

Court File No.:

16-69664

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

In the matter of a Claim under the  
*Class Proceedings Act, 1992, S.O. 1992, c. 6*



**GORDON EGAN, KEVIN KUNKA,  
SCOTT PETRIE and PAUL CROZIER**

Plaintiffs

- and -

**NATIONAL RESEARCH COUNCIL OF CANADA  
AND CARLETON UNIVERSITY**

Defendants

**AMENDED  
AMENDED  
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 an Ontario lawyer acting for you must prepare a Statement of Defence in form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

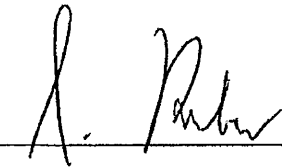
**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the Court.

DATED: August 18, 2016

Issued by: \_\_\_\_\_



Court House  
161 Elgin Street  
Ottawa, Ontario, K2P 2K1

**TO: NATIONAL RESEARCH COUNCIL OF CANADA**  
1200 Montreal Road  
Ottawa, Ontario K1A 0R6

**AND TO: CARLETON UNIVERSITY**  
1125 Colonel By Drive  
Ottawa, ON K1S 5B6

## CLAIM

### DEFINITIONS

1. The following definitions apply for the purpose of this statement of claim:
  - (a) “**CEPA**” means the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, schedule 1, as amended;
  - (b) “**Class**” or “**Class Members**” means all persons owning real property in the **Contaminated Area** as of January 1, 2013, excluding the National Research Council and the Crown;
  - (c) “**Contaminants**” means PFASs, PFOAs, PFOSs, their precursor and related perfluorinated and polyfluorinated alkyl compounds and any other contaminants as defined by the EPA or CEPA derived from substances burned on the NRC Lands;
  - (d) “**Contamination**” means the migration of Contaminants;
  - (e) “**Contaminated Area**” means the area within the Township of Mississippi Mills, Ontario, more particularly described as lands and premises bounded by a line commencing at the intersection of Ramsay Concession 7A and Rae Road, south along Rae Road to Country Road No. 29, west along County Road No. 29 to Drummond Road, north along Drummond Road to Ramsay Concession 7A, east along Ramsay Concession 7A to the point of commencement at Rae Road;
  - (f) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (g) “**CPA**” means the *Class Proceedings Act*, 1992, S.O. 1992, c. C.6, as amended;
  - (h) “**Crozier**” means Paul Crozier;

- (i) **“Crozier Residence”** means the lands and premises known municipally as 102 Senator Street, Carleton Place, Ontario;
- (j) **“Egan”** means Gordon Egan;
- (k) **“Egan Residence”** means the lands and premises known municipally as 167 Emerich Street, Carleton Place, Ontario;
- (l) **“EPA”** means the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and the regulations thereunder, as amended;
- (m) **“Kunka”** means Kevin Kunka;
- (n) **“Kunka Residence”** means the lands and premises known municipally as 139 Emerich Street, Carleton Place, Ontario;
- (o) **“MOECC”** means the Ontario Ministry of the Environment and Climate Change;
- (p) **“NRC”** means the National Research Council of Canada;
- (q) **“NRC Lands”** means the lands and premises known municipally as 833 Ramsay Concession 8, Carleton Place, Ontario;
- (r) **“OWRA”** means the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, as amended;
- (s) **“Petrie”** means Scott Petrie;
- (t) **“Petrie Residence”** means the lands and premises known municipally as 163 Senator Street, Carleton Place, Ontario;
- (u) **“PFAS”** or **“PFASs”** means perfluorinated and polyfluorinated alkyl compounds;
- (v) **“PFOA”** and **“PFOAs”** means perfluorooctanoic acid and its salts; and
- (w) **“PFOS”** and **“PFOSs”** means perfluorooctane sulfonate and its salts.

