

Class Action Litigation on Drinking Water Advisories in First Nations

McCarthy Tétrault LLP and Olthuis Kleer Townshend LLP have commenced national class action litigation to address long-term drinking water advisories in First Nations communities. The class action has been certified in the Manitoba Court of Queen's Bench on behalf of Tataskweyak Cree Nation and Chief Doreen Spence, and in the Federal Court on behalf of Curve Lake First Nation, Chief Emily Whetung, Neskantaga First Nation, and Chief Christopher Moonias.

The litigation addresses the Federal government's failure to ensure that reserve communities have adequate access to clean drinking water. This failure has sickened many, caused undue inconvenience to many more, and impacted traditional ceremonies and spiritual practices. We are seeking injunctive relief to compel Canada to fix the water problems that continue to beset class members. We are also seeking compensation for hardships that class members have been forced to endure.

The litigation alleges that Canada has violated the *Charter of Rights and Freedoms* by failing to ensure that First Nations peoples living on reserves have adequate access to clean drinking water. Additionally, the litigation advances claims for breach of fiduciary duty, negligence, and nuisance. This litigation does not advance claims arising from treaty rights.

The class proceedings are structured so that First Nations can choose to participate in the action in order to seek solutions to their water issues going forward and assert claims for past and ongoing harms suffered by the community as a collective. We are in the process of signing up as many impacted First Nations as possible, so that we can present Canada with a unified voice. The more First Nations that join, the stronger our position will be with Canada at the negotiation table and in court.

In order to participate in the action your Chief and Council need to pass a Band Council Resolution authorizing your First Nation's participation by opting in to the action and retaining our firms as its lawyers. When your First Nation opts in to the action it will have the right to decide whether to accept a settlement, if there is any.

The class already includes individual members of First Nations whose communities were subject to a drinking water advisory that lasted at least one year at any time from November 8, 1995 to the present, and who lived on reserve during the advisory. Class members must not have died before November 8, 2017.

The first stage of the litigation will determine class members' right to clean drinking water. If we succeed, the second stage of the litigation will consider the circumstances of each First Nation to determine whether Canada breached its duties and what relief should be ordered.

We are in the process of assembling our evidence to move for judgement. At the same time, we are discussing resolution with Canada. **If your First Nation has been affected by a lack of access to clean water – even if it does not fit the class definition – we ask that you contact Stephanie Willsey at swillsey@mccarthy.ca / 1 (416) 601-8962 or Kevin Hille at khille@oktlaw.com / 1 (416) 598-3694 to discuss how your First Nation can participate.**

We believe that this litigation offers a chance to First Nations to address infrastructure deficits and to obtain compensation for communities and their members. However, time is of the

essence if your First Nation wants to participate. We need to hear from you no later than December 15th, 2020.

Thank you for your consideration.