

2017 01G 7673 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

JOHN CYRILLE CHIASSON

PLAINTIFF

AND:

NALCOR ENERGY

DEFENDANT

Brought under the *Class Actions Act*, SNL 2001, c. C-18.1

BROUGHT UNDER THE *CLASS ACTIONS ACT*
BEFORE THE HONOURABLE JUSTICE VALERIE L. MARSHALL

Fresh as Amended Order for Certification

SUMMARY OF CURRENT DOCUMENT	
Court File Number(s):	2017 01G 7673 CP
Date of Filing of Document:	December 13, 2021
Name of Filing Party or Person:	John Cyrille Chiasson (Proposed Representative Plaintiff)
Application to which Document being filed relates:	Application for an Order certifying the within proceeding as a class action
Statement of purpose in filing:	Order certifying the within proceeding as a class action

BEFORE THE HONOURABLE JUSTICE VALERIE L. MARSHALL

THIS APPLICATION was made by the Plaintiff for an order certifying this proposed class action as a class action pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1 (the "Act");

UPON READING the Application for Certification, the evidence filed by the parties, and the submissions of counsel;

AND UPON HEARING the submissions of the parties;

IT IS HEREBY ORDERED:

1. That the action is hereby certified as a class action pursuant to the Act.
2. That the pleadings are contained in the Amended Statement of Claim filed ~~December 13,~~ ^{January 19,} 2021, ²⁰²².
3. That the certified Class is defined as all persons who were Owner or Non-Owner Class Members as of May 17, 2017, such subclasses defined as:
 - 1) Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who owned or co-owned real property within any of the three areas identified in red on Schedule "A" to this Order.
 - 2) Non-Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who resided in either of the three areas identified in red on Schedule "A" to this Order but who did not own real property located within any of the areas.
4. That John Cyrille Chiasson (c/o Wagners Law Firm, 1869 Upper Water Street, Suite PH301, Pontac House, Halifax, NS, B3J 1S9) is appointed as the representative plaintiff of the Class.
5. That the nature of the claims asserted on behalf of the Class are:
 - a. Nuisance; and
 - b. Negligencerelated to the flooding which occurred between May 16 and May 19, 2017, downstream of the Muskrat Falls hydroelectric generating project.

6. That the relief sought by the Class is general damages including damages for interference with property rights resulting from the material physical damage caused by the Defendant; special damages, including for damage to the Properties, for damage to or loss of personal property on or in the Properties, for diminution of the value of property owned, occupied, or used by the Plaintiff and other Class Members, including the complete or substantial devaluation of certain of the Properties, and the loss of the ability to sell, finance or mortgage the Properties, and for all out of pocket costs paid by Class Members to evacuate and/or relocate out of the Properties, and associated costs; pre-judgment interest; and costs.
7. That relative to the Churchill River Flood of May 16 - 17, 2017, (the "Flood"), which impacted properties (the "Properties") in the three areas identified in Schedule "A" to this Order, the following questions are certified as common issues:

Liability in Negligence

1. What duty of care (if any) was owed by Nalcor with respect to the class members' interests as owners or occupiers of properties impacted by the Flood?
2. If a duty of care was owed, did Nalcor breach the duty of care?
3. Was general harm to the class members a reasonably foreseeable consequence of Nalcor's breach of duty?

Liability in Nuisance

4. Did the Flood substantially interfere with the class members' use and enjoyment of the Properties?

Causation in Negligence and Nuisance

5. Did Nalcor cause or materially contribute to the Flood which impacted Properties within the three zones identified on Schedule "A"?
8. That Notice of Certification, the opt-in and opt-out deadline, and means of opting in or out will be provided by a "Notice of Certification" in the form set out in Schedule "B" to this Order. The Notice of Certification will be distributed to the Class by the following means, which will constitute the "Notice Plan":

1. Direct notice:

- 1) Class Counsel has a list of names and mail/email addresses of potential Class Members who have contacted Class Counsel expressing interest in the action.
- 2) Within 15 business days of the issuance of this Order, Class Counsel will send Notice of Certification directly to known potential Class Members on this list by regular mail and/or electronic mail (electronic mail will be the primary method, where it is available).