**RELIEF SOUGHT**

## 2. The plaintiffs claim:

- (a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs;
- (b) a declaration that the defendants's use, handling, application, storage and disposal of products containing Contaminants caused a nuisance in the Contaminated Area;
- (c) a declaration that the defendants are is strictly liable for the escape of Contaminants into the Contaminated Area;
- (d) a declaration that the defendants's use, handling, application, storage and disposal of products containing Contaminants breached the EPA, the CEPA and the OWRA and thereby caused loss and damage to the plaintiffs and the other Class Members;
- (e) a declaration that the defendants owed a duty of care to the plaintiffs and to the other class members;
- (f) a declaration that the defendants were ~~was~~ negligent in the use, handling, application, storage and disposal of products containing Contaminants;
- (g) a mandatory order requiring the defendants to implement control and remedial measures at the NRC Lands, in order to prevent the continued migration of the Contaminants onto, under, into or through the Contaminated Area;
- (h) a mandatory order requiring the defendants to remediate the Contaminated Area;
- (i) in the alternative to the relief in paragraph 1(h), above, a declaration that the plaintiffs and the other Class Members are entitled to remediate the properties

they own in the Contaminated Area to completely eliminate all traces of Contaminants and that the defendants must pay the cost of so doing as damages;

- (j) a mandatory order requiring the defendant NRC to provide access to the Plaintiffs, to the NRC lands for the purpose of sampling of soil or groundwater found thereon, upon reasonable notice to the Defendant;
- (k) general damages and special damages in the amount of \$40,000,000.00 representing remediation costs, engineering and other professional costs, financing costs and diminution in value of the properties of the plaintiffs and the other Class Members;
- (l) punitive damages in the amount of \$2,000,000.00;
- (1.1) an order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (m) prejudgment interest pursuant to the CJA;
- (n) post-judgment interest pursuant to the CJA;
- (o) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to s. 26(9) of the CPA, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (p) such further and other relief as this Honourable Court may deem just.

3. The plaintiffs do not seek recovery of damages in this proceeding for the individual personal injuries they and the other Class members have suffered as a result of their exposure to the Contaminants, nor do they waive such claims. The Plaintiffs say that the

Class has been and continues to be exposed to the Contaminants, exposure to which is or may be hazardous.

## OVERVIEW

4. The NRC operates a fire fighting testing facility on the NRC Lands known as the National Fire Laboratory. From approximately April 1, 2006 until March 31, 2016, the NRC leased a portion of the NRC Lands to Carleton University. Carleton University constructed a fire research facility on the NRC Lands to conduct large-scale testing of fire safety materials and equipment. As part of ~~that~~ the NRC's operations, the NRC used and continues to use fire-fighting foams containing PFASs. As part of Carleton University's use and occupation of the NRC Lands, Carleton University used fire-fighting foams containing PFASs. The Contamination was caused by the NRC and Carleton University improperly using, handling, applying, storing and disposing of the fire-fighting foam and also numerous toxic substances to which the fire-fighting foam was applied. The NRC and Carleton University allowed the Contaminants to migrate from the NRC Lands and contaminate the Contaminated Area.
5. The Contaminants which migrated from the NRC Lands entered into the groundwater and spread throughout the Contaminated Area forming a groundwater plume. The Plaintiffs and the other Class Members, all of whom reside in the Contaminated Area, use the groundwater as potable water, as their water supply is from wells, and not drawn from municipal services. There are detectable levels of the Contaminants in their well water.

6. The NRC has admitted that the NRC Lands are the source of the PFASs found in the wells of the Plaintiffs and the other Class Members.
7. The properties that are owned by the plaintiffs and the other Class Members in the Contaminated Area have suffered a diminution in value as a result of the Contamination of the groundwater in the Contaminated Area.
8. In this action, the plaintiffs and the other Class Members seek to recover damages equal to the reduction in value of their properties in the Contaminated Area, consequential damages and punitive damages. The plaintiffs and the other Class Members also seek an order requiring the defendant to remediate the Contaminated Area or, in the alternative, to recover damages equal to the costs of removing the Contaminants from their properties.
9. The plaintiffs and the other Class Members also seek to recover damages for the inconvenience, discomfort and distress for the stress, inconvenience and aggravation of having to reside with potable water which is badly contaminated.

#### **THE PLAINTIFFS**

10. Egan purchased the Egan Residence in June 2007 and has resided there with his family since the purchase. The Egan Residence is located approximately 500 metres from the NRC Lands and is within the Contaminated Area. The Egan Residence relies on potable well water as its drinking water supply.



