



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

BEFORE THE HONOURABLE
JUSTICE ROBERT SMITH

)
)

WEDNESDAY, THE 7th
OF JULY, 2021

B E T W E E N:

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

Plaintiffs

- and -

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

Defendants

ORDER

THIS MOTION made by the Plaintiffs for an order certifying this action as a class proceeding, identifying the common issues, appointing the Representative Plaintiffs and appointing class counsel pursuant to the *Class Proceedings Act, 1992, S.O. 1992, c. 6*, as amended, was heard on May 26 and 27, 2021, at Ottawa, Ontario.

ON READING the Representative Plaintiffs' Amended Notice of Motion for Certification, the Affidavit of Paul Crozier sworn July 24, 2019, the Affidavit of Gordon Egan sworn July 24, 2019, the Affidavit of Kevin Kunka sworn July 24, 2019, the Affidavit of Stephen Hansel sworn July 24, 2019, the Affidavit of Dr. David A. Reynolds sworn August 8, 2019, the Affidavit of Mark Shore sworn July 26, 2019, the Affidavit of Mark Shore sworn July 31, 2020, the Affidavit of Gary Fudge affirmed June 30, 2020, the Affidavit of John Comba affirmed July 3, 2020, the Affidavit of

Anthony Lackey affirmed July 15, 2020, and the Exhibits to those Affidavits, the Transcripts of the Cross-Examinations of Anthony Lackey, taken on September 24, 2020, the Cross-Examination of John Comba, taken on September 24, 2020, the Cross-Examination of Paul Crozier, taken on September 25, 2020, the Cross-Examination of Stephen Hansel, taken on September 25, 2020, the Cross-Examination of Kevin Kunka, taken on September 29, 2020, the Cross-Examination of Gordon Egan, taken on September 29, 2020, the Cross-Examination of Mark Shore, taken on September 30, 2020 and the Cross-Examination of Dr. David Reynolds, taken on October 8, 2020 and the Exhibits marked on those Cross-Examinations, filed, and upon hearing the submissions of counsel for the Plaintiffs and the Defendants:

1. **THIS COURT ORDERS** that the within action be and is certified as a class proceeding as against the National Research Council of Canada pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.

2. **THIS COURT ORDERS** that the Class (or “Class Members” as applicable) is defined as follows:

All persons owning real property at or after December 23, 2015 in the area within the Township of Mississippi Mills, Ontario, more particularly described as the 69 lands and premises within the boundary demarcated by the black and orange line in Schedule “C” to the Amended Notice of Motion, excluding the National Research Council of Canada and the Crown.

3. **THIS COURT ORDERS** that Subclass A is defined as follows:

Subclass A shall be members of the above defined class where PFAS compounds have never been detected in their drinking water, or only detected at levels below Health Canada’s screening values.

4. **THIS COURT ORDERS** that Paul Crozier is hereby appointed as the representative plaintiff on behalf of the Class.
5. **THIS COURT ORDERS** that Gordon Egan and Kevin Kunka are hereby appointed as representative plaintiffs on behalf of the members of Subclass A.
6. **THIS COURT ORDERS** that Mann Lawyers LLP are hereby appointed as Class Counsel in this action.
7. **THIS COURT DECLARES** that the following claims, asserted on behalf of the Class and Subclass A are hereby approved: strict liability under the doctrine of *Rylands v. Fletcher*, nuisance, statutory liability under s. 99 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, statutory liability under s. 40 of the *Canadian Environmental Protection Act*, 1999, SC 199, c. 33 and negligence.
8. **THIS COURT DECLARES** that relief sought by the Class and Subclass A is damages for diminution in value of Class Members' and Subclass A members' properties, pre- and post-judgment interest and costs.
9. **THIS COURT ORDERS** that the common issues in this class proceeding shall be as follows:
 - Is the National Research Council of Canada ("NRC") liable to the Class Members or Subclass A members:
 - a) Under the doctrine of *Rylands v. Fletcher* as a result of its handling, application, storage and disposal of products containing PFAS compounds and the escape of those products onto the adjacent lands;