2. Indirect notice:

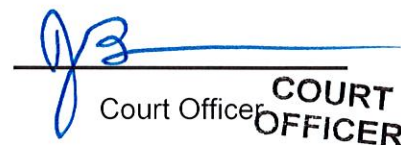
Within 15 business days of the issuance of this Order, Class Counsel will give notice to the Class as follows:

1. Post Notice of Certification and the Opt-In and Opt-Out Forms on its website (www.wagners.co);
2. Issue a press release describing the contents of the Notice of Certification; and
3. Provide Notice of Certification upon request.

9. That the costs of distributing Notice of Certification shall be paid for by the Plaintiff.
10. That the Notice Plan and Notice of Certification satisfy the requirements of s. 19(6) of the Act and are deemed to be adequate notice to Class Members.
11. That the Plaintiff's Litigation Plan, attached hereto as Schedule "C" is approved as a workable method of advancing the action on behalf of the Class, subject to clarification and amendment if required now or as the action progresses.
12. That a Class Member may opt out of the class action or, if not a resident of the Province, opt in, by sending an Opt Out or Opt In Form, attached hereto as Schedule "D", to Wagners on or before the Opt Out/Opt In Deadline stipulated in the form, which shall be sixty (60) calendar days after the date of implementation of the Notice Plan.
13. That within thirty business (30) days of the close of the Opt In/Out Period, Class Counsel will provide to the Defendant via letter the names of all those who elected to opt out or opt in to the within action.

14. That the Defendant shall deliver its statements of defence no later than sixty (60) business days following the issuance of this Order.
15. That no costs are awarded in this Application.

DATED at St. John's in the Province of Newfoundland and Labrador, this
19 day of January, 2022


Court Officer **COURT
OFFICER**

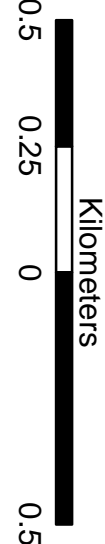


Happy Valley - Goose Bay

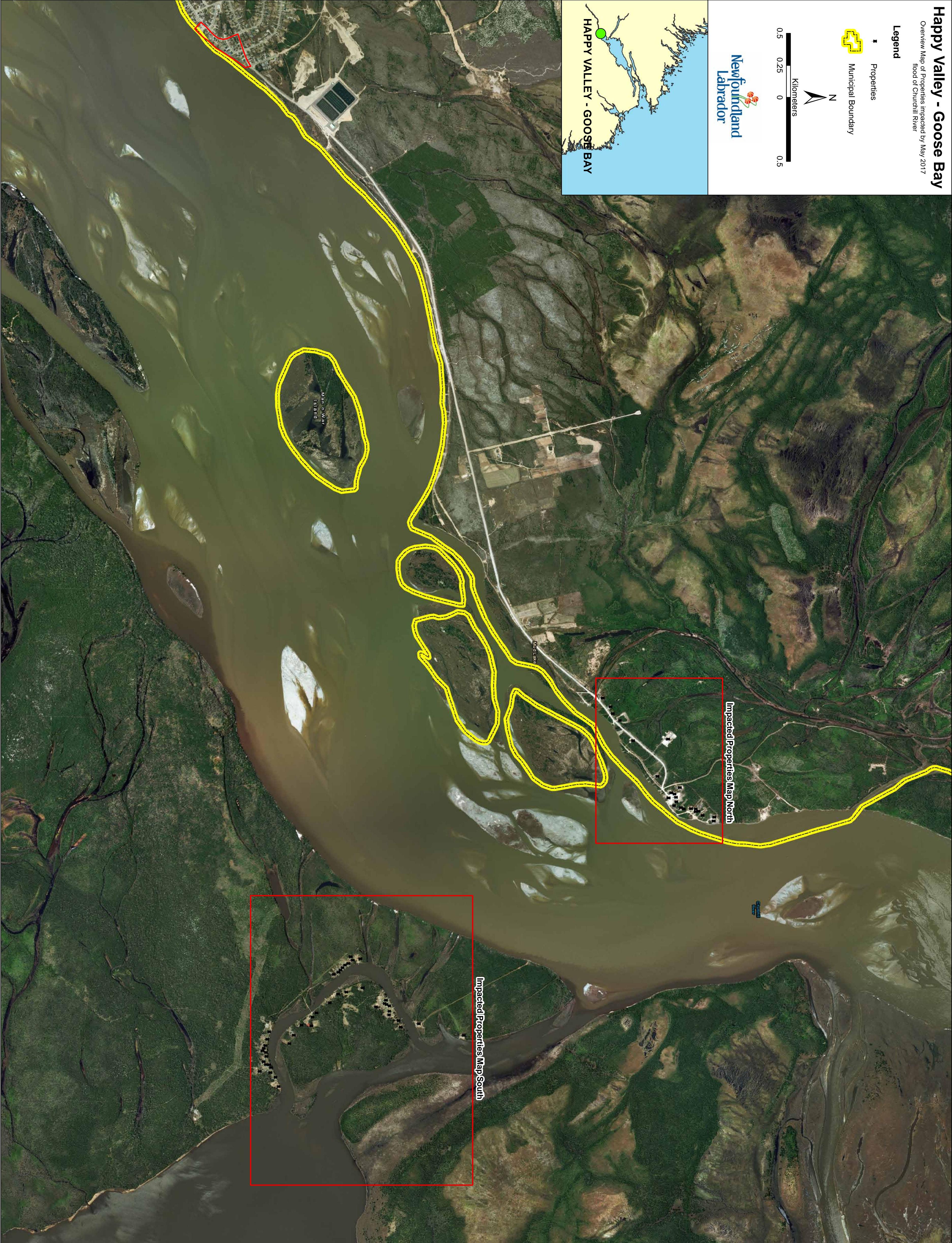
Overview Map of Properties Impacted by May 2017
flood of Churchill River

