe leur quote-part du Fonds d'indemnisation pour préjudices déterminés, proportionnelle à l'indemnisation pour les préjudices déterminés qui leur seraient dus.

(8) Il n'y a pas de réversion au Canada du Fonds d'indemnisation pour préjudices déterminés.

(9) Si des fonds restent dans le Fonds d'indemnisation pour préjudices déterminés après avoir payé toutes les demandes d'indemnisation pour les dommages déterminés, l'administrateur les verse au fonds en fiducie.

2.04 **Calcul des dommages-intérêts de Première Nation membre du groupe**

(1) L'administrateur calcule les dommages-intérêts de Première Nation membre du groupe selon la formule indiquée ci-après (la « **formule de calcul des dommages-intérêts de Première Nation** »).

(2) Chaque Première Nation membre du groupe recevra une indemnité de base de cinq cent mille dollars (500 000 $) (l'« **indemnité de base** »).

(3) En plus de l'indemnité de base, les Premières Nations recevront un montant correspondant à cinquante pour cent (50 %) des dommages-intérêts individuels payés aux personnes

membres du groupe à l'égard des avis concernant la qualité de l'eau potable dans les réserves ou réserves des Premières Nations membre du groupe (les « **dommages-intérêts de Première Nation** »).

2.05 **Paiement des dommages-intérêts des Premières Nations membres du groupe**

(1) L'administrateur paie l'indemnité de base et les dommages-intérêts de Première Nation provenant du Fonds pour la relance économique et culturelle des Premières Nations.

(2) L'administrateur paie l'indemnité de base à chaque Première Nation membre du groupe dans les quatre-vingt-dix (90) jours suivant l'approbation de l'entente de règlement par les tribunaux, y compris tous les appels, et à une Première Nation membre du groupe qui donne un avis d'acceptation aux avocats du groupe.

(3) Tous les six (6) mois après que l'indemnité de base a été versée conformément au paragraphe 2.05(2), l'administrateur paie à la Première Nation membre du groupe les dommages-intérêts de Première Nation qui ont été accumulés à ce jour.

2.06 **Aucune disposition relative aux préjudices continus**

(1) L'entente ne prévoit pas que des dommages-intérêts seront accordés aux membres du groupe à l'égard des avis concernant la qualité de l'eau potable à long terme qui commencent ou se poursuivent après le 20 juin 2021, et les membres du groupe ne renoncent pas à quelque réclamation à l'égard de ces dommages-intérêts futurs.

2.07 **Responsabilité du Canada**

(1) Les parties conviennent expressément qu'au moment de faire les paiements prévus dans l'entente de règlement, la responsabilité du Canada envers les personnes membres du groupe et les Premières Nations membres du groupe qui ont accepté l'entente de règlement pour les préjudices jusqu'au 20 juin 2021, en raison du défaut du Canada de fournir de l'eau potable propre, est terminée.

(2) Les parties devront convenir d'un libellé de renonciation spécifique pour l'entente de règlement.

ARTICLE 3 RÉPARATION PROSPECTIVE

3.01 **Plan d'action pour les Premières Nations membres du groupe devant être mis en œuvre**

(1) Le Canada déploie tous les efforts raisonnables pour appuyer l'élimination des avis concernant la qualité de l'eau potable à long terme qui concernent les membres du groupe, y compris en prenant les mesures énoncées dans le plan d'action, dans les délais prévus dans le projet.

(2) Le plan d'action peut être modifié avec le consentement des parties, en plus d'être mis à jour régulièrement par le Canada au fur et à mesure que des progrès sont réalisés.

(3) Aucune disposition de l'entente n'empêche le Canada de prendre des mesures supplémentaires au profit des membres du groupe, mesures qui ne sont pas prévues dans le plan d'action.

3.02 **Engagement à prendre des mesures supplémentaires**

(1) En plus du plan d'action, le défendeur doit faire tous les efforts raisonnables pour veiller à ce que les personnes membres du groupe qui vivent sur les réserves aient régulièrement accès à l'eau

potable à leur domicile, que ce soit à partir d'un réseau d'eau public ou privé approuvé par une résolution du conseil de bande, y compris les systèmes sur place, qui respecte les exigences les plus strictes entre les exigences fédérales ou les normes provinciales régissant la qualité de l'eau résidentielle (l'« **engagement** »). Il est entendu :

a) qu'un accès courant doit permettre toutes les utilisations habituelles et nécessaires de l'eau dans une maison canadienne située dans un endroit similaire, y compris, notamment, l'eau potable, pour se laver et pour l'hygiène personnelle, pour la préparation d'aliments et pour laver la vaisselle, pour l'assainissement et pour la blanchisserie;

b) que l'engagement se limite aux efforts raisonnables du Canada, y compris la fourniture réelle de financement au titre des coûts, de formation, de planification et d'assistance technique;

c) que si, malgré les efforts raisonnables du Canada, un accès courant ne peut être obtenu, le Canada n'est pas tenu de garantir un accès courant au domicile d'une personne membre du groupe; et

d) que les facteurs qui peuvent être pris en compte dans la détermination des efforts raisonnables comprennent, notamment :

i) les points de vue de la Première Nation;

ii) les exigences fédérales ou les normes et protocoles provinciaux relatifs à l'eau;

iii) si de la surveillance et des essais sont effectués sur le réseau d'alimentation en eau; et

iv) l'emplacement physique du domicile, y compris la proximité des réseaux d'alimentation en eau centralisés et l'éloignement.

(2) Le Canada doit dépenser au moins six milliards de dollars (6 000 000 000 $) jusqu'en 2030, comme le prévoit le Budget principal des dépenses de Services aux Autochtones Canada, au taux d'au moins quatre cents millions de dollars (400 000 000 $) par année, pour respecter l'engagement en finançant le coût réel de la construction, de la mise à niveau, de l'exploitation, de l'aménagement et de l'entretien de l'infrastructure de l'eau dans les réserves pour les Premières Nations (les « **dépenses dans le cadre de l'engagement** »).

a) Le Canada doit remettre aux avocats du groupe un état annuel de toutes les dépenses dans le cadre de l'engagement jusqu'en 2030.

b) Sur demande, le Canada remet à toute Première Nation membre du groupe un état des dépenses dans le cadre de l'engagement qu'il a reçu.

3.03 **Abrogation et remplacement de la Loi sur la salubrité de l'eau potable des Premières Nations**

(1) Le Canada fera tous les efforts raisonnables pour déposer une loi abrogeant la *Loi sur la salubrité de l'eau potable des Premières Nations*, L.C. 2013, ch. 21 (la « ***LSEPPN*** ») au plus tard le 31 mars 2022.

(2) Le Canada fera tous les efforts raisonnables pour élaborer et déposer une loi remplaçant la LSEPPN (la « **loi remplaçante** »), en consultation avec les Premières Nations, et pour déposer cette loi au plus tard le 31 décembre 2022.

(3) La loi remplaçante vise les objectifs suivants :

a) Assurer la viabilité des réseaux d'approvisionnement en eau des Premières Nations, en fonction des prémisses suivantes :

i) Définir des normes minimales de qualité de l'eau pour les réseaux d'approvisionnement en eau des Premières Nations, compte tenu des normes qui s'appliquent directement aux collectivités des Premières Nations; et

ii) Définir des normes minimales de capacité pour l'approvisionnement en eau des collectivités des Premières Nations, quant au volume par personne membre de la collectivité;

b) Élaborer une approche transparente pour la construction, l'amélioration et la prestation de services d'approvisionnement en eau potable et de traitement des eaux usées pour les Premières Nations;

c) Confirmer le financement adéquat et durable des réseaux d'approvisionnement en eau et de traitement des eaux usées des Premières Nations; et

d) Appuyer la prise en charge volontaire de l'infrastructure d'approvisionnement en eau et de traitement des eaux usées par les Premières Nations.

(4) Indépendamment de son engagement de déposer la loi remplaçante, le Canada appuie l'élaboration d'initiatives en matière de gouvernance des Premières Nations, comme il est décrit à l'article 3.04, ci-après.

3.04 **Comité consultatif des Premières Nations**

(1) Le Canada fournit vingt millions de dollars (20 000 000 $) de financement jusqu'à l'exercice 2025/2026, pour la création du comité consultatif des Premières Nations sur l'eau potable salubre (le « **CCPNEPS** »).

(2) La composition du CCPNEPS est représentative de la diversité des collectivités, des langues, des genres, des territoires, des compétences, des connaissances et de l'expérience de la précarité de l'approvisionnement en eau des Premières Nations membres du groupe au Canada.

(3) Le CCPNEPS est investi des fonctions principales suivantes :

a) Travailler avec les Premières Nations membres du groupe à assurer une supervision et un encadrement et à faire des recommandations à Services aux Autochtones Canada propres à favoriser l'élaboration et la mise en œuvre d'initiatives stratégiques prospectives, y compris notamment :

i) L'élaboration de la stratégie à long terme pour l'approvisionnement en eau et le traitement des eaux usées de Services aux Autochtones Canada dans les réserves des Premières Nations membres du groupe; et

ii) L'élaboration de la loi remplaçante;

b) Fournir à Services aux Autochtones Canada des conseils et des perspectives stratégiques propres à favoriser la viabilité à long terme pour de l'eau potable salubre dans les collectivités des Premières Nations; et

c) Appuyer l'établissement des besoins et des priorités du financement pour l'approvisionnement en eau et le traitement des eaux usées dans les collectivités des Premières Nations.

(4) Les parties établissent conjointement le mandat du CCPNEPS.

3.05 **Initiatives en matière de gouvernance des Premières Nations**

(1) Le Canada fournit neuf millions de dollars (9 000 000 $) de financement aux Premières Nations pour qu'elles élaborent leurs propres règlements et initiatives en matière de gouvernance jusqu'à l'exercice 2025/2026 (le « **Fonds pour la gouvernance de l'eau** »).

(2) La capitalisation du Fonds pour la gouvernance de l'eau s'effectue jusqu'à la période indiquée, que la loi remplaçante soit ou non adoptée, notamment dans les délais prévus.

(3) Le Fonds pour la gouvernance de l'eau aide les Premières Nations membres du groupe qui souhaitent élaborer leurs propres initiatives en matière de gouvernance de l'eau, notamment pour la recherche, l'obtention de conseils techniques, la rédaction de règlements et la mise en œuvre de projets pilotes dans les communautés des Premières Nations.

(4) Les parties établissent conjointement le mandat du Fonds pour la gouvernance de l'eau.

3.06 **Accord sur les mesures requises**

(1) Le Canada doit consulter sans délai chaque Première Nation membre du groupe qui l'avise que l'engagement n'est pas respecté ou qu'il cesse d'être respecté (chacune étant une « **Première Nation insuffisamment desservie** ») en vue de respecter l'engagement.

(2) Le Canada doit déployer tous les efforts raisonnables pour parvenir à un accord avec la Première Nation insuffisamment desservie précisant les mesures qui sont nécessaires pour respecter l'engagement (un « **accord de réparation** »).

(3) Le Canada et la Première Nation insuffisamment desservie doivent se conforment à l'accord de réparation.

3.07 **Règlement des différends concernant les mesures requises**

(1) Si le Canada ne parvient pas à un accord de réparation avec une Première Nation insuffisamment desservie après six (6) mois, le Canada et la Première Nation insuffisamment desservie soumettent chacun leur projet d'accord de réparation à un processus de règlement des différends (la « **procédure de règlement des différends relatifs à l'engagement** »).

(2) La procédure de règlement des différends relatifs à l'engagement sera élaborée conjointement par les parties et intégrera les pratiques de règlement des différends autochtones.

[Cet espace a été volontairement laissé en blanc]

LES PARTIES CONVIENNENT DES MODALITÉS CI-DESSUS et elles négocieront de bonne foi et feront tous les efforts raisonnables pour signer l'entente de règlement au plus tard le 27 août 2021, ou à toute autre date dont les parties peuvent convenir.

Nation des Cris de Tataskweyak

(signé) Doreen Spence
Cheffe Doreen Spence pour son propre compte et pour le compte de la Nation des Cris de Tataskeweyak
Date : Le 21 juillet 2021

Première Nation de Curve Lake

(signé) Emily Whetung
Cheffe Emily Whetung pour son propre compte et pour le compte de la Première Nation de Curve Lake
Date : Le 19 juillet 2021

Première Nation de Neskantaga

(signé) Wayne Moonias
Chef Wayne ~~Christopher~~ Moonias pour son propre compte et pour le compte de la Première Nation de Neskantaga
Date : Le 27 juillet 2021

Procureur général du Canada

(signé)
Catharine Moore/Scott Farlinger
Avocat du procureur général du Canada
Date : Le 29 juillet 2021

ANNEXE « A »

Plan d'action relatif aux avis concernant la qualité de l'eau potable à long terme : rapport d'étape aux deux semaines

Mise à jour : 25 juin 2021

Progression relativement aux AQEP à long terme depuis novembre 2015							
Région	AQEP LT en vigueur	N^bre de collectivités touchées par les AQEP LT	AQEP LT ajoutés depuis nov. 2015	AQEP LT levés depuis nov. 2015	N^bre d'AQEP LT désactivés depuis novembre 2015	AQEP en vigueur depuis 2 à 12 mois	AQEP levés en vigueur depuis 2 à 12 mois
ATL	[illegible]	0	[illegible]	[illegible]	0	1	[illegible]
QC	[illegible]	0	[illegible]	[illegible]	[illegible]	0	[illegible]
ON	[illegible]	26	[illegible]	[illegible]	3	2	[illegible]
MB	[illegible]	2	[illegible]	[illegible]	0	1	[illegible]
SK	[illegible]	4	[illegible]	[illegible]	2	3	[illegible]
AB	[illegible]	0	[illegible]	[illegible]	0	0	[illegible]
C.-B.	[illegible]	0	[illegible]	[illegible]	0	1	[illegible]
YK	[illegible]	0	[illegible]	[illegible]	0	2	[illegible]
Total	[illegible]	32	[illegible]	[illegible]	5	9	[illegible]

Mention.

- AQEP LT et autres éléments à considérer
- AQEP CT susceptible de devenir un avis à long terme
- AQEP levé depuis le dernier rapport

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves. *Le nombre de maisons et d'immeubles communautaires touchés n'est qu'une estimation et doit être confirmé avant son utilisation dans les rapports. **Les nouvelles dates cibles sont des estimations approximatives seulement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.										
Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
ON	Bearskin Lake	Bearskin Lake Community Centre/Youth Centre Semi-Public Water System (n° 17216) *Ne pas boire l'eau depuis mars 2006*	21/03/2006	21/03/2007	0	1	Les niveaux d'uranium sont supérieurs aux recommandations de l'Ontario.	Long terme : Mises à niveau majeures de la station, prolongement du réseau de canalisations Court terme : Camion à la citerne du centre communautaire	– La Première Nation a accepté une solution provisoire (installation d'une citerne au centre communautaire); projet approuvé – Des restrictions ont limité la mise en œuvre de la solution provisoire – Les représentants de SAC ont été informés par le conseil le 18 janvier 2021 que la nouvelle citerne avait été installée à l'aréna, la livraison de la citerne au centre jeunesse a été retardée; l'équipement été livré en février 2021 – Fin mars 2021, l'entrepreneur a été informé que la moitié des travaux de plomberie était terminée; l'entrepreneur recommandait un réservoir de 3 750 litres, plutôt que trois réservoirs de 1 100 litres (les petits réservoirs seront utilisés comme remplacement pour les citernes remplies par camion); l'équipe de gestion de projet (EGP) est d'accord – Avril 2021, nouveau réservoir sur place; à la demande de la collectivité, l'entrepreneur a retardé la mobilisation au 12 mai 2021; l'entrepreneur est arrivé sur les lieux le 8 juin 2021, les travaux sur le système d'eau doivent commencer la semaine du 14 juin 2021; l'entrepreneur a fait savoir qu'il faudra 7 à 14 jours pour terminer les travaux – Les représentants régionaux continuent les activités de sensibilisation, en respectant les autres priorités de la collectivité, y compris la santé publique pendant la pandémie – La solution à long terme, un projet intégral dont les coûts sont évalués à plus de 60 M$, tient compte des recommandations relatives à l'eau, aux eaux usées et aux services publics; on estime actuellement qu'il faudra de trois à quatre ans pour réaliser le projet non financé; des discussions en avril-mai 2021 avec la direction de la collectivité ont permis de convenir d'une approche en plusieurs phases; l'EGP, avec le conseil tribal de Windigo à la tête, travaille à l'élaboration de documents d'approbation pour la conception détaillée de la modernisation de la station de traitement d'eau et de l'étang d'épuration dans l'objectif d'amorcer les activités de conception en 2021-2022 – Soutien opérationnel fourni à la collectivité par le conseil tribal de Windigo, avec le soutien financier de SAC	07/2021

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves

Le nombre de maisons et d'immeubles communautaires touchés n'est qu'une estimation et doit être confirmé avant son utilisation dans les rapports.

***Les nouvelles dates cibles sont des estimations approximatives uniquement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.*

Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
ON	Beaverlodge Lake	Beaverlodge Lake Nursing Station Semi Private Water *AQEP depuis février 2020*	26/02/2020	26/02/2021	0	1	Puits d'eau souterraine sans traitement ni désinfection	Long terme : Installation d'un système de traitement pour l'immeuble. Court terme : s.o.	Beaverlodge Lake a déclaré l'état d'urgence en raison de la COVID-19 avec restrictions subséquentes sur les déplacements dans la collectivité. Une première rencontre entre SAC et le Conseil tribal de Windigo a eu lieu le 28 juillet 2020; Windigo a collaboré avec la collectivité pour élaborer une proposition relative à l'évaluation du puits, la conception d'un système de traitement approprié et une maintenance/surveillance continue. SAC collabore avec la Première Nation et le pôle consistant à l'eau du conseil tribal de Windigo pour la conception, l'installation et l'exploitation d'un système de traitement des eaux autonome pour le poste de soins infirmiers et la résidence. SAC a reçu une demande de financement de la Première Nation qui passe un aperçu de la portée, du calendrier et du coût du projet proposé; le financement a été approuvé et le conseil de la Première Nation de Windigo a informé les représentants de SAC que les services d'une firme d'ingénierie avaient été retenus pour commencer les travaux en vue de définir le système de traitement de la source d'eau souterraine existante; le calendrier du projet est à venir. L'EGP a été consulté; le financement a été accordé. Windigo a envoyé un courriel au chef le 12 avril pour confirmer l'approbation du lancement du projet. Le 5 mai 2021, SAC a été informé que la collectivité avait donné à l'ingénieur-conseil l'autorisation de procéder; l'expert-conseil collabore avec l'EGP pour prendre des dispositions afin de se rendre dans la collectivité et réaliser l'évaluation du site; une évaluation sur place est prévue le 17 juin 2021; le nouveau calendrier du projet sera alors établi. L'opérateur local de la SFE a offert son soutien pour l'analyse de qualité de l'eau brute. Défis continus liés à la coordination et à la communication.	30/9/2021
ON	Chippewas de Nawash	Cape Croker Public Water System *AQEP depuis janvier 2018*	31/01/2019	31/01/2020	264	20	Le réseau satisfait aux exigences concernant le traitement.	Long terme : Nouvelle station de traitement et prolongement du réseau de distribution. Court terme : Option non privilégiée par la Première Nation.	**Long terme** : Conception dans une proportion de 99 % reçue pour les travaux de distribution; conception dans une proportion de 99 % pour les travaux de traitement; attendue en juillet 2021 a été reçue par SAC et est à l'étude; fournisseur des services de traitement sélectionné; évaluation terminée de la préqualification de l'entrepreneur général pour le réseau de distribution; préqualification en cours pour l'entrepreneur général du Conseil tribal de Windigo. La Première Nation a demandé une plus grande portée du projet pour que le réseau de distribution et le débit pour les services d'incendie répondent les normes sur les niveaux de service (NNS) de SAC et l'approbation du financement; discussions avec la Première Nation pour une portée en conformité avec les NNS de SAC. SAC a rencontré la collectivité en janvier 2021; les coûts estimatifs sont passés de 23 M$ à 63 M$. La conception dans une proportion de 99 % pour les travaux de distribution soumise à SAC le 26 mars 2021 a été examinée et des commentaires ont été émis. Rencontre entre SAC et le chef en février 2021 pour discuter de la demande de la Première Nation d'approuver le nouveau C.A.T. de 63 M$ et de financer tous les éléments du projet au-delà des NNS; la collectivité a indiqué lors d'une rencontre subséquente qu'elle était favorable à un partage parties des coûts pour les éléments en dehors des NNS; la collectivité a indiqué qu'elle pouvait fournir une contribution de 700 000 $. Révisions apportées à la demande de changement en fonction de l'examen national de niveau 1 et deux entretiens de l'ingénieur-conseil; information transmise à la collectivité et approuvée; soumis par les représentants régionaux pour approbation et examen; le projet doit être présenté en juin 2021. **Solution provisoire** : station communautaire privilégiée; la Première Nation a initialement choisi de ne pas poursuivre cette option, mais l'a plutôt acceptée; la Première Nation a fourni à SAC la correspondance officielle le 27 août 2020 confirmant sa demande de rescinder à la solution provisoire pour poursuivre le financement au projet à long terme.	10/2023
ON	Deer Lake	Deer Lake Public Water System *AQEP depuis octobre 2014*	15/10/2019	15/10/2020	220	5	Échantillonnage incohérent	Long terme : À déterminer au moyen d'une étude de faisabilité. Court terme : Amélioration des activités et de la surveillance.	AQEP en vigueur en raison d'incohérences opérationnelles; les opérateurs doivent soumettre à l'ASEP des échantillons bactériologiques pendant quatre semaines avant de réaliser des échantillonnages consécutifs pour analyse en laboratoire. La collectivité reçoit du soutien opérationnel fourni par le conseil tribal de Keewaytinook Okimakanak (KO), suite le soutien financier de SAC. Les hauts responsables de SAC ont rencontré le chef et le conseil en septembre 2020 pour encourager une amélioration des activités. Le pôle a offert une formation aux opérateurs sur les techniques d'échantillonnage; le pôle a fait état d'une amélioration du contrôle de la qualité d'eau et des autres fonctions opérationnelles en janvier 2021; en février 2021, le contrôle de la qualité d'eau n'a pas été effectué à la fréquence requise. Le 12 mai 2021, le pôle de KO a informé les responsables de SAC qu'il n'y a pas de problèmes techniques à court terme; le média filtrant et la valve de contrôle du débit ont été remplacés avec succès; les essais effectués le 29 avril 2021 indiquaient que l'eau de la station était conforme aux recommandations applicables; l'échantillonnage devait être fait chaque semaine pour assurer la conformité; problèmes opérationnels récurrents.	À déterminer

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves

***Le nombre de maisons et d'immeubles communautaires touchés n'est qu'une estimation et doit être confirmé avant son utilisation dans les rapports.**

****Les nouvelles dates cibles sont des estimations approximatives uniquement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.**

Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
									SAC travaille avec le collectivité pour faire progresser l'étude de faisabilité pour les besoins à long terme. Le financement de cette étude et les réparations immédiates au système existant (remplacement des filtres) ont été approuvés par SAC en décembre 2020; approximativement concurrentes pour l'étude de faisabilité finale, évaluation des propositions terminée et expert-conseil choisi en avril 2021; mission de lancement le 26 avril; mission prévue du document d'information/rapport sur les besoins en juillet 2021 Les responsables régionaux de SAC collaborent avec le pôle pour discuter avec la collectivité au besoin de surveillance et pour offrir du soutien.	
ON	Première Nation d'Eabametoong	Eabametoong Public Water System (n° 7132) AQEP depuis août 2001	01/08/2001	01/08/2002	287	12	Le procédé de traitement et le réseau de distribution ne sont pas fiables et ne respectent pas les recommandations.	Long terme : Prolongement, modernisation et mise en service de la station de traitement d'eau existante Court terme : s.o.	- Prolongement, modernisation et mise en service terminés - Inspection du MEPP en octobre 2019: les déficiences opérationnelles ont été corrigées - La Première Nation a demandé un financement pour d'autres travaux à la STE et pour nettoyer le système d'eaux usées avant de lever l'AQEP. le financement a été approuvé en octobre 2020. les travaux restent en suspens en raison des problèmes touchant la chaîne d'approvisionnement Inspection de garantie le 16 novembre 2020; certaines parties des travaux sur les eaux usées ont été achevées avant janvier 2021, les restrictions en raison de la COVID ont entravé les travaux; l'entrepreneur a fait savoir que le calendrier des travaux sur les dernières lacunes (dégrilleur de sacs, palans, travaux de génie civil mineurs) sera établi la semaine du 14 juin 2021 L'échantillonnage indique que la moyenne trimestrielle de quatre résultats d'analyse des THM et AHA en 2020-2021 est inférieure à la concentration maximale admissible L'ASEP de Matawa a indiqué le 7 mai 2021 que des éclaircissements (éclaircissements et la résolution des problèmes opérationnels étaient nécessaires avant la publication d'une recommandation Le problème du financement d'exploitation et d'entretien a été soumis en janvier 2020; la Première Nation voulait exploiter le système pendant un an avant de faire la levée; demande de financement d'exploitation et d'entretien à 100 %, la collectivité n'a pas transmis de conclusions sur les coûts d'exploitation et d'entretien; correspondance entre SAC et le chef en conseil en décembre 2020 - Réunion le 26 mars 2021: la collectivité est ouverte à la venue de travailleurs externes; réunions régulières du PCGP; réunion le 10 mai 2021 pour discuter des problèmes d'eaux usées, lien avec le retrait de l'AQEP LT; la Première Nation élabore une demande de financement afin d'entreprendre une étude/évaluation Selon Mikrotreat(entrepreneur chargé du nettoyage du système d'eaux usées, de matériel/équipement doit arriver le 23 avril; SAC n'a reçu aucune mise à jour de l'état La correspondance entre le chef et SAC indique l'intérêt pour la résolution de l'APEO LT une fois un plan mis en place pour corriger les lacunes en matière d'exploitation et de construction En raison des problèmes touchant le réseau d'égout, la STE est limitée par intermittence afin de contrôler le débit d'eaux usées; la collectivité a demandé un approvisionnement et un remboursement pour l'eau embouteillée; SAC a approuvé le financement de l'eau embouteillée pour 2021-2022 Soutien opérationnel fourni par le conseil tribal de Matawa, avec le soutien financier de SAC	À déterminer
ON	Marten Falls	Marten Falls Public Water System (n° 7138) AQEP depuis juillet 2015	16/07/2005	15/07/2006	91	0	Le système de traitement produit de l'eau qui ne respecte pas les recommandations.	Long terme : Remplacement du système de traitement à la station existante et modernisation des installations Court terme : s.o.	- La construction a été achevée en mars 2016, la troisième ronde de mise en service a été achevée avec succès en juin 2019 - Fin du rinçage du réseau de distribution en juillet 2016 - Le rapport d'évaluation du MEPP (juillet 2019) a révélé des déficiences opérationnelles, les problèmes ont été réglés en novembre 2019. L'échantillonnage répond aux exigences, mais l'ASEP de Matawa ne recommande pas encore la levée de l'avis. L'ASEP a indiqué que quatre séries d'échantillons trimestriels pour l'analyse des THM et des AHA (août, octobre et décembre 2020 et février 2021) se situaient dans les limites réglementaires applicables, bien en deçà de la concentration maximale admissible moyenne par trimestre Inspection de garantie terminée: au 26 mars 2021, toutes les lacunes de la STE ont été confirmées comme ayant été corrigées; rapport d'achèvement présenté le 19 mars 2021 Lettre du chef en janvier 2021 décrivant les préoccupations de la collectivité quant à l'exploitation et l'entretien, le fonctionnement et l'approche en matière de gestion d'actifs à venir Réunion le 22 avril 2021 pendant laquelle le chef a fait part de la lettre du 8 avril 2021 envoyée au ministre pour obtenir des engagements relatifs à a) un financement d'exploitation et d'entretien à 100 % fondé sur des données réelles; b) un système de gestion des actifs; c) la proposition de Matawa pour un fonctionnement en tout temps par pôle	À déterminer

