



COURT FILE NO. T-1328-19

**FEDERAL COURT**

BETWEEN:

OKANAGAN INDIAN BAND and Chief Byron Louis on his own behalf and  
on behalf of all members of OKANAGAN INDIAN BAND

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

**STATEMENT OF CLAIM TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

DATED: ~~2018~~ 15 2019

**JOYCE FAN  
REGISTRY OFFICER  
AGENT DU GREFFE**

Issued by: \_\_\_\_\_  \_\_\_\_\_ (Registry Officer)

Address of local office: Federal Court  
Pacific Centre  
P.O. Box 10065  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1B6

**TO: ATTORNEY GENERAL OF CANADA  
284 Wellington  
Street Ottawa, ON  
K1A 0H8**

## CLAIM

1. On their own behalf and on behalf of the Plaintiff First Nation's members, the Plaintiffs' claims are:
  - a. A declaration that Canada has breached its fiduciary duty owed to the Plaintiffs in relation to the creation and management of their respective reserves by creating and sustaining unsafe drinking water conditions on the Plaintiffs' reserves so that the reserves cannot be used for the purposes for which they were set aside.
  - b. A declaration that Canada has breached the Honour of the Crown arising in relation to the creation and management of the Plaintiffs' reserves by creating and sustaining unsafe drinking water conditions on the Plaintiffs' reserves so that the reserves cannot be used for the purposes for which they were set aside.
  - c. A declaration that Canada's conduct in creating and sustaining unsafe drinking water conditions on First Nations' reserves, including the Plaintiffs' reserves, violates the Individual Plaintiff's and other First Nation people's rights to life, liberty and security of the person and is not in accordance with the principles of fundamental justice, contrary to s.7 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. ("**Charter**") and is not demonstrably justifiable under section 1 of the **Charter**.
  - d. A declaration that Canada's conduct in creating and sustaining unsafe drinking water conditions on First Nations' reserves, including the Plaintiffs' reserves, violates the Individual Plaintiff's and other First Nation people's rights to equality, contrary to s.15(1) of the **Charter**, and this violation is not demonstrably justifiable under section 1 of the **Charter**.

- e. A declaration that Canada has breached its obligations under section 36(1)(c) of the **Constitution Act, 1982**, being Schedule B to the *Canada Act 1982 (U.K.), c. 11* ("**Constitution Act, 1982**").
- f. A declaration that Canada is obliged pursuant to sections 7 and 15 of the **Charter** and section 36(1)(c) of the **Constitution Act, 1982** to remedy the unsafe drinking water conditions on the Plaintiffs' reserves.
- g. An order that Canada must remedy the unsafe drinking water conditions on the Plaintiffs' reserves, and that such remedies must:
  - i. be developed and implemented in consultation with the Plaintiffs;
  - ii. meet minimum acceptable standards for the provision of water for human personal use and consumption;
  - iii. be adequate for the purpose of allowing the Plaintiffs' reserves to be used for the purposes for which they were set aside;
  - iv. ensure on-reserve drinking water systems are commensurate with those made available to similarly situated non-aboriginal Canadians;
  - v. include timetables, reporting and monitoring regimes, and outcome measurements; and
  - vi. enhance the Plaintiff First Nations' governance powers in the course of creating new regulations.
- h. An order that the judge hearing this matter or such other judge as the Chief Justice may direct remain seized of this matter for the purpose of addressing any issues that may arise with respect to the steps that Canada proposes to take in order to remedy the breaches;
- i. An order that any party may from time to time apply to the court for further directions concerning the steps to be taken to remedy the breaches;

- j. Damages for the injuries suffered by the Plaintiffs as a result of Canada's breaches;
- k. An order that Canada disgorge any savings it made by failing to provide adequate water supplies for the Plaintiffs;
- l. Pre-judgment and post-judgment interest;
- m. Costs of this action; and
- n. Such further and other relief as counsel may advise and this Honourable Court permits.

#### **SUMMARY OF THE CLAIM:**

- 2. Canada has a fiduciary duty, rooted in the Honour of the Crown, and other legal obligations under the **Constitution Act, 1982** and the **Charter** to ensure on-reserve drinking water systems provide First Nations and their members with safe drinking water.
- 3. Canada is in breach of those duties as a result of systemic conduct that has created, contributed to and sustained unsafe drinking water conditions on OKIB reserves and many First Nations' reserves across Canada.
- 4. Further, in failing to ensure on-reserve drinking water is safe, Canada has acted in a manner inconsistent with the Honour of the Crown.

#### **THE GROUNDS FOR THE APPLICATION ARE:**

##### **The Plaintiffs**

- 5. Chief Byron Louis is an Indian within the meaning of the **Indian Act**, R.S.C., c. I-5 (the "**Indian Act**"), the elected Chief and a member of Okanagan Indian Band. ("OKIB"). He resides with other members of OKIB on the Okanagan Indian Reserve No. 1, located in the Okanagan Valley between Okanagan Lake and the Salmon River in Township 17, Range 10. Chief Byron Louis is suing on his own behalf and on behalf of all other members of OKIB.

6. The Okanagan Indian Band is an Indian Band within the meaning of the ***Indian Act***. OKIB members are “Indians” within the meaning of the ***Indian Act***, and OKIB’s reserves are “reserves” within the meaning of the ***Indian Act*** and “Indian reserves”, within the meaning of Schedule 2 to the ***Constitution Act, 1930***, 20-21 George V, c. 26 (U.K.) (“***Constitution Act, 1930***”).
7. The members of OKIB are also an Aboriginal people within the meaning of section 35 of the ***Constitution Act, 1982***. OKIB are part of the Syilx people who have occupied the Okanagan Valley since time immemorial. The term “First Nation” in this Statement of Claim refers to groups with protection under section 35 of the ***Constitution Act, 1982***.
8. Neither OKIB, the Syilx nor any predecessor group have ever signed a treaty with the Crown.
9. The Plaintiff First Nation and Individual Plaintiff are referred to collectively as the “Plaintiffs”.