Legend

- Properties
- Municipal Boundary



SCHEDULE "A"




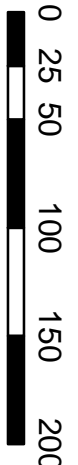
Happy Valley - Goose Bay

Map of Properties Impacted by May 2017
flood of Churchill River

Legend

 Municipal Boundary

 N

 0 25 50 100 150 200
Meters





Impacted Properties Map North

Impacted Properties Map South

Mud Lake

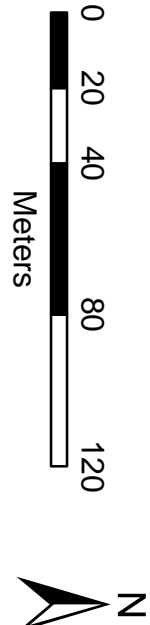
Cape River

Impacted Properties Map North

Properties identified as impacted by flood

Legend

- Properties
- Municipal Boundary

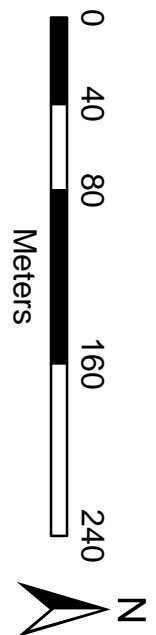


Impacted Properties Map South

Properties identified as impacted by flood

Legend

- Properties
- Municipal Boundary



SCHEDULE "B"

NOTICE OF CERTIFICATION OF THE MUD LAKE FLOODING CLASS ACTION – JOHN CYRILLE CHIASSON V. NALCOR ENERGY

What is the class action about?

Class Members are advised of certification of a class action arising from flooding of the Churchill River between May 16-17, 2017. The Defendant is Nalcor Energy.

The class action seeks compensation for damage caused to Properties, including diminution of the value of Properties, and for any physical and/or psychological injuries suffered by Class Members. The claim alleges the causes of action of nuisance and negligence.

Who is included?

All persons who were Owner or Non-Owner Class Members as of May 17, 2017, such sub-classes defined as:

a. Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who owned or co-owned real property within any of the three areas identified in red on Schedule "A" to the Certification Order.

b. Non-Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who resided in any of the three areas identified in red on Schedule "A" to the Certification Order but who did not own real property located within any of the areas.

Representative Plaintiff:

John Cyrille Chiasson
c/o Wagners
1869 Upper Water St.
PH301, Pontac House
Halifax, NS B3J1S9

Class Counsel Compensation:

The Representative Plaintiff has entered into a Contingency Fee Agreement with Wagners. Wagners will apply to the Court at the conclusion of the case to have its legal fees approved. Wagners will pay for all case expenses incurred in advancing the case and if the case is successful, Wagners will apply to the court to be reimbursed for these case expenses. If the case is not successfully settled or tried, Wagners will not be paid or be reimbursed for any expenses.