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									Dans la correspondance de l'ASEP de Matawa datée du 5 mars 2021, la Première Nation a été avisée que l'AQEP demeurerait en vigueur jusqu'à ce que deux échantillons d'eau bactériologiquement convenables soient prélevés à 24 heures d'intervalle pour se conformer aux exigences applicables. L'échantillonnage n'a pas été fait et est peu susceptible de se faire sans qu'on règle d'abord les préoccupations du chef et du conseil à l'égard du financement d'exploitation et d'entretien, de l'approche de gestion des actifs et du fonctionnement. Soutien opérationnel fourni par le conseil tribal de Mawaa, par l'intermédiaire du pôle de l'eau potable et des eaux usées, financé par SAC.	
ON	Mishkeegogamang	Mishkeegogamang Ten Houses Systems (SA) (n° 2189) *AQEP depuis juin 2019*	10/06/2019	10/06/2020	30	3	Le système de traitement ne satisfait pas aux exigences d'ESEGS. Problèmes d'approvisionnement en produits chimiques.	Long terme : Nouvelle station de traitement d'eau. Court terme : Amélioration du système de traitement	- Provisoire – Nouveau système mis en novembre 2020 - L'ASEP a indiqué que quatre semaines d'échantillonnage étaient nécessaires pour confirmer la sécurité; l'opérateur responsable général (ORG) soutient les opérateurs; des défis opérationnels persistent. Échantillonnage par l'ASEP le 26 janvier 2021: résultats bactériologiques relatifs à la teneur en manganèse le 2 février 2021; l'OFNTSC a participé activement. Février 2021, le COVID a retenu le soutien sur place du pôle; défis opérationnels toujours présents. *Le chef a informé le personnel en mars 2021 de l'importance d'une surveillance périodique; l'OFNTSC a relancé sa volonté de travailler directement avec des opérateurs locaux.* Soutien opérationnel offert par l'OFNTSC, par l'intermédiaire du centre de gestion de l'eau potable et des eaux usées avec le soutien financier de SAC; l'ORG de retour sur le site la semaine du 26 avril 2021 pour une période de deux semaines. Le 5 mai 2021, l'ORG a confirmé que les essais effectuées par conformité pour le manganèse. l'ORG a signalé une amélioration des pratiques de surveillance de l'eau avec la réalisation à l'interne de trois séries d'analyses bactériologiques. le 17 mai 2021 l'ORG a communiqué de très bons résultats par suite de modifications mineures du système de traitement. l'ORG prévoit retourner sur le site le 7 juin 2021. Le 28 mai 2021, l'ASEP a indiqué que, avec une surveillance, les résultats des essais soient été soumis pendant trois semaines. *Le 1er juin 2021, l'ORG a signalé que les échantillons bactériologiques requis n'avaient pas été prélevés.* La phase de conception de la modernisation à long terme de la STE est terminée; le C.A.T. est passé de 5,75 M$ à 9 M$, la Première Nation a reçu l'approbation du financement pour la phase de construction. l'appel d'offres concurrentiel a pris fin. toutes les soumissions dépassaient le budget approuvé pour le projet. SAC a approuvé un financement pour soutenir un nouveau C.A.T. de 11,2 M$. Phase de construction en cours. réalisation prévue en novembre 2021. la construction respectera le calendrier.	07/2021
ON	Première Nation des Mississaugas de Scugog Island	Scugog Community Water System 1 Public Water System (n° 15899) *AQEP depuis octobre 2008*	23/10/2008	23/10/2009	9	0	Les systèmes de traitement ne satisfont pas aux exigences d'ESEGS.	Long terme : Nouvelle station de traitements, stockage élevé et réseau de distribution Court terme : s.o.	- Construction de nouveaux puits et d'une station de traitement, stockage élevé, modernisation de la station de pompage et réseau de distribution terminés; des travaux mineurs d'aménagement paysager et d'autres éléments devront être réalisés et corrigés au printemps 2021 Les services d'un ASEP ont été retenus et les échantillons de mise en service satisfont aux exigences contractuelles Dernière inspection pour le contrat relatif à la STE eau et le réseau de distribution est en cours. il reste plusieurs éléments (aménagement paysager, etc.) en un plan d'action est en voie d'élaboration par l'entrepreneur pour les corriger; période de garantie expirée le 22 mai 2021	09/2021
ON	Première Nation des Mississaugas de Scugog Island	Scugog Community Water System 2 Public Water System (n° 15900) *AQEP depuis octobre 2008*	23/10/2008	23/10/2009	6	0				09/2021
ON	Première Nation des Mississaugas de Scugog Island	Scugog Bend Office Semi-Public Water System (n° 17224) *AQEP depuis octobre 2008*	23/10/2008	23/10/2009	0	1			La Première Nation exige que 55 maisons alimentées actuellement par des puits privés soient raccordées au nouveau réseau avant la levée de l'avis; comprend des travaux à l'intérieur des maisons; la COVID a occasionné des retards Rétrocontrôle entre le chef et le conseil en décembre 2020: a indiqué que le contrat pour le raccordement aux services publics de deux bâtiments publics et de deux bâtiments semi-publics, en plus de 55 maisons avait été attribué. travaux devraient être terminés d'ici le 31 mars 2021; le chef a demandé au SAC un soutien financier pour le contrat de construction d'environ 750 000 $. SAC a approuvé le financement supplémentaire Retards dans la construction attribuables aux restrictions de la COVID; le chef et le conseil ont reposé les travaux au 11 février 2021 par souci de sécurité à l'égard des travaux à l'intérieur des maisons; réunion de l'EGP le 24 février 2021 pour confirmer le calendrier de démarrage et les paramètres de santé et de sécurité. la fin des travaux n'était pas prévue avant juillet 2021 - Les travaux de construction ont commencé. l'entrepreneur a effectué des forages directionnels sur diverses propriétés dans la collectivité et a installé des raccordements au service d'eau aux limites de propriété	09/2021
ON	Première Nation des Mississaugas de Scugog Island	Scugog Health Centre Semi-Public Water System (n° 17225) *AQEP depuis octobre 2008*	23/10/2008	23/10/2009	0	1				09/2021

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									- Le 22 avril 2021, le chef et le conseil ont informé l'entrepreneur qu'en raison des restrictions provinciales liées à la COVID, aucun travail ne peut être effectué dans sa municipalité jusqu'à ce que le confinement soit levé; en raison d'engagements contractuels antérieurs, le retour de l'entrepreneur sur le site n'aura pas lieu avant août 2021 - Solution opérationnelle fournie par le conseil tribal d'Ogemawahj, par l'intermédiaire du centre de gestion de l'eau potable et des eaux usées, financé par SAC	
ON	Mississaugamiing	Mississaugamiing Public Water System AQEP depuis mai 2020	15/05/2020	15/05/2021	18	5	Arrêt nécessaire pour permettre les travaux de construction afin de mettre à niveau l'installation	Long terme: Modernisation des procédés de traitement et de désinfection, améliorations structurelles du bâtiment, mise à niveau des systèmes mécaniques et électriques Court terme : s.o.	AQEP en vigueur pour permettre les arrêts nécessaires aux travaux de modernisation, y compris le remplacement du média filtrant. AQEP reste en vigueur en raison des défis opérationnels touchant une chaîne de traitement; problèmes du réseau de distribution résolus. La modernisation de la station et des procédés de traitement se poursuit; le média filtrant a été remplacé et une couche biologique s'est formée sur le nouveau filtre à sable lent. Le 21 janvier 2021, réunion de l'EGP : l'entrepreneur est informé d'autres retards; l'équipement de matériel est retenu à la frontière Canada–É.-U., en attente d'une autorisation d'entrer au Canada. Le 23 février 2021, l'entrepreneur a tenté un démarrage; cependant, plusieurs composants requièrent d'autres ajustements; l'entrepreneur collabore avec des sous-traitants pour procéder aux rajustements et prévoit entreprendre les procédures de démarrage le 23 mars 2021. L'expert-conseil a été saisi pour les activités de démarrage en sont révélées infructueuses, puisque le système SCADA n'avait pas été programmé ou préparé par le sous-traitant; le démarrage était prévu le 26 avril 2021; cependant, d'autres problèmes avec les systèmes UV ont été relevés et les pièces nécessaires n'étaient pas encore retrouvés sur place; tentative de démarrage manquée le 3 mai 2021, les analyseurs ne fonctionnaient pas comme ils auraient été conçus, une reprise le 11 mai 2021 a aussi échoué. Reprise la semaine du 17 mai 2021; cependant, les essais de performance ont échoué parce que le système n'répondait pas aux exigences pour le débit maximal; les travaux sont en cours pour régler les problèmes liés à la performance; le 10 juin 2021, l'EGP a indiqué que l'entrepreneur poursuivait le travail pour corriger les problèmes touchant l'ozoneur, aucun calendrier n'a été fourni pour l'achèvement des travaux et le démarrage; l'essai de performance doit être refait; une réunion de l'EGP est prévue la semaine du 14 juin 2021. - Solution opérationnelle offert à la collectivité par le conseil tribal de Pwi-Di-Goo-Zhing, par l'intermédiaire du centre de gestion de l'eau potable et des eaux usées, financé par SAC	À déterminer – Le calendrier du projet n'est pas encore établi.
ON	Mohawks de la baie de Quinte	Ali MBQ Semi- Public Water System (n° 17230) AQEP depuis juin 2008	06/08/2008	06/08/2009	64	1	L'approvisionnement en eau soulèverait risque d'être contaminé.	Long terme: Modernisation de la station de traitement d'eau de Desoronto, prolongement de la conduite principale de la station d'eau (phase 2), prolongement de la conduite principale (phase 3) Court terme : s.o.	- Le Première Nation considère tout les systèmes touchés comme un seul système - La modernisation de la station de Deseronto satisfait aux exigences de l'entente de service municipale (ESTM) - Achèvement de la phase 2 du prolongement de la conduite d'eau principale et du château d'eau, mise en service du réseau le 10 novembre 2020; travaux terminés - Appel d'offres pour la phase 3 de la construction clôturé en septembre 2020; une soumission reçue dépassant le budget approuvé d'environ 6 M$; la Première Nation et l'EGP ont envisagé une réduction de la portée et retardé la construction au printemps 2021; les négociations ont réduit les coûts d'environ 1 M$ En octobre 2020, les Mohawks de la baie de Quinte ont été saisi que des retards avaient une incidence sur le projet de réhabilitation du pont Skyway du MTO et demandé que le projet soit avancé afin d'obtenir l'approbation du financement de SAC pour la phase 3 au prix de l'appel d'offres. SAC a approuvé la pleine portée et les coûts du projet; contrat attribué; construction en cours Les travaux subiront aux exigences nécessaires pour lever les cinq avis touchant la collectivité La Première Nation est préoccupée par les puits privés près du lac Ontario qui ne sont pas visés par la phase 3 ou le projet d'infrastructure Canada; les représentants de SAC travaillent de concert avec la collectivité pour trouver des solutions La Première Nation est préoccupée par la contamination du sol (carburant) découverte sur le coté de la construction; l'entrepreneur doit installer une conduite d'eau principale avec une gaine en plastique isolante autour de la conduite en présence de contamination Semaine du 24 mai 2021, l'EGP a indiqué que le forage dirigé sous la rivière pour agrandir le réseau de distribution avait échoué en raison de conditions imprévues au sol; l'expert-conseil a examiné les options, y compris la possibilité de forer plus en profondeur pour en tenir plus sur sa viabilité; une nouvelle conception de la conduite pourrait être nécessaire, possibilité de retard Expert-conseil/entrepreneur préoccupé par l'état de la conduite d'eau principale de Johnson-la Lionil; le plan de projet prévoit le remplacement à la conduite d'eau existante en tenant compte de réparations mineures; rapport de défaillance examiné et, compte tenu	09/2021
ON	Mohawks de la baie de Quinte	MBQ Airport Public Water System (n° 17227) AQEP depuis octobre 2003	17/10/2003	17/10/2004	10	0	Désinfection insuffisante			09/2021
ON	Mohawks de la baie de Quinte	MBQ Bayview Vacant Apartments Public Water System (n° 17228) AQEP depuis juin 2008	06/08/2008	06/08/2009	4	0	L'approvisionnement en eau soulèverait risque d'être contaminé.			09/2021
ON	Mohawks de la baie de Quinte	MBQ Clifford Maracle's Well Public Water Supply (n° 17229) AQEP depuis janvier 2012	20/01/2012	20/01/2013	inconnu	inconnu	La bactérie E. coli et les coliformes totaux sont présents. Le système de traitement n'est pas entretenu.			09/2021
ON	Mohawks de la baie de Quinte	MBQ Trailer Park Public Water System (n° 17231) AQEP depuis juin 2008	06/08/2008	06/08/2009	9	0	L'approvisionnement en eau soulèverait risque d'être contaminé.			09/2021

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									de l'état de la conduite principale, un remplacement pourrait être nécessaire, les options sont évaluées et l'EGP cherche à calculer les coûts supplémentaires pour le projet; le 10 juin 2021, l'analyse des options se poursuit.	
ON	Muskrat Dam Lake	Muskrat Dam Public Water System (A710042) AQEP depuis octobre 2003	24/10/2003	24/10/2004	88	3	Le système de filtration est inadéquat et la capacité de la station est insuffisante	Long terme : Modernisation des systèmes de filtration et de désinfection Court terme : s.o.	La modernisation des systèmes de filtration et de désinfection est achevée et mise en service a commencé en juillet 2019; elle a été interrompue en mars 2020 en raison de la COVID; elle a redémarré et a été achevée en juillet 2020. En septembre 2020, l'AEPP a remis une lettre au chef et au conseil recommandant la révocation de l'AQEP LT. En octobre 2020, le chef a indiqué son appui à la révocation de l'AQEP; le 7 octobre, un nouveau chef et un nouveau conseil ont été élus; après la réunion avec le chef adjoint le 5 novembre, l'AEPP a dit nouveau recommandé au nouveau chef et au nouveau conseil la révocation de l'AQEP. Le 16 décembre 2020, à la demande de la Première Nation, SAC a discuté de la révocation de l'AQEP; le chef a indiqué qu'aux termes du mandat précédent (2012-2015), il voulait une nouvelle STE (et un nouvel emplacement) en raison du risque de contamination d'une carrière désaffectée; le chef a demandé à SAC de cesser de faire pression pour une révocation de l'AQEP. SAC a déjà financé un projet d'assainissement des sols contaminés. Une correspondance a été envoyée par SAC offrant son assistance en vue appui à la révocation de l'AQEP; SAC a assuré un suivi en mars 2021; la collectivité a indiqué qu'elle communiquera avec le ministère lorsqu'elle sera prête. Le 28 mai 2021, l'AEPP a informé SAC que les résultats des essais selon les recommandations de l'AEPP n'ont pas été reçus depuis l'automne 2020; la recommandation de l'AEPP de levée l'avis à compter de septembre 2020 exige une autre série d'essais pour confirmer que l'eau respecte les recommandations. Le 7 juin 2021, un soutien technique en tout temps a été demandé par le chef; l'opérateur local ayant été aux prises avec des problèmes qui nécessitaient un arrêt; l'opérateur aurait travaillé avec le fournisseur de traitement pour ajuster le processus afin de tenir compte des fluctuations de la qualité de l'eau brute; ses progrès ont été réalisés, la production d'eau a été relancée; cependant, à la demande de la Première Nation, SAC a approuvé le soutien sur place. La phase de garantie expire le 27 juillet 2021 et SAC a demandé à l'expert-conseil de fournir les dates d'inspection. Soutien opérationnel fourni par le conseil tribal d'SFNA, avec le soutien financier de SAC.	À déterminer
ON	Neskantaga	Neskantaga Public Water System (# 7137) AQEP depuis février 1995	01/02/1995	01/02/1996	76	4	Le système de traitement ne respecte pas les recommandations; eaux en choix inadéquats	Long terme : Mise à niveau et agrandissement de la station de traitement actuelle Court terme : s.o.	En raison de retards, la Première Nation a mis fin à un contrat de mise à niveau en février 2019; un nouvel entrepreneur a été engagé. Concernant achevés, la Première Nation exploitera le système pendant un an avant que l'AQEP ne soit levé; demande de financement d'exploitation et de maintenance à 100 %; lettre reçue en février 2020 décrivant les demandes. Des travaux pour le réseau de distribution et les eaux usées sont nécessaires; approbation obtenue le 7 octobre 2020; l'étude de 4 197 305 $; C.A.T. revu à 16 436 746 $. Le 15 octobre 2020, des stations ont été aménagées sur l'eau du réservoir; on a conclu à la présence d'huile minérale (non toxique) présente de la pompe, le réseau de distribution a été purgé; les tests effectués par la suite ont confirmé l'absence d'huiles et de graisses. Le collectivité a été évacuée pour revenir le 23 décembre 2020; le nouveau réseau est en fonction depuis le 12 novembre 2020. Des tests ont été effectués le 13 décembre 2020; l'eau respecte les exigences; financement de SAC et soutien sur place à temps plein de l'ADE. Les travaux se poursuivent pour régler les problèmes liés aux eaux usées; un nouveau camion de pompage permet de gérer provisoirement les débits d'eaux usées; les travaux du poste de relèvement achevés; les pompes ont été remplacées; son lubrifiants, joints de relèvement en mesure de pomper son contenu vers la lagune; l'expert-conseil a recommandé de remplacer le conduite de refoulement; financement approuvé; les prix des soumissions ont dépassé l'estimation de l'expert-conseil et le budget approuvé de 1,34 M$; la région appuie le coût supplémentaire; l'entrepreneur a été embauché, le tuyau de conduite de refoulement de remplacement a été livré à la collectivité. (Installation devait commencer à la fin de mai et être achevée à la fin de septembre 2021. La Première Nation était en confinement; tous les entrepreneurs sont partis. À l'exception d'ADE, en date du 11 juin 2021, le confinement est maintenu et aucun travail n'est entrepris pour régler le problème des eaux usées ou du rendement de la STE. le 8 juin 2021, la Première Nation a indiqué qu'une décision sur la levée des restrictions devrait être prise le 11 juin 2021 au plus tard.	À déterminer

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Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
									Un dépassement des coûts de 4 M$ a été signalé, faisant passer le C.A.T. de 16,5 M$ à 20 M$. Les représentants de SAC se préparent à soumettre le projet aux autorités appropriées compétentes une fois les éventuelles préoccupations réglées.	
ON	Nibinamik	Nibinamik Public Water System (n° 7138) AQEP depuis février 2013	05/02/2013	05/02/2014	101	3	Le réseau est inadéquat et ne respecte pas les recommandations. Amélioration de la capacité requise	Long terme : Mise à niveau et agrandissement de la station actuelle, et travaux de distribution Court terme : Option non privilégiée par la Première Nation	Long terme : Planification de la mise à niveau et de l'agrandissement de la station terminée; une modification apportée à la conception en novembre 2019 en vue d'obtenir l'achèvement Équipement acheté à l'avance; contrat de construction attribué; matériaux et équipement acheminés au site à l'hiver 2020 La Première Nation a fermé en mars 2020 en raison de la COVID-19 La construction n'a pas commencé; la Première Nation a donné la priorité à un projet de centrale au diesel en cas d'urgence L'analyse des options a été effectuée par l'expert-conseil pour faire progresser la construction du projet d'approvisionnement en eau en 2020; la Première Nation a lancé, par la correspondance en juillet 2020, pour aviser l'entrepreneur que la construction a été retardée jusqu'au printemps 2021 en raison des restrictions d'accès de la collectivité SAC a envoyé une lettre en décembre 2020 pour accuser réception de la décision de la Première Nation de réaliser d'ici un le projet d'approvisionnement en eau en raison de la COVID-19 et de la disponibilité de l'hébergement Des matériaux et de l'équipement relatifs à l'hébergement ont été livrés au moyen de la route d'hiver 2021 Réunion du CEGP le 20 avril 2021 : l'entrepreneur devait être sur place jusqu'au 5 mai pour la préparation du camp; la construction devait commencer le 10 mai 2021 au lieu du 25 mai 2021 La réunion de lancement des travaux de construction a eu lieu le 6 mai 2021; l'entrepreneur a confirmé que la construction des fondations commencerait le 14 mai La Première Nation était en conformement compté en raison de la COVID et de deux décès dans la collectivité; l'entrepreneur était censé revenir le 25 mai 2021, mais la Première Nation lui a demandé de reporter son retour L'CEGP s'est réuni le 7 juin 2021, la Première Nation a accepté la prolonge de la COVID-19 révisé de l'entrepreneur général et a approuvé la reprise des travaux de construction; l'entrepreneur a coordonné la remobilisation au site, date cible du 14 juin 2021; le calendrier révisé du projet suivra Provisoire : La solution provisoire de la station jumelle de traitement par membrane peut remplacer le traitement existant) n'a pas été acceptée par la Première Nation Soutien opérationnel fourni à la collectivité par le conseil tribal de Matawa, avec le soutien financier de SAC	01/2022
ON	North Caribou Lake	North Caribou Lake Public Water System AQEP depuis mars 2020	03/03/2020	03/03/2021	291	7	Le système ne peut pas répondre à la demande ni ne respecte pas les exigences relatives au traitement.	Long terme : Agrandissement de la station et remplacement du système de traitement Court terme : À déterminer	Une étude de faisabilité a été menée quant aux besoins à long terme en matière d'eau potable et d'eaux usées, mais aucune solution privilégiée n'a été proposée. le principal problème a trait à la capacité. l'âge de l'équipement et l'impossibilité de le réparer rendent ce problème difficile à régler La Première Nation a terminé de réparer et réparer les fuites du réseau de distribution ce qui comprend l'apport de réparation de plomberie résidentielle visant à réduire la consommation, la collectivité a réparé trois sections du réseau de distribution. la recherche de fuites effectuée par la suite n'a révélé aucun autre problème. la station de traitement de l'eau fonctionne en tout temps afin de répondre à la demande. grâce aux réparations apportées au réseau de distribution par la collectivité, l'approvisionnement n'a plus à être interrompu pour permettre aux réservoirs de se remplir La Première Nation exige que l'on s'engage à mettre en œuvre une solution à long terme non finançée pour l'eau potable et les eaux usées avant que soit envisagée une solution provisoire pour la station de traitement de l'eau Des travaux sont en cours pour faire progresser l'élaboration d'une solution à long terme pour l'eau potable en fonction des recommandations de l'étude de faisabilité. le feu vert à cet effet dépendant en attente la documentation du projet a été transmise à la Première Nation pour examen et approbation Des solutions provisoires ont été cernées si la location d'un ou de plusieurs systèmes de traitement conteneurisés est recommandée. l'accroissement des capacités d'entreposage/ajout à titre de solution provisoire est jugé techniquement et financièrement impossible Réunion tenue le 14 mai 2021, la Première Nation s'est concentrée sur l'examen de la demande d'approbation de projet (DAP) pour la modernisation de la STE. la solution provisoire est considérée comme un projet distinct. la Première Nation n'a pas confirmé s'on prête à tenir l'avis si une solution provisoire était mise en œuvre – Commodités. fondée sur l'examen de la DAP par la Première Nation reçue le 28 mai 2021, examen final par la Première Nation et SAC en cours, réunion du MPP et du membre de l'ingénieur-conseil en conception partagée avec la Première Nation en vue des prochaines étapes Les documents d'approbation de la solution provisoire sont en cours d'élaboration	À déterminer – Le calendrier du projet n'est pas encore établi

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves *Le nombre de maisons et d'immeubles communautaires touchés n'est qu'une estimation et doit être confirmé avant son utilisation dans les rapports. **Les nouvelles dates cibles sont des estimations approximatives uniquement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.										
Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
ON	North Spirit Lake	North Spirit Lake Public Water System (n° 7126) *AQEP depuis juin 2019*	05/04/2019	05/04/2020	36	5	Fuites dans le réseau de distribution d'eau; la station de traitement de l'eau présente des problèmes de défaillance et de capacité Problèmes d'exploitation et d'entretien	Long terme : Entretien et rénovation de la station et du réseau de distribution; améliorations à l'exploitation Court terme : s.o.	Les opérateurs locaux sont difficiles à engager; la Première Nation a engagé un opérateur non accrédité. Le pôle a augmenté la fréquence de ses visites et de son soutien à distance. Le réseau de distribution a subi des réparations supplémentaires; des pompes à haute pression ont été remplacées et un commutateur de transfert a été installé pour le système d'alimentation de secours requis; trois nouvelles pompes à haute pression ont été installées en octobre 2020. L'installation du commutateur de transfert pour le système d'alimentation de secours ou les pompes à incendie a été montée en raison du manque de disponibilité de l'entrepreneur (results de la COVID); l'entrepreneur a été mobilisé, mais des pièces supplémentaires étaient nécessaires. Les travaux comprennent la commande de deux unités de contrôle du chlore et d'un système de protection contre les incendies pour l'école de la collectivité; le pôle K/O a indiqué que l'automatisation de trois pompes à haute pression et de contrôleurs programmables a été effectuée. Le rinçage du réseau de distribution a été retardé. En février 2021, il n'y avait aucun accès à la collectivité en raison de la COVID; le 16 avril 2021, le calendrier révisé n'a pas été établi; le 26 avril 2021, la collectivité a indiqué qu'elle aimerait une étude de faisabilité sur une solution à long terme (station à la fin de vie utile). SAC a rédigé une demande de financement pour le compte de la collectivité et l'a partagée aux fins d'examen et d'approbation le 5 mai 2021; la réunion prévue pour le 19 mai 2021 a été reportée au 27 mai. SAC a été informé par le pôle K/O que les travaux relatifs au commutateur de transfert et à la génératrice de secours ont été achevés le samedi du 19 mai 2021; des génératrices d'usine ont été reçues et devaient être installées le samedi du 31 mai 2021; le rinçage du réseau de distribution est prévu pour le semaine du 31 mai 2021; SAC n'a pas obtenu de mise à jour. Les postes de relèvement des eaux usées sont fonctionnels grâce au travail d'opérateurs locaux et à la télé-assistance du pôle. Le pôle K/O a indiqué qu'il ne peut pas confirmer que la station est surveillée; les essais n'ont pas lieu, le pôle K/O continue de conseiller le chef et le conseil quant aux problèmes opérationnels à régler.	À déterminer
ON	Northwest Angle No. 33	East Pump house Plant Public Water System (partie du Angle mid Public Water System) (n° 7126) *AQEP depuis avril 2011*	11/04/2011	11/04/2012	17	3	Station de pompage est : désinfection inefficace	Long terme : Nouvelle station de traitement de l'eau centralisée à Angle Inlet Court terme : s.o.	Des solutions provisoires permettant la levée de l'avis ont été envisagées, mais ce ne sont pas arrivées pompes ou économiques. La conception en appel d'offres pour la nouvelle usine sont terminés; l'équipement a été achevé à l'avance et livré sur le site. La collectivité a été fermée en mars 2020 et la construction, interrompue, en raison de la COVID-19 (une réouverture limitée en) mai a permis la poursuite des travaux. Les travaux de construction de la STE se poursuivent; les retards dus à la COVID-19 ont entraîné une hausse de coûts de 1,2 M$. En mars 2021, l'entrepreneur a indiqué qu'il était sur la bonne voie pour l'achèvement en juillet 2021. Rien donné que l'immeuble n'était pas encore fermé, les représentants régionaux de SAC ont indiqué qu'il y avait un risque élevé que les travaux ne soient pas terminés conformément au calendrier. Le 12 avril 2021, l'entrepreneur a fourni un calendrier révisé repoussant l'achèvement substantiel des travaux à octobre 2021, pour justifier ce report, il a invoqué le défaut par certains sous-traitants (affectés au béton) d'effectuer leurs travaux, ainsi que d'autres problèmes non attribuables à la Première Nation ou à la COVID ; l'entrepreneur a été informé des conditions contractuelles qui précisaient les coûts de l'ingénierie continue, de la gestion de projet et de l'administration de la Première Nation, l'entrepreneur a indiqué qu'il s'efforçait de trouver des moyens d'accélérer le processus. Lors d'une réunion de l'EGP, le 26 avril, l'entrepreneur a signalé l'embauche d'un nouveau coordonnateur de la sécurité du chantier et d'un nouveau superviseur de chantier; l'administrateur du contrat a rapporté une amélioration de la productivité et de l'organisation sur le terrain. À la demande de SAC, l'EGP a convenu d'organiser des réunions bimensuelles pour appuyer la gestion des problèmes; les réunions étaient auparavant mensuelles; la réunion de l'EGP a eu lieu le 15 juin 2021 et le projet a été déclaré conforme au calendrier révisé. *Solution questionnant toujours par le constat établi AANC, par l'intermédiaire du centre de gestion de l'eau potable et des eaux usées financé par SAC, la collectivité collabore avec le pôle pour former l'opérateur principal afin qu'il passe de l'accréditation de catégorie 2 à celle de catégorie 3, et pour que deux autres candidats obtiennent le certificat d'opérateur en formation.*	11/2021
ON	Northwest Angle No. 33	West Pump house Plant Public Water System (partie du Angle mid Public Water System) (n° 7126) *AWRB depuis février 2018*	12/02/2016	12/02/2017	inconnu	inconnu	Station de pompage dont les niveaux de radionucléides sont supérieurs aux recommandations			11/2021
ON	Northwest Angle No. 33	Elsie Blackhawk Pump house Public Water System (n° 7132A) *AQEP depuis avril 2011*	11/04/2011	11/04/2012	3	0	Ne satisfait pas aux recommandations ministérielles de désinfection			11/2021
ON	Ojibway Nation of Saugeen	Saugeen Health Clinic Semi-Public Water System	26/04/2018	2019-09-05	0	1	Les niveaux de turbidité sont	Long terme : Installation d'unités de traitement au	Formation et travail physique pour la réparation et la réhabilitation de puits activités grâce au PFI en mars 2019; l'échantillonnage indique une contamination bactériologique	07/2021

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves

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Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
		AQEP depuis avril 2019					supérieure aux recommandations.	point d'entrée sur les deux puits Court terme : s.o.	- Dans son évaluation de novembre 2019, l'expert-conseil a recommandé l'installation d'un nouveau puits et de nouvelles unités de traitement pour chaque bâtiment touché; conception détaillée achevée en janvier 2021. - Forage de nouveaux puits pour les bâtiments communautaires en octobre 2020; travaux de pompes et de plomberie terminés - Les tests indiquent une eau brute de bonne qualité avec de légers dépassements de l'objectif esthétique relatif au manganèse. Devis demandés aux entrepreneurs le 19 février 2021; contrat attribué. Équipement et pièces en commande. L'entrepreneur a indiqué que l'obtention de certains matériaux a été retardée; des problèmes de chaîne d'approvisionnement ont nui au respect des échéances des travaux; dessins d'atelier en cours d'examen par un ingénieur-conseil; réunion de l'EGP la semaine du 5 avril 2021; l'entrepreneur a indiqué qu'il faut quatre semaines pour terminer les travaux. - Le 13 mai 2021, l'entrepreneur n'avait pas reçu les matériaux; les fournisseurs ont avisé que la livraison était prévue pour la fin de mai. L'entrepreneur a indiqué qu'à attendait l'arrivée de matériaux importants, dont des réservoirs devant être installés en priorité; d'autres composantes, notamment une pompe, sont en retard de plus d'un mois, et le fournisseur ne donne que peu de renseignements sur leur livraison. L'entrepreneur a confirmé la mobilisation sur le site prévue pour le 14 juin pour l'installation du système du centre de santé; on prévoit qu'il faudra une semaine pour terminer l'installation; les commandes de certaines pièces d'équipement (réservoirs de contact au chlore) nécessaires pour achever les systèmes de traitement au point d'entrée de l'école et au multiplex sont en souffrance et, dans le meilleur des cas, on prévoit qu'ils seront disponibles de la mi-juin à la fin juin. Il faudra procéder à une analyse chimique complète, ainsi qu'à d'autres essais pour résoudre l'AQEP LT. - La Première Nation est préoccupée par les puits résidentiels et a demandé du financement dans le cadre du volet Infrastructures vertes faisant partie du Programme d'infrastructure Investir dans le Canada administré par la province d'Ontario; la Première Nation a demandé une contribution de SAC pour appuyer le projet s'il est approuvé. Soutien opérationnel fourni à la collectivité par l'OFNNTSC, avec le soutien financier de SAC.	07/2021
ON	Oiibkaan Nation of Saugeen	Saugeen School Semi-Public Water System *AQEP depuis avril 2019*	27/04/2019	27/04/2019	0	1	La bactérie E. coli et des coliformes totaux sont présents dans l'eau du puits.			
ON	Oneida of the Thames	Oneida Public Water System (n° 7176) *AQEP depuis septembre 2019*	26/09/2019	26/09/2020	546	22	Le système de traitement ne satisfait pas aux exigences d'ESHDES.	Long terme : À déterminer au moyen d'une étude de faisabilité Court terme : Options provisoires à envisager	- La réunion de lancement de l'étude de faisabilité s'est tenue en septembre 2020; les options provisoires n'ont pas pu être conçues et construites avant mars 2021 – une augmentation des coûts du projet a été approuvée afin que soit établie la viabilité à long terme de la source d'eau souterraine actuellement utilisée; les résultats indiquent que le puits d'eau souterraine et l'aquifère ne peuvent pas répondre à la demande projetée. L'expert-conseil a entrepris des recherches sur les raccordements aux réseaux municipaux de la région. - L'expert-conseil a poursuivi ses recherches de solutions provisoires; les options possibles comprennent la location d'un système à membranes mobiles, mais on se préoccupe de la capacité de traitement des eaux usées de supporter une réactivation ainsi que les rétroinstallations électriques et mécaniques devant être apportées à la station actuelle; une solution provisoire pourrait ne pas être techniquement ou financièrement possible. L'EGP a tenu une réunion le 3 février 2021 pour discuter de l'analyse des options; l'expert-conseil a indiqué que le raccordement au réseau municipal devrait s'effectuer dès que possible à titre de solution provisoire; la Première Nation a exprimé son soutien à un raccordement municipal; il existe deux options de raccordement municipal, dont l'une pourrait répondre aux besoins de certains logements dans d'autres collectivités des Premières Nations à proximité; le raccordement à d'autres collectivités n'a pas été examiné à fond. L'expert-conseil a présenté des options au chef et au conseil en février 2021 afin de déterminer la préférence pour deux options de connexion, d'évaluer l'intérêt pour une solution provisoire; les détails de la discussion et les résultats n'ont pas été communiqués à SAC. Lors de conversations avec les représentants de projets de la collectivité, SAC a été informé que le chef et le conseil favorisent une solution comportant une ESTM; la Première Nation examine l'étude de faisabilité finale, partagée le 26 mai 2021 avec SAC; l'examen technique est en cours et les commentaires devraient être émis d'ici le 16 juin 2021. SAC travaille à la planification d'une réunion pour faire progresser le projet; le suivi se poursuit.	À déterminer – Le calendrier du projet n'est pas encore établi.