- b) For nuisance as the result of the migration of PFAS compounds from NRC lands to the class members' lands;
- c) Under s. 99 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- d) Under s. 40 of the *Canadian Environmental Protection Act*, 1999, SC 199, c. 33;
- e) For negligence;
 - (i) By NRC, in its use, handling, application, storage and disposal of PFAS compounds, such that these compounds were allowed to contaminate class members' lands;
- f) For damages for diminution of the value of Class Members' and Subclass A members' properties due to the negative stigma that affects them as a result of the contamination and possibility of contamination of their drinking water by PFAs compounds;
 - (i) For Class Members where PFAS compounds have been detected in their drinking water above Health Canada screening values; and
 - (ii) For members of Subclass A, where PFAS compounds have been detected in their drinking water below the Heath Canada screening values or have never been detected to date.

10. **THIS COURT ORDERS THIS COURT ORDERS** that the Plaintiffs' Litigation Plan in the form attached hereto as Schedule "A" is hereby approved.

11. **THIS COURT ORDERS** that the Notice of Certification substantially in the form attached hereto as Schedule "B" is hereby approved.

12. **THIS COURT ORDERS** that the opt out deadline shall be forty (40) days from the date that the Notice of Certification is sent to the Class Members. The Plaintiffs shall provide the NRC with a list of the names and addresses of all Class Members who have opted out of this Class Proceeding.

13. **THIS COURT ORDERS** that the NRC shall provide to the Plaintiffs the addresses of the 69 lands and premises that are referenced in the Class Definition set out in paragraph 2 above. The NRC shall further provide to the Plaintiffs the most up to date contact information for Class Members who are former owners of properties within these 69 lands and premises to the extent that contact information is already in the NRC's possession at the time of this order.

14. **THIS COURT ORDERS** that the Plaintiffs be granted leave to amend the Amended Statement of Claim to allege a spill and breach of the provisions of the *Environmental Protection Act*.

15. **THIS COURT ORDERS** that the NRC shall deliver its Statement of Defence within 30 days of delivery of the Amended Amended Statement of Claim.

16. **THIS COURT ORDERS** that the plaintiffs shall have 15 days to make submissions on costs, the defendants shall have 15 days to respond and the plaintiffs shall have 10 days to reply.



SCHEDULE "A"

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

B E T W E E N:

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

Plaintiffs

- and -

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

Defendants

PLAINTIFFS' LITIGATION PLAN

The Plaintiffs propose the following Litigation Plan with respect to this Class Proceeding.

I Certification of Class Proceeding:

1. The action was certified as a Class Proceeding by Order of the Court, dated July 7, 2021 (the "Certification Order").

A) By the Certification Order, the Class was defined for the purposes of this litigation as:

All persons owning real property at or after December 23, 2015 in the area within the Township of Mississippi Mills, Ontario, more particularly described as the 69 lands and premises within the boundary demarcated by the black and orange line in Schedule "C" to the Amended Notice of Motion, excluding the National Research Council of Canada and the

Crown.

By the Certification Order, a subclass was defined for the purposes of this litigation as:

Subclass A shall be members of the above defined class where PFAS compounds have never been detected in their drinking water, or only detected at levels below Health Canada's screening values.

B) By the Certification Order, the common issues were defined as follows:

Is the National Research Council of Canada ("NRC") liable to the class members or Subclass A members?

- a) Under the doctrine of *Rylands v. Fletcher* as a result of its handling, application, storage and disposal of products containing PFAS compounds and the escape of those products onto the adjacent lands;
- b) For nuisance as the result of the migration of PFAS compounds from NRC lands to the class members' lands;
- c) Under s. 99 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- d) Under s. 40 of the *Canadian Environmental Protection Act*, 1999, SC 199, c. 33;
- e) For negligence;
 - (i) By NRC, in its use, handling, application, storage and disposal of PFAS compounds, such that these compounds were allowed to contaminate class members' lands;

f) For damages for diminution of the value of class members' and Subclass A members' properties due to the negative stigma that affects them as a result of the contamination and possibility of contamination of their drinking water by PFAs compounds;

(i) For class members where PFAS compounds have been detected in their drinking water above Health Canada screening values; and

(ii) For members of Subclass A, where PFAS compounds have been detected in their drinking water below the Health Canada screening values or have never been detected to date.