11. Kunka purchased the Kunka Residence in November 2007 and has resided there with his family since the purchase. The Kunka Residence is located approximately 500 metres from the NRC Lands and is within the Contaminated Area. The Kunka Residence relies on potable well water as its drinking water supply.
12. Petrie purchased the Petrie Residence in October 2007 and has resided there with his family since the purchase. The Petrie Resident is located approximately 100 metres from the NRC Lands and is within the Contaminated Area. The Petrie Residence relies on potable well water as its drinking water supply.
13. Crozier purchased the Crozier Residence in 2007 and has resided there with his family since November 2011. The Crozier Resident is located approximately 500 metres from the NRC Lands and is within the Contaminated Area. The Crozier Residence relies on potable well water as its drinking water supply.

#### **THE DEFENDANTS**

14. The NRC is an agent of Her Majesty and pursuant to the provisions of the *National Research Council Act*, R.S.C. 1985, c. N-15, as amended, has charge of such matters affecting scientific and industrial research in Canada as may be assigned to it by the Governor in Council.
15. The NRC is the owner of the NRC Lands, on which it operates a fire-fighting testing

facility known as the National Fire Laboratory. The National Fire Laboratory has operated on the NRC Lands since approximately 1981. Activities carried on at the National Fire Laboratory include the burning of various substances, including but not limited to, vehicles, rubbers, plastics, metals and other substances containing toxic substances, and the testing of various chemicals, including, but not limited to, fire-fighting foam containing PFASs to douse the resulting fires.

- 15.1 Carleton University is a post-secondary educational university with its principle campus located in the City of Ottawa, in the Province of Ontario. Carleton University is incorporated pursuant to the laws of Ontario. In 2001, Carleton University established an Industrial Research Chair in Fire Safety Engineering and offers a graduate program in Fire Safety Engineering.
- 15.2 Carleton University was an occupant of the NRC Lands from approximately April 1, 2006 until March 31, 2016 pursuant to the terms of a Memorandum of Lease Agreement, dated November 17, 2016, and a subsequent extension of that agreement. Carleton University occupied the NRC Lands for the purpose of construction of a fire research facility on the NRC Lands to conduct large-scale testing. The facility includes a 10-storey atrium, a 37 metre tunnel and a 25 metre by 25 metre burn hall in addition to laboratories. Carleton University's fire research facility forms part of the National Fire Laboratory.
- 15.3 Activities carried on by Carleton University on the NRC Lands included the burning of

various substances, including but not limited to, vehicles, rubbers, plastics, metals and other substances containing toxic substances, and the testing of various chemicals, including, but not limited to, fire-fighting foam containing PFASs to douse the resulting fires.

### **PFASs, PFOS, AND PFOA**

16. PFASs are a large class of fluorinated aliphatic substances that exhibit molecular structures that contain one or more carbon atoms that have had their hydrogen atoms replaced by fluorine atoms. PFASs do not occur naturally in the environment and are man-made chemicals. They are used in many industrial applications, including fire-fighting foam. PFASs include a number of precursor compounds which can degrade, to other PFASs that are persistent in the environment and do not further degrade. Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) are example PFASs that have not been observed to degrade under environmental conditions, and thus are persistent at sites that have been impacted with PFAS-containing substances.
17. PFASs have been recognized as having potential negative impact upon the environment and human health. Their use in fire-fighting foam has been restricted in Canada since 2008. PFOA and PFOS exposure has been associated with high cholesterol, increased liver enzymes, decreased vaccination response, thyroid disorders, pregnancy-induced hypertension and preeclampsia and cancer (testicular and kidney).
18. Considerable study of PFASs has been carried out in the United States of America which

resulted in the release of a Drinking Water Health Advisory for PFOA and PFOS by the United States Environmental Protection Agency in May of 2016. Under that Advisory, it was determined that PFOA is a health hazard and a maximum allowable limit for PFOA in drinking water was set at  $0.07 \mu\text{g} / \text{L}$  (micrograms / litre). PFOS was also determined to be a health hazard, and the maximum allowable limit for PFOS in drinking water was set at  $0.07 \mu\text{g} / \text{L}$ . Additionally, the United States Environmental Protection Agency recommended that when PFOA and PFOS are detected in drinking water, the sum of the measured concentrations of PFOA and PFOS should be compared to the at  $0.07 \mu\text{g} / \text{L}$  level. The Plaintiffs state that any levels of contamination on their properties are unacceptable and that there are likely many other contaminants on the Plaintiff's properties.