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ON	Sachigo Lake	Sachigo Lake Public Water System AQEP depuis octobre 2018	19/10/2018	19/10/2018	165	3	Le réservoir de la station de traitement de l'eau fait très mal, générant la saturation de l'eau.	Long terme : Agrandissement de la station actuelle Court terme : Installation de nouvelles unités de traitement dans la station actuelle dès que possible	- Solution à long terme : agrandissement et mise à niveau de la STE actuelle, livraison par la route d'hiver de 2019. Solution provisoire : installation anticipée d'une chaîne de traitement dans la station actuelle – appuyée au départ par la Première Nation. L'installation de l'équipement et modernisation des installations existantes seront effectuées dans le cadre d'un seul contrat pour réaliser des économies. L'accès a été restreint en mars 2020 en raison de la COVID-19. Le 19 août 2020, la Première Nation a autorisé le retour sur le site des négociations ont été menées avec l'entrepreneur, y compris les coûts de reclamation pour retard. L'entrepreneur de l'EGP était sur place le 24 novembre 2020; la mise en service de la chaîne de traitement provisoire était prioritaire; les réentrances ont été endommagées pendant la période d'inactivité. Conseillée par le pôle, la Première Nation a informé l'EGP que l'AQEP LT ne pourra pas être levé tant que la deuxième chaîne de traitement n'est pas installée. L'ASEP a indiqué que l'eau de la nouvelle chaîne de traitement dépassait parfois la CMA de manganèse; l'unité fonctionne normalement avec l'aide de l'ORS, et les ajustements de pH s'avèrent efficaces pour gérer les fluctuations saisonnières de manganèse. Des échantillons ont été envoyés au laboratoire; plusieurs paramètres de rendement n'ont pas été respectés; la production de l'unité dans la distribution est en suspens; des retards ont été accusés dans la désaffectation de l'ancienne chaîne de traitement pour installer une deuxième chaîne; lors de la tournée de l'EGP du 5 mai 2021, l'entrepreneur a été informé que le fournisseur de traitement avait trouvé une solution aux problèmes de manganèse et de pH; les travaux se poursuivent pour résoudre ces problèmes. Le 25 mai 2021, l'entrepreneur a présenté un nouveau calendrier repoussant à septembre la levée de l'AQEP en raison de retards liés à l'exploitation de la première chaîne de traitement, l'achèvement substantiel de l'agrandissement et de la mise à niveau de la STE est prévu pour février 2022. L'entrepreneur a soumis des échantillons d'une nouvelle chaîne de traitement aux fins d'analyse et attend les résultats, si les suggestions sont respectées, l'eau de la nouvelle unité sera détournée vers des réservoirs de distribution et la désaffectation de l'unité de traitement existante commencera. La Première Nation appuie cette approche. L'installation de la mise à niveau et du prolongement des conduites d'eau ou d'égout est temporairement suspendue en raison de la découverte d'un site de sépultures non marquées; une équipe médico-légale s'est rendue sur les lieux le 9 juin 2021 pour enquêter. Solution opérationnelle fournie par le conseil tribal de Windigo, avec le soutien financier de SAC.	31/12021
ON	Sandy Lake	Sandy Lake Public Water System (n° 7179) AQEP depuis octobre 2002	10/10/2002	10/10/2003	450	15	Le système est inadéquat et ne respecte pas les recommandations. Amélioration de la capacité requise	Long terme : Mise à niveau et agrandissement de la station de traitement de l'eau Court terme : Réparation et optimisation de l'usine; réparation et nettoyage du réseau de distribution; améliorations opérationnelles	- Solution provisoire (réparation et optimisation de la STE et du réseau de distribution) menée à bien; réparations supplémentaires réalisées en juillet 2020 Défis opérationnels empêchant l'ASEP de recommander la levée de l'eau. Le pôle de l'OFNTSC offre son soutien pour préparer les opérateurs à la modernisation des installations. Le chef a précisé que la levée de l'AQEP est une priorité. Le 11 décembre, les opérateurs ont convenu qu'ils veulent procéder à la surveillance avec le soutien de l'OFNTSC; une lettre de SAC datée de la semaine du 14 décembre 2020 invitait à recourir à du soutien, en vue d'améliorer les opérations. Début des travaux de construction dans le cadre d'une solution à long terme en janvier 2020; restrictions d'accès en raison de la COVID en mars 2020; entrepreneur remplacé en septembre 2020; date d'achèvement du projet à long terme reportée à juin 2022 (répercussions de la COVID). Les travaux de construction sont repris, ralentissement de la production en raison de la COVID; matériaux de construction acheminés dans la collectivité par le réseau de routes d'hiver, sauf pour un changement de carburant; l'entrepreneur prend des dispositions pour l'achèvement de marchandises ou de carburant par voie aérienne. L'OFNTSC a annoncé que le personnel peut entrer dans la collectivité; des tests rapides comportant des résultats négatifs sont requis pour que le personnel puisse atterrir par vol nolisé et être placé en isolement avant de commencer à travailler; l'OFNTSC a précisé que ces protocoles limitent la capacité à fournir le niveau de service approuvé. Le 13 avril 2021, l'OFNTSC a reçu l'autorisation de mobilisation dans la collectivité en juin 2021; on ignore encore si le pôle s'est mobilisé dans la collectivité. Réunion de l'EGP le 27 avril 2021: la Première Nation a été avisée du fait qu'il n'y a pas de changements aux protocoles relatifs à la COVID; l'entrepreneur a été prévenu d'un retard de 2 semaines en raison de la COVID et du temps froid; l'entrepreneur a employé à rétablir le calendrier pour le reste du projet. À la réunion du 25 mai 2021 de l'EGP, l'entrepreneur a publié un calendrier révisé, prévoyant une prolongation de 3 semaines; le consultant et l'EGP proclament à une	7/2022

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****Les nouvelles dates cibles sont des estimations approximatives uniquement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.**

Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
									analyse des obligations contractuelles, la Première Nation a confirmé qu'il n'y a pas eu de modifications aux processus d'élimination de la COVID et qu'une entente avec l'OPNTSC a été signée en vue de fournir le soutien du pôle aux opérateurs locaux; en date du 11 juin 2021, les travaux de construction de la solution à long terme se poursuivaient comme prévu et conformément à l'échéancier. L'exploitation et la surveillance manquent encore d'uniformité.	
ON	Shoal Lake No. 40	Pump house No. 1 Public Water System (n° 6534) AQEP depuis février 1997	19/02/1997	19/02/1998	15	1	Procédés de traitement inadéquats qui fournissent une eau ne respectant pas les recommandations.	Long terme : Nouvelle station centralisée de traitement de l'eau et réseau de distribution Court terme : s.o.	- Conception détaillée datant de 2010 mise à jour pour respecter les exigences réglementaires en vigueur et répondre aux besoins à long terme de la collectivité. À la demande de la Première Nation, le projet a été redécoupé au Tmail pilote d'appel d'offres des Autochtones, qui favorise un processus d'approvisionnement concurrentiel auprès d'entrepreneurs qualifiés appartenant à des Autochtones. Les travaux de construction sont en cours; des réservoirs souterrains sont en construction, les opérations de dynamitage et de creusage de tranchées devant recevoir les nouvelles canalisations de distribution et de prise d'eau brute sont terminées; la tuyauterie marine et les filtrants sont en place; les travaux de maçonnerie sont en cours; l'immeuble est fermé et une couche isolante est en train de se former sur le filtre; les travaux d'électricité et de mécanique sont en cours à l'intérieur de l'usine. D'après l'échéancier de l'entrepreneur, le dénuyautage et les essais de performance devraient être terminés à la fin de juin 2021. La Première Nation, touché le projet notamment au moyen de précautions rigoureuses en matière de santé et de sécurité relatives à la COVID-19, ce qui a retenu la cadence, et l'entrepreneur a fait part d'un léger retard dans l'évolution du projet, ce qui repousse l'achèvement à juillet 2021. À la réunion de l'EGP du 26 février 2021, la collectivité s'est dite préoccupée par la capacité des fosses septiques de certaines maisons à supporter l'utilisation accrue qui est prévue; la Première Nation et son équipe de consultation explorent les possibilités d'évaluation et les différentes options en vue d'élaborer un plan d'action. La Première Nation a reçu une approbation de financement du Programme d'infrastructure Investir dans le Canada – Infrastructures vertes visant à soutenir les améliorations apportées aux fosses septiques. Des réunions de construction ont lieu tous les mois; à la réunion de l'EGP du 19 mai 2021, l'entrepreneur a fait part de la possibilité de retards par rapport à l'échéancier, car les systèmes de commande des moteurs ne fonctionnaient pas à leur réception; si la défectuosité n'est pas réparée par le fabricant en temps opportun, la mise en service prévue pour le mois 2021 sera retardée. Le consultant et l'entrepreneur s'emploient à établir des options pour terminer d'autres travaux afin de maintenir le chemin critique le plus possible vers ce qui était prévu. La prochaine réunion doit avoir lieu le 23 juin 2021, alors que tout changement prévu sera connu. - Soutien opérationnel fourni par le conseil tribal de Bimose, avec le soutien financier de SAC.	07/2021
ON	Shoal Lake No. 40	Pump house No. 2 Public Water System (n° 17125) AQEP depuis février 1997	19/02/1997	19/02/1998	15	1				07/2021
ON	Shoal Lake No. 40	Pump house No. 3 Public Water System (n° 17126) AQEP depuis février 1997	19/02/1997	19/02/1998	20	3				07/2021
ON	Shoal Lake No. 40	Pump house No. 4 Public Water System (n° 17127) AQEP depuis février 1997	19/02/1997	19/02/1998	9	4				07/2021
ON	Shoal Lake No. 40	Pump house No. 5 Public Water System (n° 17128) AQEP depuis février 1997	19/02/1997	19/02/1998	15	0				07/2021
ON	Shoal Lake No. 40	Pump house No. 9 Public Water System (n° 17129) AQEP depuis février 1997	19/02/1997	19/02/1998	15	0				07/2021
ON	Shoal Lake No. 40	School Pump house Public Water System (n° 17217) AQEP depuis février 1997	19/02/1997	19/02/1998	15	0				07/2021
ON	Washagamis Bay	Washagamis Bay East Public Water System (n° 6532) AQEP depuis décembre 2008	19/12/2008	19/12/2009	34	2	Mauvaise qualité de l'eau; casernes; traitement insuffisant; capacité inadéquate	Long terme : Nouvelle station de traitement et mises à niveau du réseau de distribution Court terme : Nouveaux puits et réparations provisoires de la station; nettoyage et réparation du réseau de distribution	- Forage de nouveaux puits, réparations provisoires de l'usine terminées, usine fournit de l'eau potable Nettoyage terminé du réseau de distribution; vidanges causées par l'arrêt de pression; réparations effectuées - Travaux touchant la prise d'eau réalisés pour régler les problèmes liés à la quantité - Interruption des travaux par suite du confinement de la collectivité le 1er octobre 2020 (cas confirmé de COVID); fin du confinement le 6 octobre 2020 Semaines du 14 décembre 2020 : échantillonnage par l'AGEP; recommandation de la levée de l'AQEP LT le 4 janvier 2021 Teneur en sodium légèrement élevée dans l'eau traitée, source de préoccupation pour la collectivité L'AGEP a tenu une séance d'information avec le chef et le conseil; le chef a avisé SAC que la collectivité n'accepterait pas les recommandations relatives à la levée des AQEP avant la mise en place d'une solution à long terme Réalisation d'une solution à long terme (nouvelle STE en voie de construction); la Première Nation a collaboré avec l'entrepreneur pour établir des protocoles relatifs à la COVID-19 permettant que les activités de construction se poursuivent L'entrepreneur a fait part d'un retard dans les travaux; le démarrage et la mise en service sont prévus pour mai; la formation et l'échantillonnage suivront une analyse chimique complète est requise et sera coordonnée par l'entrepreneur; l'AGEP de KCA coordonnera l'échantillonnage bactériologique à la suite de la mise en service, et participe activement aux discussions d'équipe du projet La mise en service ayant été prévue pour le 17 mai 2021, l'expert-conseil a été avisé par l'entrepreneur que les essais de performance et la mise en service sont retardés à la suite de problèmes liés à la programmation SCADA et à des pannes de la pompe du bassin d'eau de ruissellement; le calendrier révisé n'a pas encore été publié	07/2021

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves *Le nombre de maisons et d'immeubles communautaires touchés n'est qu'une estimation et doit être confirmé avant son utilisation dans les rapports. **Les nouvelles dates cibles sont des estimations approximatives uniquement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.										
Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
									- À la réunion de l'EGP du 9 juin 2021, l'entrepreneur a déclaré que la procédure de démarrage devait commencer 11 juin 2021. Le collectivité a entrouche deux opérateurs de l'initiative Simons WaterFirst qui travaillent de concert avec l'équipe de construction pour mettre d'obtenir le certificat d'opérateur en formation); la collectivité obtient également un soutien opérationnel fourni par l'intermédiaire du pôle de Banque fédéral par SAC	
ON	Washagamis Bay	Washagamis Bay West Public Water System (n° 1713J2) AQEP depuis décembre 2008.	04/12/2008	04/12/2008	8	0			- Solution provisoire (modernisation de la station de pompage) connue à bien Échantillonnage et essais, élaboration d'un plan de levée (en collaboration avec l'ASEP Collecte d'échantillons par l'ASEP le 2 juin 2020; teneur en chlore résiduel non conforme aux paramètres exigés Mesures correctives apportées Collecte d'échantillons pour essais par l'ASEP du Remote Chiefs Association les 23 et 24 juin 2021; les essais ont révélé que l'eau était conforme à toutes les exigences réglementaires et, le 12 août 2021, l'ASEP a envoyé une lettre au chef et au conseil recommandant la levée de l'AQEP pour le réseau; le chef et le conseil ont suspendu l'acceptation de la recommandation jusqu'à ce que le réseau East fournisse aussi une eau potable salubre Solution à long terme et soutien offert à l'opérateur comme mentionné ci-dessus pour le réseau East.	3/7/2021
MB	Shamattawa	Shamattawa Public Water System (n° 4801) AQEP depuis décembre 2018	8/12/2018	8/12/2019	163	14	Usine au-delà de son cycle de vie et amélioration de la capacité requise. Problèmes d'exploitation et d'entretien.	Court terme : Mise à niveau et agrandissement de la station Court terme : Réparations provisoires et améliorations opérationnelles	Réparations de l'usine terminées; les travaux étaient en suspens en raison de la COVID; les travaux ont repris le 23 avril 2020 Renforcement du soutien offert à l'opérateur par l'entremise du PFI; deux opérateurs de remplacement en formation Problèmes au panneau de commande le 8 septembre; les pompes d'eau brute se sont arrêtées; ce qui fait vider les réservoirs; la capacité d'approvisionnement de la collectivité cause des préoccupations; le PFI a préparé le panneau de commande, relié à circuit dans le réseau de distribution avec le chlore résiduel approprié Problèmes avec le câblage de certaines zones; le PFI, l'ASEP et l'entrepreneur ont réglé le panneau d'électricité de pression au poste de sorte informent en octobre 2020, 17 robinets d'arrêt défectueux au porte ont été remplacés; la pression et le chlore résiduel ont été déclarés acceptables le 4 décembre 2020 Faible teneur en chlore résiduel qui persiste lorsque l'opérateur principal est absent; en janvier 2021, le chef voulait entamer le processus de levée; la DGSPNI a avisé le chef que l'AQEP resterait en place jusqu'à ce que 2 échantillons consécutifs confirment les résultats en assurant un taux de résidus approprié dans le réseau de distribution Le 19 février, le PFI dans la collectivité a collaboré avec l'opérateur, travaillera avec le chef pour discuter de l'importance d'avoir des opérateurs supplémentaires formés et engagés; l'entrepreneur est retourné dans la collectivité le 18 février; des solutions et des pompes ont été installés; les problèmes ont continué ; la rupture d'un robinet modulateur d'une canalisation d'eau doit être localisée et réparée; des échantillons indiquent que le problème de chlore résiduel persiste Du 21 au 26 avril, le PFI présent dans la collectivité; plusieurs bornes d'incendie qui fuient en localisation d'une maison inhabitée où l'arrivée d'eau n'a pas été coupée; le PFI a permis de repérer une personne intéressée à travailler à la STE; le chlore résiduel demeure une préoccupation dans le réseau de distribution Les travaux ont commencé relativement à la solution à long terme; travaux pour une modernisation majeure, un agrandissement et une nouvelle prise d'eau pour le traitement d'eau terminés à l'automne 2022; fixation de la date cible pour l'harmonisation avec la solution à long terme et ce qui concerne les problèmes en cours à la station existante.	9/6/2022
MB	Nation crie de Tataskweyak	Tataskweyak Cree Public Water System (n° 4802) AQEP depuis mai 2017	17/05/2017	17/05/2018	380	5	Avis émis par la Première Nation et relatif aux problèmes de contamination pendant la crue printanière, non fondé sur une recommandation de l'ASEP	Long terme : modernisation de la station de traitement d'eau (filtration et UV); évaluation de la source de l'eau et analyse des THM; mise à jour de l'étude de faisabilité en cours pour une solution à plus long terme; conception et construction d'une canalisation pour puiser l'eau dans le lac Assean Court terme : s.o.	- La qualité de l'eau (respecte les recommandations); réparations et travaux réalisées pour améliorer le traitement; évaluation de la source d'eau réalisée en janvier 2019, recommence le lac Assean comme source privilégiée et une modernisation de la station de traitement; analyses additionnelles des THM Lettres remises à la Première Nation concernant la bonne qualité de l'eau (dernière lettre envoyée en février 2019), mais la Première Nation n'a pas levée l'avis Financement accordé pour l'eau embouteillées et la réalisation d'autres analyses de la source actuelle de l'eau concernant les cyanobactéries; l'analyse des cyanotoxines va au-delà des suggestions en matière d'essais des recommandations canadiennes et de la réglementation provinciale Réalisation d'une évaluation de la source d'eau et mise à jour de l'étude de faisabilité de 2016 en tous-instance en vue d'évaluer les options pouvant répondre aux besoins à long terme en eau potable de la collectivité; après l'étude de faisabilité, le projet de puiser l'eau du lac Assean passera à l'étape de la conception et de la construction); SAC est déterminé à financer la conception et la construction d'une canalisation pour puiser l'eau de la collectivité dans le lac Assean	À déterminer

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves

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****Les nouvelles dates cibles sont des estimations approximatives uniquement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.**

Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
SK	Lista Pine	Lista Pine Public Water System *AQEP depuis novembre 2018*	14/11/2018	14/11/2018	300	10	Station en mauvais état et arrivée de son cycle de vie. Problèmes d'exploitation et d'entretien.	Long terme : Modernisation de la station de traitement d'eau Court terme : Réparations de l'usine, améliorations opérationnelles	- Les réparations à court terme visant à remettre le système à un niveau de fonctionnement approprié sont terminées; la station fournit un approvisionnement adéquat en eau potable salubre. Au début d'août 2020, la présence de la bactérie *E. coli* a été signalée dans un puits d'eau brute. Le puits touché a été surchargé le 10 août 2020. - Initialement, il y avait des problèmes d'approvisionnement en eau; cependant, certains puits ont subi un entretien et de nouveaux puits ont été creusés et mis à l'eau. À l'heure actuelle, la Première Nation est sans opérateur accrédité. Le bureau régional de SAC travaille étroitement avec celle-ci pour fournir les services d'un autre opérateur; entre-temps, les formateurs du PFI offrent un soutien. L'opérateur a de la difficulté à suivre la formation requise en raison de la COVID-19; l'AQEP restera en place jusqu'à ce que l'opérateur soit accrédité. L'opérateur poursuit sa formation, accumulant des heures en vue de son accréditation. - La conception d'une solution à long terme est en cours, le processus d'appel d'offres se termine à la fin de juin, et les travaux de construction devraient commencer en juillet 2021; une solution à long terme n'est pas requise pour régler la question des avis, mais la Première Nation pourrait ne pas être éligible à la levée des AQEP LT avant la réalisation complète de la solution à long terme; SAC s'emploie à assurer à la Première Nation que les travaux de construction de la solution à long terme se poursuivent.	08/2021
SK	Peepeekisis	Peepeekisis Main Public Water System (n° 6660) *AQEP depuis février 2018*	5/2/2015	5/2/2015	178	10	Les procédés de traitement des deux réseaux doivent faire l'objet d'un entretien et d'une mise à niveau. Problèmes d'exploitation et d'entretien.	Long terme : Mise à niveau de la station de traitement d'eau; agrandissement du réseau de distribution Court terme : Réparations terminées; l'ASEP a recommandé la révocation des avis.	- Réparations terminées; avoir recommandé en juillet 2018, mais la Première Nation est réticente à lever l'avis avant que les mises à niveau à long terme de la station de traitement d'eau soient terminées. SAC a offert de partager les coûts d'un réseau de distribution à basse pression; la Première Nation n'a pas donné son accord à ce jour. - Les travaux de mise à niveau à long terme sont pratiquement terminés et la station de traitement d'eau mise à niveau fournit de l'eau potable et devant désormais le collectionné.	À déterminer
SK	Peepeekisis	Poorman Well (n° 17166) *AQEP depuis avril 2012*	10/04/2013	10/04/2014	8	0				À déterminer
ON	Big Grassy	Big Grassy Public Water System *AQEP depuis mars 2021*	09/03/2021	09/03/2022	60	7	Fuite d'eau et perte de pression de distribution.	Long terme : Mises à niveau et agrandissement de la station de traitement actuelle Court terme : s.o.	- La collectivité fait face à des problèmes liés à la station actuelle; mais AQEP au cours des dix derniers mois; AQEP actuel en raison de la perte de pression de distribution; fuite présumée Détection et correction des fuites effectuées; cependant d'autres problèmes découlant des travaux de mise à niveau et du raccordement des nouveaux systèmes ou équipements de traitement continuent de poser des défis importants. - Les dirigeants de la Première Nation ont décidé de maintenir l'AQEP en place jusqu'à la réalisation du projet de modernisation et d'agrandissement; en construction depuis mars 2020. - L'échéancier de l'entrepreneur prévoit l'achèvement d'une partie substantielle des travaux en août 2021; la mise en service devrait avoir lieu le 5 juillet 2021. - Les réunions de l'EGP ont lieu tous les mois, la plus récente ayant été tenue le 21 mai 2021, et la prochaine, le 18 juin 2021; à la réunion de mai de l'EGP, l'entrepreneur a fait état de problèmes liés à la chaîne d'approvisionnement : les vanneurs de fréquence (VF) et le centre de commande pour moteurs (CCM) ont des répercussions sur le chemin critique, la mise en service du train de filtration est prévue pour le 21 juin 2021, en attendant la réception du CCM; pont le livraison est différée. - Il y a des problèmes opérationnels et la Première Nation a fait savoir qu'elle travaillait sur un plan de relève dans le but d'embaucher de nouveaux opérateurs à temps pour la mise en service. - Soutien opérationnel fourni par le conseil tribal ARRC, par l'intermédiaire du centre de gestion de l'eau potable et des eaux usées, financé par SAC.	08/2021
ON	Mishkeegogamang	Ace Lake Public Water System *AQEP* *depuis septembre 2020*	08/09/2020	08/09/2021	Inconnu	Inconnu	Le système de traitement ne répond pas aux exigences des règlements d'élimination échantillonnage et tests inadéquats	Long terme : Modernisation du système de traitement Court terme : s.o.	- Avis d'ébullition de l'eau en place, car le système de traitement ne répond pas aux exigences d'élimination des registres. l'information sur la qualité de l'eau n'est pas étayée par des échantillonnages et des essais suivants adéquats de l'eau. - La conception à long terme de la modernisation du système de traitement a été achevée dans le cadre du projet du système de Ten Houses de la réserve de la Mishkeegagamang. - Selon l'échéancier de construction actuel, la modernisation doit être terminée en juillet 2021; les représentants de SAC ont demandé à l'entrepreneur de produire un calendrier révisé; l'entrepreneur a remis un calendrier révisé le 28 mai 2021, précisant que la date d'achèvement du réseau d'Ace Lake demeure inchangée.	07/2021
ON	Mishkeegogamang	Mishkeegogamang #39 Public Water System	07/01/2021	07/01/2022	77	9	Aucun contrôle de la qualité pour la station ou l'eau –	Long terme : Mise à niveau et	- Défis opérationnels. l'AQEP découle des contrôles irréguliers de la station et de la qualité de l'eau.	04/2021

Avis concernant la qualité de l'eau potable à long terme en vigueur dans le réseau public des réserves *Le nombre de maisons et d'immeubles communautaires touchés n'est qu'une estimation et doit être confirmé avant son utilisation dans les rapports. **Les nouvelles dates cibles sont des estimations approximatives uniquement et peuvent changer à mesure que les répercussions de la pandémie évoluent. Les dates cibles seront réévaluées au fur et à mesure de l'avancement des projets.										
Région	Première Nation	Nom du réseau	Date (JJ/MM/AAAA)	Date à laquelle l'avis est devenu un AQEP LT (JJ/MM/AAAA)	Nombre de maisons touchées*	Nombre d'immeubles communautaires touchés*	État	Mesures correctives	Situation actuelle	Date cible**
		AQEP depuis janvier 2021					problèmes opérationnels	agrandissement de la station Court terme : Correction des lacunes d'entretien relevées lors de l'évaluation de la station (pompes, filtres, électricité et automatisation) et amélioration des opérations	L'évaluation de la station a révélé des lacunes d'entretien (pompes, filtres, électricité et automatisation). SAC a approuvé un financement pour les coûts estimatifs pour régler ces problèmes d'entretien. Appel de propositions fait pour obtenir les services d'un ingénieur-conseil, et contrat attribué, visite sur les lieux le semaine du 20 mars 2021, réception du rapport d'évaluation de l'ingénieur signalant des problèmes avec les membranes de nanofiltration; fournisseur de traitement évalué le 17 mai 2021, le rapport d'évaluation mis à jour contenant les conclusions et les recommandations du fournisseur de traitement devant être remis le 31 mai 2021 en date du 11 juin 2021, SAC n'avait pas encore reçu le rapport, car l'ingénieur-conseil avait signalé que le fournisseur de traitement (Napier Reid) n'avait pas encore présenté son évaluation et ses recommandations; les travaux de réparation devaient être terminés à la fin d'août 2021 mais en raison du retard accusé par le fournisseur de traitement, il existe un risque moyen que l'échéancier prenne du retard Soutien opérationnel fourni par l'OFNTSC, par l'intermédiaire du centre de gestion de l'eau potable et des eaux usées, financé par SAC. L'évolution de la pandémie de COVID freine les progrès du pôle, dans le soutien apporté à l'amélioration des opérations. Une étude de faisabilité a permis d'établir une solution à long terme; à l'heure actuelle, le projet n'est pas encore financé.	