Will it cost me anything to participate?

You do not have to pay anything out of pocket to participate in the class action, and you will not be liable for any legal costs of the Defendant should the trial be unsuccessful. Class Members are encouraged to contact Wagners for further explanation of costs.

What options do Class Members have?

If you are a Class Member and as of * [date of Certification Order issuance] resided in Newfoundland and Labrador you do not need to do anything at this point to get the benefit of any ruling on the common issues of whether the Defendant was negligent or committed the tort of nuisance. A judgment on the common issues, whether favourable or not, will bind all resident Class Members who do not opt-out.

If the common issues are resolved in favour of the Class, Class Members will need to advance an individual claim, and any remaining individual issues will need to be addressed in a manner to be determined by the Court.

If you are a resident of Newfoundland and Labrador and wish to be excluded from the Class you must opt-out of the class action by sending an Opt-Out Form to Wagners by mail or email on or before *. By opting out you will exclude yourself from the benefit of any settlement or trial.

If you are a Class Member and as of * [date of Certification Order issuance] reside outside of Newfoundland and Labrador, and wish to participate in the class action, you must opt in to the class action by delivering a completed Opt-In Form to Wagners by mail or email on or before *.

To access an Opt-Out or Opt-In Form, or to obtain further information, visit www.wagners.co or contact Wagners at:

Wagners
1869 Upper Water St.
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9
Toll Free: 1-800-465-8794 / Email: classaction@wagners.co

This summary notice has been approved by The Supreme Court of Newfoundland and Labrador.

Do not Contact the Court about this Certification.

SCHEDULE “C”

Plaintiff’s Litigation Plan

DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan (the “Plan”) have the meanings as particularized in the Amended Statement of Claim, as it may be further amended from time to time.

CLASS COUNSEL

2. The Plaintiff has retained Wagners (“Class Counsel”) to advance this class action. Class Counsel has the requisite knowledge, skill, experience, personnel and financial resources to advance the action to resolution. Class Counsel may, if determined to be appropriate from time to time, collaborate with other counsel in advancing the class action.

THE COMPOSITION OF THE CLASS

3. The “Class” and “Class Members” are defined as all persons who were Owner or Non-Owner Class Members as of May 17, 2017, such subclasses defined as:
 - 1) Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who owned or co-owned real property within the three areas identified in red on Schedule “A” to the Certification Order.
 - 2) Non-Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who resided in any of the three areas identified in red on Schedule “A” to the Certification Order but who did not own real property located within any of the areas.

NOTICE OF CERTIFICATION, NOTICE PLAN AND THE OPT-IN/OPT-OUT PROCEDURE

4. The Plaintiff proposes that notification of certification, the opt-in and opt-out deadline, and means of opting in or out be provided via “Notice of Certification” in the form set out in Schedule “B” to the Order certifying this action as a class proceeding. Subject to approval of the Court, Notice of Certification will be distributed to the Class by the following means (referred to collectively as the “Notice Plan”):
 - 1) Direct notice: Class Counsel has a list of names and mail/email addresses of potential Class Members who contacted Class Counsel expressing interest in the action. Within 15 business days of the filing of the Order certifying this action as a class proceeding, Class Counsel will send Notice of Certification directly to known potential Class Members on this list by regular mail and/or electronic mail (electronic mail will be the primary method, where it is available).
 - 2) Indirect notice:
Within 15 business days of the filing of the Order certifying this action as a class proceeding, Class Counsel will give notice to the Class as follows:
 - 1) post Notice of Certification and the Opt-In and Opt-Out Forms on its website (www.wagners.co);
 - 2) issue a press release describing the contents of the Notice of Certification; and
 - 3) provide Notice of Certification upon request.
5. The Opt Out/Opt In Deadline will be sixty (60) calendar days from the date of implementation of the Notice Plan.
6. The costs (as applicable) of distributing Notice of Certification pursuant to the Notice Plan will be paid by the Plaintiff.

REPORTING AND COMMUNICATION

7. Class counsel will post current information on the status of the action on its website

and this will be updated regularly. Copies of notices and other information for Class Members are and will be accessible from the website.

8. Class Counsel will inform known Class Members about material updates in the litigation via regular mail and/or electronic mail (electronic mail will be the primary method, where it is available).

