

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)

BETWEEN:

JOHN CYRILLE CHIASSON

PLAINTIFF

AND:

**NALCOR ENERGY and HER MAJESTY THE
QUEEN IN RIGHT OF NEWFOUNDLAND
AND LABRADOR**

DEFENDANTS

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

STATEMENT OF CLAIM

I. OVERVIEW

1. Nalcor Energy commenced work on the Muskrat Falls Generating Project (the “Project”) in 2013 with the construction of an 824 megawatt hydroelectric generating facility at Muskrat Falls, on the lower Churchill River, approximately 30 km west of Happy Valley-Goose Bay, Labrador.
2. The hydroelectric generating facility consists of a spillway, a reservoir, two dams and a powerhouse.
3. The total length of the Churchill River is approximately 856 kilometres and it flows east from the Smallwood Reservoir in Labrador into the Atlantic Ocean via Lake Melville.
4. The Town of Mud Lake is located on the Churchill River and is situated downstream of the Project.

5. The Defendants are responsible for the design, development, construction, ownership and operation of the Project.
6. Construction of the Project began in 2013 and was expected to take approximately four to five years to complete. Power from the dam and hydro station is currently expected to be delayed until summer/early fall of 2019, with full power in 2020.
7. Phase One includes construction of an 824 MW hydroelectric generating facility, the erection of over 1,600 kilometres of transmission lines across the Province, and the Maritime Link connection between the Province and Nova Scotia.
8. The Defendants' dams are built across the natural river system and in conjunction with the higher elevation are used to create runoff for the hydroelectric generating plant.
9. On or about May 16, 2017, the water levels in Churchill River and Mud Lake suddenly and rapidly rose. On the morning of May 17, 2017, the rise in water levels led to flooding of properties located within the impacted areas of the Town of Mud Lake and Happy Valley (the "Properties").
10. The proposed Class consists of two subclasses. An individual (other than the Defendants and their parent companies, affiliates or subsidiaries) who owned or co-owned a Property, or Properties, is hereinafter referred to as an "Owner Class Member". An individual (other than the Defendants and their parent companies, affiliates or subsidiaries) who was living in one of the Properties on May 17, 2017 but does not have any ownership interest in the Property is hereinafter referred to as a "Non-Owner Class Member." Owner and Non-Owner Class Members are collectively referred to as "Class Members", or the "Class".
11. Class Members experienced water levels several feet deep on and in their Properties. As a result of the flooding, Class Members were evacuated by helicopter and by boat on or about May 16 and 17, 2017.

12. Some Class Members were relocated to the military base 5 Wing Goose Bay, and some continued to reside at the base for many months.
13. To date many Class Members remain evacuated and are unsure when they may return to the Properties.
14. The Properties are extensively damaged.
15. The flooding within the impacted communities and residential areas has led to serious and significant property damage, including diminution of property value, and has caused serious physical and psychological harm to the Plaintiff and Class Members. Additionally, the damage as a result of the flooding has rendered homes on the Properties unfit for habitation.
16. The subject of the present action is damage caused by flooding to the Plaintiff's and Class Members' properties (both real and personal) and the serious and severe physical and psychological harm inflicted on the Plaintiff and Class Members as a result.
17. In this action the Plaintiff seeks, on his own behalf and on behalf of the Class, the following:
 - (a) An order requiring the Defendants to take reasonable steps to prevent future flooding of Properties as a result of the Project;
 - (b) To recover damages for the interference with their property rights resulting from the material physical damage caused by the Defendants, including the loss of personal property in and on the Properties;
 - (c) To recover damages for the diminution of the value of the Properties, including the complete or substantial devaluation of the Properties, and the loss of the ability to sell, finance or mortgage the Properties;

- (d) To recover damages for the substantial psychological and personal injuries resulting from the Defendants' actions and/or omissions;
- (e) To recover damages for funding a "Medical Monitoring Program", supervised by the Court, for the purpose of retaining appropriate medical and other experts to review and monitor the health of the Plaintiff and Class Members, and to make recommendations about their treatment; and
- (f) Such other damages as may arise.

