

Federal Court



Cour fédérale

Date: 20240314

Manitoba Court of King's Bench File No.: CI-19-01-24661

Docket: T-1673-19

Ottawa, Ontario, March 14, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

Docket: CI-19-01-24661

**TATASKWEYAK CREE NATION AND CHIEF
DOREEN SPENCE ON HER OWN BEHALF
AND ON BEHALF OF ALL MEMBERS OF TATASKWEYAK CREE NATION**

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

*(Class Proceeding commenced under
The Class Proceedings Act, CCSM. c. C. 130)*

AND BETWEEN:

Docket: T-1673-19

**CURVE LAKE FIRST NATION AND
CHIEF EMILY WHETUNG ON HER OWN BEHALF
AND ON BEHALF OF ALL MEMBERS OF CURVE LAKE FIRST NATION AND
NESKANTAGA FIRST NATION AND
CHIEF CHRISTOPHER MOONIAS ON HIS OWN
BEHALF AND ON BEHALF OF ALL MEMBERS OF
NESKANTAGA FIRST NATION**

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

(Class Proceeding commenced under Part 5.1 of the
Federal Courts Rules, SOR/98-106)

ORDER

THIS MOTION for an Order in respect of administrative matters under the settlement agreement between the Plaintiffs and the Defendant dated September 15, 2021 (the “**Settlement Agreement**”), was heard in writing. Capitalized terms used in this Order have the same meaning as in the Settlement Agreement unless otherwise defined.

ON READING the motion record of the Representative Plaintiffs and the Defendants (together, the “**Parties**”);

AND WHEREAS all parties to the Settlement Agreement have consented to the amendment of the Terms of Reference as set out below.

THIS COURT ORDERS:

1. Removing Pamela Gleeson and appointing Renelle Arsenault to the Settlement Implementation Committee under Article 14.01 of the Settlement Agreement;

2. On agreement of the Parties, approving that, with respect to First Nations, Reserves, and Drinking Water Advisory dates which are determined by the Administrator to meet the definition of Impacted First Nations under the protocol set out in Schedule “B” of the Courts’ Orders dated November 23 and 24, 2022 (an “**Added Impacted First Nation**”), the Band Councils and/or individual Claimants of the Added Impacted First Nation shall have until the longer of: (i) six (6) weeks from the date the Administrator made the Added Impacted First Nation determination; or (ii) the Claims Deadline, to submit a Band Council Resolution, Band Council Confirmation, and/or Claims Forms, as the case may be;
3. Approving the Added Impacted First Nation notice plan attached at **Schedule “A”**; and confirming that Canada will be responsible for the cost of the notice plan in accordance with s. 3.04(a) of the Settlement Agreement;
4. Approving and directing payment of legal fees and disbursements totalling \$379,968.92 inclusive of taxes, for ongoing legal services rendered by Class Counsel and the Joint Committee for Q4 2023 in accordance with ss. 18.02(2) and (4) and 15.01(8) of the Settlement Agreement;
5. Adjourning the Plaintiffs’ motion to enforce the Settlement Agreement’s provisions regarding the Defendant’s introduction of legislation to replace the repealed, *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32, which was returnable January 11, 2024, *sine die*; and

6. There shall be no costs of the within motion.

“Paul Favel”

Judge

"Glenn D. Joyal"

C.J.

SCHEDULE “A”**AMENDMENT TO THE FNAC TERMS OF REFERENCE**

WHEREAS Schedule “E” of the Court Order dated May 12, 2022 (https://firstnationsdrinkingwater.ca/wp-content/uploads/2023/04/T-1673-19_Order_Favel_May_12_2022.pdf – hereinafter “Schedule “E”) which was issued in relation to the Clean Water Class Action Settlement Agreement (“Settlement Agreement”) sets out the Terms of Reference for the First Nations Advisory Committee on Safe Drinking Water and the Secretariat established to support its administration.

AND WHEREAS section 72 of the Terms of Reference provides that the Terms of Reference are intended to be subject to continual improvement and may be amended at any time on the consent of the Joint Committee and Canada.

AND WHEREAS all parties to the Settlement Agreement have consented to the amendment of the Terms of Reference as set out below.

NOW THEREFORE Schedule “E” is hereby amended as follows:

1. All of the capitalized terms used in this Consent Order have the meanings given to them in the Settlement Agreement, except for the following terms, which shall have the following meanings:
 - a. “Act” means the Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23, including any regulations made pursuant to the Act, and any statute or regulations that may be substituted, as amended from time to time.
 - b. “Articles” means the articles of incorporation of the Corporation.
 - c. “Board” means the board of directors of the Corporation.
 - d. “By-laws” means the general operating by-laws of the Corporation, which shall be drafted by Carters Professional Corporation, and approved by the Board, as amended or replaced from time to time.
 - e. “Consent Order” means this court order, made on consent of the parties.
 - f. “Corporation” means the Secretariat, which shall be incorporated pursuant to the Act.

- g. "Director" means a member of the Board and includes a First Director.
 - h. "FNAC" means the First Nations Advisory Committee on Safe Drinking Water.
 - i. "First Director(s)" means the first Directors of the Corporation, appointed in accordance with this Order.
 - j. "Officer" means an officer of the Corporation including, without limitation, the Executive Director.
 - k. "Member" means a member of the Corporation and "Members" or "Membership" means the collective membership of the Corporation.
 - l. "Successor Director" means a Director elected by the Members to replace the First Directors.
2. The Terms of Reference are hereby amended by adding and inserting new sections after section 33 as follows:
- 33.1 The Corporation shall be incorporated under the Act by the filing of Articles with Corporations Canada.
 - 33.2 The Corporation shall be governed by a Board consisting of a minimum of three (3) Directors. Subject to the Act and the Articles, the Board shall manage or supervise the management of the activities and affairs of the Corporation.
 - 33.3 The following persons are hereby appointed as the First Directors of the Corporation:
 - Emily Whetung;
 - Doreen Spence; and
 - Christopher Moonias.
- The terms of office of the First Directors shall commence upon incorporation of the Corporation and shall continue until the Successor Directors are elected at the first meeting of Members, held in accordance with the By-laws. This Court may remove any Director from office upon application by the Representative Plaintiffs, the Joint Committee or the other Directors. In the event of a vacancy among the First Directors, the remaining First Directors shall request this Court to appoint a replacement to serve until such time as the Successor Directors are elected at the first meeting of Members.
- 33.4 The First Directors shall approve the By-laws following incorporation of the Corporation.

- 33.5 The First Directors shall be allowed an honorarium for their services and shall be paid for expenses incurred on behalf of the Corporation, provided that the amount of the total honoraria shall be approved by FNAC.
- 33.6 Upon taking office, each Director shall be deemed to be a Member of the Corporation.
- 33.7 The Directors shall invest the funds of the Corporation pursuant to the Trustee Act (Ontario). In accordance with the Trustee Act (Ontario), the standard of care that shall apply to the investment of funds of the Corporation shall be the care, skill, diligence and judgment that a prudent investor would exercise in making similar investments.
3. All terms and conditions of Schedule E not expressly modified by this Consent Order shall remain in full force and effect. In the event of any inconsistencies between this Consent Order and the terms of Schedule E, the terms set forth in this Consent Order shall govern and control.