

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 : : <https://classaction2.com/fr-drinkingwater.html>

The Manitoba Court of Queen's Bench 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 December 7, 2021 at the Federal Court in Ottawa or by videoconference. You can obtain the details of the videoconference by contacting the Federal Court. 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 November 23, 2021.

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 Drinking Water Advisories Class Action c/o CA2 Inc. at drinkingwater@classaction2.com by Tuesday, November 30, 2021.

If the proposed settlement is approved by the courts, eligible First Nations will have to accept its terms. First Nations that do not accept the settlement agreement in accordance with its terms will not be eligible for benefits under the settlement agreement. For more information about how a First Nation can accept the settlement agreement, please contact:

- Stephanie Willsey at Direct Line: 416-601-8962, Toll-Free 1-877-244-7711, Email: swillsey@mccarthy.ca
- Alana Robert at Direct Line: 416-601-8022, Email: alrobert@mccarthy.ca
- Jaclyn McNamara at Direct Line: (416) 598-1214, Email: jmcmamara@oktlaw.com

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?

Drinking Water Advisories Class Action
 c/o CA2 Inc.
 9 Prince Arthur Avenue
 Toronto, ON M5R 1B2
drinkingwater@classaction2.com
 Tel: 1-800-538-0009

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, which will be appointed by the courts if the proposed settlement is approved by the courts

Who should First Nations with questions contact?

Drinking Water Advisories Class Action
c/o CA2 Inc.
9 Prince Arthur Avenue
Toronto, ON M5R 1B2
drinkingwater@classaction2.com
Tel: 1-800-538-0009

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 long-term 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: <https://www.classaction2.com/drinkingwater.html>.

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: <https://www.classaction2.com/drinkingwater.html>.

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 Drinking Water Advisories Class Action c/o CA2 Inc. at drinkingwater@classaction2.com by Tuesday, November 30, 2021.

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 Kloor Townsend LLP ("**Class Counsel**"). You may contact class counsel at:

- Stephanie Willsey at Direct Line: 416-601-8962, Toll-Free 1-877-244-7711, Email: swillsey@mccarthy.ca
- Alana Robert at Direct Line: 416-601-8022, Email: alrobert@mccarthy.ca
- Jaclyn McNamara at Direct Line: (416) 598-1214, Email: jmcnamara@oktlaw.com

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, you 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 email or mail your objection by November 23, 2021 to Class Counsel at swillsey@mccarthy.ca or:

Stephanie Willsey
 McCarthy Tétrault LLP
 PO Box 48, Suite 5300
 Toronto Dominion Bank Tower
 Toronto, ON M5K 1E6

When and where will the courts decide whether to approve the proposed settlement?

The courts will hold a joint hearing on December 7, 8, and 9, 2021. You may attend in person at the Federal Court in Ottawa or by videoconference.

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 in person at the Federal Court in Ottawa or by videoconference 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. The courts will be hearing objections on December 7, 2021.

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 if the proposed settlement is approved by the courts.

You may also consult Class Counsel at:

- Stephanie Willsey at Direct Line: 416-601-8962, Toll-Free 1-877-244-7711, Email: swillsey@mccarthy.ca
- Alana Robert at Direct Line: 416-601-8022, Email: alrobert@mccarthy.ca
- Jaclyn McNamara at Direct Line: (416) 598-1214, Email: jmcmamara@oktlaw.com

Who do First Nations contact to join the proposed settlement?

First Nations with questions should ask Class Counsel at:

- Stephanie Willsey at Direct Line: 416-601-8962, Toll-Free 1-877-244-7711, Email: swillsey@mccarthy.ca
- Alana Robert at Direct Line: 416-601-8022, Email: alrobert@mccarthy.ca
- Jaclyn McNamara at Direct Line: (416) 598-1214, Email: jmcmamara@oktlaw.com

WHAT IF I NEED MORE INFORMATION?

Who do I contact for more information?

You may contact the Settlement Administrator once approved by the Court and Class Counsel at:

- Stephanie Willsey at Direct Line: 416-601-8962, Toll-Free 1-877-244-7711, Email: swillsey@mccarthy.ca
- Alana Robert at Direct Line: 416-601-8022, Email: alrobert@mccarthy.ca
- Jaclyn McNamara at Direct Line: (416) 598-1214, Email: jmcmamara@oktlaw.com