AUTRES INITIATIVES CONNEXES			
Région	Première Nation	Projet	Situation actuelle
ON	Première Nation de Curve Lake	Curve Lake New Water Treatment Plant	La Première Nation de Curve Lake ne compte, à l'heure actuelle, aucun avis sur la qualité de l'eau potable en vigueur. En juin 2019, l'AQEP LT sur l'immeuble administratif des aînés de Curve Lake a été levé. Curve Lake est desservi avec de l'eau souterraine pompée dans environ 300 puits individuels pour chaque maison, en plus de la subdivision Nishnawbeka qui est desservie par un réseau collectif d'approvisionnement souterrain (Curve Lake [Nishnawbeka] Water Supply Treatment System – qui dessert 59 maisons); ce réseau sera démoli une fois la nouvelle station de traitement d'eau en fonction, et le réseau de distribution d'eau actuel de la subdivision Nishnawbeka sera intégré au nouveau système. La réserve compte 208 immeubles à revenu locatif qui sont aussi desservis par des puits individuels. Ces unités ne seront pas desservies par le nouveau réseau de traitement et de distribution d'eau. Les puits individuels de Curve Lake sont d'une qualité et d'une quantité inégales, avec un faible rendement des périodes d'eau et une contamination des installations septiques sur place. Le résultat des essais précédents montre la présence de niveaux élevés de sodium, de turbidité, de fer et de solides dans de nombreuses sources d'eau souterraine. Dans le cadre de l'Évaluation nationale (Nexgen Borrador Ltd., décembre 2019), quatre puits privés ont été examinés et des problèmes de qualité d'eau liés à la présence de coliformes, de nitrates et de nitrites, à la dureté et aux solides dissous totaux ont été relevés. Un rapport hydrogéologique publié en novembre 2018 (Oakridge Environmental Ltd.) indiquait que quatre puits qui devaient à l'origine alimenter la station collective de traitement de l'eau affichaient de fortes concentrations de solides dissous totaux (TDS), de dureté et de sodium, en plus de concentrations variables de carbone organique dissous (COD). La station de pompage de la subdivision Nishnawbeka manque fréquemment d'eau et n'a pas la capacité suffisante pour répondre à la demande actuelle. Le dernier rapport du Système de rapports sur la condition des biens (2018-019) recommandait une réservoir majeure ou un remplacement. Un nouveau système de traitement et de distribution d'eau à même de respecter la réglementation sur l'eau potable de l'Ontario pour alimenter en eau potable salubre la Première Nation pendant au moins les 20 prochaines années est nécessaire. – SAC a fourni un financement à la Première Nation de Curve Lake pour la mise à jour de son étude de faisabilité. L'étude mise à jour recommandait, et la collectivité a privilégié, une station de traitement d'eau en surface avec filtration sur membrane et un réseau de distribution élargi avec débit pour les services d'incendie, au coût estimatif de plus de 50 millions de dollars. SAC est résolu à financer la construction du système de traitement d'eau de Curve Lake, comme il est précisé dans la demande d'approbation de projet approuvée par le chef et le conseil le 3 juin 2020 et par SAC le 22 juin 2020, compte tenu de la croissance future des membres de la Première Nation vivant dans la réserve mentionnée dans l'étude conceptuelle. SAC a reçu la version définitive de l'étude de faisabilité le 29 mai 2020. La phase de conception du projet a été approuvée le 15 juillet 2020; coût : 2,3 millions de dollars. La Première Nation collabore avec un gestionnaire de projet et un expert-conseil en conception pour terminer la conception d'ici le fin mars 2022.
ON	Neskantaga	Évites confiance aux robinets	La DGSPNI de la région de l'Ontario a financé, à raison de 200 000 $, la proposition « Faites confiance aux robinets » à Neskantaga. Il s'agit d'un plan de guérison mieux-être communautaires qui met l'accent sur la guérison communautaire, l'éducation à la culture, l'estime de soi et l'établissement d'autres stratégies de mieux-être appropriées pour la collectivité. Cette proposition est née du besoin de remédier aux effets psychologiques et physiques de l'AQEP LT qui n'a fait qu'exacerber le traumatisme constant et les défis en santé mentale de la collectivité. Le financement versé par la DGSPNI de la région de l'Ontario servira surtout à mobiliser la communauté et à renforcer les capacités en vue d'élaborer le plan de guérison/mieux-être communautaires, en plus d'orienter le soutien en santé mentale pour la mobilisation de la collectivité et de régler les problèmes susceptibles de se poser à la suite de ces sessions. La première mobilisation de la collectivité (approuvée en février 2021) sera organisée par la Première Nation; la DGSPNI restera à la disposition de la Première Nation pour la soutenir à mesure que se mise en œuvre du projet avance. La DGSPNI de la région de l'Ontario est déterminée à financer la mise en place et la réalisation du plan de guérison/mieux-être communautaires qui est élaboré par l'entremise d'un processus de mobilisation communautaire, en consultation avec la DGSPNI.

ANNEXE B

ORDONNANCE D'AUTORISATION DE LA COUR FÉDÉRALE

Voir ci-joint.

Federal Court Cour fédérale

Date : 20201008

Dossier: T-1673-19

Ottawa (Ontario)

Le 8 octobre 2020

PRÉSENT : L'honorable juge Favel

ENTRE :

LA PREMIÈRE NATION DE CURVE LAKE ET LA CHEFFE EMILY WHETUNG POUR SON PROPRE COMPTE ET POUR LE COMPTE DE TOUS LES MEMBRES DE LA PREMIÈRE NATION DE CURVE LAKE ET LA PREMIÈRE NATION DE NESKANTAGA ET LE CHEF CHRISTOPHER MOONIAS POUR SON PROPRE COMPTE ET POUR LE COMPTE DE TOUS LES MEMBRES DE LA PREMIÈRE NATION DE NESKANTAGA

Demandeurs

et

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

ORDONNANCE

LA PRÉSENTE REQUÊTE en autorisation, présentée par les demandeurs, a été entendue le 16 septembre 2020.

À LA LECTURE du dossier de requête des demandeurs et du consentement du défendeur.

1. **LA COUR ORDONNE** que ce recours soit et est autorisé par les présentes comme un recours collectif conformément aux *Règles des cours fédérales*, 334.16 et 334.17.

2. **LA COUR ORDONNE ET DÉCLARE** que le groupe est défini comme suit :

(a) *Toutes les personnes autres que les personnes exclues :*

(i) qui sont membres d'une bande au sens du paragraphe 2(1) de la *Loi sur les Indiens*, L.R.C. 1985, c, I-5 (« **Première Nation** »), dont la disposition des terres est assujettie à cette loi ou à la *Loi sur la gestion des terres des premières nations*, L.C. 1999, c. 24 (les « **terres des Premières Nations** »), et dont les terres des Premières Nations sont visées par un avis sur la qualité de l'eau potable (qu'il s'agisse d'un avis d'ébullition d'eau, d'un avis de ne pas boire ou d'un avis de non-utilisation ou d'un autre type d'avis) qui a duré au moins un an depuis le 20 novembre 1995 jusqu'à maintenant (les «**Premières Nations touchées**»);

(ii) qui n'étaient pas décédées avant le 20 novembre 2017; et

(iii) qui résidaient habituellement dans une Première Nation touchée alors visée par un avis sur la qualité de l'eau potable qui a duré au moins un an; et

(b) *La Première Nation de Curve Lake, la Première Nation de Neskantaga et toute autre Première Nation touchée qui a choisi de se joindre au présent recours à titre de représentant (les « **Nations participantes** »).*

Les « **personnes exclues** » sont les membres de la Nation des Tsuu T'ina, de la Première Nation de Sucker Creek, de la Nation des Cris d'Ermineskin, de la Tribu des Gens-du-Sang et de la bande indienne d'Okanagan, et Michael Daryl Isnardy.

3. **LA COUR ORDONNE ET DÉCLARE** que, jusqu'à ce que les réclamations invoquées dans le présent recours collectif soient entièrement et définitivement décidées, réglées,

interrompues ou abandonnées, y compris l'épuisement de tous les droits d'appel, la permission de la Cour est requise pour introduire tout autre recours, instance ou procédure pour le compte d'un membre du groupe à l'égard des réclamations invoquées dans le présent recours, sauf les recours, instances ou procédures introduits pour le compte des membres du groupe qui se sont exclus du présent recours collectif de la manière prescrite ci-après.

4. **LA COUR ORDONNE ET DÉCLARE** que les questions communes suivantes soient et sont par les présentes autorisées aux fins de résolution pour le compte du groupe dans son ensemble:

(a) *Depuis le 20 novembre 1995 jusqu'à maintenant, le défendeur a-t-il un devoir ou une obligation envers les membres du groupe de prendre des mesures raisonnables pour leur fournir ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable pour l'utilisation humaine?*

5. **LA COUR ORDONNE ET DÉCLARE** qu'un sous-groupe soit et est par les présentes reconnu pour les membres de chaque Première Nation touchée, et la Première Nation elle-même, s'il s'agit d'une Nation participante;

6. **LA COUR ORDONNE ET DÉCLARE** que les questions communes suivantes soient et sont, par les présentes, autorisées aux fins de résolution pour le compte de chaque sous-groupe :

(a) *Si la réponse à la question commune 4(a) est « oui », le Canada a-t-il manqué à ses devoirs ou obligations envers les membres du sous-groupe?*

(b) *Si la réponse à la question commune 6(a) est « oui », une violation de la Charte des droits et libertés (« **Charte** ») est-elle sauvée par l'art. 1 de la Charte?*

(c) *Si la réponse à la question commune 6(a) est « oui », le manquement du défendeur a-t-il causé une entrave importante et déraisonnable à l'utilisation et à la jouissance de leurs terres par les membres du groupe ou leurs Premières Nations?*

(d) *Si la réponse à la question commune 6(a) est « oui » et que la réponse à la question commune 6(b) est « non », les membres du sous-groupe peuvent-ils obtenir des dommages en vertu de l'art. 24(1) de la Charte?*

(e) *La causalité des dommages subis par les membres du sous-groupe peut-elle être considérée comme une question commune?*

(f) *La Cour peut-elle procéder à une évaluation globale de tout ou partie des dommages subis par les membres du sous-groupe?*

(g) *La conduite du défendeur justifie-t-elle l'octroi de dommages-intérêts punitifs et, dans l'affirmative, de quel montant?*

(h) *La Cour devrait-elle ordonner au défendeur de prendre des mesures pour fournir aux membres du sous-groupe ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable?*

(i) *Dans l'affirmative, quelles mesures devraient être ordonnées?*

7. **LA COUR ORDONNE ET DÉCLARE** que la cheffe Emily Whetung, la Première Nation de Curve Lake, le chef Christopher Moonias et la Première Nation de Neskantaga sont nommés par les présentes représentants demandeurs du groupe.

8. **LA COUR ORDONNE ET DÉCLARE** que McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP sont nommés par les présentes avocats du groupe (les «**avocats du groupe** »).

9. **LA COUR ORDONNE ET DÉCLARE** que les demandeurs et le défendeur déploient des efforts raisonnables pour convenir de la nomination d'un administrateur aux fins de donner avis de l'autorisation du présent recours collectif (l'« **administrateur** »). Les parties avisent la Cour de la nomination de l'administrateur dans les soixante (60) jours suivant la date de la présente ordonnance, à défaut de quoi la Cour nomme un administrateur dûment qualifié.

10. **LA COUR ORDONNE** que les membres du groupe soient avisés que le présent recours a été autorisé en tant que recours collectif de la manière suivante, ce qui constitue et est par les présentes réputé constituer un avis adéquat :

(a) *l'avis simplifié figurant à l'**annexe A** et l'avis détaillé figurant à l'**annexe B**, ainsi que la traduction en français de ces documents sont affichés, tel que convenu par les parties, sur les sites Web respectifs des avocats du groupe, du défendeur et de l'administrateur;*

(b) *l'administrateur publie l'avis simplifié dans les journaux indiqués à l'**annexe C** jointe aux présentes, en format ¼ de page dans l'édition de fin de semaine de chaque journal, si possible;*

(c) *l'administrateur distribue l'avis simplifié à tous les bureaux de la Première Nation de Curve Lake, de la Première Nation de Neskantaga et de l'Assemblée des Premières Nations;*

(d) *l'administrateur transmet l'avis simplifié et l'avis détaillé à tout membre du groupe qui en fait la demande;*

(e) *l'administrateur transmet l'avis simplifié et l'avis détaillé aux chefs de chaque Première Nation touchée indiquée conformément au paragraphe 12 ci-après, à l'exception des personnes exclues;*

(f) *l'administrateur transmet l'avis simplifié et l'avis détaillé au bureau de la bande ou à un bureau analogue de chaque Première Nation touchée indiquée conformément au paragraphe 12 ci-après, à l'exception des personnes exclues, en demandant qu'ils soient affichés dans un endroit bien visible;*

(g) *l'administrateur établit une ligne de soutien nationale sans frais, afin de fournir de l'aide aux membres du groupe, aux familles, aux tuteurs, aux gardiens ou aux autres personnes qui font des demandes de renseignements pour leur propre compte ou pour le compte de membres du groupe.*

11. **LA COUR ORDONNE** que le défendeur soit responsable du coût de la remise d'un avis d'autorisation d'un recours collectif tel qu'il est énoncé au paragraphe 10 ci-dessus.

12. **LA COUR ORDONNE** que, dans les 30 jours qui suivent la date de la présente ordonnance, les demandeurs et le défendeur échangent une liste de leurs meilleurs renseignements sur les noms des Premières Nations qui peuvent participer au groupe, et ces listes constituent le moyen d'établir les Premières Nations qui ont droit à un avis direct aux fins des paragraphes 10(e) et (f) ci-dessus.

13. **LA COUR ORDONNE** qu'un membre du groupe puisse s'exclure du présent recours collectif en remettant un coupon d'exclusion signé, dont un modèle est joint à l'**annexe D**, ou une autre demande d'exclusion signée et lisible, dans les cent vingt (120) jours qui suivent la date à laquelle l'avis est publié pour la première fois conformément au paragraphe 10(b) ci-dessus (la «**date limite d'exclusion** »), à l'administrateur. L'avis simplifié et l'avis détaillé doivent indiquer la date limite d'exclusion et l'adresse de l'administrateur aux fins de la réception des coupons d'exclusion.

14. **LA COUR ORDONNE** qu'aucun membre du groupe ne puisse s'exclure du présent recours collectif après la date limite d'exclusion, sauf avec l'autorisation de la Cour.

15. **LA COUR ORDONNE** que l'administrateur signifie aux parties et dépose auprès de la Cour, dans les soixante (60) jours suivant l'expiration de la date limite d'exclusion, une déclaration sous serment énumérant toutes les personnes qui ont fait leur choix de s'exclure du recours collectif, le cas échéant.

16. **LA COUR ORDONNE** qu'une Première Nation touchée puisse participer au présent recours collectif en mandatant les avocats du groupe au moins cent vingt (120) jours avant le règlement de l'une ou l'autre des questions communes (la « **date limite de participation** »), aux avocats du groupe, à l'adresse indiquée au paragraphe 11 ci-dessus.

17. **LA COUR ORDONNE** qu'aucun membre du groupe ne puisse participer au présent recours collectif après la date limite de participation, sauf avec l'autorisation de la Cour.

18. **LA COUR ORDONNE** que les avocats du groupe signifient aux parties et déposent auprès de la Cour, dans les soixante (60) jours suivant l'expiration de la date limite de participation, une liste de toutes les Premières Nations touchées qui ont choisi de participer au recours collectif.

19. **LA COUR DÉCLARE** que le plan de poursuite de l'instance joint aux présentes à l'appendice 1 est une méthode pratique pour faire avancer le recours collectif pour le compte du groupe.

20. **LA COUR ORDONNE** que chaque partie supporte ses propres frais de la requête en autorisation du présent recours collectif.

« Paul Favel »
Juge

Annexe A

Avis juridique

Êtes-vous membre d'une Première Nation qui a été visée par un avis concernant la qualité de l'eau potable à long terme?

Une poursuite pourrait avoir une incidence sur vous et votre Première Nation. Veuillez lire ceci attentivement.

Vous pourriez être touché par un recours collectif en raison du manque d'accessibilité à l'eau potable propre sur les réserves des Premières Nations.

La Cour du Banc de la Reine du Manitoba et la Cour fédérale du Canada ont décidé qu'un recours collectif au nom d'un « groupe » de membres des Premières Nations et de membres d'une bande pouvait être intenté. Les membres d'une bande peuvent choisir de demeurer dans le groupe. Les Premières Nations peuvent choisir de se joindre ou non au groupe. Il n'y a pas d'argent disponible à l'heure actuelle et rien ne garantit que le recours collectif sera accueilli.

Les tribunaux ont nommé la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, la Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Neskantaga et le chef Christopher Moonias à titre de représentants demandeurs pour le groupe.

De quoi s'agit-il?

Le présent recours collectif allègue que le Canada a manqué à ses obligations en ne veillant pas à ce que les communautés des Premières Nations aient un accès adéquat à de l'eau potable salubre. Le recours collectif allègue que les membres de ces communautés et les communautés elles-mêmes ont subi des préjudices émotionnels, physiques, financiers et spirituels. Le recours collectif allègue que le Canada a manqué à ses obligations fiduciaires et à son devoir de diligence et a contrevenu à la *Charte des droits et libertés*. La Cour n'a pas statué sur la véracité de ces allégations. En l'absence de règlement, les demandeurs devront prouver leurs prétentions devant le tribunal.

Si vous avez des questions au sujet du présent recours collectif, vous pouvez communiquer avec M. **Eric Khan** au 1-800-538-0009 ou à l'adresse info@classaction2.com.

Qui représente le groupe?

La Cour a nommé McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP pour représenter le groupe à titre d' « avocats du groupe ». Vous n'êtes pas tenu de payer les avocats du groupe, ni personne d'autre, pour participer. Si les avocats du groupe obtiennent de l'argent ou des avantages pour le groupe, ils peuvent demander des honoraires et des frais d'avocats, lesquels seront déduits des sommes ou des avantages recouvrés pour les membres du groupe.

Particuliers membres du groupe : Qui est inclus et qui est exclu?

Membres d'une bande inclus : Le groupe comprend les membres d'une bande (au sens de la *Loi sur les Indiens*) : a) dont la réserve était visée par un avis concernant l'eau potable (tel qu'un avis

d'ébullition de l'eau, etc.) pendant au moins un an à un moment quelconque du 20 novembre 1995 jusqu'à maintenant; b) qui n'étaient pas décédés avant le 20 novembre 2017; et c) qui vivent habituellement dans leur réserve.

Membres d'une bande exclus : Les membres de la Nation des Tsuu T'ina, de la Première Nation de Sucker Creek, de la Nation des Cris d'Ermineskin, de la Tribu des Gens-du-Sang, de la bande indienne d'Okanagan et Michael Daryl Isnardy sont exclus de ce recours collectif.

Particuliers : Quelles sont vos options?

Demeurer dans le groupe : Pour demeurer dans le groupe, vous n'avez rien à faire. Si le groupe obtient de l'argent ou des avantages, les avocats du groupe donneront un avis sur la façon de réclamer votre part. Vous serez légalement lié par toutes les ordonnances et tous les jugements, et vous ne pourrez pas poursuivre le Canada au sujet des mêmes réclamations en droit.

Le fait de demeurer dans le groupe n'aura pas d'incidence sur le soutien reçu des organismes communautaires qui sont financés par un gouvernement.

S'exclure du groupe : Si vous ne souhaitez pas participer à ce recours collectif, vous devez vous en exclure. Si vous vous excluez, vous ne pouvez pas obtenir d'argent ni d'avantages de ce litige. Pour vous exclure, veuillez visiter **[NDR : Insérer le site Web de l'administrateur pour ce recours]** pour obtenir un coupon d'exclusion ou écrire à CA2 Inc., 9, avenue Prince Arthur, Toronto (Ontario) M5R 1B2 afin de demander votre exclusion du présent recours collectif. Indiquez vos nom, adresse, numéro de téléphone et apposez votre signature. **Votre demande d'exclusion doit être envoyée au plus tard le [NDR : 90 jours à partir de la date de la première publication de l'avis].**

Premières Nations : Quelles sont vos options?

Choisir de se joindre au groupe : Les Premières Nations qui souhaitent se joindre au groupe et faire valoir des réclamations au nom de leur communauté doivent prendre des mesures pour participer au recours. Pour participer au recours ou obtenir de plus amples renseignements, veuillez communiquer avec l'administrateur au 1-800-538-0009 ou à l'adresse info@classaction2.com. Les Premières Nations peuvent également communiquer avec l'avocate du groupe Stephanie Willsey (sans frais : 1-877-244-7711; swillsey@mccarthy.ca) ou l'avocat du groupe Kevin Hille 416-598-3694; khille@oktlaw.com). **Votre demande de participation doit être envoyée au plus tard 120 jours avant la décision quant aux réclamations des membres du groupe.**

Comment puis-je obtenir de plus amples renseignements?

Nom de l'administrateur : CA2
Coordonnées : 1-800-538-0009 ou info@classaction2.com

Transmettre l'information aux personnes qui en ont besoin

Les représentants demandeurs et les avocats du groupe demandent aux travailleurs de la santé, aux travailleurs sociaux, aux dirigeants communautaires des Premières Nations, aux membres de la famille, aux aidants et aux amis des membres du groupe de bien vouloir transmettre l'information

aux membres du groupe qui auraient de la difficulté à lire ou à comprendre le présent avis. On peut obtenir de plus amples renseignements sur le présent recours sur le site Web ou en communiquant avec l'administrateur. Veuillez montrer le présent avis aux personnes qui pourraient être touchées par le présent recours ou à leurs aidants.

Annexe B

Êtes-vous membre d'une Première Nation qui a été visée par un avis concernant la qualité de l'eau potable à long terme?

Si vous avez répondu « OUI », un recours collectif pourrait avoir une incidence sur vos droits et les droits des Premières Nations

Un tribunal a autorisé le présent avis

- Vous pourriez être touché par un recours collectif visant l'accès à l'eau potable propre dans vos communautés des Premières Nations.
- La Cour du Banc de la Reine du Manitoba et la Cour fédérale du Canada ont décidé que des recours collectifs peuvent être introduits pour le compte d'un « groupe » de membres des Premières Nations et de membres d'une bande. Les membres d'une bande peuvent choisir de demeurer dans le groupe. Les Premières Nations peuvent choisir de se joindre ou non au groupe. Les tribunaux ont nommé la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, la Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Neskantaga et le chef Christopher Moonias à titre de représentants demandeurs pour le groupe.
- Les tribunaux n'ont pas statué si le Canada avait eu des comportements fautifs, et la question à savoir si le Canada a fait quelque chose de mal doit éventuellement être décidée par le tribunal. Il n'y a pas d'argent offert actuellement et rien ne garantit qu'il y en aura. Cependant, vos droits sont touchés et vous avez un choix à faire maintenant. Le présent avis vise à vous aider, vous et votre Première Nation, à faire ce choix.

PARTICULIERS MEMBRES D'UNE BANDE : VOS DROITS LÉGAUX ET OPTIONS À CETTE ÉTAPE	
NE RIEN FAIRE : CONSERVER VOS DROITS DANS LE CADRE DU GROUPE	**Demeurer membre du groupe dans le cadre de ces poursuites et attendre le résultat du litige. Partager les avantages éventuels résultant du litige, mais abandonner certains droits individuels.** En ne faisant rien, vous gardez la possibilité de recevoir de l'argent ou d'autres avantages pouvant découler d'un procès ou d'un règlement. Mais vous renoncez à tout droit de poursuivre vous-même le Canada à propos des mêmes réclamations en droit que dans la présente poursuite.
VOUS EXCLURE DU GROUPE (OPTION D'EXCLUSION)	**Vous exclure du groupe dans le cadre de ces poursuites et n'en tirer aucun avantage. Conserver ses droits.** Si vous demandez de vous exclure du groupe et que de l'argent ou des avantages sont ultérieurement attribués aux membres du groupe, vous n'en bénéficierez pas. Mais vous conservez le droit de poursuivre vous-même le Canada à propos des mêmes réclamations en droit que dans la présente poursuite.
PREMIÈRES NATIONS : VOS DROITS LÉGAUX ET OPTIONS À CETTE ÉTAPE	

QUESTIONS? APPELEZ SANS FRAIS AU 1-800-538-0009 OU VISITEZ HTTPS://CLASSACTION2.COM/

CHOISIR DE SE JOINDRE AU GROUPE (OPTION DE PARTICIPATION)	**Se joindre au groupe. Si vous vous joignez au groupe, vos Premières Nations pourraient partager l'argent et les avantages résultant du litige.** En vous joignant au groupe (option de participation), les Premières Nations pourraient recevoir de l'argent ou d'autres avantages, notamment des infrastructures d'approvisionnement en eau, qui pourraient découler d'un procès ou d'un règlement dans le cadre du recours collectif. Il est facile de participer et cela ne coûte rien.

NE RIEN FAIRE: PERDRE LES DROITS DE VOTRE PREMIÈRE NATION AUX TERMES DU RECOURS COLLECTIF	**En ne faisant rien, votre Première Nation perdra la possibilité de recevoir de l'argent et d'autres avantages si le recours collectif est accueilli favorablement.** Si les Premières Nations se joignent pas au groupe (option de participation) et que de l'argent ou des avantages sont ultérieurement attribués, votre Première Nation n'en bénéficiera pas. En choisissant de ne pas participer, votre Première Nation peut conserver les droits de poursuivre le Canada à propos des mêmes réclamations en droit que dans le présent litige.

- Les avocats doivent prouver les réclamations contre le Canada lors d'un procès ou conclure un règlement. Si de l'argent ou des avantages sont obtenus, vous serez avisé de la façon de réclamer votre part.
- Vos options sont expliquées dans le présent avis. Pour être exclu du recours, les particuliers membres d'une bande doivent en faire la demande au plus tard le **[NDR : 90 jours à partir de la première publication de l'avis.]**. Pour se joindre au recours collectif, les Premières Nations doivent envoyer leur avis de participation au plus tard 120 jours avant la décision quant aux réclamations des membres du groupe.

QUE CONTIENT LE PRÉSENT AVIS?

RENSEIGNEMENTS DE BASE

1. Pourquoi le présent avis est-il remis?

Les tribunaux ont des recours collectifs « autorisés ». Cela signifie que les poursuites respectent les exigences relatives aux recours collectifs et peuvent être instruites. Si vous êtes inclus, vous pourriez avoir des droits légaux et des options avant que les tribunaux ne statuent sur le bien-fondé des réclamations intentées contre le Canada en votre nom. Le présent avis tente d'expliquer toutes ces démarches.

Le juge en chef Joyal de la Cour du banc de la Reine du Manitoba préside actuellement l'affaire *Tataskweyak Cree Nation and Chief Doreen Spence v. Canada*. Le juge Favel de la Cour fédérale du Canada préside actuellement l'affaire *Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias v. Canada*. Les personnes qui intentent une poursuite sont appelées les demandeurs. Le Canada est le défendeur. Un lien vers la dernière version de la demande introductive d'instance (le document juridique énonçant les allégations contre le Canada) est disponible ici : https://www.mccarthy.ca/fr/action-collective-concernant-les-avis-sur-la-qualite-de-leau-potable-des-premieres-nations.

2. Quel est l'objet du présent recours?

Les présents recours collectifs allèguent que le Canada a manqué à ses obligations en ne veillant pas à ce que les communautés des Premières Nations aient un accès adéquat à de l'eau potable salubre. Les recours collectifs allèguent également que les membres de ces communautés et les communautés elles-mêmes ont subi des préjudices émotionnels, physiques, financiers et spirituels. Les recours collectifs allèguent que le Canada a manqué à ses obligations fiduciaires et à son devoir de diligence et a contrevenu à la *Charte des droits et libertés*. Les tribunaux n'ont pas statué (et le Canada n'a fait aucun aveu) quant à la véracité de l'une ou l'autre de ces affirmations. S'il n'y a pas de règlement avec le Canada, les demandeurs devront prouver leurs prétentions devant la Cour.