#### **The Defendant**

10. The Attorney General of Canada is the Minister of the Crown designated by section 23 of the ***Crown Liability and Proceedings Act***, R.S.C. 1985, c C-50 to represent Her Majesty the Queen in right of Canada in proceedings taken against Her Majesty (“Canada”).
11. Pursuant to the ***Constitution Act, 1982***, the ***Indian Act***, the Honour of the Crown, and its fiduciary duties, Canada is responsible for ensuring that First Nations have access to safe drinking water on-reserve.
12. The Department of Indian Affairs and Northern Development, known publically as two departments, Crown Indigenous Relations and Northern Affairs (“CIRNA”) and Indigenous Services Canada (“ISC”), is the primary body through which Canada fulfills its legal responsibilities to First Nations.

13. Health Canada and Environment Canada are responsible for working with these departments to ensure there is adequate safe drinking water available on First Nations' reserves.

### **Standing**

14. The Plaintiffs assert both private and public interest standing to bring this claim.
15. The Plaintiffs have private interest standing because they are directly affected by Canada's failure to take reasonable and effective measures to ensure the realization of the right to safe drinking water on reserves.
16. The Plaintiffs also have public interest standing. They raise a serious justiciable issue of public import respecting the constitutionality of Canada's systemic conduct that has created, contributed to and sustained the unsafe drinking water conditions on First Nation reserves.
17. The Plaintiffs have a real stake in Canada's conduct and are both directly and genuinely interested in the resolution of this claim.
18. This claim advances a reasonable and effective method of bringing the issue before the Court in all of the relevant circumstances. Many First Nation reserve communities that are affected by Canada's conduct, which has created, contributed to and sustained their unsafe drinking water conditions. These communities are among the most marginalized communities in Canada and lack the resources to bring forward such a claim.

### **Establishment of the Plaintiffs' Reserves**

19. After British Columbia joined the Confederacy in 1871, the Canadian Government identified the need to create Indian Reserves in British Columbia in order to keep the peace as the land policy of the Provincial government at the time was to deny Aboriginal rights and title. The lands were to be set aside for the Aboriginal people for their exclusive use and occupation.
20. The Reserves were to serve as locations for the Aboriginal peoples to establish

permanent settlements. The Reserves were promised as a home in which the Aboriginal peoples could maintain their distinct communities and way of life.

21. As a result of this ongoing political and social tension, the Reserve Commissioners allotted reserves to be set aside for the use and benefit of OKIB. Initially, the Okanagan Indian Band was comprised of Okanagan Reserve No.1, Otter Lake Reserve No.2, Harris Reserve No.3, Swan Lake Reserve No.4, Long Lake Reserve No. 5, Priest's Valley Reserve No.6 and Duck Lake Reserve No.7.  
  
(Collectively, "the Reserves")
22. Mission Creek Reserve No.8, Tsinstikeptum Reserve No.9 and Reserve No. 10 were removed from the Okanagan Indian Band when Westbank Indian Band, now known as Westbank First Nation separated from the Okanagan Indian Band to become their own Indian Band in the mid-1900s.
23. The Reserves were allotted as the Okanagan Indian Band respectively from 1877-1891 and were variously surveyed from 1880-1889.
24. The common intention of the First Nations, including OKIB, and Canada was that the reserve lands were to be set aside for the First Nations to be used for their residential, cultural, spiritual, recreational, and government homes of the First Nations and their respective members.
25. First Nations, including OKIB, and Canada understood that an adequate supply of safe drinking water was and continues to be necessary for First Nations' members to fully use and benefit from the reserves for the purposes set out above, and would be part of the First Nations' interest in the reserves.
26. Following the making of the Reserves and into the 20<sup>th</sup> century, Canada increasingly pressured aboriginal people to give up their traditional way of life and patterns of land use, and encouraged them to move on to the reserves and establish residential communities there. This process was reinforced by the increasing development of off-reserve lands for agricultural, mining, forestry



and settlement purposes, which made it increasingly difficult to live off-reserve.

27. As on-reserve communities grew, it became apparent that the reserves could not be used for their intended purposes without the provision of an adequate water supply. For the most part, the reserves had been established without a water system or supply adequate to provide for the needs of the community. Furthermore, the limited land base available to First Nations meant that they could not expand their land bases to provide sewage disposal infrastructure or to otherwise manage growth.
28. Recognizing that the promise of reserves suitable for supporting and sustaining aboriginal communities would largely be rendered meaningless without the provision of an adequate water supply, Canada, through the Minister of Indian Affairs (and subsequently through various successor ministries) began to implement measures to provide basic water supplies on reserve.

#### **Canada's Recognition of the Need for Safe On-Reserve Drinking Water**

29. Access to adequate safe drinking water is a necessity of life and a fundamental human right. Safe drinking water contributes to basic human survival, health, participation in society and the capacity to realize other fundamental rights. The absence of safe drinking water contributes to disease, reduced social and economic participation, and even death.
30. Canada has acceded to a number of international instruments (set out below) that explicitly or implicitly recognizes a right to safe drinking water for all Canadians.
31. Canada has also recognized through various federal laws, policies and initiatives that the provision of safe drinking water on reserves is critical to ensure the health and safety of First Nation peoples, and that the drinking water of many First Nation reserve communities is at high risk.
32. Despite this recognition, many residents of OKIB reserves do not have access to adequate safe drinking water as a direct result of conduct by Canada.

33. The inability of First Nations' members to access adequate, safe drinking water on reserve causes significant harm to their physical, psychological and emotional health.
34. The harms caused by the inability to access adequate safe drinking water are compounded by the fact that aboriginal people are a historically disadvantaged group. They have faced, and continue to face, higher levels of poverty than non-aboriginal Canadians. They have been dispossessed of their lands and isolated on small reserves. They have poorer health and higher rates of mortality than non-aboriginal Canadians.
35. Access to safe drinking water is fundamental not only to ensuring the bare necessities of life, but also to mitigating some of these long-standing disadvantages. The lack of safe drinking water has serious overall impacts on physical and mental health.
36. The inability of First Nations' members, including the Individual Plaintiff, to access safe drinking water on reserve also adversely affects their use and enjoyment of reserve lands, which were set aside for the use and benefit of First Nations' members in recognition of their Aboriginal title to the lands and to protect their core village lands from incursion by European settlers. Access to safe drinking water is integral to First Nations' and their members' ability to use and benefit from the reserve lands, including the Plaintiffs' Reserves.