II. THE PARTIES

The Plaintiff

18. The Plaintiff, John Cyrille Chiasson, owns the real property located at 172 Mud Lake Road in Happy Valley-Goose Bay. Mr. Chiasson's wife, June Alice Chiasson, also resides at this property and is co-owner of the residence. Mr. Chiasson has owned the property for approximately 22 years. The Plaintiff's address for service is c/o Raymond F. Wagner, Q.C., Wagners, 1869 Upper Water Street, Suite PH301, Halifax, Nova Scotia, B3J 1S9, and the telephone number is 1-902-425-7330.
19. On May 18, 2017, the Plaintiff was evacuated from his property by boat to safety. Mr. Chiasson has since returned to his property, to find extensive damage to the foundation of his residence, and as well to many items of personal property. Since the flood Mr. Chiasson has experienced difficulty sleeping, and fears the flooding will happen again.
20. As a result of the actions and omissions of the Defendants in relation to the Project, the Plaintiff has suffered loss, injury and damages, including: the above-noted damage to the foundation of his real property; diminution of the value of his real property; the need to evacuate and relocate due to the flooding; the loss of and/or extensive damage to personal property including motor vehicles; and psychological and physical harm.

21. The Plaintiff pleads, on his own behalf and on behalf of the Class, that the Defendants' actions and omissions, detailed herein, have caused the Plaintiff and Class Members to suffer losses, injuries and damages.
22. The Plaintiff seeks to certify this action as a class proceeding pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1 (the "Act") on behalf of all persons who are, or were, Owner Class Members or Non-Owner Class Members as of May 17, 2017.
23. The Plaintiff, as the proposed representative plaintiff, does not have any interest adverse to any of the members of the proposed Class. The Plaintiff states that there is an identifiable class that would be fairly and adequately represented by him, that his claim raises common issues, and that a class action is the preferable procedure to resolve the common issues of the Class.

The Defendants

(a) Nalcor Energy

24. The Defendant, Nalcor Energy ("Nalcor"), is a body corporate, incorporated pursuant to section 3(1) of the *Energy Corporation Act*, S.N.L., 2007, c. E-11.01 (the "*Energy Corporation Act*"), with its head office located at 500 Columbus Drive, in St. John's, Newfoundland and Labrador. Nalcor is wholly owned by the Province of Newfoundland and Labrador.
25. There is a complex relationship of corporate partners, subsidiary companies and affiliates responsible for the legal, administrative, management and operational functions of the Project, the details of which are known to the Defendants but which remain unknown to the Plaintiff and Class Members. References hereinafter made to Nalcor are intended to include its servants, agents, contractors, all parent companies, subsidiaries and/or affiliates responsible for, involved in, and with any relation (including without limitation a financial relation) to the development, administration, management, oversight and operation of the Project, including without limitation the below-described entities.

26. Nalcor is wholly responsible for all of the acts and omissions of its predecessor and subsidiary companies, including the companies named herein, as applicable, by virtue of having succeeded or acquired those companies and by virtue of having assumed the obligations of those companies.

(i) *Newfoundland and Labrador Hydro*

27. Newfoundland and Labrador Hydro is a wholly owned subsidiary of Nalcor, a provincial Crown corporation, with its head office located at 500 Columbus Drive, in St. John's, Newfoundland and Labrador. Newfoundland and Labrador Hydro generates, transmits and sells electricity in the Province, Quebec and the north-eastern areas of the United States.

28. Newfoundland and Labrador Hydro holds an interest in the Churchill Falls (Labrador) Corporation Limited and the Lower Churchill Development Corporation, an inactive subsidiary.

(ii) *Churchill Falls (Labrador) Corporation Limited*

29. Churchill Falls (Labrador) Corporation Limited ("CF(L)Co"), known as the Hamilton Falls Power Corporation at the time of its formation in 1958, built and operated the Churchill Falls hydroelectric complex.

30. In 1961, the Government of Newfoundland and Labrador granted the Hamilton Falls Power Corporation a 99-year lease to the 67,340 square kilometer watershed of Upper Churchill. The Hamilton Falls Power Corporation was re-named the Churchill Falls (Labrador) Corporation in 1965.

31. In 1966, CF(L)Co began construction on Churchill Falls Generating Station. The 5,428-megawatt generating station delivered its first kilowatts on December 6, 1971, and its 11 turbines were fully operational by June 1974. That year, the Government of Newfoundland

and Labrador purchased a controlling interest in CF(L)Co from its parent company and turned it over to the Newfoundland and Labrador Power Commission.