19. In Canada, Health Canada has established drinking water screening values for nine PFASs, including PFOA and PFOS. The drinking water screening value for PFOA is  $0.2 \mu\text{g} / \text{L}$  (micrograms / litre). The drinking water screening value for PFOS is  $0.6 \mu\text{g} / \text{L}$ . CEPA, Schedule 1, lists both PFOA and PFOS as toxic substances. The Plaintiffs do not accept any contamination of their properties where such contamination was caused by the Defendant.
20. In 2008, Canada restricted the manufacture, importing and use of PFASs and products containing them. An exemption for fire-fighting foams allowed stock-piled products to be used for a five year period thereafter.

21. The NRC have continuously and frequently used fire-fighting foam containing PFASs at the NRC Lands throughout its ownership, possession, occupation and operation of its facility on the NRC Lands. Carleton University has continuously and frequently used fire-fighting foam containing PFASs at the NRC Lands throughout its possession, occupation and operation of its facility on the NRC Lands.

#### **NRC TESTING OF THE NRC LANDS AND THE CONTAMINATED AREA**

22. In or prior to 2013, the NRC tested the NRC Lands and concluded that they were contaminated with the Contaminants at levels higher than those established by Health Canada. The plaintiffs do not know the results of this testing, but the results are known to the defendants.
23. Subsequently, the NRC installed groundwater monitoring wells in the Contaminated Area, but not on any of the properties of the plaintiffs or the other Class Members, for the purpose of taking groundwater samples. The plaintiffs do not know the results of this testing, but the results are known to the defendants.
24. On or about December 23, 2015, the NRC advised the plaintiffs and the other Class Members that the NRC Lands were contaminated and requested access to the properties of certain Class Members, including the plaintiffs, to test their drinking water wells.
25. A large number of substances which are toxic or likely to be toxic were not tested for by the NRC in its testing of the drinking water of the plaintiffs and the other Class Members,

and proper testing needs to be done to screen for other toxic substances which are likely to be present.

26. The testing conducted on the Plaintiffs' well water found the presence of the Contaminants in their drinking water. Additionally further testing of the well water and groundwater on their lands are necessary to determine the presence of contaminants other than those set out in the restricted screening carried out to date by the Defendant.
27. It is understood that the NRC has continued to conduct testing of groundwater and soil in the Contaminated Area. The plaintiffs do not know the results of this testing, but the results are known to the defendants.
28. On or about July 8, 2016, the NRC acknowledged publically that ~~its~~ the National Fire Laboratory operated at the NRC Lands by the NRC and Carleton University is the source of the PFASs in the drinking water wells of the plaintiffs and the other Class Members.
29. The full extent and geographic scope of the migration of the Contaminants from the NRC Lands throughout the Contaminated Area is not known to the plaintiffs, but is known to the NRC and Carleton University. The plaintiffs' best knowledge is that the groundwater beneath the Contaminated Area has been significantly impacted with the Contaminants.
30. The fair market value of the properties owned by the plaintiffs and the other Class Members in the Contaminated Area has been significantly reduced as a result of the

Contamination. These properties will continue to suffer a diminution in value in the future as a result of the Contamination. The plaintiffs claim from the NRC this diminution in value as damages.

## **THE LIABILITY OF THE DEFENDANTS**

### ***Nuisance***

31. The NRC and Carleton University created a nuisance, which is continuing, through ~~its~~ their use, handling, application, storage and disposal of fire-fighting foam containing PFASs and the burning of substances containing the Contaminants at or near the National Fire Laboratory on the NRC Lands.
32. The NRC and Carleton University ~~are~~ is liable in nuisance for causing or permitting the discharge or migration of the Contaminants from the NRC Lands to the properties of the plaintiffs and the other Class Members in the Contaminated Area. The NRC and Carleton University ~~are~~ is also liable for failing to take timely, complete and effective actions to stop the discharge and migration of the Contaminants from the NRC Lands to the Contaminated Area.