### **Canada's Jurisdiction over the Delivery of Drinking Water on First Nation Reserves**

37. Under section 91(24) of the *Constitution Act, 1867*, 30 & 31 Vict, c. 3 ("*Constitution Act, 1867*"), Canada is responsible for "Indians and Lands reserved for Indians". Only Canada may legislate in respect of First Nation reserve lands. As a result, Canada has jurisdiction to ensure on-reserve drinking water systems provide First Nation communities with safe drinking water.
38. In addition, through provisions in the *Indian Act*, Canada has restricted the ability of First Nations to exercise jurisdiction over drinking water on

reserves.

39. Canada also has responsibilities under section 36(1) of the ***Constitution Act, 1982*** to ensure the provision of essential public services of reasonable quality to all Canadians, including First Nations.
40. As a result of creating reserves and assuming control over their management, Canada owes a fiduciary duty to First Nations and their members, including the Plaintiffs, to ensure that they can use and benefit from the reserves, including access to an adequate supply of safe drinking water on-reserve, arising out of the fact that:
  - a. Canada had undertaken to act in the best interests of First Nations in establishing and managing reserves; and
  - b. Reserves and their creation represented a substantial legal and practical interest of First Nations over which Canada has assumed discretionary control through the Indian Act.
41. More generally, even in the absence of a fiduciary duty, Canada is subject to the Honour of the Crown in all of its dealings with Aboriginal people.
42. Canada has, through the ***Indian Act***, limited the authority of First Nations, including the Plaintiff First Nations, to take steps to ensure the safety of drinking water on reserves, including through limiting First Nations' by-law making powers.
43. Canada has asserted an active and central role in the design, implementation and delivery of drinking water on reserves, including the Plaintiffs' Reserves. Through its systemic conduct, Canada has created, contributed to and sustained unsafe drinking water conditions on reserves, including the Plaintiffs' Reserves.

**Canada's Conduct in Creating and Sustaining Unsafe Drinking Water Conditions on First Nations' Reserves**

44. In the 1970s, Canada, through its Department of Indian and Northern Affairs

Canada ("INAC", as it was then known), took discretionary control over on-reserve drinking water systems. INAC's responsibilities with respect to drinking water on-reserve, included, *inter alia*:

- a. planning and implementing water systems;
- b. designing and constructing water facilities;
- c. operating and maintaining water systems;
- d. employing water system operators; and
- e. performing feasibility studies and conducting water needs analyses.

45. In asserting discretionary control over reserve water systems, Canada, through INAC, created and contributed to unsafe drinking water conditions on reserves, including the Plaintiffs' Reserves, for the following reasons, *inter alia*:

- a. INAC failed to build water system facilities to any enforceable building standard or operational standard;
- b. INAC failed to ensure water facilities were built in appropriate locations on-reserve, away from activities that had the potential to contaminate drinking water;
- c. INAC failed to properly operate and maintain water facilities;
- d. INAC failed to upgrade water facilities as necessary;
- e. INAC failed to ensure the water could be safely delivered to reserve residents and that all homes on reserves were connected to water facilities; and
- f. INAC failed to assess and remedy boil water advisories on-reserves.

46. Starting in the 1980s, Canada entered into agreements with First Nations, including OKIB, attempting to make First Nations partly responsible for the delivery of drinking water to on-reserve communities, including responsibility for the maintenance and operation of certain facilities.

47. These agreements were made even though Canada failed to rectify the unsafe drinking water systems it had created and failed to provide First Nations, including OKIB, with the resources and support necessary to assume any shared responsibility for the delivery of safe water to reserve residents. Canada knew or ought to have known that First Nations, including OKIB, did not have the resources or capacity required to maintain and operate their already deficient water systems.
48. Further, Canada only partially funded the operations of on-reserve water treatment systems' and maintenance costs regardless of a First Nation's ability to generate the rest of the funding. As a result, for most First Nations, including OKIB, the funding was and continues to be too low to, *inter alia*, retain certified facility operators, replace components as needed, purchase chemicals needed to operate facilities, or engage in the required level of monitoring.
49. As a result, Canada has sustained the unsafe drinking water conditions by, *inter alia*:
  - a. passing substandard water facilities onto First Nations and their members, including the Plaintiffs;
  - b. failing to adequately protect source groundwater;
  - c. failing to ensure all homes on reserves, including the Plaintiffs' Reserves, are connected to water facilities that can deliver safe drinking water;
  - d. failing to assess the capacity of First Nations to operate and maintain water facilities, including OKIB;
  - e. failing to allocate funds appropriately for water systems, including to the Plaintiff OKIB;
  - f. failing to provide standards for water systems equivalent to national standards and ensuring a clear line of accountability to ensure compliance;

- g. failing to provide First Nations, including OKIB, with adequate technical or management support for their drinking water operations;
  - h. failing to provide adequate training programs for on-reserve water operators;
  - i. failing to ensure on-reserve water operators comply with operating practices; and
  - j. failing to ensure that any legislative enactments establish an effective regulatory regime with proper consultation with First Nations, including OKIB, to ensure safe drinking water on reserves.
50. Although Canada required First Nations to share responsibility for the operation and maintenance of on-reserve drinking water systems, Canada continued to be responsible and accountable for ensuring that on-reserve drinking water systems provided First Nations' on-reserve communities, including the Plaintiffs' Reserves, with safe drinking water.
51. Since signing the agreements and despite various federal initiatives and policies, including the ***Safe Drinking Water for First Nations Act, S.C. 2013, c.21***, Canada has continued to sustain the unsafe drinking water conditions on First Nations' reserves, including the Plaintiffs' Reserves, and has failed to meet its own objectives and goals in this regard.

**The Drinking Water Relied on by OKIB Is Unsafe**

52. Of an estimated 649 land parcels within the OKIB boundary, only 359 are connected to one of six community water systems, with the remaining 290 parcels not connected to a community water system.
53. Of the six community water systems, only one system includes proper treatment and disinfection necessary to protect human health when the water is piped to households.

