

Legal Notice

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 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 Shamattawa First Nation and Chief Jordna Hill 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.

**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 **December 8, 2023**. To join the Class Action, First Nations must send their opt in notice no later than 90 days before Class members' claims are to be determined.

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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.

Justice Favel of the Federal Court of Canada is currently overseeing the case known as *Shamattawa First Nation and Chief Jordna Hill 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](#).

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 send an email to drinkingwater@classaction2.com or call 1 (800) 538 0009 for assistance.

3. Why is this a class action?

In a class action, the “representative plaintiffs” (in this case, Shamattawa First Nation and Chief Jordna Hill) 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:

(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, the *First Nations Land Management Act*, S.C. 1999, c. 24, or a Modern Treaty (together “**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 and continued or commenced after June 20, 2021 (“**Impacted First Nations**”); and
- (ii) after June 20, 2020 ordinarily resided on First Nations Lands for a period of at least one year while such First Nation Lands were subject to a drinking water advisory that lasted at least one year; and

(b) Shamattawa 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.

“**Modern Treaty**” means a land claims agreement within the meaning of s. 35 of the *Constitution Act, 1982*, entered into on or after January 1, 1973.

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 **December 8, 2023**. First Nations must decide whether they want to join the class by **no later than 90 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 choose 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 *Shamattawa First Nation and Chief Jordna Hill v. Canada* Court File No. T-1937-22. Include your name, address, telephone number, and signature. You can also get an Opt Out coupon at www.classaction2.com/drinkingwater.html. You must deliver your removal request by **December 8, 2023** to: Drinking Water Advisories Class Action c/o CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2.

Email drinkingwater@classaction2.com or 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 Class Counsel Alana Robert (toll free: 1-877-244-7711 extension 548022 or alrobert@mccarthy.ca); Class Counsel Heather Maki (toll free: 1-877-244-7711 extension 523615 or hmaki@mccarthy.ca); or Class Counsel Kevin Hille (khille@oktlaw.com or (416) 598-3694). **Requests by First Nations to opt in must be sent no later than 90 days before Class members' claims are determined.**

THE LAWYERS REPRESENTING YOU

9. 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.

10. 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

11. 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.

12. 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 www.classaction2.com/drinkingwater.html as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information? How to I get information to people who need it?

You can get more information at www.classaction2.com/drinkingwater.html by calling toll free at 1 (800) 538-0009, by writing to: Drinking Water Advisories Class Action c/o CA2 Inc., 9 Prince Arthur Avenue, Toronto, Ontario M5R 1B2, or by emailing: drinkingwater@classaction2.com.

First Nations and Individual Band Members may also contact Class Counsel (toll free: 1-877-244-7711) and ask for Class Counsel Alana Robert (alrobert@mccarthy.ca or 66 Wellington Street West, Toronto, Ontario, M5K 1E6); or Class Counsel Kevin Hille (khille@oktlaw.com or (416) 598-3694 or 250 University Avenue, 8th floor, Toronto, Ontario, M5H 3E5).

Shamattawa First Nation, Chief Jordna Hill, 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.