### ***Strict Liability***

33. The plaintiffs plead and rely upon the doctrine of strict liability (*Rylands v. Fletcher*). The NRC and Carleton University ~~are~~ is liable for any and all damage caused to the plaintiffs and the other Class Members as a result of the Contamination because:
  - (a) the NRC and Carleton University made a non-natural or special use of the

NRC Lands, in that they ~~it~~ used, stored, handled, applied and disposed of fire-fighting foam containing PFASs and burned substances containing the Contaminants at the NRC Lands;

- (b) the NRC and Carleton University knew or ought to have known that the fire-fighting foam and substances containing the Contaminants that they ~~it~~ brought to the NRC Lands were likely to do mischief if the foam or chemicals derived from the burned substances escaped; and
- (c) the Contaminants escaped from the NRC Lands and contaminated the Contaminated Area resulting in damage and loss to the plaintiffs and the other Class Members.

### *Negligence*

- 34. The NRC and Carleton University owed a duty of care to the plaintiffs and the other Class Members because they ~~it~~ knew that their ~~its~~ acts and omissions in their ~~its~~ use, storage, handling, application and disposal of fire-fighting foam containing PFASs and burning of substances containing the Contaminants could cause damage and loss to the plaintiffs and the other Class Members.
- 35. The NRC and Carleton University breached the standard of care and were negligent in their ~~its~~ use, storage, handling, application and disposal of fire-fighting foam containing PFASs and burning substances containing the Contaminants at or near the NRC Lands, particulars of which negligence are as follows:
  - (a) ~~it~~ they failed to properly use, store, handle, apply and dispose of fire-fighting



foam containing PFASs used at the its National Fire Laboratory and the fire research facility operating at the NRC Lands;

- (b) ~~it~~ they failed to take proper precautions to prevent the introduction of the Contaminants from the substances that ~~it~~ they burned into the groundwater;
- (c) ~~it~~ they continued to use fire-fighting foam containing PFASs after their use was restricted by the federal government;
- (d) ~~it~~ they failed to adequately train, monitor and supervise ~~its~~ their employees, servants and agents in the proper use, storage, handling, application and disposal of fire-fighting foam containing PFASs;
- (e) ~~it~~ they failed to adequately train, monitor and supervise ~~its~~ their employees, servants and agents in the proper use, storage, handling, application and disposal of substances that ~~it~~ they burned which contained the Contaminants;
- (f) ~~it~~ they failed to hire competent employees, servants and agents to use, storage, handle, apply and dispose of fire-fighting foam containing PFASs and substances that ~~it~~ they burned containing the Contaminants;
- (g) ~~it~~ they failed to warn the plaintiffs and the other Class Members that the Contaminants were present in the groundwater in the Contaminated Area;
- (h) ~~it~~ they failed to use adequate safety equipment that would have prevented the discharge of the Contaminants from the NRC Lands;
- (i) ~~it~~ they failed to implement adequate safety policies and procedures at ~~its~~ the National Fire Laboratory and the fire research facility;
- (j) ~~it~~ they failed to maintain and operate an adequate containment facility for spent fire-fighting foam containing PFASs at ~~its~~ the National Fire Laboratory

and fire research facility;