54. The remaining 290 parcels do not have access to a safe and reliable supply of potable drinking water from a community water system and do not have access to water for fire protection.
55. The 290 parcels that are not connected to community water systems rely on individual water wells drawing water from shallow aquifers that are vulnerable to contamination and are likely Groundwater at Risk of Containing Pathogens (“GARP”).
56. Approximately ½ dozen households rely on self-serve bulk water obtained from a household-grade plumbing at the OKIB Public Works facility.
57. Between 2010 – 2019, the OKIB community systems experienced no fewer than 79 Boil Water Advisories and 9 Do Not Consume Orders.
58. Approximately 638 OKIB members reside on the remaining 290 parcels. As a result, about half of the on-reserve population does not have access to reliable and safe drinking water.

#### **The OKIB Drinking Water Systems Rely on GUDI**

59. In 2010, an engineering assessment of reserve water systems commissioned by Canada (the “Neegan Burnside” Report) found that all drinking water systems on the Reserve failed to meet Guidelines for Canadian Drinking Water Quality (“GCDWQ”).
60. Neegan Burnside identified the majority of drinking water systems rely on Groundwater Under Direct Influence (GUDI) of surface water meaning that these systems are vulnerable to contamination arising from anthropogenic and natural sources of contamination including livestock, household septic fields, agricultural practices including fertilizer, herbicide and/or pesticide applications and/or giardia/cryptosporidium outbreaks.
61. Neegan Burnside identified a number of distribution systems with elevated coliform levels.

### **The Drinking Water Systems for OKIB are at High Risk**

62. Neegan Burnside assigned a High Risk ranking to these systems, meaning they included major deficiencies that pose a High Risk to the quality of water that may lead to potential health and safety or environmental concerns.
63. Neegan Burnside relied on Canada's Risk Ranking system that provides a relative ranking of risk to health to allow for a comparison of sites across Canada, but does not quantify the probability of health impacts to specific individuals that consume water on the reserve.
64. Once systems are classified as High Risk, immediate corrective action to minimize or eliminate deficiencies is needed. Canada has known about the high risk ratings since at least 2010.

### **Specific Drinking Water System Deficiencies Documented in 2010**

65. Neegan Burnside identified a number of deficiencies on the reserve and made specific recommendations to address the problems.
66. The **Bradley Creek Community Water Supply and Distribution Deficiencies** included:
  - a. The system was rated at a High Risk.
  - b. A boil water order was issued in September 2009.
  - c. The water source was deemed 100% GUDI with no treatment.
  - d. Source water failed to meet GCDWQ aesthetic limits for iron, manganese and total dissolved solids.
  - e. Source water failed to meet GCDWQ health limits for coliform.
  - f. The distribution system also exceeded GCDWQ health limits for coliform.
67. Neegan Burnside recommended the installation of a new well, expanded storage and disinfection (ultra-violet treatment and chlorination).



68. **The Head of Lake (Irish Creek) Community Water Supply and Distribution** Deficiencies included:

- a. The system was rated as a High Risk.
- b. The water source was deemed 100% GUDI with no treatment.
- c. Source water failed to meet of GCDWQ aesthetic limits for aluminum, manganese and TDS.
- d. The distribution system failed to meet GCDWQ health limits for coliform and E.Coli.

69. Neegan Burnside recommended the installation of water treatment for manganese removal and expanded chlorine contact time in storage for disinfection.

70. **The Round Lake Community Water Supply and Distribution Deficiencies** included:

- a. The system was rated as a High Risk.
- b. The water source was ranked as potentially GUDI no treatment.
- c. Source water failed to meet GCDWQ aesthetic limits for iron.
- d. The distribution system failed to meet GCDWQ health limits for coliforms.

71. Neegan Burnside recommended the installation of a new well with addition of chlorination and contact piping for disinfection.

72. **The Salmon River Community Water Supply and Distribution Deficiencies** included:

- a. The system was rated as High Risk
- b. The water source was ranked as potentially GUDI with potential for surface water inundation at the well head and no treatment.

- c. The system failed to meet GCDWQ aesthetic limits for aluminum.
  - d. The distribution system failed to meet GCQWQ limits for coliforms.
73. Neegan Burnside recommended the installation of a new well with addition of chlorination and contact time.
74. The **Six Mile Community Water Supply and Distribution System Deficiencies** included:
- a. The system was rated as a High Risk.
  - b. The water source was ranked as potentially GUDI with no treatment.
  - c. Source water failed to meet GCDWQ aesthetic limits for iron.
  - d. The distribution system failed to meet GCDWQ health limits for coliform.
75. The **Whiteman Creek Community Water Supply and Distribution System Deficiencies** included:
- a. The system was rated as a High Risk.
  - b. The water source was rated as potentially GUDI with no treatment.
  - c. The distribution system failed to meet GCDWQ health limits for coliform.
76. Neegan Burnside recommended the installation of a new well, chlorination, contact piping and expanded storage.
77. Water supply and distribution issues associated with a 7<sup>th</sup> system, namely the Madeline Lake System were not assessed by Neegan Burnside. It was noted that a single well was discharging untreated water.

### **Water System Deficiencies Confirmed Again in 2016**

78. In 2016, an engineering assessment commissioned by Canada (the "OPUS" E-ACRS Buildings and Infrastructure Assets report) examined the physical assets associated with the 7 systems.
- a. Bradley Creek and Six Mile Systems were combined with a water treatment plant constructed in 2014 for iron and manganese removal and chlorination with sodium hypochlorite.
  - b. The Head of Lake Water System, the Round Lake System, the Salmon River System, the Whiteman Creek System, and the Madeline Lake System still comprised a single well providing untreated water despite the deficiencies and recommendations identified in the Neegan Burnside report in 2010.

### **Water System Deficiencies Confirmed Again in 2017**

79. In 2017, an engineering assessment commissioned by the Plaintiff ("Urban Systems" report Water Master Plan for IR#1) examined water quality issues associated with the now 6 systems.
80. The Head of Lake System still relied on a single well that does not meet British Columbia's Ground Water Protection Regulation ("GWPR") under the Water Sustainability Act "WSA") nor does it meet INAC minimum well diameter requirements:
- a. Due to well construction and proximity to septic field, there is a risk that microbiological guidelines will not be met.
  - b. Source Water quality exceeded GCDWQ aesthetic limits for manganese and might fail to meet the proposed Health Canada guideline.
  - c. Ammonia levels were elevated, possibly due to anthropogenic impacts upgradient of the well.