C) By the Certification Order, Paul Crozier was appointed as Representative Plaintiff of the class members and Gordon Egan and Kevin Kunka were appointed as Representative Plaintiffs for the members of Subclass A.

D) By the Certification Order, Mann Lawyers LLP was appointed as Class Counsel.

2. The following matters remain to be addressed by the Court:

A) Approval of this Litigation Plan;

B) Approval of the Notice of Certification;

C) Setting of the opt out deadline; and

- D) An Order in respect of the publication of the Notice of Certification.

II Publication of Notice of Certification

3. The Representative Plaintiffs are to provide Notice of Certification of the within class proceeding, as required by section 17(6) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, to the class members in the form approved by this Honourable Court:

- a) By hand delivering to every residence in the Class Area and in respect of class members who do not presently reside in the class area, by sending, at the Defendant's expense, a copy of the Notice of Certification by regular mail to the last known mailing address of each Class Member and by email to the last known email address of each Class Member, if known; and
- b) By posting the Notice of Certification on Class Counsel's website at the following URL: www.mannlawyers.com.

III Post-Certification Status Report

4. Mann Lawyers LLP will create and update its webpage dedicated to this proposed class proceeding. The phone number and email contact provided on the webpage will remain in effect until the claim is resolved.

IV Document Production and Examinations for Discovery

5. The parties will finalize a Discovery Plan pursuant to Rule 29.1 of the *Rules of Civil Procedure*.

6. The Plaintiffs propose that the following terms be included in the Discovery Plan:
 - a) The NRC shall deliver its Statement of Defence within 30 days of the date of delivery of the Amended Amended Statement of Claim;

 - b) The Plaintiffs shall deliver Affidavits of Documents and all Schedule "A" productions within four (4) months of the expiration of the opt out period;

 - b) The NRC shall deliver its Affidavit of Documents and all Schedule "A" productions within four (4) months of the expiration of opt out period;

 - c) The documents to be produced by the Plaintiffs shall include, but not necessarily be limited to relevant, non-privileged documents falling within one or more of the following categories:
 - i) all communications between the Representative Plaintiffs and other members of the Class who do not opt out of the action;

 - ii) all communications between members of the Class who do not opt out of the action (including the Representative Plaintiffs) and the Defendants;

- iii) all documents relating to the Contamination on the lands of the members of the Class who do not opt out of the action (including the Representative Plaintiffs); and
 - iv) all other documents in any way supporting the claims of members of the Class who do not opt out of the action (including the Representative Plaintiffs).
- d) The documents to be produced by the NRC shall include, but not necessarily be limited to relevant, non-privileged documents falling into one or more of the following categories:
- i) all communications between the NRC and the members of the Class who do not opt out of the action (including the Representative Plaintiffs);
 - ii) all documents in respect of the use of the NRC lands;
 - iii) all documentation in respect of the products used on the NRC Lands which contained PFAS substances, including, but not limited to, purchase orders, invoices, instructions as to use, product information, safety information, handling guidelines and regulatory or other guidelines or guidance documents;

- iv) all data, reports, laboratory results, memoranda, correspondence or communications in respect of any soil, groundwater or surface water sampling on the NRC Lands and lands within the Class Area;
 - v) all communications between the NRC and any engineering firms or consultants, including, but not limited to, Stantec, Golder Associates and SNC Lavalin, in respect of the Contamination (as defined in the Amended Statement of Claim);
 - v) documentation in respect of remedial work conducted on the NRC Lands, including all data, reports and communications with engineers and consultants; and
 - vi) All communications between the NRC and the federal Ministry of the Environment and Climate Change, the provincial Ministry of the Environment, Conservation and Parks, the Township of Mississippi Mills and the Mississippi Valley Conservation Authority in respect of the Contamination.
- d) Examinations for discovery of the Representative Plaintiffs and the NRC shall be conducted within ninety (90) days of the completion of documentary production.
- e) Responses to undertakings shall be provided within 60 days after examinations.