- (k) ~~it~~ they failed to maintain and operate an adequate containment facility for burned substances containing the Contaminants at its the National Fire Laboratory and fire research facility;
- (l) ~~it~~ they failed to prevent the discharge of the Contaminants on the NRC Lands;
- (m) ~~it~~ they failed to take adequate and timely measures to prevent the migration of the Contaminants from the NRC Lands in, on and beneath the Contaminated Area;
- (n) ~~it~~ they failed to take steps to adequate and timely steps to remediate the NRC Lands and the Contaminated Area upon learning of the Contamination;
- (o) ~~it~~ they failed to cease the use of fire-fighting foam containing PFASs when ~~it~~ they knew or ought to have known that the use of such foam was restricted by the federal government;
- (p) ~~it~~ they failed to adequately or properly monitor ~~its~~ their practices with respect to ~~its~~ their use, storage, handling, application and disposal of fire-fighting foam containing PFASs in order to ensure that contamination of the Contaminated Area by PFASs would not occur; and
- (q) ~~it~~ they failed to adequately or properly monitor ~~its~~ their practices with respect to ~~its~~ their use, storage, handling, application and disposal of burned substances containing the Contaminants in order to ensure that contamination of the Contaminated Area by the Contaminants would not occur.

36. The NRC's negligence of the NRC and Carleton University has caused damage and loss

to the plaintiffs and the other Class Members.

***EPA***

37. Pursuant to s. 99 of the EPA, an owner of a pollutant or person in control of a pollutant that is spilled and causes, or is causing, or is likely to cause an adverse effect, is liable for the resulting damage and loss. The Plaintiffs state that the spills and discharges of substances containing Contaminants by the NRC constitute spills as defined in s. 91 of the EPA. The plaintiffs state that the NRC is liable to them and the other Class Members under s. 99 of the EPA for all losses and damages incurred by the plaintiffs and the other Class Members resulting from these spills which have caused an adverse effect (pursuant to s. 99(2)(a)(i)) and resulting from the NRC's neglect or default in carrying out its duties imposed under Part X of the EPA (pursuant to s. 99(2)(a)(iii)).
38. Each of the ~~The~~ NRC and Carleton University are ~~is~~ both an "owner of the pollutant" and a "person having control of a pollutant" pursuant to the provisions of the EPA, and ~~is~~ are therefore responsible for all costs to remediate the Contaminated Area, including the properties of the plaintiffs and the other Class Members.
39. The Contamination is causing an adverse effect to the plaintiffs and the other Class Members in that the Contamination has impaired the quality of the groundwater and drinking water in the Contaminated Area.
40. The NRC and Carleton University have ~~has~~ failed to comply with ~~its~~ their obligations

under the EPA not to discharge, or cause or permit the discharge of the Contaminants into the natural environment. These ~~This~~ breaches of the NRC's obligations and Carleton University's obligations have ~~has~~ caused damage and loss to the plaintiffs and the other Class Members.

41. Further, the NRC and Carleton University have ~~has~~ failed to comply with ~~its~~ their obligations under s. 93(1) of the EPA to "forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment", despite the fact that the NRC and Carleton University knew or ought to have known that the Contaminants were causing or were likely causing an adverse effect upon the plaintiffs and the other Class Members.

#### ***CEPA***

42. The NRC and Carleton University owned or had the charge, management or control of the Contaminants immediately before their release, and ~~was~~ were accordingly required to take all reasonable measures to prevent the release and to mitigate any danger to the environment or to human life or health that results from the release, pursuant to the provisions of s. 95 of the CEPA. The NRC and Carleton University were ~~was~~ further required under s.95 to make a reasonable effort to notify any member of the public who may be adversely affected by the release. The NRC and Carleton University breached all of these obligations.
43. The NRC's breach of its obligations under the CEPA and Carleton University's breach of

its obligations under the CEPA have ~~has~~ caused damage and loss to the plaintiffs and the other Class Members. Pursuant to s. 40 of the CEPA, the NRC and Carleton University ~~are~~ is liable to the plaintiffs and the other Class Members for the damage and loss they have suffered as a result of the ~~NRC's~~ contravention of the CEPA by the NRC and Carleton University.

### ***OWRA***

44. The NRC and Carleton University ~~are~~ is liable to the plaintiffs and the other Class Members for failing to comply with ~~its~~ their duties pursuant to s. 30 of the *OWRA* not to discharge, or cause or permit the discharge of the Contaminants in a place or in any waters, which includes groundwater, where such discharge may impair the quality of the waters. ~~These~~ This breaches of the NRC's duties and of Carleton University's duties ~~have~~ has caused damage and loss to the plaintiffs and the other Class Members.