- d. The water has extremely offensive odour that has forced many residents to use bottled water for drinking.
  - e. Overall, the Head of Lake Community Supply and Distribution system water quality was deemed to be very poor.
81. **The Round Lake System** still relied on a single well that does not meet BC GWPR nor INAC requirements. In addition, Kala Geosciences Ltd. conducted a groundwater assessment (“Kala Report”) and concluded that Groundwater at Risk of Containing Pathogens (“GARP”) risks existed at the well.
- a. **The Madeline Lake System** still relied on a single well that was not compliant with MC GWPR not meet INAC standards. Kala concluded GARP hazards were present at the well. Urban Systems rested water quality with manganese exceeding GCDWQ health levels.
  - b. **The Salmon River System** still relied on single well that was not compliant with BC-GWPR nor INAC Standards. Kala concluded that the water supply well should be considered GARP. A new well drilled in 2006 remained unconnected but was also likely GARP.
82. In May 2016, Health Canada proposed lowering the GVDWQ Maximum Acceptable Concentration (MAC) for manganese to 0.1 mg/L with an Aesthetic Objective (AO) of 0.02 mg/L.
83. In May 2019, Health Canada issued a new GCDWQ for manganese that lowered the Maximum Acceptable Concentration (MAC) for manganese to 0.12 mg/L and the Aesthetic Objective (AO) to 0.02 mg/L.
84. OKIB Lands and Housing continues to assess the elevated levels of manganese reported previously at Head of Lake and Madeline Lake. Manganese levels between November 2018 and March 2019 exceed the MAC of 0.12 mg/L:
- a. Head of Lake as high as 0.168 mg/L.
  - b. Madeline Lake as high as 0.294 mg/L.

85. In May 2019, Fossil Water Corporation accompanied an OKIB operator and conducted visits to the 6 water supply and distribution systems. Five of the six systems remain at a High Risk despite the fact that concerns have been documented in engineering reports since 2010.
- a. The Head of Lake System continues to represent a High Risk while supplying very poor quality untreated water from a well that does not meet BC-GWPR nor INAC standards with manganese levels that exceed GCDWQ MAC limits. The Head of Lake system also experiences excessive water losses that represent potential leakage points with associated risk of infiltration of pathogens into the distribution system.
  - b. The Round Lake System continues to represent a High Risk including the supply of unchlorinated water from a well that does not meet BC-GWPR nor INAC requirements and is considered GARP.
  - c. The Madeline Lake System continues to represent a High Risk noting the supply of unchlorinated water from a well that does not meet BC-GWPR nor INAC standards, and is considered GARP with manganese levels that exceed GCDWQ MAC limits.
  - d. The Salmon River System continues to represent a High Risk including the supply of unchlorinated water from a well that is not compliant with BC-GWPR nor INAC standards but is also likely GARP.
  - e. The Whiteman Creek system continues to represent a High Risk including the supply of unchlorinated water from a well that is not compliant with BC-GWPR nor INAC standards that is considered GARP. Two new wells are reportedly to be connected in 2019 with no immediate provision for chlorination.
86. The homes that are not connected to community systems continue to rely on groundwater aquifers that are Groundwater at Risk of Pathogens. Numerous wells are vulnerable to contamination from septic fields and land management

practices up-gradient from OKIB associated with recreational and agricultural operations. As recently as 2017, the federal government studied and noted the connection between the aquifers in the Okanagan Valley.

87. As a result of the cumulative effects of Canada's conduct, Canada has caused or contributed to unsafe drinking water conditions for the Plaintiff's residents and patrons in the following ways:

- a. Failing to take immediate corrective action as explicitly stated in the INAC's Fact Sheet that outlines commitments to take action in response to deficiencies and recommendations identified in the 2009-2011 National Assessment of First Nations Water and Wastewater Systems as reported in the 2011 Neegan Burnside Report.
- b. Failing to take immediate corrective action in response to deficiencies summarized in the 2016 OPUS Report that re-examined the Plaintiff's water systems.
- c. Failing to notify OKIB in May 2016 of proposed changes to manganese MAC levels for Head of Lake and Madeline Lake systems known to have elevated levels of manganese since Neegan Burnside's 2010 report.
- d. Failing to provide the Plaintiff with sufficient water treatment systems to address the change in manganese levels.
- e. Failing to provide the Plaintiff with sufficient chlorination systems to eliminate the risk of distributing untreated water.
- f. Failing to notify the Plaintiff of the promulgation in May 2019 of changes to manganese MAC levels that forced the Plaintiff to issue Do Not Consume advisories for Head of Lake and Madeline Lake Water Supply Systems.
- g. Failing to provide adequate source groundwater protection.

88. As a result of the cumulative effects of Canada's conduct, Canada has caused

or contributed to unsafe drinking water conditions for First Nations communities, including the Plaintiff OKIB, in the following ways, *inter alia*:

- a. instituting changes to legislation, policies, programs and services that have resulted in unsafe drinking water on First Nation reserves, including the Plaintiffs' Reserve;
- b. failing to ensure First Nation communities, including the Plaintiff OKIB, receive the same level of water safety protection as off-reserve communities;
- c. failing to implement administrative guidelines, policies and funding arrangements with First Nations, including the Plaintiff OKIB, consistently and in a manner that covers all the elements required by any regulatory regime;
- d. undertaking no measures or, alternatively, inadequate measures, to address the impact of the changes resulting from the partial transfer to First Nations of responsibilities for the operation and maintenance of water treatment systems;
- e. failing to undertake appropriate strategic coordination to ensure that government programs effectively provide for safe drinking water on-reserve;
- f. failing to ensure the enforceability of protocols and guidelines in relation to on-reserve drinking water;
- g. failing to enact an adequate regulatory framework for on-reserve drinking water;
- h. failing to ensure on-reserve drinking water is regularly tested;
- i. failing to provide training programs for water operators that are accessible to all First Nations;