Si vous éprouvez des difficultés à comprendre cet enjeu ou si vous avez des questions au sujet du recours collectif, vous pouvez composer le 1-800-538-0009 pour obtenir de l'aide.

3. Pourquoi s'agit-il d'un recours collectif?

Dans un recours collectif, les « représentants demandeurs » (en l'espèce, la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, la Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Nesktanaga et le chef Christopher Moonias) ont poursuivi en justice au nom des particuliers membres d'une bande et de Premières Nations qui ont des revendications semblables. Tous ces particuliers membres d'une bande font partie du « groupe » ou sont des « membres du groupe », de même que les Premières Nations qui choisissent de se joindre au recours collectif. La Cour règle les questions pour tous les membres du groupe dans une même affaire, sauf (dans le cas des particuliers membres du groupe) pour ceux qui se retirent du groupe (option d'exclusion) et (dans le cas des Premières Nations) pour ceux qui ne se joignent pas au recours collectif (option de participation).

4. Qui est membre du groupe?

Le groupe comprend et exclut les personnes suivantes :

Toutes les personnes, sauf les « personnes exclues » :

(i) qui sont membres d'une bande au sens du paragraphe 2(1) de la *Loi sur les Indiens*, L.R.C. 1985, c. I-5 (« **Première Nation** »), dont la disposition des terres est assujettie à cette loi ou à la *Loi sur la gestion des terres des premières nations*, L.C. 1999, c. 24 (les « **terres des Premières Nations** »), et dont les terres des Premières Nations sont visées par un avis sur la qualité de l'eau potable (qu'il s'agisse d'un avis d'ébullition d'eau, d'un avis de ne pas boire, d'un avis de non-utilisation ou d'un autre type d'avis) qui a duré au moins un an depuis le 20 novembre 1995 (les « **Premières Nations touchées** »);

(ii) qui n'étaient pas décédées deux ans avant le début du présent recours (soit, au plus tard le 20 novembre 2017);

(iii) qui résidaient habituellement dans une Première Nation touchée pendant qu'elle était visée par un avis sur la qualité de l'eau potable qui a duré au moins un an; et

(iv) la Nation des Cris de Tataskweyak, la Première Nation de Curve Lake, la Première Nation de Neskantaga et toute autre Première Nation touchée qui choisit de se joindre au présent recours à titre de représentant (les « **Nations participantes** »).

Les « **personnes exclues** » sont des membres de la Nation des Tsuu T'ina, de la Première Nation de Sucker Creek, de la Nation des Cris d'Ermineskin, de la Tribu des Gens-du-Sang, de la bande indienne d'Okanagan et de la bande indienne d'Okanagan et de Michael Daryl Isnardy.

5. Que veulent les demandeurs?

Les demandeurs réclament des sommes d'argent et d'autres avantages pour le groupe, notamment des infrastructures d'approvisionnement en eau. Les demandeurs réclament également des honoraires d'avocats et des frais de justice, majorés des intérêts.

6. Y a-t-il de l'argent offert maintenant pour les membres du groupe?

Il n'y a pas d'argent ni d'avantages à l'heure actuelle parce que la Cour n'a pas encore statué quant aux comportements fautifs du Canada et que les deux parties n'ont pas conclu de règlement. Rien ne garantit que des sommes d'argent ou des avantages seront obtenus. Si de l'argent ou d'autres avantages deviennent disponibles, un avis sera donné sur la façon de réclamer votre part.

VOS DROITS ET OPTIONS

Chaque particulier membre d'une bande doit décider s'il veut rester ou non dans le groupe, et doit le faire au plus tard le **[NDR : 90 jours à partir de la première publication de l'avis]**. Les

Premières Nations doivent décider de se joindre ou non au groupe **au plus tard 120 jours avant que la Cour ne statue sur les réclamations des membres du groupe.**

7.	**Que se passe-t-il si je ne fais rien? Que se passe-t-il si la Première Nation ne fait rien?**

Particuliers membres d'une bande : Si vous ne faites rien, vous resterez automatiquement dans le recours collectif. Vous serez lié par toutes les ordonnances de la Cour, bonnes ou mauvaises. Si des sommes d'argent ou d'autres avantages sont attribués, vous pourriez avoir à prendre des mesures après avoir reçu un avis pour recevoir des avantages.
Premières Nations : Les Premières Nations doivent choisir de se joindre au recours collectif pour recevoir les avantages éventuels et être liées par toutes les ordonnances, bonnes ou mauvaises.

8.	**Que se passe-t-il si je ne veux pas me joindre au recours? Que se passe-t-il si une Première Nation souhaite se joindre au recours?**

Particuliers membres d'une bande : Si vous ne souhaitez pas être partie à l'instance, vous devez vous retirer – c'est-à-dire choisir « l'option d'exclusion ». Si vous vous retirez, vous ne recevrez aucun avantage pouvant découler du recours collectif. Vous ne serez pas lié par des ordonnances de la Cour et vous conservez le droit de poursuivre le Canada en tant que particulier à l'égard des questions en l'espèce.

Pour vous exclure, envoyez une communication indiquant que vous souhaitez être retiré du groupe de *Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation and Chief Christopher Moonias v. Canada,* dossier de la Cour nº CI-19-01-2466. Indiquez vos nom, adresse, numéro de téléphone et apposez votre signature. Vous pouvez également obtenir un formulaire d'exclusion à l'adresse **[insérer le lien Web de l'administrateur].** Vous devez faire parvenir votre demande d'exclusion au plus tard le **[NDR : 90 jours à partir de la première publication de l'avis]** à: CA2 Inc., 9, avenue Prince Arthur, Toronto (Ontario) M5R 1B2 ou info@classaction2.com.

Composez le **1-800-538-0009** si vous avez des questions sur la façon de vous exclure du recours collectif.

Premières Nations : Les Premières Nations qui souhaitent se joindre au recours collectif et faire valoir des réclamations au nom de leur bande ou de leur communauté doivent prendre des mesures pour s'y joindre – c'est-à-dire choisir l' « option de participation ». Pour choisir l'option de participation ou pour obtenir de plus amples renseignements, veuillez communiquer avec l'administrateur au **1-800-538-0009** ou à l'adresse info@classaction2.com. Les Premières Nations peuvent également communiquer avec les avocats du groupe et demander l'avocate du groupe Stephanie Willsey (sans frais : 1-877-244-7711 ou swillsey@mccarthy.ca) ou l'avocat du groupe Kevin Hille à khille@oktlaw.com ou au 416-598-3694. **Les demandes de participation des Premières Nations doivent être envoyées au plus tard 120 jours avant que la Cour ne statue sur les réclamations des membres du groupe.**

LES AVOCATS QUI VOUS REPRÉSENTENT

9. Les particuliers membres d'une bande sont-ils représentés par un avocat dans ce recours?

Oui. La Cour a nommé McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP pour vous représenter, ainsi que d'autres membres du groupe, à titre d'« avocats du groupe ». Vous n'aurez pas à payer d'honoraires ou d'autres frais juridiques pour ces avocats. Si vous souhaitez être représenté par un autre avocat, vous pouvez en retenir un pour comparaître devant la Cour à vos propres frais.

10. Comment les avocats seront-ils payés?

Les avocats ne seront payés que s'ils obtiennent gain de cause ou concluent un règlement. La Cour doit également approuver leur demande de rémunération. Les honoraires et frais pourraient être déduits des sommes obtenues pour le groupe, ou payés séparément par le défendeur.

PROCÈS

11. Quand et comment la Cour tranchera-t-elle qui a raison?

Si le recours collectif n'est pas rejeté ou réglé, les demandeurs doivent prouver leurs réclamations dans le cadre d'une requête en jugement sommaire ou d'un procès qui aura lieu à Ottawa (Ontario). Au cours de la requête ou du procès, la Cour entendra tous les éléments de preuve de manière à ce qu'elle puisse rendre une décision sur la question de savoir qui des demandeurs ou du Canada a raison à propos des réclamations dans le recours collectif. Rien ne garantit que les demandeurs gagneront quelque somme d'argent ou avantage pour le groupe.

12. Est-ce que je recevrai de l'argent après le procès?

Si les demandeurs obtiennent de l'argent ou des avantages à la suite d'un procès ou d'un règlement, vous serez avisé de la façon d'en demander une part ou des autres options que vous avez à ce moment-là. Ces choses ne sont pas connues à l'heure actuelle. Des renseignements importants sur cette affaire seront affichés sur le site Web **[NDR : insérer le site Web de l'administrateur]** dès qu'ils seront disponible.

OBTENIR DE PLUS AMPLES RENSEIGNEMENTS

13. Comment obtenir de plus amples renseignements? Comment puis-je transmettre l'information aux personnes qui en ont besoin?

Vous pouvez obtenir de plus amples renseignements à l'adresse **https://classaction2.com/** en composant sans frais le 1-800-538-0009, en écrivant à l'adresse suivante : CA2 Inc., 9, avenue Prince Arthur, Toronto (Ontario) M5R 1B2, ou par courriel : **info@classaction2.com.**

Les membres des Premières Nations et les particuliers membres d'une bande peuvent également communiquer avec les avocats du groupe et demander l'avocate du groupe Stephanie Willsey (sans

frais : 1-877-244-7711 ou swillsey@mccarthy.ca ou 66, rue Wellington Ouest, Toronto (Ontario) M5K 1E6) ou l'avocat du groupe Kevin Hille à khille@oktlaw.com ou au 416-598-3694 ou 250, avenue University, 8e étage, Toronto (Ontario) M5H 3E5.

La Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Neskantaga, le chef Christopher Moonias, la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, et les avocats du groupe demandent aux travailleurs de la santé, aux travailleurs sociaux, aux dirigeants communautaires des Premières Nations, aux membres de la famille, aux aidants et aux amis des membres du groupe de bien vouloir transmettre l'information aux membres du groupe qui auraient de la difficulté à lire ou à comprendre le présent avis. On peut obtenir de plus amples renseignements concernant le présent recours sur le site Web ou en communiquant avec l'administrateur ou les avocats du groupe. Veuillez montrer le présent avis aux personnes qui pourraient être touchées par le présent recours ou à leurs aidants.

Annexe C

Liste des journaux

Globe and Mail
National Post
Winnipeg Free Press
Vancouver Sun
Edmonton Sun
Calgary Herald
Saskatoon Star Phoenix
Regina Leader Post
Thunder Bay Chronicle-Journal
Toronto Star
Ottawa Citizen
Gazette de Montréal
La Presse de Montréal (édition numérique)
Halifax Chronicle-Herald
Moncton Times and Transcript
First Nations Drum

Annexe D

MODÈLE DE COUPON D'EXCLUSION

À: **[Insérer l'adresse de l'administrateur de la réclamation]**
[Insérer l'adresse électronique de l'administrateur]

Il ne s'agit **PAS** d'un formulaire de réclamation. Le fait de remplir le présent **COUPON D'EXCLUSION** vous empêchera de recevoir une indemnité ou d'autres avantages découlant d'un règlement ou d'un jugement dans le cadre du recours collectif désigné ci-après :

Remarque : Pour s'exclure, le présent coupon doit être dûment rempli et envoyé à l'adresse ci-dessus au plus tard **[INSÉRER LA DATE QUI TOMBE 90 JOURS APRÈS LA PREMIÈRE PUBLICATION DE L'AVIS]**

Dossier de la Cour nº : T-1673-19

LA PREMIÈRE NATION DE CURVE LAKE et LA CHEFFE EMILY WHETUNG pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE CURVE LAKE et LA PREMIÈRE NATION DE NESKANTAGA et LE CHEF CHRISTOPHER MOONIAS pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE NESKANTAGA

Demandeurs

–et–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

Je comprends qu'en m'excluant de ce recours collectif, je confirme que je ne souhaite pas participer à ce recours collectif.

Je comprends que toute réclamation individuelle que je pourrais avoir doit être introduite dans un délai de prescription déterminé ou cette réclamation sera légalement interdite.

Je crois comprendre que l'autorisation de ce recours collectif a suspendu l'écoulement du délai de prescription à partir du moment où le recours collectif a été déposé. Le délai de prescription recommencera à courir contre moi si je m'exclus de ce recours collectif.

Je comprends qu'en m'excluant, j'assume l'entière responsabilité de la reprise de la poursuite des démarches juridiques pertinentes relatives au délai de prescription pour protéger toute réclamation que je pourrais avoir.

Date :

Nom du membre du groupe :

_____ _____

Signature du témoin

Signature du membre du groupe qui s'exclut

Nom du témoin :

_____

Appendice 1

Dossier de la Cour nº T-1673-19

COUR FÉDÉRALE

ENTRE :

LA PREMIÈRE NATION DE CURVE LAKE et LA CHEFFE EMILY WHETUNG pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE CURVE LAKE
et LA PREMIÈRE NATION DE NESKANTAGA et LE CHEF CHRISTOPHER MOONIAS pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE NESKANTAGA

Demandeurs

–e t–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

Poursuite en vertu *des Règles des Cours fédérales, 334.16 et 334.17*

PLAN DE POURSUITE DE L'INSTANCE

POUR LES QUESTIONS COMMUNES, LES REQUÊTES EN AUTORISATION ET JUGEMENT SOMMAIRE

1. Le calendrier de consentement des parties est joint en **annexe A**. Le présent plan de poursuite de l'instance vise à traiter des requêtes des demandeurs en autorisation et jugement sommaire.

2. Si la requête en jugement sommaire est accueillie, un autre plan sera proposé pour régler les questions restantes, selon le résultat.

3. Sinon, si la requête en jugement sommaire n'est pas accueillie, les demandeurs proposeront un autre plan pour l'instruction des questions communes.

4. Les demandeurs demandent l'autorisation de la question commune suivante devant être résolue pour le compte de l'ensemble du groupe (la « **question commune de l'étape 1** ») :

(a) Depuis le 20 novembre 1995 jusqu'à maintenant, le défendeur a-t-il un devoir ou une obligation envers les membres du groupe de prendre des mesures raisonnables pour leur fournir ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable pour l'utilisation humaine?

5. Si le défendeur consent à l'autorisation d'un recours collectif, les demandeurs négocieront avec le défendeur pour résoudre les questions communes. En cas d'échec des négociations, les demandeurs exigeront la remise d'une défense, après quoi ils remettront un dossier à l'appui d'une requête en jugement sommaire sur la question commune de l'étape 1. Lors d'une conférence préparatoire à l'instruction qui suit la remise du dossier des demandeurs, ils demanderont à la Cour de décider que cette affaire est appropriée pour un jugement sommaire et de fixer une date d'audition de leur requête.

6. Si le défendeur s'oppose à l'autorisation d'un recours collectif, les demandeurs exigeront que le défendeur présente une défense. Les demandeurs produiront alors un dossier à l'appui des requêtes en autorisation et jugement sommaire sur la question commune de l'étape 1. Lors d'une conférence préparatoire à l'instruction qui suit la remise du dossier des demandeurs, ils demanderont à la Cour de décider que cette affaire est appropriée pour un jugement sommaire et de fixer le calendrier d'audition de leur requête en jugement sommaire ainsi que l'audition de leur requête en autorisation.

7. Lors de la requête en autorisation, les demandeurs demanderont également l'autorisation des questions communes suivantes devant être résolues pour le compte de chaque sous-groupe de la Première Nation touchée, soit les membres de cette Première Nation et la Première Nation elle-même, si elle est une Première Nation participante (les « **questions communes de l'étape 2** ») :

(a) Si la réponse à la question commune 4(a) est « oui », le Canada a-t-il manqué à ses devoirs ou obligations envers les membres du sous-groupe?

(b) Si la réponse à la question commune 7(a) est « oui », une violation de la *Charte des droits et libertés* (« **Charte** ») est-elle sauvée par l'art. 1 de la *Charte*?

(c) Si la réponse à la question commune 7(a) est « oui », le manquement du défendeur a-t-il causé une entrave importante et déraisonnable à l'utilisation et à la jouissance de leurs terres par les membres du groupe ou leurs Premières Nations?

(d) Si la réponse à la question commune 7(a) est « oui » et que la réponse à la question commune 7(b) est « non », les membres du sous-groupe peuvent-ils obtenir des dommages en vertu de l'art. 24(1) de la *Charte*?

(e) La causalité des dommages subis par les membres du sous-groupe peut-elle être considérée comme une question commune?

(f) La Cour peut-elle procéder à une évaluation globale de tout ou partie des dommages subis par les membres du sous-groupe?

(g) La conduite du défendeur justifie-t-elle l'octroi de dommages-intérêts punitifs et, dans l'affirmative, de quel montant?

(h) La Cour devrait-elle ordonner au défendeur de prendre des mesures pour fournir aux membres du sous-groupe ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable?

(i) Dans l'affirmative, quelles mesures devraient être ordonnées?

8. Si la question commune de l'étape 1 est tranchée en faveur des demandeurs, les parties concluront un plan de communication de la preuve pour gérer la production, en temps opportun, par le défendeur des documents pertinents à l'égard des questions communes de l'étape 2 pour chaque sous-groupe des Premières Nations touchées.

9. Au moment d'évaluer la production des documents du défendeur, les demandeurs décideront s'il y a lieu de présenter des requêtes en jugement sommaire sur les questions communes de l'étape 2 pour certains ou la totalité des sous-groupes des Premières Nations touchées, ou s'il y a lieu de prévoir une instruction sur ces questions communes.

NOTIFICATION DE L'AUTORISATION ET PROCÉDURE D'EXCLUSION

10. Lors de la requête en autorisation, les demandeurs demanderont à la Cour de fixer la forme et le contenu de la notification de l'autorisation de ce recours (l'« **avis d'autorisation** »), le

moment et la manière de fournir l'avis d'autorisation (le « **programme d'avis** ») et d'indiquer une date d'exclusion comme étant trois (3) mois suivant la date de l'ordonnance d'autorisation (la «**date d'exclusion** »), et une date de participation comme étant six (6) mois avant le début de la détermination des questions communes de l'étape 2.

11. Si une requête en jugement sommaire est entendue avec une requête en autorisation, les demandeurs demanderont au tribunal de rendre d'abord sa décision sur l'autorisation, d'ordonner la délivrance d'un avis si un recours collectif est autorisé, puis de rendre sa décision sur la question commune de l'étape 1 après la date d'exclusion.

12. Les demandeurs demanderont à la Cour d'ordonner au défendeur de payer les frais du programme d'avis, y compris les frais de l'administrateur.

13. Les demandeurs demanderont une ordonnance pour la distribution de l'avis d'autorisation comme suit :

(a) afficher l'avis sur les sites Web respectifs des avocats du groupe, du défendeur et de l'administrateur;

(b) publier l'avis dans les journaux désignés;

(c) distribuer l'avis à tous les bureaux de la Nation des Cris de Tataskweyak et de l'Assemblée des Premières Nations;

(d) faire parvenir l'avis à tout membre du groupe qui le demande et aux chefs de chaque Première Nation qui a le droit d'adhérer au groupe, ainsi qu'à chaque bureau d'une bande;

(e) établir une ligne de soutien nationale sans frais, afin de fournir de l'aide aux membres du groupe, aux familles, aux tuteurs, aux gardiens ou aux autres personnes qui font des demandes pour leur propre compte ou pour le compte de membres du groupe;

(f) et par tout autre avis que la Cour ordonne.

14. Les demandeurs demanderont à la Cour d'approuver les formulaires d'exclusion et de participation devant être utilisés par les membres du groupe qui souhaitent s'exclure du recours collectif ou y participer, ce qui exigera que le membre du groupe fournisse suffisamment de renseignements pour établir qu'il est membre du groupe.

ÉTAPES DE POURSUITE DE L'INSTANCE APRÈS LA DÉTERMINATION DES QUESTIONS COMMUNES FAVORABLES AU GROUPE

Avis de résolution des questions communes

15. Les demandeurs demanderont à la Cour de régler la forme et le contenu de l'avis de résolution des questions communes de l'étape 1 et de l'étape 2 (le « **plan d'avis de résolution** ») et la manière dont les membres du groupe déposeront des réclamations (les « **formulaires de réclamation** ») avant une date fixée avec l'administrateur. Les demandeurs demanderont également à la Cour de régler un processus approprié pour déterminer les questions individuelles restantes.

Évaluation des dommages

16. Si les questions communes sont résolues en faveur des demandeurs, les demandeurs proposent deux (2) méthodes d'évaluation et de distribution des dommages-intérêts pour les membres du groupe comme suit :

(a) l'ensemble des dommages-intérêts dont chaque particulier membre d'un groupe peut se prévaloir *au prorata* ou *au prorata* au sein d'un sous-groupe;

(b) l'ensemble des dommages-intérêts dont les Premières Nations participantes peuvent se prévaloir sur une base communautaire; et

17. À la suite de la détermination de l'ensemble des dommages-intérêts, y compris les dommages-intérêts punitifs, des dommages-intérêts supplémentaires peuvent être accordés dans le cadre d'instances individuelles.

Évaluation du nombre de demandeurs

18. Après l'expiration du délai de remise des formulaires de réclamation, l'administrateur calcule le nombre total de demandeurs aux fins de tout partage *au prorata* des dommages-intérêts globaux.

19. Les parties peuvent également retenir les services d'un actuaire pour aider à déterminer la taille du groupe et les caractéristiques démographiques du groupe.

Distribution de dommages-intérêts punitifs globaux

20. Si la Cour accorde des dommages-intérêts globaux au groupe ou à un sous-groupe, le montant total des dommages-intérêts sera attribué au groupe d'une manière que déterminera la Cour dans un délai fixé par la Cour à partir de l'avis de résolution.

Fonds non distribués

21. Toute somme non distribuée sera distribuée à *cy-près* selon les directives de la Cour. Les demandeurs proposent que les montants résiduels soient distribués *cy-près* à des organismes communautaires qui aident les Premières Nations touchées à mettre en place des infrastructures d'approvisionnement en eau.

Résolution des questions individuelles

22. Dans les trente (30) jours qui suivent la délivrance du jugement sur les questions communes, les parties se réunissent pour régler un protocole visant à résoudre des questions individuelles. Si les parties ne parviennent pas à s'entendre sur un tel protocole, les demandeurs doivent demander des directives à la Cour dans les soixante (60) jours.

EXIGENCES DIVERSES DU PLAN DE POURSUITE DE L'INSTANCE

Financement

23. Les avocats du groupe ont conclu une entente avec les représentants demandeurs à l'égard des honoraires d'avocats et débours juridiques. Cette entente prévoit que les avocats du groupe ne recevront pas de paiement pour leur travail tant que le recours collectif n'aura pas reçu une suite favorable ou que les frais n'auront pas été recouvrés du défendeur.

24. Les honoraires des avocats du groupe sont soumis à l'approbation du tribunal.

Administration des réclamations

25. L'administrateur assurera l'administration des réclamations pour tout règlement ou jugement obtenu. L'administrateur distribuera l'avis conformément au plan d'avis de résolution. Si un règlement est réalisé et qu'un fonds de règlement est fourni, ou si un jugement donne lieu à une attribution en faveur des membres du groupe, l'administrateur administrera les paiements prélevés sur le fonds aux demandeurs selon la procédure indiquée ci-dessus, après approbation et/ou modification par la Cour.

Site Web du recours collectif

26. De temps à autre, les avocats du groupe afficheront les actes de procédure et les documents de cour pertinents, les derniers documents et résumés des derniers développements et faits nouveaux, les délais prévus, la foire aux questions et les réponses et les coordonnées des avocats du groupe pour les renseignements des membres du groupe.

Gestion des conflits

27. Les avocats du groupe et les demandeurs ont pris les mesures appropriées pour établir qu'il n'existe aucun conflit d'intérêts entre les membres du groupe, et qu'aucun tel conflit n'est prévu. En cas de conflit, McCarthy Tétrault S.E.N.C.R.L., s.r.l. représentera un sous-groupe et Olthuis Kleer Townshend LLP, l'autre. Si un conflit survenait entre les Premières Nations et leurs membres, ce qui n'est pas prévu étant donné leur intérêt commun, McCarthy Tétrault S.E.N.C.R.L., s.r.l. représentera les membres et Olthuis Kleer Townshend LLP représentera les Premières Nations.

Droit applicable

28. La législation applicable est la *Loi constitutionnelle de 1982*, la *Loi constitutionnelle de 1867*, la *Charte des droits et libertés*, la *Loi sur la salubrité de l'eau potable des Premières Nations, L.C. 2013, c. 21*, la *Loi sur les Indiens*, L.R.C. 1985, c. I-5, *Loi sur la gestion des terres des Premières Nations*, L.C. 1999, c. 24, *La Loi sur les Cours fédérales*, L.R.C. 1985, c. F-7 ainsi que les règlements applicables, la common law et le droit canadien.

Coordination des instances

29. Le 14 juillet 2020, la Cour du banc de la Reine du Manitoba a autorisé un recours collectif connexe dans l'affaire intitulée *Tataskweyak Cree Nation v. Canada*, dossier de la Cour nº 19-01-24661 (l'« **action de Tataskweyak** »). Les représentants demandeurs dans l'action de Tataskweyak se sont engagés à travailler en collaboration avec les demandeurs pour faire valoir leurs intérêts communs. Aux termes du Protocole judiciaire *canadien de gestion de recours collectifs multijuridictionnels et la remise d'un avis de recours collectif*, les demandeurs demanderont à la Cour fédérale et à la Cour du banc de la Reine du Manitoba de convoquer des conférences conjointes de gestion des instances, selon le cas, afin d'assurer la coordination entre

les deux instances et de favoriser l'efficacité. Afin d'assurer la cohérence des résultats, les demandeurs peuvent demander à la Cour fédérale et à la Cour du banc de la Reine du Manitoba de se réunir pour entendre toute requête en jugement sommaire ou en vue d'un procès de l'action de Tataskweyak et du présent recours.

Annexe A

Calendrier

CALENDRIER DE POURSUITE DE L'INSTANCE PROPOSÉ		
Étapes à suivre	**Par quelle partie**	**Date à respecter**
Remise de la défense	Défendeur	À remettre sur avis de 60 jours par les demandeurs
Remise de la réponse, le cas échéant	Demandeurs	À remettre 15 jours après la remise de la défense
Remise du dossier de jugement sommaire	Demandeurs	30 juin 2020 (peut être ajournée jusqu'à 5 mois si le défendeur consent à l'autorisation et participe à des discussions exploratoires sur le règlement)
Pré-instruction pour évaluer le jugement sommaire	Toutes les parties	Juillet 2020 (peut être ajournée jusqu'à 5 mois si le défendeur consent à l'autorisation et participe à des discussions exploratoires sur le règlement)
Remise du dossier de réponse	Défendeur	30 octobre 2020 (peut être ajournée jusqu'à 5 mois si le défendeur consent à l'autorisation et participe à des discussions exploratoires sur le règlement)
Remise du dossier de réplique, le cas échéant	Demandeurs	16 décembre 2020 (ou 45 jours après la remise du dossier de réponse, selon la plus tardive de ces éventualités)
Contre-interrogatoires	Toutes les parties	À terminer 75 jours après la remise du dossier de réplique, le cas échéant, ou 120 jours après la remise du dossier de réponse
Requêtes en rejet, le cas échéant	Toutes les parties	À terminer 30 jours après la fin des contre-interrogatoires

CALENDRIER DE POURSUITE DE L'INSTANCE PROPOSÉ		
Étapes à suivre	**Par quelle partie**	**Date à respecter**
Remise des réponses aux engagements	Toutes les parties	À terminer 15 jours après la requête en rejet
Remise du mémoire des demandeurs	Demandeurs	À remettre 45 jours après l'achèvement des réponses aux engagements
Remise du mémoire de réponse	Défendeur	À remettre 45 jours après la remise du mémoire des demandeurs
Remise du mémoire de réplique	Demandeurs	À remettre 15 jours après la remise du mémoire de réponse
Audition d'une éventuelle requête en jugement sommaire	Toutes les parties	Juillet-août 2021

Dossier de la Cour nº T-1673-19

COUR FÉDÉRALE

LA PREMIÈRE NATION DE CURVE LAKE et LA CHEFFE EMILY WHETUNG pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE CURVE LAKE et LA PREMIÈRE NATION DE NESKANTAGA et LE CHEF CHRISTOPHER MOONIAS pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE NESKANTAGA

Demandeurs

–e t–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

PLAN DE POURSUITE DE L'INSTANCE

(Déposé le 8e jour de septembre 2020)

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Avocats des demandeurs

ANNEXE C

ORDONNANCE D'ATTESTATION DU MANITOBA

Voir ci-joint.

N° de dossier CI-19-01-24661

COUR DU BANC DE LA REINE

Winnipeg Centre

ENTRE :

LA NATION DES CRIS DE TATASKWEYAK et LA CHEFFE DOREEN SPENCE pour son propre compte et pour le compte de tous les membres de la NATION DES CRIS DE TATASKWEYAK

Demandeurs

–et–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

Procédure en vertu de la *Loi sur les recours collectifs*, CPLM c. C. 130

ORDONNANCE

LA PRÉSENTE MOTION en attestation, présentée par les demandeurs, a été entendue le 14 juillet 2020 au 408 York Ave à Winnipeg, au Manitoba.

À LA LECTURE du dossier de motion des demandeurs et du consentement du défendeur.

ET SUR AVIS que les parties consentent à la présente ordonnance.