V Case Management and Dispute Resolution

7. Following certification, the completion of document production and examinations for discovery, the Plaintiffs will seek to attend before the Court in order to clarify and/or re-define the common issues, if required, and to schedule any further motions that may be required prior to the trial of common issues.
8. The Plaintiffs are willing to participate in mediation or other non-binding alternative dispute resolution efforts.

VI Final Determination of Common Issues

9. The date expert reports, if any, shall be exchanged, fixing a pre-trial date and fixing a trial date shall be the subject matter of further directions by this Honourable Court.
10. It is proposed that the trial judge will determine the principles involved and the amount of each class members' damages during the trial of the common issues, however, if there are individual issues which remain to be resolved following the common issues trial, it is proposed that a case conference be conducted before this Honourable Court to determine the most efficient and practical means of determining those issues.
11. In the event that aggregate damages are awarded, counsel for the plaintiffs shall bring a motion before this Honourable Court to determine the manner in which such damages ought to be distributed to the class.

VII Other Issues

12. The retainer agreement with the Representative Plaintiffs states that the Plaintiff's legal fees and disbursements are to be paid on a contingency basis as provided for in the *Class Proceedings Act, 1992*, and are subject to the Court's approval.

13. Mann Lawyers LLP will conduct settlement negotiations with the NRC's lawyers from time to time as circumstances dictate.

14. This plan will be reconsidered and may be revised under the continuing case management authority of the court, if required, both before and after the determination of the common issues.

**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

PLAINTIFFS' LITIGATION PLAN

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@mannelawyers.com

Lawyers for the Plaintiffs

SCHEDULE “B”

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

B E T W E E N:

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

Plaintiffs

- and -

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

Defendants

NOTICE UNDER THE CLASS PROCEEDINGS ACT, 1992

THE CLASS OF CLAIMANTS:

To all persons owning real property at or after December 23, 2015 in the area within the Township of Mississippi Mills, Ontario, more particularly described as the 69 properties within the boundary demarcated by the orange in the drawing at Schedule “A” attached hereto, excluding the National Research Council of Canada and the Crown (the “Class Area”).

The Class was also defined by the Court to include a subclass (Subclass A), being members of the above defined Class where PFAS compounds have never been detected in their drinking water, or only detected at levels below Health Canada’s screening values.

THE NATURE OF THE LAWSUIT:

This lawsuit against the National Research Council of Canada was certified as a Class Proceeding by Order of the Court, dated July 7, 2021.

Members of the Class and Subclass A who do not opt out of the Class Proceeding shall be entitled to participate in an action that seeks to recover damages they allegedly sustained as a result of the alleged contamination of lands and groundwater by the activities carried on at the National Fire Laboratory located at 833 Ramsay Concession 8, Carleton Place, Ontario. The Class Proceeding will permit each of the Class Members (including members of Subclass A) to participate in the action seeking recovery of damages allegedly suffered by them as a result of the contamination or possible contamination of their lands and groundwater, including general damages, damages for remediation and damages for any loss in value of their property which may be sustained by them.

RELIEF SOUGHT - FULL COMPENSATION FOR ALL DAMAGES SUSTAINED:

The lawsuit claims general damages for any loss in value of their property, interest and legal costs.

REPRESENTATIVE PLAINTIFFS:

The lawsuit has been started by Gordon Egan, Kevin Kunka and Paul Crozier represented by their lawyer, Michael Hebert of the law firm Mann Lawyers LLP. Paul Crozier has been appointed as the Representative Plaintiff for the Class, and Gordon Egan and Kevin Kunka have been appointed as the Representative Plaintiffs for Subclass A.

RIGHT TO OPT OUT OF THE LAWSUIT:

Members of the Class (including members of Subclass A) who wish to participate in the Class Action need not do anything at this time. They are automatically included in the Class Proceeding.

Class Members (including members of Subclass A) who do not wish to participate in the Class Action must opt out.

If you do not want to be part of this lawsuit and want to be excluded from the Class of Claimants, you must complete and sign the Opt Out Election Form attached hereto and deliver it to the following by registered mail, facsimile transmission, e-mail or personal delivery:

**Michael S. Hebert, Mann Lawyers LLP,
11 Holland Avenue, Suite 300, Ottawa, Ontario, K1Y 4S1,
Facsimile: 613-722-7677, E-mail: NRCaction@mannlawyers.com**

IF YOU SHARE OWNERSHIP OF YOUR PROPERTY WITH ANY OTHER PERSON, THE OPT OUT ELECTION FORM MUST BE COMPLETED AND SIGNED BY ALL OWNERS OF THE PROPERTY.