- j. failing to ensure on-reserve water system operators are appropriately certified;
  - k. failing to ensure adequate information is collected about on-reserve drinking water conditions, including:
    - i. whether First Nations meet the conditions of their funding arrangements;
    - ii. whether maintenance is conducted or is needed;
    - iii. whether inspections have been carried out;
    - iv. whether deficiencies have been corrected; and
    - v. whether drinking water is safe for human consumption.
89. As a result of these failures:
- a. ground water is not adequately protected;
  - b. the design, construction, operation and maintenance of First Nations' drinking water systems, including those of the Plaintiffs, are deficient;
  - c. on-reserve drinking water systems, including those of the Plaintiffs, deliver drinking water that poses risks to health and safety;
  - d. reserve communities, including those of the Plaintiffs, do not benefit from a level of protection comparable to off-reserve communities; and
  - e. reserve communities, including those of the Plaintiffs, do not benefit from a level of protection comparable to federal employees assigned to on-reserve worksites.
90. The effect of these failures is that First Nation reserve community members, including the Individual Plaintiff, faces:
- a. lack of access to safe and reliable water from water treatment systems for 5 out of the 6 community water systems on reserve;



- b. reliance on untreated and insufficiently protected groundwater water sources;
- c. unacceptable levels of contamination in the water systems;
- d. unacceptable levels of disease-causing bacteria, viruses or parasites in the water system from the source to the tap;
- e. adverse health effects including gastrointestinal infections, skin infections, lice infestations, urinary tract infections, cancer, hepatitis and eye/ear infections;
- f. water unfit for non-drinking purposes such as showering, washing clothes or personal hygiene;
- g. boil water advisories or bans on using water that can last for years; and
- h. the expense of obtaining water off-reserve or bottled water.

91. Further particulars of the deficiencies of water systems created, sustained, and contributed to by Canada and the impacts of such deficiencies on the Plaintiffs are set out below.

***The Unsafe Drinking Water Conditions on the Plaintiffs' Reserves***

92. First Nations and their members, including the Plaintiffs, experience a number of harms as a result of Canada's failure to provide adequate safe drinking water to the Plaintiff OKIB's on-reserve communities. These harms are set out below.

***Water System Failures***

93. The Plaintiff OKIB's water sources have experienced:
- a. water shortages and declining availability of water;
  - b. contamination from sources such as sewage, industry, or agriculture; and
  - c. poor and deteriorating water quality.

94. Five (5) out of the Six (6) of The Plaintiff OKIB's water systems :
- a. have insufficient capacity;
  - b. have decrepit or faulty equipment and components;
  - c. were not built to provincial or federal building codes;
  - d. were designed with inappropriate or insufficient treatment processes and lack sufficient chlorination to ensure the integrity of the distribution system;
  - e. were not designed with the flexibility to meet future needs;
  - f. are unreliable; and are incapable of meeting Health Canada's Guidelines for Canadian Drinking Water Quality on a regular basis.
95. The Plaintiff OKIB's water system operators spend most of their time dealing with crises.

*Unsafe Alternative Water Systems*

96. In addition to the water system failures, many of the Plaintiff OKIB's on-reserve members are not connected to water treatment plants and rely on private wells. Wells are more susceptible to contamination than piped water and do not provide an adequate or stable supply of safe drinking water. Many of these wells are Groundwater Under the Direct Influence (GUDI) and vulnerable to surface contamination, not do they meet British Columbia's Groundwater Protection Regulation (GWPR) and are Groundwater At Risk of Containing Pathogens (GARP).

*Adverse Effects*

97. On-reserve drinking water has put the Plaintiff OKIB's on-reserve members at a higher risk of contracting illnesses, such as skin and gastrointestinal conditions, diarrhea and headaches.
98. Unsafe drinking water causes many of the Plaintiff OKIB's on-reserve members stress and anxiety as a result of, among other things, foul tastes and

odours and the presence of chemicals and pollutants in the water.

99. The Plaintiff OKIB's water treatment systems have undergone repeated boil water advisories, meaning periods when water is safe to drink only after it has been boiled. The occurrence of boil water advisories has caused residents to lose confidence in water treatment systems.
100. The Plaintiff OKIB's water treatment systems fail to consistently provide enough water for on-reserve members to drink and perform daily tasks.
101. Further, when a private well becomes unusable due to contamination, members face great difficulty obtaining water from other sources.
102. Many of the Plaintiff OKIB's on-reserve members do not consider it safe to drink water from the tap and are forced to travel off-reserve to buy bottled water.
103. The lack of adequate planning and funding for water infrastructure has negatively impacted OKIB's ability to deliver fire services to its members.
104. The lack of safe drinking water has contributed to the decision of some of the Plaintiff OKIB's members to move off reserve or consider doing so, despite the intended purpose of the reserves for the use and benefit of the Plaintiff First Nations and their members.

**The Claims:**

105. Canada has failed to ensure First Nations' on-reserve communities, including those of the Plaintiffs, have access to adequate safe drinking water on reserve. Further, Canada has failed to ensure that access to adequate safe drinking water is comparable to that of off- reserve communities or federal employees on reserve.
106. The Plaintiffs claim that the lack of safe drinking water on reserve has caused their members and other on-reserve First Nations people adverse health effects and severe psychological stress and exposes them to the

threat of a significant health risk.

***Canada has Breached its Fiduciary Duty to First Nations, including the Plaintiff First Nations***

107. Canada has a fiduciary duty to provide an adequate supply of safe drinking water to reserves, including the Plaintiffs' Reserves, and has failed to do so.
108. The fiduciary duty and Honour of the Crown duties imposed upon Canada require that:
  - a. Canada ensure that reserves are suitable for the purposes for which they were intended to be used;
  - b. Canada ensure that the reserves have an adequate supply of water for human consumption in the context of residential use; and
  - c. Canada ensure that reasonable steps are taken to maintain the water supply to the reserves in a manner that is safe for human consumption in the context of residential use.
109. The fiduciary obligations to provide an adequate supply of safe drinking water to First Nations and their members, including the Plaintiffs, arose when Canada set aside reserves for the use and benefit of First Nations and unilaterally asserted and assumed control of on-reserve drinking water services.
110. Canada has unilaterally asserted or claimed discretionary authority through constitutional and legislative instruments as follows:
  - a. Canada asserted authority over reserve lands and communities through section 91(24) of the **Constitution Act, 1867**. Acting under this power and among other measures, Canada enacted the Indian Act, as amended from time to time, which purported to dictate the nature of band governments and to define and restrain the scope of these governments' authority over such matters as reserve land, capital infrastructure and water systems; and