1. **LA COUR ORDONNE** que ce recours soit et est autorisé par les présentes comme un recours collectif conformément à la *Loi sur les recours collectifs*, CPLM c. C. 130.

2. **LA COUR ORDONNE ET DÉCLARE** que le groupe est défini comme suit :

(a) Toutes les personnes autres que les personnes exclues :

(i) qui sont membres d'une bande au sens du paragraphe 2(1) de la *Loi sur les Indiens*, L.R.C. 1985, c, I-5 (« **Première Nation** »), dont la disposition des terres est assujettie à cette loi ou à la *Loi sur la gestion des terres des*

premières nations, L.C. 1999, c. 24 (les « **terres des Premières Nations** »), et dont les terres des Premières Nations sont visées par un avis sur la qualité de l'eau potable (qu'il s'agisse d'un avis d'ébullition d'eau, d'un avis de ne pas boire ou d'un avis de non-utilisation ou d'un autre type d'avis) qui a duré au moins un an depuis le 20 novembre 1995 jusqu'à maintenant (les «**Premières Nations touchées**»);

(ii) qui n'étaient pas décédées avant le 20 novembre 2017; et

(iii) qui résidaient habituellement dans une Première Nation touchée alors visée par un avis sur la qualité de l'eau potable qui a duré au moins un an; et

(b) La Nation des Cris de Tataskweyak et toute autre Première Nation touchée qui a choisi de se joindre au présent recours à titre de représentant (les « **Nations participantes** »).

Les « **personnes exclues** » sont les membres de la Nation des Tsuu T'ina, de la Première Nation de Sucker Creek, de la Nation des Cris d'Ermineskin, de la Tribu des Gens-du-Sang et de la bande indienne d'Okanagan, et Michael Daryl Isnardy.

3. **LA COUR ORDONNE ET DÉCLARE** que, jusqu'à ce que les réclamations invoquées dans le présent recours collectif soient entièrement et définitivement décidées, réglées, interrompues ou abandonnées, y compris l'épuisement de tous les droits d'appel, la permission de la Cour est requise pour introduire tout autre recours, instance ou procédure pour le compte d'un membre du groupe à l'égard des réclamations invoquées dans le présent recours, sauf les recours, instances ou procédures introduits pour le compte des membres du groupe qui se sont exclus du présent recours collectif de la manière prescrite ci-après.

4. **LA COUR ORDONNE ET DÉCLARE** que les questions communes suivantes soient et sont par les présentes autorisées aux fins de résolution pour le compte du groupe dans son ensemble:

(a) Depuis le 20 novembre 1995 jusqu'à maintenant, le défendeur a-t-il un devoir ou une obligation envers les membres du groupe de prendre des mesures raisonnables

pour leur fournir ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable pour l'utilisation humaine?

5. **LA COUR ORDONNE ET DÉCLARE** qu'un sous-groupe soit et est par les présentes reconnu pour les membres de chaque Première Nation touchée, et la Première Nation elle-même, s'il s'agit d'une Nation participante;

6. **LA COUR ORDONNE ET DÉCLARE** que les questions communes suivantes soient et sont, par les présentes, autorisées aux fins de résolution pour le compte de chaque sous-groupe :

(a) Si la réponse à la question commune 4(a) est « oui », le Canada a-t-il manqué à ses devoirs ou obligations envers les membres du sous-groupe?

(b) Si la réponse à la question commune 6(a) est « oui », une violation de la *Charte des droits et libertés* (« **Charte** ») est-elle sauvée par l'art. 1 de la *Charte*?

(c) Si la réponse à la question commune 6(a) est « oui », le manquement du défendeur a-t-il causé une entrave importante et déraisonnable à l'utilisation et à la jouissance de leurs terres par les membres du groupe ou leurs Premières Nations?

(d) Si la réponse à la question commune 6(a) est « oui » et que la réponse à la question commune 6(b) est « non », les membres du sous-groupe peuvent-ils obtenir des dommages en vertu de l'art. 24(1) de la Charte?

(e) La causalité des dommages subis par les membres du sous-groupe peut-elle être considérée comme une question commune?

(f) La Cour peut-elle procéder à une évaluation globale de tout ou partie des dommages subis par les membres du sous-groupe?

(g) La conduite du défendeur justifie-t-elle l'octroi de dommages-intérêts punitifs et, dans l'affirmative, de quel montant?

(h) La Cour devrait-elle ordonner au défendeur de prendre des mesures pour fournir aux membres du sous-groupe ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable?

(i) Dans l'affirmative, quelles mesures devraient être ordonnées?

7. **LA COUR ORDONNE ET DÉCLARE** que la cheffe Doreen Spence et la Nation des Cris de Tataskweyak sont nommées par les présentes représentants demandeurs du groupe.

8. **LA COUR ORDONNE ET DÉCLARE** que McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP sont nommés par les présentes avocats du groupe (les «**avocats du groupe** »).

9. **LA COUR ORDONNE ET DÉCLARE** que les demandeurs et le défendeur déploient des efforts raisonnables pour convenir de la nomination d'un administrateur aux fins de donner avis de l'attestation du présent recours collectif (l'« **administrateur** »). Les parties avisent la Cour de la nomination de l'administrateur dans les soixante (60) jours suivant la date de la présente ordonnance, à défaut de quoi la Cour nomme un administrateur dûment qualifié.

10. **LA COUR ORDONNE** que les membres du groupe soient avisés que le présent recours a été attesté en tant que recours collectif de la manière suivante, ce qui constitue et est par les présentes réputé constituer un avis adéquat :

(a) l'avis simplifié figurant à l'**annexe A** et l'avis détaillé figurant à l'**annexe B**, ainsi que la traduction en français de ces documents sont affichés, tel que convenu par les parties, sur les sites Web respectifs des avocats du groupe, du défendeur et de l'administrateur;

(b) l'administrateur publie l'avis simplifié dans les journaux indiqués à l'**annexe C** jointe aux présentes, en format ¼ de page dans l'édition de fin de semaine de chaque journal, si possible;

(c) l'administrateur distribue l'avis simplifié à tous les bureaux de la Nation des Cris de Tataskweyak et de l'Assemblée des Premières Nations;

(d) l'administrateur transmet l'avis simplifié et l'avis détaillé à tout membre du groupe qui en fait la demande;

(e) l'administrateur transmet l'avis simplifié et l'avis détaillé aux chefs de chaque Première Nation touchée indiquée conformément au paragraphe 12 ci-après, à l'exception des personnes exclues;

(f) l'administrateur transmet l'avis simplifié et l'avis détaillé au bureau de la bande ou à un bureau analogue de chaque Première Nation touchée indiquée conformément au paragraphe 12 ci-après, à l'exception des personnes exclues, en demandant qu'ils soient affichés dans un endroit bien visible;

(g) l'administrateur établit une ligne de soutien nationale sans frais, afin de fournir de l'aide aux membres du groupe, aux familles, aux tuteurs, aux gardiens ou aux autres personnes qui font des demandes de renseignements pour leur propre compte ou pour le compte de membres du groupe.

11. **LA COUR ORDONNE** que le défendeur soit responsable du coût de la remise d'un avis d'attestation d'un recours collectif tel qu'il est énoncé au paragraphe 10 ci-dessus.

12. **LA COUR ORDONNE** que, dans les 30 jours qui suivent la date de la présente ordonnance, les demandeurs et le défendeur échangent une liste de leurs meilleurs renseignements sur les noms des Premières Nations qui peuvent participer au groupe, et ces listes constituent le moyen d'établir les Premières Nations qui ont droit à un avis direct aux fins des paragraphes 10(e) et (f) ci-dessus.

13. **LA COUR ORDONNE** qu'un membre du groupe puisse se retirer du présent recours collectif en remettant un coupon de retrait signé, dont un modèle est joint à l'**annexe D**, ou une autre demande de retrait signée et lisible, dans les cent vingt (120) jours qui suivent la date à laquelle l'avis est publié pour la première fois conformément au paragraphe 10(b) ci-dessus (la «**date limite de retrait** »), à l'administrateur. L'avis simplifié et l'avis détaillé doivent indiquer la date limite de retrait et l'adresse de l'administrateur aux fins de la réception des coupons de retrait.

14. **LA COUR ORDONNE** qu'aucun membre du groupe ne puisse se retirer du présent recours collectif après la date limite de retrait, sauf avec l'autorisation de la Cour.

15. **LA COUR ORDONNE** que l'administrateur signifie aux parties et dépose auprès de la Cour, dans les soixante (60) jours suivant l'expiration de la date limite de retrait, une déclaration sous serment énumérant toutes les personnes qui ont fait leur choix de se retirer du recours collectif, le cas échéant.

16. **LA COUR ORDONNE** qu'une Première Nation touchée puisse participer au présent recours collectif en mandatant les avocats du groupe au moins cent vingt (120) jours avant le règlement de l'une ou l'autre des questions communes (la « **date limite de participation** »), aux avocats du groupe, à l'adresse indiquée au paragraphe 11 ci-dessus.

17. **LA COUR ORDONNE** qu'aucun membre du groupe ne puisse participer au présent recours collectif après la date limite de participation, sauf avec l'autorisation de la Cour.

18. **LA COUR ORDONNE** que les avocats du groupe signifient aux parties et déposent auprès de la Cour, dans les soixante (60) jours suivant l'expiration de la date limite de participation, une liste de toutes les Premières Nations touchées qui ont choisi de participer au recours collectif.

19. **LA COUR DÉCLARE** que le plan de poursuite de l'instance joint aux présentes à l'appendice 1 est une méthode pratique pour faire avancer le recours collectif pour le compte du groupe.

20. **LA COUR ORDONNE** que chaque partie supporte ses propres frais de la motion en attestation du présent recours collectif.

14 juillet 2020

G.D. JOYAL

L'honorable juge en chef Joyal

CONSENTEMENT QUANT À LA FORME ET AU CONTENU :

Par : _____

Stephanie Willsey pour Catharine Moore/Scott Farlinger
Le procureur général du Canada

Par : _____
Stephanie Willsey
La Nation des Cris de Tataskweyak et la cheffe Doreen Spence

Annexe A

Avis juridique

Êtes-vous membre d'une Première Nation qui a été visée par un avis concernant la qualité de l'eau potable à long terme?

Une poursuite pourrait avoir une incidence sur vous et votre Première Nation. Veuillez lire ceci attentivement.

Vous pourriez être touché par un recours collectif en raison du manque d'accessibilité à l'eau potable propre sur les réserves des Premières Nations.

La Cour du Banc de la Reine du Manitoba et la Cour fédérale du Canada ont décidé qu'un recours collectif au nom d'un « groupe » de membres des Premières Nations et de membres d'une bande pouvait être intenté. Les membres d'une bande peuvent choisir de demeurer dans le groupe. Les Premières Nations peuvent choisir de se joindre ou non au groupe. Il n'y a pas d'argent disponible à l'heure actuelle et rien ne garantit que le recours collectif sera accueilli.

Les tribunaux ont nommé la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, la Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Neskantaga et le chef Christopher Moonias à titre de représentants demandeurs pour le groupe.

De quoi s'agit-il?

Le présent recours collectif allègue que le Canada a manqué à ses obligations en ne veillant pas à ce que les communautés des Premières Nations aient un accès adéquat à de l'eau potable salubre. Le recours collectif allègue que les membres de ces communautés et les communautés elles-mêmes ont subi des préjudices émotionnels, physiques, financiers et spirituels. Le recours collectif allègue que le Canada a manqué à ses obligations fiduciaires et à son devoir de diligence et a contrevenu à la *Charte des droits et libertés*. La Cour n'a pas statué sur la véracité de ces allégations. En l'absence de règlement, les demandeurs devront prouver leurs prétentions devant le tribunal.

Si vous avez des questions au sujet du présent recours collectif, vous pouvez communiquer avec M. Eric Khan au 1-800-538-0009 ou à l'adresse info@classaction2.com.

Qui représente le groupe?

La Cour a nommé McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP pour représenter le groupe à titre d' « avocats du groupe ». Vous n'êtes pas tenu de payer les avocats du groupe, ni personne d'autre, pour participer. Si les avocats du groupe obtiennent de l'argent ou des avantages pour le groupe, ils peuvent demander des honoraires et des frais d'avocats, lesquels seront déduits des sommes ou des avantages recouvrés pour les membres du groupe.

Particuliers membres du groupe : Qui est inclus et qui est exclu?

Membres d'une bande inclus : Le groupe comprend les membres d'une bande (au sens de la *Loi sur les Indiens*) : a) dont la réserve était visée par un avis concernant l'eau potable (tel qu'un avis

d'ébullition de l'eau, etc.) pendant au moins un an à un moment quelconque du 20 novembre 1995 jusqu'à maintenant; b) qui n'étaient pas décédés avant le 20 novembre 2017; et c) qui vivent habituellement dans leur réserve.

Membres d'une bande exclus : Les membres de la Nation des Tsuu T'ina, de la Première Nation de Sucker Creek, de la Nation des Cris d'Ermineskin, de la Tribu des Gens-du-Sang, de la bande indienne d'Okanagan et Michael Daryl Isnardy sont exclus de ce recours collectif.

Particuliers : Quelles sont vos options?

Demeurer dans le groupe : Pour demeurer dans le groupe, vous n'avez rien à faire. Si le groupe obtient de l'argent ou des avantages, les avocats du groupe donneront un avis sur la façon de réclamer votre part. Vous serez légalement lié par toutes les ordonnances et tous les jugements, et vous ne pourrez pas poursuivre le Canada au sujet des mêmes réclamations en droit.

Le fait de demeurer dans le groupe n'aura pas d'incidence sur le soutien reçu des organismes communautaires qui sont financés par un gouvernement.

Se retirer du groupe : Si vous ne souhaitez pas participer à ce recours collectif, vous devez vous en retirer. Si vous vous retirez, vous ne pouvez pas obtenir d'argent ni d'avantages de ce litige. Pour vous retirer, veuillez visiter **[NDR : Insérer le site Web de l'administrateur pour ce recours]** pour obtenir un coupon de retrait ou écrire à CA2 Inc., 9, avenue Prince Arthur, Toronto (Ontario) M5R 1B2 afin de demander votre retrait du présent recours collectif. Indiquez vos nom, adresse, numéro de téléphone et apposez votre signature. **Votre demande de retrait doit être envoyée au plus tard le [NDR : 120 jours à partir de la date de la première publication de l'avis].**

Premières Nations : Quelles sont vos options?

Choisir de se joindre au groupe : Les Premières Nations qui souhaitent se joindre au groupe et faire valoir des réclamations au nom de leur communauté doivent prendre des mesures pour participer au recours. Pour participer au recours ou obtenir de plus amples renseignements, veuillez communiquer avec l'administrateur au 1-800-538-0009 ou à l'adresse info@classaction2.com. Les Premières Nations peuvent également communiquer avec l'avocate du groupe Stephanie Willsey (sans frais : 1-877-244-7711; swillsey@mccarthy.ca) ou l'avocat du groupe Kevin Hille 416-598-3694; khille@oktlaw.com). **Votre demande de participation doit être envoyée au plus tard 120 jours avant la décision quant aux réclamations des membres du groupe.**

Comment puis-je obtenir de plus amples renseignements?

Nom de l'administrateur : CA2
Coordonnées : 1-800-538-0009 ou info@classaction2.com

Transmettre l'information aux personnes qui en ont besoin

Les représentants demandeurs et les avocats du groupe demandent aux travailleurs de la santé, aux travailleurs sociaux, aux dirigeants communautaires des Premières Nations, aux membres de la famille, aux aidants et aux amis des membres du groupe de bien vouloir transmettre l'information

aux membres du groupe qui auraient de la difficulté à lire ou à comprendre le présent avis. On peut obtenir de plus amples renseignements sur le présent recours sur le site Web ou en communiquant avec l'administrateur. Veuillez montrer le présent avis aux personnes qui pourraient être touchées par le présent recours ou à leurs aidants.

Annexe B

Êtes-vous membre d'une Première Nation qui a été visée par un avis concernant la qualité de l'eau potable à long terme?

Si vous avez répondu « OUI », un recours collectif pourrait avoir une incidence sur vos droits et les droits des Premières Nations

Un tribunal a autorisé le présent avis

- Vous pourriez être touché par un recours collectif visant l'accès à l'eau potable propre dans vos communautés des Premières Nations.
- La Cour du Banc de la Reine du Manitoba et la Cour fédérale du Canada ont décidé que des recours collectifs peuvent être introduits pour le compte d'un « groupe » de membres des Premières Nations et de membres d'une bande. Les membres d'une bande peuvent choisir de demeurer dans le groupe. Les Premières Nations peuvent choisir de se joindre ou non au groupe. Les tribunaux ont nommé la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, la Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Neskantaga et le chef Christopher Moonias à titre de représentants demandeurs pour le groupe.
- Les tribunaux n'ont pas statué si le Canada avait eu des comportements fautifs et la question à savoir si le Canada a fait quelque chose de mal doit éventuellement être décidée par le tribunal. Il n'y a pas d'argent offert actuellement et rien ne garantit qu'il y en aura. Cependant, vos droits sont touchés et vous avez un choix à faire maintenant. Le présent avis vise à vous aider, vous et votre Première Nation, à faire ce choix.

PARTICULIERS MEMBRES D'UNE BANDE : VOS DROITS LÉGAUX ET OPTIONS À CETTE ÉTAPE	
NE RIEN FAIRE : CONSERVER VOS DROITS DANS LE CADRE DU GROUPE	**Demeurer membre du groupe dans le cadre de ces poursuites et attendre le résultat du litige. Partager les avantages éventuels résultant du litige, mais abandonner certains droits individuels.** En ne faisant rien, vous gardez la possibilité de recevoir de l'argent ou d'autres avantages pouvant découler d'un procès ou d'un règlement. Mais vous renoncez à tout droit de poursuivre vous-même le Canada à propos des mêmes réclamations en droit que dans la présente poursuite.
VOUS RETIRER DU GROUPE (OPTION DE RETRAIT)	**Vous retirer du groupe dans le cadre de ces poursuites et n'en tirer aucun avantage. Conserver ses droits.** Si vous demandez de vous retirer du groupe et que de l'argent ou des avantages sont ultérieurement attribués aux membres du groupe, vous n'en bénéficierez pas. Mais vous conservez le droit de poursuivre vous-même le Canada à propos des mêmes réclamations en droit que dans la présente poursuite.
PREMIÈRES NATIONS : VOS DROITS LÉGAUX ET OPTIONS À CETTE ÉTAPE	

QUESTIONS? APPELEZ SANS FRAIS AU 1-800-538-0009 OU VISITEZ HTTPS://CLASSACTION2.COM/

CHOISIR DE SE JOINDRE AU GROUPE (OPTION DE PARTICIPATION)	**Se joindre au groupe. Si vous vous joignez au groupe, vos Premières Nations pourraient partager l'argent et les avantages résultant du litige.** En vous joignant au groupe (option de participation), les Premières Nations pourraient recevoir de l'argent ou d'autres avantages, notamment des infrastructures d'approvisionnement en eau, qui pourraient découler d'un procès ou d'un règlement dans le cadre du recours collectif. Il est facile de participer et cela ne coûte rien.

NE RIEN FAIRE: PERDRE LES DROITS DE VOTRE PREMIÈRE NATION AUX TERMES DU RECOURS COLLECTIF	**En ne faisant rien, votre Première Nation perdra la possibilité de recevoir de l'argent et d'autres avantages si le recours collectif est accueilli favorablement.** Si les Premières Nations se joignent pas au groupe (option de participation) et que de l'argent ou des avantages sont ultérieurement attribués, votre Première Nation n'en bénéficiera pas. En choisissant de ne pas participer, votre Première Nation peut conserver les droits de poursuivre le Canada à propos des mêmes réclamations en droit que dans le présent litige.

- Les avocats doivent prouver les réclamations contre le Canada lors d'un procès ou conclure un règlement. Si de l'argent ou des avantages sont obtenus, vous serez avisé de la façon de réclamer votre part.
- Vos options sont expliquées dans le présent avis. Pour être exclu du recours, les particuliers membres d'une bande doivent en faire la demande au plus tard le **[NDR : 120 jours à partir de la première publication de l'avis.]**. Pour se joindre au recours collectif, les Premières Nations doivent envoyer leur avis de participation au plus tard 120 jours avant la décision quant aux réclamations des membres du groupe.

QUE CONTIENT LE PRÉSENT AVIS?

RENSEIGNEMENTS DE BASE

1. Pourquoi le présent avis est-il remis?

Les tribunaux ont des recours collectifs « attestés ». Cela signifie que les poursuites respectent les exigences relatives aux recours collectifs et peuvent être instruites. Si vous êtes inclus, vous pourriez avoir des droits légaux et des options avant que les tribunaux ne statuent sur le bien-fondé des réclamations intentées contre le Canada en votre nom. Le présent avis tente d'expliquer toutes ces démarches.

Le juge en chef Joyal de la Cour du banc de la Reine du Manitoba préside actuellement l'affaire *Tataskweyak Cree Nation and Chief Doreen Spence v. Canada*. Le juge Favel de la Cour fédérale du Canada préside actuellement l'affaire *Curve Lake First Nation, Chief Emily Whetung, Nesktanaga First Nation, and Chief Christopher Moonias v. Canada*. Les personnes qui intentent une poursuite sont appelées les demandeurs. Le Canada est le défendeur. Un lien vers la dernière version de la demande introductive d'instance (le document juridique énonçant les allégations contre le Canada) est disponible ici : https://www.mccarthy.ca/fr/action-collective-concernant-les-avis-sur-la-qualite-de-leau-potable-des-premieres-nations.

2. Quel est l'objet du présent recours?

Les présents recours collectifs allèguent que le Canada a manqué à ses obligations en ne veillant pas à ce que les communautés des Premières Nations aient un accès adéquat à de l'eau potable salubre. Les recours collectifs allèguent également que les membres de ces communautés et les communautés elles-mêmes ont subi des préjudices émotionnels, physiques, financiers et spirituels. Les recours collectifs allèguent que le Canada a manqué à ses obligations fiduciaires et à son devoir de diligence et a contrevenu à la *Charte des droits et libertés*. Les tribunaux n'ont pas statué (et le Canada n'a fait aucun aveu) quant à la véracité de l'une ou l'autre de ces affirmations. S'il n'y a pas de règlement avec le Canada, les demandeurs devront prouver leurs prétentions devant la Cour.

Si vous éprouvez des difficultés à comprendre cet enjeu ou si vous avez des questions au sujet du recours collectif, vous pouvez composer le 1-800-538-0009 pour obtenir de l'aide.

3. Pourquoi s'agit-il d'un recours collectif?

Dans un recours collectif, les « représentants demandeurs » (en l'espèce, la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, la Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Nesktanaga et le chef Christopher Moonias) ont poursuivi en justice au nom des particuliers membres d'une bande et de Premières Nations qui ont des revendications semblables. Tous ces particuliers membres d'une bande font partie du « groupe » ou sont des « membres du groupe », de même que les Premières Nations qui choisissent de se joindre au recours collectif. La Cour règle les questions pour tous les membres du groupe dans une même affaire, sauf (dans le cas des particuliers membres du groupe) pour ceux qui se retirent du groupe (option de retrait) et (dans le cas des Premières Nations) pour ceux qui ne se joignent pas au recours collectif (option de participation).

4. Qui est membre du groupe?

Le groupe comprend et exclut les personnes suivantes :

Toutes les personnes, sauf les « personnes exclues » :

(i) qui sont membres d'une bande au sens du paragraphe 2(1) de la *Loi sur les Indiens*, L.R.C. 1985, c. I-5 (« **Première Nation** »), dont la disposition des terres est assujettie à cette loi ou à la *Loi sur la gestion des terres des premières nations*, L.C. 1999, c. 24 (les « **terres des Premières Nations** »), et dont les terres des Premières Nations sont visées par un avis sur la qualité de l'eau potable (qu'il s'agisse d'un avis d'ébullition d'eau, d'un avis de ne pas boire, d'un avis de non-utilisation ou d'un autre type d'avis) qui a duré au moins un an depuis le 20 novembre 1995 (les « **Premières Nations touchées** »);

(ii) qui n'étaient pas décédées deux ans avant le début du présent recours (soit, au plus tard le 20 novembre 2017);

(iii) qui résidaient habituellement dans une Première Nation touchée pendant qu'elle était visée par un avis sur la qualité de l'eau potable qui a duré au moins un an; et

(iv) la Nation des Cris de Tataskweyak, la Première Nation de Curve Lake, la Première Nation de Neskantaga et toute autre Première Nation touchée qui choisit de se joindre au présent recours à titre de représentant (les « **Nations participantes** »).

Les « **personnes exclues** » sont des membres de la Nation des Tsuu T'ina, de la Première Nation de Sucker Creek, de la Nation des Cris d'Ermineskin, de la Tribu des Gens-du-Sang, de la bande indienne d'Okanagan et de la bande indienne d'Okanagan et de Michael Daryl Isnardy.

5. Que veulent les demandeurs?

Les demandeurs réclament des sommes d'argent et d'autres avantages pour le groupe, notamment des infrastructures d'approvisionnement en eau. Les demandeurs réclament également des honoraires d'avocats et des frais de justice, majorés des intérêts.

6. Y a-t-il de l'argent offert maintenant pour les membres du groupe?

Il n'y a pas d'argent ni d'avantages à l'heure actuelle parce que la Cour n'a pas encore statué quant aux comportements fautifs du Canada et que les deux parties n'ont pas conclu de règlement. Rien ne garantit que des sommes d'argent ou des avantages seront obtenus. Si de l'argent ou d'autres avantages deviennent disponibles, un avis sera donné sur la façon de réclamer votre part.

VOS DROITS ET OPTIONS

Chaque particulier membre d'une bande doit décider s'il veut rester ou non dans le groupe, et doit le faire au plus tard le **[NDR : 120 jours à partir de la première publication de l'avis]**. Les

Premières Nations doivent décider de se joindre ou non au groupe **au plus tard 120 jours avant que la Cour ne statue sur les réclamations des membres du groupe.**

7. Que se passe-t-il si je ne fais rien? Que se passe-t-il si la Première Nation ne fait rien?

Particuliers membres d'une bande : Si vous ne faites rien, vous resterez automatiquement dans le recours collectif. Vous serez lié par toutes les ordonnances de la Cour, bonnes ou mauvaises. Si des sommes d'argent ou d'autres avantages sont attribués, vous pourriez avoir à prendre des mesures après avoir reçu un avis pour recevoir des avantages.
Premières Nations : Les Premières Nations doivent choisir de se joindre au recours collectif pour recevoir les avantages éventuels et être liées par toutes les ordonnances, bonnes ou mauvaises.

8. Que se passe-t-il si je ne veux pas me joindre au recours? Que se passe-t-il si une Première Nation souhaite se joindre au recours?

Particuliers membres d'une bande : Si vous ne souhaitez pas être partie à l'instance, vous devez vous retirer – c'est-à-dire choisir « l'option de retrait ». Si vous vous retirez, vous ne recevrez aucun avantage pouvant découler du recours collectif. Vous ne serez pas lié par des ordonnances de la Cour et vous conservez le droit de poursuivre le Canada en tant que particulier à l'égard des questions en l'espèce.

Pour vous retirer, envoyez une communication indiquant que vous souhaitez être retiré du groupe de *Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation and Chief Christopher Moonias v. Canada,* dossier de la Cour nº CI-19-01-2466. Indiquez vos nom, adresse, numéro de téléphone et apposez votre signature. Vous pouvez également obtenir un formulaire de retrait à l'adresse **[insérer le lien Web de l'administrateur].** Vous devez faire parvenir votre demande de retrait au plus tard le **[NDR : 120 jours à partir de la première publication de l'avis]** à: CA2 Inc., 9, avenue Prince Arthur, Toronto (Ontario) M5R 1B2 ou info@classaction2.com.

Composez le 1-800-538-0009 si vous avez des questions sur la façon de vous retirer du recours collectif.

Premières Nations : Les Premières Nations qui souhaitent se joindre au recours collectif et faire valoir des réclamations au nom de leur bande ou de leur communauté doivent prendre des mesures pour s'y joindre – c'est-à-dire choisir l' « option de participation ». Pour choisir l'option de participation ou pour obtenir de plus amples renseignements, veuillez communiquer avec l'administrateur au 1-800-538-0009 ou à l'adresse info@classaction2.com. Les Premières Nations peuvent également communiquer avec les avocats du groupe et demander l'avocate du groupe Stephanie Willsey (sans frais : 1-877-244-7711 ou swillsey@mccarthy.ca) ou l'avocat du groupe Kevin Hille à khille@oktlaw.com ou au 416-598-3694. **Les demandes de participation des Premières Nations doivent être envoyées au plus tard 120 jours avant que la Cour ne statue sur les réclamations des membres du groupe.**

LES AVOCATS QUI VOUS REPRÉSENTENT

9. Les particuliers membres d'une bande sont-ils représentés par un avocat dans ce recours?

Oui. La Cour a nommé McCarthy Tétrault S.E.N.C.R.L., s.r.l. et Olthuis Kleer Townshend LLP pour vous représenter, ainsi que d'autres membres du groupe, à titre d'« avocats du groupe ». Vous n'aurez pas à payer d'honoraires ou d'autres frais juridiques pour ces avocats. Si vous souhaitez être représenté par un autre avocat, vous pouvez en retenir un pour comparaître devant la Cour à vos propres frais.