CASE MANAGEMENT CONFERENCES

9. The Plaintiff proposes that case management conferences be conducted before a case management judge as necessary and at the request of the parties, and as otherwise directed by the Court.
10. The Plaintiff proposes that a case management conference be held within forty-five (45) calendar days of the issuance of the Order for Certification, the primary purpose being to seek the direction of the Court on any outstanding issues and to determine the litigation schedule.
11. The Plaintiff proposes the following schedule for the remaining steps in the action:
 - 1) Within sixty (60) business days after issuance of the Order for Certification, the Defendant shall deliver its Statement of Defence;
 - 2) Lists of Documents will be restricted to the certified common issues and will be produced by the Defendant in stages. Within four (4) months following the delivery of the Statement of Defence, the parties will exchange their first Lists of Documents; within six (6) months following the delivery of its Statement of Defence, the Defendant will produce its second List of Documents, and within eight (8) months following the delivery of its Statement of Defence, the Defendant will produce its third and final List of Documents.
 - 3) Within four (4) months following the delivery by the Defendant of the final List of Documents, the parties will complete their examinations for discovery of the parties, which shall be restricted to the certified common issues; and
 - 4) Within six (6) months after all examinations for discovery of the parties have been

concluded, the parties will exchange expert reports, following which discovery of experts will be completed within two (2) months.

12. The *Rules of The Supreme Court, 1986* will apply to the scheduling of any appeals brought in the action.

DISCOVERY

13. The Plaintiff proposes that counsel for the parties shall efficiently disclose documents to one another utilizing computer database software so that, as much as reasonably practicable, documents may be produced and shared between the parties and be made available to the Court in electronic format.
14. The Plaintiff proposes that a conference of all counsel be held following the completion of the discovery stage in order to address, *inter alia*, the potential refinement of the common issues for trial (including, if necessary, the addition or removal of common issues, upon the approval of the Court as necessary) and the schedule for the common issues trial.

MEDIATION

15. The Plaintiff will participate in mediation before a mutually acceptable mediator if the Defendant is prepared to do so, whether before the common issues trial or at other stages of the litigation.

INTERLOCUTORY MOTIONS

16. Unless a particular motion is a matter of urgency, all interlocutory motions will be heard by the case management judge.
17. The scheduling of and any directions in relation to any interlocutory applications will be addressed at a case management conference. If the need for an interlocutory application should arise in a more time-sensitive manner, a request for dates and directions can be delivered to the case management judge as need be. Unless otherwise agreed to or directed by the case management judge, the filing deadlines for any such interlocutory applications will be governed by Rule 29 of the *Rules of*

NOTICE OF RESOLUTION OF THE COMMON ISSUES

18. In the event that the common issues are resolved in favour of the Plaintiff, the Court will be asked:
 - 1) to settle the form and content of the notice of resolution of the common issues (the “Notice of Resolution”);
 - 2) to determine how the individual issues will be resolved; and
 - 3) to approve a form and deadline for individual claims by Class Members.
19. The Plaintiff proposes that the Notice of Resolution include the following information, to be further refined following the common issues trial:
 - 1) A description of the Class;
 - 2) A description of the common issues and their outcomes at trial;
 - 3) The nature of any class-wide remedies granted in the judgment on the common issues;
 - 4) What steps a Class Member must take to assert an individual claim and what facts a Class Member must prove to succeed on such a claim;
 - 5) How to obtain further information; and
 - 6) That their claims in relation to the matters raised in the pleadings will be deemed to have been finally adjudicated whether or not they participate in the claims stage of the proceeding.
20. The Plaintiff will ask the Court to order that the Notice of Resolution be distributed substantially in accordance with the procedure outlined above in the Notice Plan for the Notice of Certification.