### ***Trespass***

45. The NRC and Carleton University ~~are~~ is liable in trespass in that, without consent, ~~it~~ they released or permitted the release of the Contaminants into the environment, contaminating the soil and groundwater in the Contaminated Area which directly interfered with and damaged the properties owned by the plaintiffs and the other Class Members in the Contaminated Area. The ~~NRC's~~ trespass by the NRC and Carleton University caused damage and loss to the plaintiffs and the other Class Members.

**DAMAGES**

46. As a result of the acts and omissions of the NRC and Carleton University described herein, the plaintiffs and the other Class Members have suffered and will suffer damage and loss, as follows:

- (a) diminution in the fair market value of their properties in the Contaminated Area;
- (b) an inability to obtain mortgage financing or re-financing and / or increased financing costs;
- (c) engineering and other professional costs in respect of the investigation of their properties in the Contaminated Area;
- (d) engineering and other professional costs in respect of the remediation of their properties in the Contaminated Area;
- (e) engineering and other professional costs in respect of the ongoing monitoring of their drinking well water;
- (f) damages for inconvenience, discomfort and distress; and
- (g) other expenses and losses, full particulars of which will be provided prior to trial.

47. The plaintiffs request that this Court order damages to be paid to Class Members on an aggregate basis or otherwise in accordance with sections 23, 24, and 25 of the *Class Proceedings Act*.

48. The plaintiffs further state that the conduct of the NRC and Carleton University warrants

an award of punitive damages. The conduct of the NRC and Carleton University in ~~its~~ the National Fire Laboratory and fire research facility operation, and in particular, ~~its~~ their use, storage, handling, application and disposal of fire-fighting foam containing PFASs and ~~its~~ their burning of substances containing the Contaminants was indifferent, reckless, wanton, without care, deliberate, callous, willful, in complete disregard of the rights and safety of the plaintiffs and the other Class Members. When the NRC discovered the Contamination, it conducted an environmental investigation of the NRC Lands and performed testing in the Contaminated Area, but it failed to make full, prompt and candid disclosure of the results of that testing and of the Contamination to the plaintiffs and the other Class Members.

#### STATUTES RELIED UPON

49. The plaintiffs plead and rely upon the provisions of the EPA (ss. 13, 14, 91, 93 and 99); the CEPA (ss. 40, 95 and Schedule 1); the OWRA (s. 30); the CPA; ~~and the CJA;~~ and the *Negligence Act*, R.S.O. 1990, c. N.1.
50. The plaintiffs propose that this action be tried at Ottawa.

**DATE:** August 18, 2016

**BEAMENT HEBERT  
NICHOLSON LLP**  
Barristers and Solicitors  
979 Wellington St. W.  
Ottawa, ON ~~K1Y 2K1~~

**Michael S. Hebert**  
**LSUC #19109-O**  
Tel: (613) 241-3400

GORDON EGAN, KEVIN KUNKA,  
SCOTT PETRIE and PAUL CROZIER

Plaintiffs

v. NATIONAL RESEARCH COUNCIL OF CANADA ET AL.

Defendant

Court File No. 16-69664

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

In the matter of a Claim under the  
*Class Proceedings Act, 1992, S.O. 1992, c. 6*

Proceeding commenced at OTTAWA

**AMENDED AMENDED  
STATEMENT OF CLAIM**

AMENDED THIS 25 DAY / JOUR  
MODIFIÉE DE  
OF / DE March 2022  
PURSUANT TO RULE 29.02(c)  
CONFORMÉMENT À LA RÈGLE  
OR ORDER  
OU À L'ORDONNANCE J. Smith  
DATED THIS / FAIT CE July  
DAY / JOUR OF / DE 2021  
REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER, COUR SUPÉRIEURE DE JUSTICE



**MANN LAWYERS LLP**  
11 Holland Avenue, Suite 300  
Ottawa, ON K1Y 4S1

**Michael S. Hebert**  
LSO #: 19109 O  
Tel: (613) 722-1500  
Fax: (613) 722-7677  
Email: [michael.hebert@mannlawyers.com](mailto:michael.hebert@mannlawyers.com)

**Lawyers for the Plaintiffs**