10. Comment les avocats seront-ils payés?

Les avocats ne seront payés que s'ils obtiennent gain de cause ou concluent un règlement. La Cour doit également approuver leur demande de rémunération. Les honoraires et frais pourraient être déduits des sommes obtenues pour le groupe, ou payés séparément par le défendeur.

PROCÈS

11. Quand et comment la Cour tranchera-t-elle qui a raison?

Si le recours collectif n'est pas rejeté ou réglé, les demandeurs doivent prouver leurs réclamations dans le cadre d'une motion de jugement sommaire ou d'un procès qui aura lieu à Ottawa (Ontario). Au cours de la motion ou du procès, la Cour entendra tous les éléments de preuve de manière à ce qu'elle puisse rendre une décision sur la question de savoir qui des demandeurs ou du Canada a raison à propos des réclamations dans le recours collectif. Rien ne garantit que les demandeurs gagneront quelque somme d'argent ou avantage pour le groupe.

12. Est-ce que je recevrai de l'argent après le procès?

Si les demandeurs obtiennent de l'argent ou des avantages à la suite d'un procès ou d'un règlement, vous serez avisé de la façon d'en demander une part ou des autres options que vous avez à ce moment-là. Ces choses ne sont pas connues à l'heure actuelle. Des renseignements importants sur cette affaire seront affichés sur le site Web **[NDR : insérer le site Web de l'administrateur]** dès qu'ils seront disponible.

OBTENIR DE PLUS AMPLES RENSEIGNEMENTS

13. Comment obtenir de plus amples renseignements? Comment puis-je transmettre l'information aux personnes qui en ont besoin?

Vous pouvez obtenir de plus amples renseignements à l'adresse https://classaction2.com/ en composant sans frais le 1-800-538-0009, en écrivant à l'adresse suivante : CA2 Inc., 9, avenue Prince Arthur, Toronto (Ontario) M5R 1B2, ou par courriel : info@classaction2.com.

Les membres des Premières Nations et les particuliers membres d'une bande peuvent également communiquer avec les avocats du groupe et demander l'avocate du groupe Stephanie Willsey (sans

frais : 1-877-244-7711 ou swillsey@mccarthy.ca ou 66, rue Wellington Ouest, Toronto (Ontario) M5K 1E6) ou l'avocat du groupe Kevin Hille à khille@oktlaw.com ou au 416-598-3694 ou 250, avenue University, 8e étage, Toronto (Ontario) M5H 3E5.

La Première Nation de Curve Lake, la cheffe Emily Whetung, la Première Nation de Neskantaga, le chef Christopher Moonias, la Nation des Cris de Tataskweyak, la cheffe Doreen Spence, et les avocats du groupe demandent aux travailleurs de la santé, aux travailleurs sociaux, aux dirigeants communautaires des Premières Nations, aux membres de la famille, aux aidants et aux amis des membres du groupe de bien vouloir transmettre l'information aux membres du groupe qui auraient de la difficulté à lire ou à comprendre le présent avis. On peut obtenir de plus amples renseignements concernant le présent recours sur le site Web ou en communiquant avec l'administrateur ou les avocats du groupe. Veuillez montrer le présent avis aux personnes qui pourraient être touchées par le présent recours ou à leurs aidants.

Annexe C

Liste des journaux

Globe and Mail
National Post
Winnipeg Free Press
Vancouver Sun
Edmonton Sun
Calgary Herald
Saskatoon Star Phoenix
Regina Leader Post
Thunder Bay Chronicle-Journal
Toronto Star
Ottawa Citizen
Gazette de Montréal
La Presse de Montréal (édition numérique)
Halifax Chronicle-Herald
Moncton Times and Transcript
First Nations Drum

Annexe D

MODÈLE DE COUPON DE RETRAIT

À: **[Insérer l'adresse de l'administrateur de la réclamation]**
[Insérer l'adresse électronique de l'administrateur]

Il ne s'agit **PAS** d'un formulaire de réclamation. Le fait de remplir le présent **COUPON DE RETRAIT** vous empêchera de recevoir une indemnité ou d'autres avantages découlant d'un règlement ou d'un jugement dans le cadre du recours collectif désigné ci-après :

Remarque : Pour se retirer, le présent coupon doit être dûment rempli et envoyé à l'adresse ci-dessus au plus tard **[INSÉRER LA DATE QUI TOMBE 120 JOURS APRÈS LA PREMIÈRE PUBLICATION DE L'AVIS]**

Dossier de la Cour n° : T-1673-19

LA PREMIÈRE NATION DE CURVE LAKE et LA CHEFFE EMILY WHETUNG pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE CURVE LAKE et LA PREMIÈRE NATION DE NESKANTAGA et LE CHEF CHRISTOPHER MOONIAS pour son propre compte et pour le compte de tous les membres de LA PREMIÈRE NATION DE NESKANTAGA

Demandeurs

–et–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

Je comprends qu'en me retirant de ce recours collectif, je confirme que je ne souhaite pas participer à ce recours collectif.

Je comprends que toute réclamation individuelle que je pourrais avoir doit être introduite dans un délai de prescription déterminé ou cette réclamation sera légalement interdite.

Je crois comprendre que l'attestation de ce recours collectif a suspendu l'écoulement du délai de prescription à partir du moment où le recours collectif a été déposé. Le délai de prescription recommencera à courir contre moi si je me retire de ce recours collectif.

Je comprends qu'en me retirant, j'assume l'entière responsabilité de la reprise de la poursuite des démarches juridiques pertinentes relatives au délai de prescription pour protéger toute réclamation que je pourrais avoir.

Date : _____

Nom du membre du groupe : _____

_____
Signature du témoin

_____
Signature du membre du groupe qui se retire

Nom du témoin :

_____

Appendice 1

Dossier de la Cour nº CI-19-01-24661

COUR DU BANC DE LA REINE

Winnipeg Centre

ENTRE :

LA NATION DES CRIS DE TATASKWEYAK et LA CHEFFE DOREEN SPENCE pour son propre compte et pour le compte de tous les membres de la NATION DES CRIS DE TATASKWEYAK

Demandeurs

–et–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

Procédure en vertu de la *Loi sur les recours collectifs*, CPLM c. C. 130

PLAN DE POURSUITE DE L'INSTANCE

POUR LES QUESTIONS COMMUNES, LES MOTIONS EN ATTESTATION ET DE JUGEMENT SOMMAIRE

1. Le calendrier de consentement des parties, tel qu'il est ordonné par la Cour, est joint en **annexe A**. Le présent plan de poursuite de l'instance vise à traiter des motions des demandeurs en attestation et de jugement sommaire.

2. Si les motions sont accueillies, un autre plan sera proposé pour régler les questions restantes, selon le résultat.

3. Sinon, si la motion de jugement sommaire n'est pas accueillie, les demandeurs proposeront un autre plan pour l'instruction des questions communes.

4. Dans le cadre de la motion en attestation, les demandeurs demanderont l'attestation de la question commune suivante devant être résolue pour le compte de l'ensemble du groupe (la «**question commune de l'étape 1** ») :

(a) Depuis le 20 novembre 1995 jusqu'à maintenant, le défendeur a-t-il un devoir ou une obligation envers les membres du groupe de prendre des mesures raisonnables pour leur fournir ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable pour l'utilisation humaine?

5. Si le défendeur consent à l'attestation d'un recours collectif, les demandeurs négocieront avec le défendeur pour résoudre les questions communes. En cas d'échec des négociations, les demandeurs exigeront la remise d'une défense, après quoi ils remettront un dossier à l'appui d'une motion de jugement sommaire sur la question commune de l'étape 1. Lors d'une conférence préparatoire à l'instruction qui suit la remise du dossier des demandeurs, ils demanderont à la Cour de décider que cette affaire est appropriée pour un jugement sommaire et de fixer une date d'audition de leur motion.

6. Si le défendeur s'oppose à l'attestation d'un recours collectif, les demandeurs exigeront que le défendeur présente une défense. Les demandeurs produiront alors un dossier à l'appui des motions en attestation et de jugement sommaire sur la question commune de l'étape 1. Lors d'une conférence préparatoire à l'instruction qui suit la remise du dossier des demandeurs, ils demanderont à la Cour de décider que cette affaire est appropriée pour un jugement sommaire et de fixer le calendrier d'audition de leur motion de jugement sommaire ainsi que l'audition de leur motion en attestation.

7. Lors de la motion en attestation, les demandeurs demanderont également l'attestation des questions communes suivantes devant être résolues pour le compte de chaque sous-groupe de la Première Nation touchée, soit les membres de cette Première Nation et la Première Nation elle-même, si elle est une Première Nation participante (les « **questions communes de l'étape 2** ») :

(a) Si la réponse à la question commune 4(a) est « oui », le Canada a-t-il manqué à ses devoirs ou obligations envers les membres du sous-groupe?

(b) Si la réponse à la question commune 7(a) est « oui », une violation de la *Charte des droits et libertés* (« **Charte** ») est-elle sauvée par l'art. 1 de la *Charte*?

(c) Si la réponse à la question commune 7(a) est « oui », le manquement du défendeur a-t-il causé une entrave importante et déraisonnable à l'utilisation et à la jouissance de leurs terres par les membres du groupe ou leurs Premières Nations?

(d) Si la réponse à la question commune 7(a) est « oui » et que la réponse à la question commune 7(b) est « non », les membres du sous-groupe peuvent-ils obtenir des dommages en vertu de l'art. 24(1) de la *Charte*?

(e) La causalité des dommages subis par les membres du sous-groupe peut-elle être considérée comme une question commune?

(f) La Cour peut-elle procéder à une évaluation globale de tout ou partie des dommages subis par les membres du sous-groupe?

(g) La conduite du défendeur justifie-t-elle l'octroi de dommages-intérêts punitifs et, dans l'affirmative, de quel montant?

(h) La Cour devrait-elle ordonner au défendeur de prendre des mesures pour fournir aux membres du sous-groupe ou s'assurer qu'il leur soit fourni ou s'abstenir d'interdire un accès adéquat à de l'eau potable?

(i) Dans l'affirmative, quelles mesures devraient être ordonnées?

8. Si la question commune de l'étape 1 est tranchée en faveur des demandeurs, les parties concluront un plan de communication de la preuve pour gérer la production, en temps opportun, par le défendeur des documents pertinents à l'égard des questions communes de l'étape 2 pour chaque sous-groupe des Premières Nations touchées.

9. Au moment d'évaluer la production des documents du défendeur, les demandeurs décideront s'il y a lieu de présenter des motions de jugement sommaire sur les questions communes

de l'étape 2 pour certains ou la totalité des sous-groupes des Premières Nations touchées, ou s'il y a lieu de prévoir une instruction sur ces questions communes.

NOTIFICATION DE L'ATTESTATION ET PROCÉDURE DE RETRAIT

10. Lors de la motion en attestation, les demandeurs demanderont à la Cour de fixer la forme et le contenu de la notification de l'attestation de ce recours (l'« **avis d'attestation**»), le moment et la manière de fournir l'avis d'attestation (le « **programme d'avis** ») et d'indiquer une date de retrait comme étant trois (3) mois suivant la date de l'ordonnance d'attestation (la « **date de retrait**»), et une date de participation comme étant six (6) mois avant le début de la détermination des questions communes de l'étape 2.

11. Si une motion de jugement sommaire est entendue avec une motion en attestation, les demandeurs demanderont au tribunal de rendre d'abord sa décision sur l'attestation, d'ordonner la délivrance d'un avis si un recours collectif est attesté, puis de rendre sa décision sur la question commune de l'étape 1 après la date de retrait.

12. Les demandeurs demanderont à la Cour d'ordonner au défendeur de payer les frais du programme d'avis, y compris les frais de l'administrateur.

13. Les demandeurs demanderont une ordonnance pour la distribution de l'avis d'attestation comme suit :

(a) afficher l'avis sur les sites Web respectifs des avocats du groupe, du défendeur et de l'administrateur;

(b) publier l'avis dans les journaux désignés;

(c) distribuer l'avis à tous les bureaux de la Nation des Cris de Tataskweyak et de l'Assemblée des Premières Nations;

(d) faire parvenir l'avis à tout membre du groupe qui le demande et aux chefs de chaque Première Nation qui a le droit d'adhérer au groupe, ainsi qu'à chaque bureau d'une bande;

(e) établir une ligne de soutien nationale sans frais, afin de fournir de l'aide aux membres du groupe, aux familles, aux tuteurs, aux gardiens ou aux autres personnes qui font des demandes pour leur propre compte ou pour le compte de membres du groupe;

(f) et par tout autre avis que la Cour ordonne.

14. Les demandeurs demanderont à la Cour d'approuver les formulaires de retrait et de participation devant être utilisés par les membres du groupe qui souhaitent se retirer du recours collectif ou y participer, ce qui exigera que le membre du groupe fournisse suffisamment de renseignements pour établir qu'il est membre du groupe.

ÉTAPES DE POURSUITE DE L'INSTANCE APRÈS LA DÉTERMINATION DES QUESTIONS COMMUNES FAVORABLES AU GROUPE

Avis de résolution des questions communes

15. Les demandeurs demanderont à la Cour de régler la forme et le contenu de l'avis de résolution des questions communes de l'étape 1 et de l'étape 2 (le « **plan d'avis de résolution** ») et la manière dont les membres du groupe déposeront des réclamations (les « **formulaires de réclamation** ») avant une date fixée avec l'administrateur. Les demandeurs demanderont également à la Cour de régler un processus approprié pour déterminer les questions individuelles restantes.

Évaluation des dommages

16. Si les questions communes sont résolues en faveur des demandeurs, les demandeurs proposent deux (2) méthodes d'évaluation et de distribution des dommages-intérêts pour les membres du groupe comme suit :

(a) l'ensemble des dommages-intérêts dont chaque particulier membre d'un groupe peut se prévaloir *au prorata* ou *au prorata* au sein d'un sous-groupe;

(b) l'ensemble des dommages-intérêts dont les Premières Nations participantes peuvent se prévaloir sur une base communautaire; et

17. À la suite de la détermination de l'ensemble des dommages-intérêts, y compris les dommages-intérêts punitifs, des dommages-intérêts supplémentaires peuvent être accordés dans le cadre d'instances individuelles.

Évaluation du nombre de demandeurs

18. Après l'expiration du délai de remise des formulaires de réclamation, l'administrateur calcule le nombre total de demandeurs aux fins de tout partage *au prorata* des dommages-intérêts globaux.

Distribution de dommages-intérêts punitifs globaux

19. Si la Cour accorde des dommages-intérêts globaux au groupe ou à un sous-groupe, le montant total des dommages-intérêts sera attribué au groupe d'une manière que déterminera la Cour dans un délai fixé par la Cour à partir de l'avis de résolution.

Fonds non distribués

20. Toute somme non distribuée sera distribuée à *cy-près* selon les directives de la Cour. Les demandeurs proposent que les montants résiduels soient distribués *cy-près* à des organismes communautaires qui aident les Premières Nations touchées à mettre en place des infrastructures d'approvisionnement en eau.

Résolution des questions individuelles

21. Dans les trente (30) jours qui suivent la délivrance du jugement sur les questions communes, les parties se réunissent pour régler un protocole visant à résoudre des questions individuelles. Si les parties ne parviennent pas à s'entendre sur un tel protocole, les demandeurs doivent demander des directives à la Cour dans les soixante (60) jours.

EXIGENCES DIVERSES DU PLAN DE POURSUITE DE L'INSTANCE

Financement

22. Les avocats du groupe ont conclu une entente avec les représentants demandeurs à l'égard des honoraires d'avocats et débours juridiques. Cette entente prévoit que les avocats du groupe ne recevront pas de paiement pour leur travail tant que le recours collectif n'aura pas reçu une suite favorable ou que les frais n'auront pas été recouvrés du défendeur.

23. Les honoraires des avocats du groupe sont soumis à l'approbation du tribunal en vertu de la *Loi sur les recours collectifs*.

Administration des réclamations

24. L'administrateur assurera l'administration des réclamations pour tout règlement ou jugement obtenu. L'administrateur distribuera l'avis conformément au plan d'avis de résolution. Si un règlement est réalisé et qu'un fonds de règlement est fourni, ou si un jugement donne lieu à une attribution en faveur des membres du groupe, l'administrateur administrera les paiements prélevés sur le fonds aux demandeurs selon la procédure indiquée ci-dessus, après approbation et/ou modification par la Cour.

Site Web du recours collectif

25. De temps à autre, les avocats du groupe afficheront les actes de procédure et les documents de cour pertinents, les derniers documents et résumés des derniers développements et faits nouveaux, les délais prévus, la foire aux questions et les réponses et les coordonnées des avocats du groupe pour les renseignements des membres du groupe.

Gestion des conflits

26. Les avocats du groupe et les demandeurs ont pris les mesures appropriées pour établir qu'il n'existe aucun conflit d'intérêts entre les membres du groupe, et qu'aucun tel conflit n'est prévu. En cas de conflit, McCarthy Tétrault S.E.N.C.R.L., s.r.l. représentera un sous-groupe et Olthuis Kleer Townshend LLP, l'autre. Si un conflit survenait entre les Premières Nations et leurs membres, ce qui n'est pas prévu étant donné leur intérêt commun, McCarthy Tétrault S.E.N.C.R.L., s.r.l. représentera les membres et Olthuis Kleer Townshend LLP représentera les Premières Nations.

Droit applicable

27. La législation applicable est la *Loi constitutionnelle de 1982*, la *Loi constitutionnelle de 1867*, la *Charte des droits et libertés*, la *Loi sur la salubrité de l'eau potable des Premières Nations, L.C. 2013, c. 21*, la *Loi sur les Indiens*, L.R.C. 1985, c. I-5, *Loi sur la gestion des terres des Premières Nations*, L.C. 1999, c. 24, *La Loi sur les recours collectifs*, CPLM c C130 ainsi que les règlements applicables, la common law et le droit manitobain.

Annexe A

Calendrier

CALENDRIER DE POURSUITE DE L'INSTANCE PROPOSÉ		
Étapes à suivre	**Par quelle partie**	**Date à respecter**
Remise de la défense	Défendeur	À remettre sur avis de 60 jours par les demandeurs
Remise de la réponse, le cas échéant	Demandeurs	À remettre 15 jours après la remise de la défense
Remise du dossier d'attestation/de jugement sommaire	Demandeurs	30 juin 2020 (peut être ajournée jusqu'à 5 mois si le défendeur consent à l'attestation et participe à des discussions exploratoires sur le règlement)
Pré-instruction pour évaluer le jugement sommaire	Toutes les parties	Juillet 2020 (peut être ajournée jusqu'à 5 mois si le défendeur consent à l'attestation et participe à des discussions exploratoires sur le règlement)
Remise du dossier de réponse	Défendeur	30 octobre 2020 (peut être ajournée jusqu'à 5 mois si le défendeur consent à l'attestation et participe à des discussions exploratoires sur le règlement)
Remise du dossier de réplique, le cas échéant	Demandeurs	16 décembre 2020 (ou 45 jours après la remise du dossier de réponse, selon la plus tardive de ces éventualités)
Contre-interrogatoires	Toutes les parties	À terminer 75 jours après la remise du dossier de réplique, le cas échéant, ou 120 jours après la remise du dossier de réponse
Requêtes en rejet, le cas échéant	Toutes les parties	À terminer 30 jours après la fin des contre-interrogatoires

CALENDRIER DE POURSUITE DE L'INSTANCE PROPOSÉ		
Étapes à suivre	**Par quelle partie**	**Date à respecter**
Remise des réponses aux engagements	Toutes les parties	À terminer 15 jours après la motion en rejet
Remise du mémoire des demandeurs	Demandeurs	À remettre 45 jours après l'achèvement des réponses aux engagements
Remise du mémoire de réponse	Défendeur	À remettre 45 jours après la remise du mémoire des demandeurs
Remise du mémoire de réplique	Demandeurs	À remettre 15 jours après la remise du mémoire de réponse
Audition d'une motion en attestation et d'une éventuelle motion de jugement sommaire	Toutes les parties	Juillet-août 2021

Dossier de la Cour nº CI-19-01-24661

COUR DU BANC DE LA REINE

Winnipeg Centre

ENTRE :

LA NATION DES CRIS DE TATASKWEYAK et LA CHEFFE DOREEN SPENCE pour son propre compte et pour le compte de tous les membres de la NATION DES CRIS DE TATASKWEYAK

Demandeurs

–et–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

Recours collectif proposé introduit aux termes des procédures en vertu de la *Loi sur les recours collectifs*, CPLM c. C. 130

PLAN DE POURSUITE DE L'INSTANCE

(Déposé le 2e jour de juillet 2020)

McCarthy Tétrault S.E.N.C.R.L., s.r.l.
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Avocats des demandeurs

Dossier de la Cour nº CI-19-01-24661

COUR DU BANC DE LA REINE

Winnipeg Centre

ENTRE :

LA NATION DES CRIS DE TATASKWEYAK et LA CHEFFE DOREEN SPENCE pour son propre compte et pour le compte de tous les membres de la NATION DES CRIS DE TATASKWEYAK

Demandeurs

–et–

LE PROCUREUR GÉNÉRAL DU CANADA

Défendeur

Recours collectif proposé introduit aux termes des procédures en vertu de la *Loi sur les recours collectifs*, CPLM c. C. 130

ORDONNANCE

(14 juillet 2020)

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Avocats des demandeurs

ANNEXE D

MODÈLE DE RÉSOLUTION D'ACCEPTATION DU CONSEIL DE BANDE

Voir ci-joint.

[Nom de la Première Nation]

Résolution du conseil de bande

En ce qui concerne l'entente de règlement dans le cadre des actions collectives portant sur les avis concernant la qualité de l'eau potable sur les terres des Premières Nations

ATTENDU QUE le 11 octobre 2019, certains demandeurs ont introduit l'action intitulée *Curve Lake First Nation and Chief Emily Whetung on her own behalf and on behalf of all members of Curve Lake First Nation and Neskantaga First Nation and Chief Christopher Moonias on his own behalf and on behalf of all members of Neskantaga First Nation c. Attorney General of Canada*, portant le numéro de dossier T-1673-19 devant la Cour fédérale (l'« **action devant la Cour fédérale** »);

ATTENDU QUE le 20 novembre 2019, certains demandeurs ont introduit l'action intitulée *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation c. Attorney General of Canada*, portant le numéro de dossier CI-19-01-24661 devant la Cour du banc de la Reine du Manitoba (l'« **action au Manitoba** », et conjointement avec l'action devant la Cour fédérale, les « **actions** »);

ATTENDU QUE les actions ont été attestées ou autorisées par les tribunaux respectifs comme des recours collectifs;

ATTENDU QUE le procureur général du Canada et les demandeurs dans les actions ont négocié une entente de règlement (l'« **entente de règlement** ») à l'égard des actions;

ATTENDU QUE l'entente de règlement prévoit qu'une Première Nation membre du groupe visé dans les actions (le « **groupe** ») peut donner à l'administrateur désigné par les tribunaux en vertu de l'entente de règlement (l'« **administrateur** ») un avis d'acceptation par cette Première Nation de l'entente de règlement et ainsi avoir droit à certaines indemnités et à certains avantages aux termes de l'entente de règlement dont peuvent se prévaloir les membres de cette Première Nation;

ATTENDU QUE [nom de la Première Nation] est membre du groupe et que le **[nom du conseil de bande]** (le « **conseil** ») souhaite confirmer et approuver l'acceptation de l'entente de règlement par **[nom de la Première Nation]** en adoptant la présente résolution du conseil de bande à une réunion dûment constituée convoquée à cette fin;

IL EST PAR LES PRÉSENTES RÉSOLU CE QUI SUIT :

1. Le conseil enjoint au chef **[Nom du chef]**, au nom de la **[Nom de la Première Nation]** et lui donne l'autorisation, par les présentes, d'approuver et d'accepter l'entente de règlement, dont une copie a été examinée par les signataires ci-après au nom du conseil, et il enjoint en outre à ce signataire autorisé et lui donne l'autorisation, par les présentes, de remettre à l'administrateur une copie signée de la présente résolution du conseil de bande pour confirmer l'acceptation de l'entente de règlement par [**Nom de la Première**

Nation]. Le conseil reconnaît et confirme par les présentes qu'aucune autre mesure n'est requise par le conseil pour accepter l'entente de règlement.

2. Le conseil ordonne et donne l'autorisation, par les présentes, au chef, au nom de la **[Nom de la Première Nation]**, de temps à autre, de signer et de remettre la présente résolution ainsi que les autres documents et instruments et de prendre toutes les mesures raisonnablement nécessaires pour exécuter l'entente de règlement et y donner effet, y compris, s'il le juge approprié, pour confirmer la résidence des personnes membres du groupe dans une réserve de la **[Nom de la Première Nation]** alors qu'un avis concernant la qualité de l'eau potable à long terme était en vigueur dans cette réserve pendant la période visée par l'entente de règlement.

3. Ces résolutions peuvent être signées par le chef et les membres du conseil en autant d'exemplaires pouvant se révéler nécessaire, sous forme originale ou électronique, dont chacun sera réputé être un original, et dont la totalité seront réputés constituer ensemble une seule et même résolution.

Les signataires suivants attestent et garantissent qu'un quorum du conseil a signé la présente résolution du conseil de bande, comme en font foi leurs signatures ci-dessous.

FAIT le _____ 202__.

_____ **[insérer le nom]**	_____ **[insérer le nom]**
_____ **[insérer le nom]**	_____ **[insérer le nom]**
_____ **[insérer le nom]**	_____ **[insérer le nom]**
_____ **[insérer le nom]**	_____ **[insérer le nom]**
_____ **[insérer le nom]**	_____ **[insérer le nom]**
_____ **[insérer le nom]**	

ANNEXE E

MODÈLE DE CONFIRMATION DU CONSEIL DE BANDE

Voir ci-joint.

[Nom de la Première Nation]

Confirmation du conseil de bande

En ce qui concerne l'entente de règlement dans le cadre des actions collectives portant sur les avis concernant la qualité de l'eau potable sur les terres des Premières Nations

Il y a lieu de se reporter à l'entente de règlement (l'« **entente de règlement** ») intervenue en date du **[•]** septembre 2021 entre le procureur général du Canada (le « **Canada** »), la Première Nation de Curve Lake et la cheffe Emily Whetung, pour son propre compte et pour le compte de tous les membres de la Première Nation de Curve Lake, la Première Nation de Neskantaga et le chef Wayne Moonias et l'ancien chef Christopher Moonias, pour leur propre compte et pour le compte de tous les membres de la Première Nation de Neskantaga, et la Nation des cris de Tataskweyak et la cheffe Doreen Spence, pour son propre compte et pour le compte de tous les membres de la Nation des cris de Tataskweyak. Les termes clés utilisés mais non définis dans la présente confirmation du conseil de bande ont le sens qui leur est donné dans l'entente de règlement.

Conformément à l'entente de règlement, une Première Nation membre du groupe peut fournir à l'administrateur une déclaration identifiant les personnes membres du groupe qui résidaient habituellement dans une réserve de cette Première Nation membre du groupe entre le 20 novembre 1995 et le 20 juin 2021 alors qu'un avis concernant la qualité de l'eau potable à long terme était en vigueur dans cette réserve (collectivement, les « **membres du groupe visés** »). Un « résident habituel » s'entend d'une personne qui a vécue dans la réserve plus longtemps qu'elle n'a vécue ailleurs, ou d'une personne qui était âgée de dix-huit (18) ans ou moins au moment visé et qui vivait habituellement dans une réserve touchée, mais qui vivait ailleurs pendant une partie de l'année pour fréquenter un établissement d'enseignement. Les membres du groupe visé doivent avoir résidé habituellement dans la réserve pendant au moins un an au cours d'une période au cours de laquelle un avis concernant la qualité de l'eau potable à long terme était en vigueur.

[Nom de la Première Nation] est une Première Nation membre du groupe. **[Nom du conseil des Premières Nations]** (le « **conseil** ») déclare par les présentes que l'**appendice A** jointe à la présente confirmation du conseil de bande constitue une liste des membres du groupe visés de la **[Nom de la Première Nation]**.

FAIT le _____ 202__.

_____	_____
[insérer le nom]	**[insérer le nom]**
_____	_____
[insérer le nom]	**[insérer le nom]**
_____	_____
[insérer le nom]	**[insérer le nom]**
_____	_____
[insérer le nom]	**[insérer le nom]**
_____	_____

APPENDICE A

Membres du groupe visés de la [Nom de la Première Nation]

Nom	Réserve	Période(s) de résidence habituelle dans la réserve	Dernière adresse connue ou autre coordonnées

ANNEXE F

PROCÉDURE DE RÈGLEMENT DES RÉCLAMATIONS

FORMULAIRES DE RÉCLAMATION

1. À la nomination de l'administrateur, les parties fournissent à l'administrateur une ou plusieurs listes sous forme de tableur électronique (la « **liste** ») indiquant, à la connaissance des parties :

    a) les Premières Nations admissibles à devenir des Premières Nations membres du groupe si elles acceptent l'entente avant la date limite pour l'acceptation;

    b) les coordonnées du bureau du conseil de bande ou du bureau analogue des Premières Nations visées au paragraphe a);

    c) les réserves touchées et les dates auxquelles les avis concernant la qualité de l'eau potable d'une durée d'au moins un (1) an étaient en vigueur pour chaque Première Nation visée au paragraphe a);

    d) si l'avis concernant la qualité de l'eau potable visé au paragraphe c) était un avis d'ébullition de l'eau, un avis de ne pas boire ou un avis de non-utilisation; et

    e) si les Premières Nations visées au paragraphe a) sont des Premières Nations éloignées ou non éloignées.