ADJUDICATION OF REMAINING / INDIVIDUAL ISSUES

21. The parties will agree on a process for the determination of individual issues if the common issues are resolved in favour of the Class, and failing agreement they may ask the Court to decide the matter.
22. The evidence necessary to succeed on an individual claim may depend on the extent of the Plaintiff's success with respect to the common issues and the evidence relied on at the common issues trial.
23. The procedural complexity of the individual issues determination should be proportionate to the value of the submitted claim. Subject to further refinement as the action progresses, Class Counsel proposes one of two claims procedures to be followed depending on the specified claim value (threshold to be determined):
 - 1) **Simplified process:** A Class Member will file affidavit evidence with the referee/evaluator, setting out the evidence relating to the individual issues remaining to be proven. If the Defendant wishes, it may conduct a time-limited out-of-court cross examination of an affiant on his/her affidavit. The referee/evaluator will then produce a written decision with respect to the Class Member's claim on the basis of the affidavit and transcript evidence. The decision will be provided to all parties and will be final.
 - 2) **Comprehensive process:** Class Members submitting claims in excess of the simplified process threshold will be required to produce all relevant, non-privileged documents in relation to the claim, and, if so required, will attend an out-of-court cross-examination by counsel for the Defendant. The referee/evaluator will then produce a written decision with respect to the Class Member's claim on the basis of the document production and transcript evidence. The report will be provided to all parties and will be final.
24. The Parties acknowledge that the above-proposed simplified and comprehensive processes for the determination of individual issues if the common issues are resolved in favour of the Class are proposed by the Plaintiff, and that the Defendant is not agreeing to, or bound by, these proposed processes.

25. Any party may ask the Court to, pursuant to its jurisdiction under s. 27 of the *Class Actions Act*, give directions that result in the least expensive and most expeditious method of determining the individual issues, including dispensing with any procedural step that it considers unnecessary.
26. The Court will set a deadline (the “Claims Deadline”) by which Class Members must initiate their individual claims.

FURTHER ORDERS CONCERNING THIS PLAN

27. This Plan may be amended from time to time by agreement of the parties, by directions provided at case management conferences, or by further order of the Court.

SCHEDULE "D"

2017 01G 7673 CP

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN:

JOHN CYRILLE CHIASSON

PLAINTIFF

AND:

NALCOR ENERGY

DEFENDANT

Brought under the *Class Actions Act*, SNL 2001, c. C-18.1

OPT OUT FORM

**DEADLINE: MUST BE POST-MARKED OR RECEIVED NO LATER THAN [INSERT OPT OUT
DEADLINE] IN ORDER TO BE VALID**

To be returned to:

**Wagners
1869 Upper Water Street
PH301, Pontac House
Halifax, NS B3J 1S9**

Or by email to:

classaction@wagners.co

I, _____, hereby provide my written direction to be excluded from (opt out of) the class action against Nalcor Energy for damages caused by the flooding event of May 16-17, 2017. I understand that by excluding myself from the class action, I **cannot** receive the benefit of any settlement or resolution of the class action.

I understand that this form is only to be completed if I was an Owner or Non-Owner Class Member as of May 17, 2017, defined as:

- a. Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who owned or co-owned real property within the three areas identified in red on Schedule "A" to the Certification Order.
- b. Non-Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who resided in any of the three areas identified in red on Schedule "A" to the Certification Order but who did not own real property located within any of the areas.

My information is as follows:

Print Name: _____ Date of Birth: _____

Address: _____ Email Address: _____

City/Prov./Code: _____ Telephone: _____

Signature: _____ Date: _____

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

JOHN CYRILLE CHIASSON

PLAINTIFF

AND:

NALCOR ENERGY

DEFENDANT

Brought under the *Class Actions Act*, SNL 2001, c. C-18.1

OPT IN FORM

**DEADLINE: MUST BE POST-MARKED OR RECEIVED NO LATER THAN [INSERT OPT IN
DEADLINE] IN ORDER TO BE VALID**

To be returned to:

**Wagners
1869 Upper Water Street
PH301, Pontac House
Halifax, NS B3J 1S9**

Or by email to:

classaction@wagners.co

I, _____, reside outside the Province of Newfoundland and Labrador as of * [insert date of Cert Order issuance] and hereby provide my written direction to be included in (opt in to) the class action against Nalcor Energy for damages caused by the flooding event of May 16-17, 2017.

I understand that this form is only to be completed if I was an Owner or Non-Owner Class Member as of May 17, 2017, defined as:

a. Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who owned or co-owned real property within the three areas identified in red on Schedule "A" to the Certification Order.

b. Non-Owner Class Members: An individual (other than the Defendant and its parent companies, affiliates or subsidiaries) who resided in any of the three areas identified in red on Schedule "A" to the Certification Order but who did not own real property located within any of the areas.

My information is as follows:

Print Name: _____

Date of Birth: _____

Address: _____

Email Address: _____

City/Prov./Code: _____

Telephone: _____

Signature: _____

Date: _____