- b. under the current Indian Act, as under previous versions, Canada delegated insignificant powers to statutorily-created band councils to permit First Nations to create water protection regimes. Having failed to delegate such powers, Canada preserved for itself the authority to control matters such as reserve capital infrastructure and the design and delivery of core services, like water.
- 111. Further, Canada has acted upon its assertion of discretionary control, and under its assumed powers has enacted various policies and initiatives, regarding control of water services on reserve.
- 112. Having assumed discretionary control over on-reserve water quality and quantity, Canada's duties in these circumstances rise to fiduciary duties.
- 113. For the reasons set out above, Canada is in breach of those fiduciary duties.
- 114. More particularly, Canada has breached its fiduciary duties and Honour of the Crown duties in respect of the provision of water to reserves, including those of the Plaintiffs, by:
  - a. failing to ensure that reserves, including those of the Plaintiffs, had and have access to an adequate drinking water supplies;
  - b. failing to ensure that reserves, including those of the Plaintiffs, had and have adequate water systems to ensure the delivery of adequate safe drinking water supplies;
  - c. failing to take remedial measures to ensure the delivery of adequate safe drinking water supplies to reserves, including those of the Plaintiffs;
  - d. failing to provide adequate training and supervision for persons or entities operating drinking water infrastructure on reserves, including those of the Plaintiffs; and

- e. failing to ensure reserve communities receive the same level of water safety protection as off-reserve communities.

115. The Plaintiffs have suffered harm as a result of these breaches of duty, including,

*inter alia*:

- a. they have been deprived of the full benefit of the use of their Reserves;
- b. they have seen the value of the residential purposes of their Reserves significantly diminish;
- c. they have seen the economic value of their Reserves significantly diminish;
- d. members of the Plaintiff OKIB have left or declined to return to their Reserves on account of the absence of an adequate safe water supply or fear of unsafe drinking water conditions; and
- e. they have been exposed to risks of health problems and diseases associated with lack of access to safe drinking water on their Reserves.

***Canada has Failed to Implement Safe Drinking Water Conditions on Reserves in a Manner Consistent with the Honour of the Crown***

116. The Crown must act honourably in its dealings with aboriginal people. This flows from the guarantee of aboriginal rights in section 35(1) of the *Constitution Act, 1982*.

117. The ultimate purpose of the Honour of the Crown is the reconciliation of pre-existing aboriginal societies with the assertion of Canadian sovereignty.

118. Canada failed to act with diligence or care in implementing water systems that deliver drinking water on reserves.

119. Rather than acting with diligence, Canada has been persistently inattentive to

the needs of First Nations for safe drinking water and created or contributed to the conditions that provide for unsafe drinking water. This is inconsistent with the action required by the honour of the Crown.

120. The Plaintiffs repeat and rely upon the particulars of the breaches above, in support of their Honour of the Crown claim against Canada.

***Application of the Charter***

121. The rights to life, liberty and security of the person under section 7 of the **Charter** and the right to equality under section 15 of the **Charter** should be interpreted in light of Canada's international human rights obligations regarding access to safe drinking water.
122. Several United Nations human rights instruments ratified by Canada have recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights. Those instruments include:
- a. the International Covenant on Economic, Social and Cultural Rights (1976), which requires that states ensure access to basic shelter, housing and sanitation and an adequate supply of safe and potable water;
  - b. the Convention on the Rights of the Child (1989), which requires state parties to take appropriate measures to combat disease through the provision of clean drinking water;
  - c. the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), which requires state parties to ensure woman in rural areas enjoy adequate living conditions, including in relation to water supply;
  - d. the United Nations Declaration on the Rights of Indigenous Peoples (2007), which recognizes a positive obligation on states to ensure

continuing improvement of the social conditions for Indigenous people, which would include safe drinking water; and

- e. The United Nations General Assembly resolution from the 108th Plenary Meeting of the 64th Session (2010), which recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.

123. Human rights instruments are persuasive sources of interpreting the provisions of the **Charter**, which should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents that Canada has ratified.

*Canada's conduct is in breach of s. 7 of the Charter*

124. The Individual Plaintiff and other First Nation people are entitled to the protection offered by section 7 of the **Charter**, which provides everyone with the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

125. The ability to reside on reserve is an essential aspect of the cultural and personal identity of the Individual Plaintiff and, as such, is an essential aspect of his ability to enjoy his life.

126. To be able to reside on reserve, First Nation members, including the Individual Plaintiff, must have access to a clean supply of water that is suitable for human consumption and use.

127. Given Canada's control over the creation of the Reserves, location of the Reserves, the resources and benefits derived from the Reserve lands, and the provision of water on the Reserves, and the fact that OKIB and its members cannot relocate the Reserves or independently provide their own water supplies, Canada is further obliged to ensure the drinking water systems it created on the Reserves deliver the Individual Plaintiff an adequate supply of safe drinking water.



128. To satisfy the obligations imposed by section 7 of the *Charter*, Canada must, *inter alia*:
- a. ensure on-reserve water systems meet minimum reasonable standards for the provision of water for human personal use and consumption; and
  - b. provide a water supply that is adequate for the purpose of allowing reserves, including those of the Plaintiffs, to be used for the purpose for which they were set aside.
129. Canada has deprived the Individual Plaintiff and other First Nation people access to safe drinking water by virtue of its conduct set out above which has, *inter alia*, resulted in:
- a. absent or inadequate functional on-reserve water supply systems in certain cases;
  - b. water supplies which are inadequate for human personal use and consumption;
  - c. illness;
  - d. continued fear, distress and concern; and
  - e. members leaving the Reserves.
130. By failing to ensure on-reserve First Nation members, including the Individual Plaintiff, have access to safe drinking water, for the reasons set out above, Canada has infringed section 7 of the *Charter* rights of the Individual Plaintiff and other First Nation persons. In particular:
- a. the right to life is engaged and infringed by placing reserve members of First Nations, including the Individual Plaintiff and other OKIB members, at a risk of death and water-borne illness as a result of inadequately treated drinking water;

- b. the right to liberty is engaged and infringed by the energy and effort required to access safe drinking water. The liberty interests of the Individual Plaintiff and other members of OKIB are infringed as they are effectively compelled to leave their Reserves to protect the health, and are therefore unable to freely choose whether to live on- or off-reserve; and
- c. the right to security of the person is engaged and infringed by the physical and serious psychological impacts or risk thereof to the Individual Plaintiff and other OKIB members, and the impacts caused by severing their close ties to their Reserve communities if they are forced to move off reserve.