2. Immédiatement après la réception de la liste, l'administrateur envoie un formulaire de réclamation à chaque bureau du conseil de bande ou bureau analogue indiqué à l'alinéa 1.b) avec une demande de remise d'une copie du formulaire de réclamation aux membres de cette Première Nation. L'administrateur envoie les formulaires de réclamation par courriel ou, si aucune adresse de courrier électronique n'est fournie, par courrier postal si une adresse est fournie. Si un courriel n'est pas distribué ou ne peut l'être, l'administrateur envoie le formulaire de réclamation par courrier postal. Si le courrier postal n'est pas distribué ou ne peut l'être, l'administrateur n'a aucune autre obligation de s'efforcer de fournir une copie du formulaire de réclamation à cette Première Nation.

3. Immédiatement après la réception de la liste, l'administrateur déploie tous les efforts raisonnables pour conserver un agent de liaison communautaire de chaque Première Nation figurant sur la liste, ou d'un conseil tribal approprié, afin de déployer tous les efforts raisonnables pour :

    a) fournir des formulaires de réclamation aux membres de cette Première Nation;

    b) encourager les membres admissibles de cette Première Nation à soumettre leurs formulaires de réclamation;

    c) aider les membres de cette Première Nation à remplir et à soumettre leurs formulaires de réclamation, notamment en les mettant en contact avec l'administrateur;

d) aviser les Premières Nations membres du groupe qu'elles doivent donner un avis d'acceptation si elles souhaitent participer à l'entente; et

e) aviser les Premières Nations membres du groupe qu'elles peuvent soumettre une confirmation du conseil de bande, si elles le souhaitent.

4. L'administrateur met le formulaire de réclamation à la disposition du public sur son site Web et le fait parvenir par courriel ou par la poste à toute personne qui en fait la demande.

5. L'administrateur inclut dans l'envoi postal une enveloppe affranchie et le formulaire de réclamation.

6. L'administrateur tient à jour une base de données de tous les formulaires de réclamation et confirmations du conseil de bande qu'il reçoit. Si les parties reçoivent des formulaires de réclamation ou des confirmations du conseil de bande, elles les transmettent immédiatement à l'administrateur.

7. À la réception d'un formulaire de réclamation ou d'une confirmation du conseil de bande, l'administrateur examine le formulaire de réclamation ou la confirmation du conseil de bande, selon le cas, pour déterminer s'il est complet et, s'il est incomplet, il fait tous les efforts raisonnables pour communiquer avec le demandeur d'indemnité ou la Première Nation membre du groupe, selon le cas, afin d'obtenir d'autres renseignements pour remplir le formulaire de réclamation ou la confirmation du conseil de bande. Toutefois, l'administrateur aura le pouvoir discrétionnaire d'accepter des irrégularités mineures et, s'il accepte un formulaire de réclamation ou une confirmation du conseil de bande comportant des irrégularités mineures, il n'est pas tenu de communiquer avec le demandeur d'indemnité ou la Première Nation membre du groupe pour obtenir de plus amples renseignements. Les demandeurs d'indemnité et les Premières Nations membres du groupe disposent de quatre-vingt-dix (90) jours à compter de la date à laquelle ils sont contactés pour remédier à toute irrégularité décelée, à défaut de quoi l'administrateur leur indiquera par écrit, selon le cas, son refus d'accepter le formulaire de réclamation ou la confirmation du conseil de bande et le motif de son refus. Malgré ce qui précède, l'administrateur peut accepter la partie incomplète d'une confirmation du conseil de bande qui contient suffisamment de renseignements pour prendre une décision quant à l'admissibilité.

8. Dans les cas d'omissions ou d'erreurs mineures dans un formulaire de réclamation ou une confirmation du conseil de bande, l'administrateur doit corriger ces omissions ou erreurs s'il dispose aisément du renseignement nécessaire pour corriger l'erreur ou l'omission.

9. Chaque demandeur d'indemnité peut seulement soumettre un (1) formulaire de réclamation à l'égard de toutes ses réclamations, tandis qu'un exécuteur testamentaire, un demandeur d'indemnité successoral ou un représentant personnel peut seulement présenter un (1) formulaire de réclamation pour le compte d'un demandeur d'indemnité concerné.

DÉCISIONS QUANT À L'ADMISSIBILITÉ CONCERNANT LES PERSONNES MEMBRES DU GROUPE

10. Immédiatement après la réception d'un formulaire de réclamation de règlement, l'administrateur prend une décision quant à l'admissibilité conformément à l'entente en fonction du formulaire de réclamation, de la liste, de toute confirmation du conseil de bande pertinente, de tout autre renseignement reçu des parties et de tout autre renseignement qu'il juge approprié. Immédiatement après la réception d'une confirmation du conseil de bande, l'administrateur prend les décisions quant à l'admissibilité conformément à l'entente (y compris le paragraphe 7.02(2)) à l'égard des demandeurs d'indemnité qui y sont indiqués, en fonction de la confirmation du conseil de bande, des formulaires de réclamation reçus à l'égard des demandeurs d'indemnité qui sont indiqués dans la confirmation du conseil de bande, de la liste, de tout autre renseignement reçu des parties et de tout autre renseignement que l'administrateur juge approprié.

11. Si un formulaire de réclamation ou une confirmation du conseil de bande indique que le demandeur d'indemnité résidait habituellement dans une réserve qui figure sur la liste depuis au moins un (1) an et qui était visée par un avis concernant la qualité de l'eau potable à long terme, mais que le demandeur d'indemnité est membre d'une Première Nation qui n'est pas une Première Nation touchée, le demandeur d'indemnité peut néanmoins être inclus dans le groupe. Si un formulaire de réclamation ou une confirmation du conseil de bande indique que le demandeur d'indemnité était habituellement résident dans une réserve qui ne figure pas sur la liste, et que l'administrateur n'en a pas encore tenu compte, alors l'administrateur :

    a) consulte le comité de mise en œuvre du règlement avant de déterminer si le nom de la réserve devrait être ajouté sur la liste au motif qu'elle était visée par un avis concernant la qualité de l'eau potable à long terme pendant la période visée et, si c'est le cas, lorsque la période la réserve était visée par un avis concernant la qualité de l'eau potable à long terme; et

    b) peut demander d'autres renseignements ou preuves avant de prendre une décision quant à l'admissibilité .

12. Si l'administrateur juge que le demandeur d'indemnité n'est pas une personne membre du groupe, il informe sans délai le demandeur d'indemnité :

    a) de la décision de l'administrateur;

    b) des motifs de la décision de l'administrateur selon lesquels le demandeur d'indemnité n'est pas une personne membre du groupe; et

    c) de sa possibilité d'interjeter appel devant le tiers évaluateur de la décision de l'administrateur conformément à la présente procédure de règlement des réclamations et à l'entente.

INDEMNITÉ POUR LES PERSONNES MEMBRES DU GROUPE

13. Si l'administrateur prend une décision quant à l'admissibilité selon laquelle un demandeur d'indemnité est une personne membre du groupe conformément à l'entente,

l'administrateur quantifie le montant payable à cette personne membre du groupe sur le Fonds en fiducie conformément à l'article 8.01 et à l'ANNEXE G de l'entente, l'administrateur demande ces fonds au fiduciaire, le fiduciaire fournit ces fonds à l'administrateur et l'administrateur paie ces fonds conformément à l'entente.

14. Lorsque l'administrateur verse une indemnité conformément à l'article 8.01 de l'entente et à l'article 13 de la présente ANNEXE F, l'administrateur informe également la personne membre du groupe :

    a) du mode de calcul de la somme payée; et

    b) de sa possibilité d'interjeter appel devant le tiers évaluateur de la quantification de l'administrateur de la somme payable conformément à la présente procédure de règlement des réclamations et à l'entente.

INDEMNITÉ POUR PRÉJUDICES DÉTERMINÉS

15. Sur demande raisonnable, les avocats du groupe aident un demandeur d'indemnité à soumettre sa réclamation d'indemnité pour préjudices déterminés ou à formuler son appel d'une décision relative à un préjudice déterminé sans frais supplémentaires pour le demandeur d'indemnité, et les honoraires des avocats du groupe sont payables conformément à l'article 18.02 de l'entente.

16. Une personne membre du groupe confirmée est admissible à une indemnité pour préjudices déterminés si elle satisfait aux critères énoncés à l'article 8.02 de l'entente.

17. Un demandeur d'indemnité peut, à son gré, soumettre, au soutien de sa réclamation d'indemnité pour préjudices déterminés, à l'administrateur la totalité ou une partie des éléments suivants avec son formulaire de réclamation :

    a) les dossiers médicaux du préjudice et sa cause;

    b) les autres dossiers, y compris les dossiers écrits, les photographies et les vidéos, concernant le préjudice et sa cause;

    c) une déclaration écrite; et

    d) témoignage oral.

18. Il est entendu que la procédure de règlement des réclamations portant sur des préjudices déterminés n'est pas censée être traumatisante et que l'article 17 de la présente **Error! Reference source not found.** n'empêche pas un demandeur d'indemnité d'établir son admissibilité à une indemnité pour préjudices déterminés en se fondant uniquement sur son formulaire de réclamation.

19. Si un demandeur d'indemnité réclame une indemnité pour préjudices déterminés, mais que l'administrateur détermine que ce demandeur d'indemnité n'a pas droit à une indemnité pour préjudices déterminés lorsque les préjudices qui y sont décrits ne sont pas prévus dans la grille d'indemnisation pour préjudices déterminés, l'administrateur se conforme sans délai à l'article 7.04 de l'entente.

20. Si un demandeur d'indemnité réclame une indemnité pour préjudices déterminés, mais que l'administrateur détermine que le demandeur d'indemnité n'a pas droit à une indemnité pour préjudices déterminés concernant les préjudices qui y sont décrits pour un motif autre que celui selon lequel le préjudice n'est pas prévu dans la grille d'indemnisation pour préjudices déterminés, l'administrateur informe sans délai le demandeur d'indemnité :

    a) de la décision de l'administrateur;

    b) des motifs de la décision de l'administrateur selon lesquels le demandeur d'indemnité n'a pas droit à une indemnité pour préjudices déterminés; et

    c) de sa possibilité d'interjeter appel devant le tiers évaluateur de la décision de l'administrateur conformément à la présente procédure de règlement des réclamations et à l'entente.

21. Si l'administrateur établit qu'une personne membre du groupe confirmée a droit à une indemnité pour préjudices déterminés, il quantifie le montant payable à cette personne membre du groupe confirmée sur le fonds d'indemnisation pour préjudices déterminés conformément à l'article 8.02 de l'entente et à l'**Error! Reference source not found.**.

22. Le paiement de l'indemnité pour préjudices déterminés sera effectué conformément à l'article 8.02 de l'entente. L'administrateur demande ces fonds au fiduciaire, le fiduciaire fournit ces fonds à l'administrateur et l'administrateur paie ces fonds conformément à l'entente.

23. Lorsque l'administrateur verse une indemnité pour préjudices déterminés à une personne membre du groupe confirmée, conformément à l'article 8.02 de l'entente et à la présente **Error! Reference source not found.**, l'administrateur doit également informer la personne membre du groupe confirmée :

    a) du mode de calcul de la somme payée; et

    b) de sa possibilité d'interjeter appel devant le tiers évaluateur de la quantification de l'administrateur de la somme payable conformément à la présente procédure de règlement des réclamations et à l'entente.

DOMMAGES-INTÉRÊTS DE PREMIÈRE NATION MEMBRE DU GROUPE

24. Dès la réception d'une acceptation, l'administrateur détermine si la Première Nation est admissible à titre de Première Nation membre du groupe. L'inscription sur la liste constitue une preuve concluante que la Première Nation est admissible à titre de Première Nation membre du groupe. Si la Première Nation ne figure pas sur la liste, l'administrateur :

    a) consulte le comité de mise en œuvre du règlement avant de déterminer si la Première Nation est admissible à titre de Première Nation membre du groupe; et

    b) peut demander des renseignements ou des preuves supplémentaires avant de décider si une Première Nation est admissible à titre de Première Nation membre du groupe .

25. Si l'administrateur établit qu'une Première Nation n'est pas une Première Nation membre du groupe par application de l'article 24 de la présente **Error! Reference source not found.**, il informe sans délai la Première Nation :

a) de la décision de l'administrateur;

b) des motifs de la décision de l'administrateur selon lesquels la Première Nation n'est pas une Première Nation membre de groupe; et

c) de sa possibilité d'interjeter appel devant le tiers évaluateur de la décision de l'administrateur conformément à la présente procédure de règlement des réclamations et à l'entente.

26. Si l'administrateur établit qu'une Première Nation qui a remis une acceptation est une Première Nation membre de groupe, il paie l'indemnité de base et les dommages-intérêts de Première Nation conformément à l'article 8.03 de l'entente. L'administrateur demande ces fonds au fiduciaire, le fiduciaire fournit ces fonds à l'administrateur et l'administrateur paie ces fonds conformément à l'entente.

27. Chaque fois que l'administrateur verse des dommages-intérêts de Première Nation à une Première Nation membre de groupe, il informe la Première Nation membre de groupe :

a) de la manière dont il a calculé la somme payée; et

b) de sa possibilité d'interjeter appel devant le tiers évaluateur de la quantification de l'administrateur conformément à la présente procédure de règlement des réclamations et à l'entente.

APPEL

28. Lorsqu'un demandeur d'indemnité, une personne membre du groupe, une Première Nation ou une Première Nation membre du groupe, selon le cas (un « **appelant** »), souhaite interjeter appel d'une décision de l'administrateur, l'appelant fournit à l'administrateur, dans les soixante (60) jours de la réception de la décision de l'administrateur, une déclaration écrite indiquant la décision qu'il souhaite porter en appel et les motifs pour lesquels il estime que l'administrateur a erré.

29. L'administrateur transmet sans délai les documents qu'il reçoit par application de l'article 28 de la présente annexe au tiers évaluateur pour que ce dernier tranche l'affaire.

30. Lorsqu'il examine un appel, le tiers évaluateur peut consulter l'appelant, l'administrateur et le comité de mise en œuvre du règlement. Le tiers évaluateur peut notamment demander des preuves à l'appelant et à l'administrateur.

31. Le tiers évaluateur tranche l'appel dans les meilleurs délais.

32. Dès qu'il rend sa décision, le tiers évaluateur informe sans délai l'appelant et l'administrateur :

a) de la décision du tiers évaluateur; et

b) des motifs de la décision du tiers évaluateur.

33. La décision du tiers évaluateur est définitive et n'est pas susceptible d'appel ou de révision.

34. Il est entendu qu'une personne membre du groupe ne peut interjeter appel devant le tiers évaluateur d'une réclamation d'indemnité pour préjudices déterminés lorsque l'administrateur juge que le préjudice qui y est décrit n'est pas prévu dans la grille d'indemnisation pour préjudices déterminés. L'article 7.04 de l'entente reçoit plutôt application.

GÉNÉRALITÉS

35. À moins d'indication contraire dans l'entente ou dans la présente procédure de règlement des réclamations, la norme de preuve dans tous les cas est la prépondérance des probabilités en fonction de l'entente, et le tiers évaluateur applique une norme de contrôle de la décision correcte en fonction de l'entente. Il est entendu que, pour que l'administrateur ou le tiers évaluateur conclue qu'un demandeur d'indemnité ou une Première Nation est admissible à une indemnité conformément à l'entente et sauf indication contraire dans la présente entente ou la présente procédure de règlement des réclamations, l'administrateur ou le tiers évaluateur doit conclure qu'il est plus que probable que le demandeur d'indemnité ou la Première Nation soit admissible à une indemnité selon les renseignements dont dispose l'administrateur ou le tiers évaluateur.

36. Pour déterminer si i) un demandeur d'indemnité est une personne membre du groupe et est admissible à une indemnité en vertu de l'entente ou ii) une Première Nation est une Première Nation membre du groupe, l'administrateur et le tiers évaluateur peuvent :

a) demander des renseignements supplémentaires à un demandeur d'indemnité, à une Première Nation ou aux parties; et

b) interroger un demandeur d'indemnité ou un représentant d'une Première Nation.

37. Les parties peuvent apporter des modifications à la présente procédure de règlement des réclamations si elles y consentent pour des changements de procédures, comme la prorogation de délai, et l'adoption de protocoles et de procédures, sans obtenir l'approbation du tribunal, pour autant que ces modifications n'aient pas d'incidence importante sur les droits et recours énoncés dans la procédure de règlement des réclamations. Les parties obtiennent l'approbation des tribunaux quant aux changements de fond apportés à la présente procédure de règlement des réclamations.

38. L'administrateur fournit une ligne d'assistance bilingue (français et anglais) sans frais pour aider les demandeurs d'indemnité, les membres de leur famille, leurs tuteurs ou d'autres personnes qui formulent des demandes de renseignements pour le compte des demandeurs d'indemnité.

39. Après la distribution des fonds indiqués ci-dessous conformément à la présente entente :

a) le Fonds en fiducie, y compris tout excédent du Fonds en fiducie;

b) le fonds d'indemnisation pour préjudices déterminés; et

c) le Fonds pour la relance économique et culturelle des Premières Nations,

l'administrateur demande à être libéré et dépose devant les tribunaux un rapport conformément à l'article 21.02 de l'entente, contenant des renseignements au mieux de sa connaissance concernant ce qui suit :

d) le nombre total de personnes membres du groupe et de Premières Nations membres du groupe;

e) le nombre de demandeurs d'indemnité qui ont soumis un formulaire de réclamation et le nombre de personnes qui ont reçu des dommages-intérêts individuels;

f) le nombre de demandeurs d'indemnité qui ont réclamé une indemnité pour préjudices déterminés et le nombre de demandeurs d'indemnité qui ont reçu une indemnité pour préjudices déterminés;

g) le nombre de Premières Nations membres du groupe qui ont remis l'acceptation de l'entente;

h) les montants distribués aux membres du groupe ou pour le compte de membres du groupe, à titre de dommages-intérêts individuels, d'indemnité pour préjudices déterminés ou de dommages-intérêts de Première Nation, et une description de la façon dont les montants ont été distribués;

i) le nombre de réclamations par Première Nation et les sommes payées par celle-ci; et

j) les coûts associés aux travaux de l'administrateur.

40. Une partie ou l'administrateur peut proposer qu'une partie du rapport visée à l'article 39 de la présente annexe soit placée sous scellés.

41. Dès qu'il est libéré de ses fonctions d'administrateur, l'administrateur conserve sur support papier ou électronique tous les documents se rapportant à une réclamation pendant deux (2) ans, après quoi il doit détruire ces documents.

ANNEXE G

GRILLE D'INDEMNISATION DES PRÉJUDICES INDIVIDUELS

Le comité mixte détermine les montants réels qui seront indiqués sur l'avis d'un actuaire ou d'un conseiller analogue.

	Indemnisation
Avis concernant la qualité de l'eau potable à long terme - Première Nation éloignée	2 000 $ par année
Avis concernant la qualité de l'eau potable à long terme : avis de non-utilisation - Première Nation non éloignée	2 000 $ par année
Avis concernant la qualité de l'eau potable à long terme : avis de ne pas boire - Première Nation non éloignée	1 650 $ par année
Avis concernant la qualité de l'eau potable à long terme : avis d'ébullition de l'eau - Première Nation non éloignée	1 300 $ par année

ANNEXE H

GRILLE D'INDEMNISATION DES PRÉJUDICES DÉTERMINÉS

Catégorie	Préjudice déterminé	Exemples de symptômes	Niveau 1 *Déséquilibre important et prolongé de la santé, du bien-être ou des activités quotidiennes qui : a) a persisté au moins un mois; b) a porté atteinte à la qualité de vie du demandeur; c) et pour lequel le demandeur a sollicité un traitement auprès d'un professionnel de la santé, y compris les guérisseurs traditionnels, les chamans, les Aînés, les responsables de la santé communautaire ou les gardiens du savoir (indemnisation totale pour tous les préjudices)*	Niveau 2 *Les effets du Niveau 1 qui : a) ont persisté pendant au moins un an; b) ont porté gravement atteinte à la santé et aux activités quotidiennes du demandeur; et c) pour lesquels le demandeur a sollicité et reçu un traitement d'un professionnel de la santé, y compris des guérisseurs traditionnels ou des chamans* *(indemnisation totale pour tous les préjudices)*
Gastroentérologie	Ingestion de bactéries (*Escherichia coli, Salmonella, Shigella, Campylobacter jejuni, choléra, Giardia instestinalis, Cryptosporidium, cyanobactéries [algues bleu-vert], coliformes totaux, Helicobacter pylori*) Infection virale (*rotavirus, norovirus, hépatite A*)	Crampes d'estomac, nausée, diarrhée, vomissements, douleurs abdominales, déshydratation, constipation	5 000 $	20 000 $

	Ingestion de produits chimiques en quantités nocives pour la santé humaine : *arsenic, atrazine, diquat, cuivre, plomb, glyphosate, nitrite, nitrate, phorate, chrome, sulfate* Ulcères d'estomac			
Respiratoire	Intoxication au chlore Ingestion de produits chimiques en quantités nocives pour la santé humaine : *nitrite, nitrate*	Graves difficultés respiratoires, douloureuse irritation des voies aériennes ou des poumons (pouvant s'accompagner d'une irritation oculaire), importantes douleurs thoraciques, essoufflement, bleuissement de la peau	20 000 $	50 000 $
Dermatologique	Infections cutanées (*Staphylococcus aureus, Streptococcus pyogenes*) Lésions cutanées Intoxication au chlore	Cellulite, clous (furoncles), lésions cutanées, pigmentation cutanée, fasciite nécrosante (maladie mangeuse de chair)	10 000 $	25 000 $
Santé mentale	Trouble dépressif majeur; trouble dépressif persistant (dysthymie); trouble panique; trouble de l'usage de l'alcool; trouble de l'usage du cannabis; trouble de l'usage du tabac; trouble de l'usage de sédatifs, de somnifères ou d'anxiolytiques; trouble	Voir l'appendice « H-1 »	15 000 $	30 000 $

	de stress post-traumatique; phobie spécifique; trouble de l'adaptation; anxiété généralisée			
Foie	Infection virale (*hépatite A*) Ingestion de bactéries (*cyanobactéries [algues bleu-vert]*) Atteintes hépatiques (*kystes, lésions, intoxication*) Ingestion de produits chimiques en quantités nocives pour la santé humaine : *antimoine, bromoxynil, tétrachlorure de carbone, cuivre, dicamba, dichlorométhane, 1,1-dichloroéthylène, 2,4-dichlorophénol, diclofop-méthyl, éthylbenzène, acides haloacétiques (AHA), métachlore, métribuzine, paraquat, pentachlorophénol, perfluorooctanesulfonate, acide perfluorooctanoïque, piclorame, chlorure de vinyle, benzo(a)pyrène, métachlore, trifluraline, trihalométhanes (THM)*	Décoloration des yeux et de la peau, gonflement des jambes et des chevilles, fatigue chronique, perte d'appétit, douleur abdominale, inflammation du foie, insuffisance hépatique	35 000 $	80 000 $ (en cas d'insuffisance hépatique)
Neurologique	Ingestion de produits chimiques en quantités nocives pour la santé humaine : *azinphos-méthyl, chlorite, diméthoate, plomb, malathion, manganèse, mercure, phorate, toluène*	Irritabilité, déficit de l'attention, céphalée, insomnie, étourdissements, pertes de mémoire, baisse du QI, modifications comportementales chez les enfants	20 000 $	50 000 $

Reins	Ingestion de produits chimiques en quantités nocives pour la santé humaine : *antimoine, baryum, bromate, cadmium, cuivre, acide 2,4-dichlorophénoxyacétique, acide 2-méthyl-4-chlorophénoxyacétique, diquat, malathion, acide aminotriacétique, paraquat, pentachlorophénol, picloram, trihalométhanes (THM), uranium*	Atteinte rénale, lésions aux reins, insuffisance rénale	25 000 $	65 000 $ (en cas d'insuffisance rénale)
Infections transmissibles par le sang, y compris l'endocardite infectieuse	Infections contractées après avoir utilisé une solution aqueuse issue d'injections/seringues/aiguilles	Douleurs aux articulations et aux muscles, douleurs thoraciques, fatigue, symptômes grippaux, sueurs nocturnes, essoufflement, œdème du bas du corps, souffle cardiaque	20 000 $	80 000 $ (en cas d'endocardite infectieuse)
Tumeurs/cancer	Ingestion de produits chimiques en quantités nocives pour la santé humaine	Tumeurs, cancer	40 000 $	100 000 $

Appendice H-1
Symptômes de référence en santé mentale

• Dépression majeure	A. Au moins cinq des symptômes suivants étaient présents au cours d'une même période de deux semaines et représentent un changement sur le plan du fonctionnement : au moins un de ces symptômes est (1) une humeur dépressive ou (2) une perte d'intérêt ou de plaisir. Ne pas inclure les symptômes qui sont manifestement attribuables à une autre condition médicale. 1. Humeur dépressive présente pendant la plus grande partie de la journée, presque tous les jours, qu'elle soit signalée par la personne (p. ex., en indiquant qu'elle se sent triste, vide, désespérée) ou observée par les autres (p. ex., en signalant l'avoir vue pleurer). (Remarque : Chez l'enfant et l'adolescent, il peut s'agir d'une humeur irritable.) 2. Diminution marquée de l'intérêt ou du plaisir relatif à toutes ou presque toutes les activités pendant la plus grande partie de la journée, presque tous les jours (signalée par la personne ou observée par les autres). 3. Perte de poids significative non attribuable à un régime ou gain de poids important (p. ex., changement de poids dépassant les 5 % en un mois), ou appétit accru ou réduit presque tous les jours. (Remarque : Chez l'enfant, prendre en compte la non-survenance d'une augmentation de poids attendue.) 4. Insomnie ou hypersomnie presque tous les jours. 5. Agitation ou ralentissement sur le plan psychomoteur presque tous les jours (observable par les autres, et non seulement un sentiment subjectif de fébrilité ou de ralentissement). 6. Fatigue ou perte d'énergie presque tous les jours. 7. Sentiment de dévalorisation ou de culpabilité excessive ou inappropriée (et potentiellement délirante) presque tous les jours (pas seulement se faire grief ou se sentir coupable d'être malade). 8. Diminution de l'aptitude à penser ou à se concentrer, ou indécision, presque tous les jours (signalée par la personne ou observée par les autres). 9. Pensées de mort récurrentes (pas seulement une peur de mourir), idées suicidaires récurrentes sans plan précis ou tentative de suicide ou plan précis pour se suicider. B. Les symptômes causent une souffrance cliniquement significative ou une altération du fonctionnement social, professionnel ou dans d'autres domaines importants. C. L'épisode n'est pas imputable aux effets physiologiques d'une substance ou d'une autre affection médicale.
• Trouble dépressif persistant (Dysthymie)	Ce trouble regroupe le trouble dépressif majeur et la dysthymie tels qu'ils sont définis dans le DSM-IV.

	A. Humeur dépressive présente presque toute la journée, plus d'un jour sur deux pendant au moins deux ans, signalée par la personne ou observée par les autres. **Remarque :** Chez l'enfant et l'adolescent, il peut s'agir d'une humeur irritable présente depuis d'au moins un an. B. Quand la personne est déprimée, elle présente au moins deux des symptômes suivants : 1. Perte d'appétit ou hyperphagie. 2. Insomnie ou hypersomnie. 3. Baisse d'énergie ou fatigue. 4. Faible estime de soi. 5. Difficultés de concentration ou difficultés à prendre des décisions. 6. Sentiments de perte d'espoir. C. Au cours des deux ans (ou, pour les enfants ou adolescents, de l'an) où l'humeur est perturbée, la personne n'a jamais cessé de présenter les symptômes des critères A et B pendant plus de deux mois consécutifs. D. Les symptômes du trouble dépressif majeur peuvent être continuellement présents pendant deux ans. E. Il n'y a jamais eu d'épisode maniaque ou d'épisode hypomaniaque, et les critères du trouble cyclothymique n'ont jamais été réunis. F. La perturbation ne s'explique pas mieux par un cas persistant de trouble schizoaffectif, de schizophrénie, de trouble délirant ou d'un autre trouble psychotique ou du spectre de la schizophrénie (spécifié ou non). G. Les symptômes ne sont pas dus aux effets physiologiques d'une substance (p. ex., une drogue utilisée par les toxicomanes ou un médicament) ou d'une autre affection médicale (p. ex. l'hypothyroïdie). H. Les symptômes causent une souffrance cliniquement significative ou une altération du fonctionnement social, professionnel ou dans d'autres domaines importants.
• Trouble panique	A. Attaques de panique inattendues et récurrentes. Une attaque de panique est une montée soudaine de peur ou de malaise intense qui atteint un pic en quelques minutes, et durant laquelle au moins quatre des symptômes suivants se manifestent : **Remarque :** La montée brusque peut naître d'un état de calme comme d'un état anxieux. 1. Palpitations, battements de cœur ou accélération du rythme cardiaque. 2. Transpiration. 3. Tremblements ou secousses. 4. Sensation d'essoufflement ou d'étouffement. 5. Sensation d'étranglement. 6. Douleur ou gêne thoraciques. 7. Nausées ou gêne abdominale. 8. Sensation de vertige, d'instabilité, d'étourdissement, ou de faiblesse. 9. Frissons ou sensations de chaleur.