The deadline for opting out is _____. No one will be permitted to opt out after the expiry of this deadline.

If you do not opt out you will remain a Class Member in the lawsuit and cooperate in the proceeding as required and comply with the terms of the retainer, which is subject to Court approval.

FINANCIAL CONSEQUENCES OF THE CLASS PROCEEDINGS TO YOU:

We are seeking, on your behalf, damages to compensate you for the alleged contamination of your lands and groundwater.

The Representative Plaintiffs have agreed with their lawyer that the legal costs in these proceedings will only be payable in the event of success in the Class Action. The firm of Mann Lawyers LLP will receive 30% of any damages recovered pursuant to a Retainer Agreement signed by the Representative Plaintiffs which will be subject to approval by the Court. No fees are payable by any Class Member unless a recovery is made from the Defendants.

Any Judgment, whether favourable or not, will bind all Class Members (including members of Subclass A) who do not opt out of this proceeding. This means that, unless you opt out, you cannot start your own action for the same claim.

Each Class Member (including members of Subclass A) who has not opted out will need to participate in the proceedings by providing information, documentation and other details of their

losses as required by the Representative Plaintiffs or the Court. At this time, you will need to provide us with your name, address of the property within the Class Area, your mailing address, your telephone number and your email address. You may provide this information to the contact information below.

If you choose not to participate in this proceeding and opt out as a member of the Class before _____ you will have agreed that you are not part of this lawsuit and will receive absolutely no compensation for any damages that may be awarded in this lawsuit. You will, however, retain any right you may have to bring your own lawsuit.

ADDITIONAL INFORMATION:

If you want to find out more about this lawsuit, please contact:

Michael S. Hebert
Mann Lawyers LLP
11 Holland Avenue, Suite 300
Ottawa, Ontario, K1Y 4S1
Telephone: (613)722-1500, Ext. 272
Facsimile: (613)722-7677
E-mail: NRCaction@mannlawyers.com

This notice is being provided pursuant to an Order of the Ontario Superior Court of Justice

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

B E T W E E N:

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

Plaintiffs

- and -

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

Defendants

OPT OUT ELECTION FORM

By completing this Opt-Out Election Form, you are choosing to irrevocably opt out of this lawsuit and are confirming that you do not wish to participate in this class action and that you will be excluded from any settlement or any damages that may be awarded by the Court.

This form must be fully completed and must be received on or before **5:00 p.m. on _____**.
Opt-Out Election Forms not fully completed and received by _____ will not be accepted.

Opt Out Election Forms must be completed and signed by **ALL** owners of a property where title is held by more than one person.

Your Name (required): _____

Address of your property within the Class Area (required): _____

Your Mailing Address (required): _____

Your Telephone Number: (required): _____

Your email address (optional): _____

DECLARATION

I declare that I wish to opt out of this lawsuit.

I understand that by submitting this Opt-Out Election Form, I will be excluded from the class action and will not be bound by its outcome. As a result, I will not receive any portion of any damages that may be awarded by the Court, or any settlement that may be reached in the lawsuit, but I will retain any right I may have to bring my own lawsuit.

Date

Signature

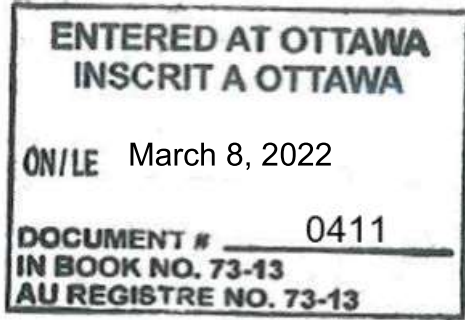
GORDON EGAN, KEVIN KUNKA,
SCOTT PETRIE and PAUL CROZIER

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

ORDER

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@mannelawyers.com

Lawyers for the Plaintiffs