131. The foregoing deprivations of the rights to life, liberty and security of the person are not in accordance with the principles of fundamental justice as they are arbitrary, grossly disproportionate to any government interest, contrary to international human rights norms, discriminatory and would shock the conscience of all Canadians.
132. Canada's infringements of the section 7 **Charter** rights of First Nation members, including the Individual Plaintiff, cannot be justified as a reasonable limit that is justifiable in a free and democratic society.

*Canada's Conduct is in Breach of s. 15(1) of the Charter*

133. Canada's conduct in creating and sustaining the unsafe drinking water conditions on First Nations reserves, including the Plaintiffs' Reserves, violates section 15(1) of the **Charter** by creating and sustaining conditions of inequality for the Individual Plaintiff and other First Nation people.
134. Section 15(1) of the **Charter** provides that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

135. In the case of Canada's conduct in delivering drinking water, the on-reserve Individual Plaintiff and other on-reserve First Nation people are subject to differential treatment. Their drinking water is unsafe compared to similarly situated off-reserve non-aboriginal communities as well as federal government employees who are assigned to work on reserves.
136. This distinction is drawn on the ground of aboriginal ancestry and residence and is highly concerning given the duty of the Crown to act honourably in all of its dealings with aboriginal peoples.
137. The Individual Plaintiff and other First Nation people are subject to widespread prejudice and stereotyping and have been historically disadvantaged in Canadian society. Their rights, needs and interests have been frequently ignored or overlooked by Canadian governments. They have a long history of being denied access to similar levels of public services that are routinely expected by non-aboriginal Canadians in similar situations.
138. For over a century, non-aboriginal communities in Canada have had the benefit of increasing levels of service in relation to clean drinking water that is suitable for human personal use and consumption. This development has continued to the point where now all or nearly all non-aboriginal communities in Canada expect to receive a supply of clean water that is suitable for human personal use and consumption.
139. By contrast, First Nations people, including the Individual Plaintiffs, have been consistently provided with inadequate support for the development and maintenance of on-reserve drinking water supply. As a result, on-reserve communities are provided with a significantly lower level of quality of water than non-aboriginal communities, and in many cases the water supply is not suitable for human personal use or consumption.
140. The effect of this deprivation is profound. It is discouraging to aboriginal people who find it difficult to maintain cohesion in their communities. Aboriginal people are rendered physically ill through the direct consequences of inadequate safe

drinking water. Aboriginal people are unable to economically develop their communities without access to such basic infrastructure.

141. The distinction resulting from Canada's conduct in creating and sustaining unsafe drinking water on reserves gives rise to discrimination by perpetuating historical disadvantage, prejudice and stereotyping. In particular, the deprivation of equal or adequate safe drinking water to First Nations people, including the Individual Plaintiff:
- a. exacerbates the situation of a group that already suffers social, political and legal disadvantage by denying equal access to safe drinking water to a group that has been historically underserved, underrepresented and excluded;
  - b. denies to the Individual Plaintiff and other First Nation people equal benefit of one of the most vital sources of both dignity and health: safe drinking water;
  - c. demeans the position of aboriginal persons relative to their non-aboriginal neighbours; and
  - d. reinforces the impoverished and disadvantaged position of aboriginal people within Canadian society.

142. For the reasons set out, Canada has infringed the rights of First Nations people, including the Individual Plaintiff, under section 15(1) of the **Charter**.

143. This systematic differential treatment constitutes discriminatory treatment by Canada and cannot be maintained as a reasonable limit on the section 15 **Charter** rights of aboriginal people that can be justified in accordance with law.

***Canada's conduct is in breach of s. 36 of the Constitution Act, 1982***

144. Under section 36(1)(c) of the **Constitution Act, 1982**, Canada has expressed a constitutional commitment to ensure that essential public services of reasonable quality are provided to all Canadians.

145. The provision of safe drinking water constitutes an essential public service.
146. Given Canada's asserted jurisdiction over reserves under section 91(24) of the ***Constitution Act, 1867***, Canada's commitment under section 36(1)(c) of the ***Constitution Act, 1982*** requires it to ensure that First Nations and their members, including the Plaintiffs, have access to safe on-reserve drinking water that is of reasonable quality, as compared to that which is available to non-aboriginal communities in Canada.
147. Canada's failure to ensure that First Nations and their members, including the Plaintiffs, have access to safe on-reserve drinking water constitutes a breach of Canada's obligations and commitments under section 36(1)(c) of the ***Constitution Act, 1982***.

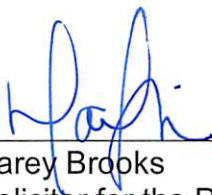
#### **Remedies**

148. The Court should issue declaratory relief setting out Canada's misconduct and obligating Canada to take such steps as may be necessary to remedy its breaches. Given the complexity of the potential remedies, the Court should maintain an ongoing supervisory role to ensure that the terms of its order are, in fact, being carried out.
149. Canada should also pay damages for the injuries suffered by the Plaintiffs.

150. Additionally, Canada has avoided significant expenditures on account of its breaches of fiduciary duty and the obligations imposed by the Honour of the Crown. It would be unjust, inequitable and contrary to the Honour of the Crown for Canada to be permitted to retain the benefit of this failure to properly implement the Treaty reserve promise. Canada should therefore be required to disgorge the benefits it has received as a result of its misconduct

The Plaintiffs propose that this action be tried in Vancouver.

DATED at the City of Vancouver, in the Province of British Columbia, this August 15, 2019.

*for:*   
\_\_\_\_\_  
Karey Brooks  
Solicitor for the Plaintiffs  
c/o JFK Law Corporation  
Barristers and Solicitors  
340-1122 Mainland St  
Vancouver, BC  
Phone: 604-687-0549 ext. 102  
Fax: 604-687-2696