32. CF(L)Co is now a subsidiary of Newfoundland and Labrador Hydro.

(iii) *Lower Churchill Project Companies*

33. The Muskrat Falls Corporation, Labrador Transmission Corporation and the Lower Churchill Management Corporation (collectively, the “Lower Churchill Project Companies”) are wholly owned subsidiary companies of Nalcor, and were formed separately under the laws of the Province.
34. The Muskrat Falls Corporation was formed to design, develop, construct, finance and operate the Muskrat Falls hydroelectric facility.
35. The Labrador Transmission Corporation was formed to design, construct, finance, operate and maintain the Labrador Transmission Assets (LTA), which include two transmission lines connecting the Muskrat Falls hydroelectric plant, the Churchill Falls (Labrador) Corporation hydroelectric facility, the Labrador-Island Link and other portions of the transmission system in Labrador.
36. The Lower Churchill Management Corporation was formed to carry out, *inter alia*, project development and management functions for a phase of the Lower Churchill Project, including planning, engineering and design, construction and risk management for various of Nalcor’s other subsidiary corporations.
37. These companies were established to carry on the business of designing, engineering, constructing, owning, financing, operating and maintaining the assets and property of various of Nalcor’s projects, including the Project.

(b) **The Province**

38. The Province is responsible for approving water control structures, including dams, and regulating dam construction and dam safety, pursuant to the *Water Resources Act*, S.N.L. 2002, c. W-4.01 (the “*Water Resources Act*”). These duties of the Province are carried out through the Department of Environment and Conservation (“ENVC”). The ENVC’s role includes receiving dam safety reviews conducted with respect to the Project and ensuring the Defendants’ compliance with the *Water Resources Act*. The minister, through the ENVC, has authority to prevent damage to properties downstream, including the Class Members’ properties, by directing the Defendants to undertake such repairs or alterations to the Project as may be necessary to prevent damage to the Properties.
39. Nalcor is subject to the *Water Resources Act* pursuant to section 17(1) of the *Energy Corporation Act*.
40. The Plaintiff states that the Defendants are responsible, jointly and severally, for the losses, injuries and damage alleged herein.
41. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendants are vicariously liable to the Plaintiff and Class Members for the acts, omissions, deeds, misdeeds and liabilities of their contractors, sub-contractors, agents, representatives, servants, employees, assigns, appointees and partners.
42. The Plaintiff alleges that the actions and omissions of the Defendants, which are more fully detailed below, caused or contributed to the losses, injuries and damage alleged herein and include: choosing not to install or employ control measures on the Project; adding sandbars at the mouth of the Churchill River; manipulating the Churchill River; increasing the water levels above 21.5 meters in the dam’s reservoir; choosing not to install a safety boom; choosing not to measure ice thickness on a regular basis or at all; and choosing not to construct a diversion or drainage ditch between the Churchill River and/or Mud Lake and the Properties to address the significant potential for flooding.

III. CAUSES OF ACTION

a. Nuisance

43. The flooding in May of 2017 caused material physical damage, including extensive water damage, to the interior and exterior of the Properties, as well as the loss of personal property on and in the Properties. It has rendered the land unfit for residential habitation or development. This material physical damage has had a negative impact on the value of the Properties. The material physical damage caused by the Defendants poses a serious risk of actual harm to the health and wellbeing of the Class Members. These detrimental effects are material, actual and readily ascertainable.
44. The Defendants are liable to the Plaintiff and Class Members for having committed the tort of nuisance.
45. No or no adequate measures or safeguards were taken by the Defendants to implement any effective or appropriate methods to prevent the potential of flooding. The Defendants chose not to measure ice thickness on a regular basis or at all. The Defendants chose not to implement groundwater monitoring wells anywhere in the area. They chose not to implement control measures such as foundation cut-offs. The Defendants further chose not to monitor weir flow data to evaluate any significant changes in quantity or quality of overflow from the Project.
46. The material harm caused by the Defendants' actions and omissions is borne directly by the Plaintiff and other Class Members. The actions and omissions of the Defendants caused the Plaintiff and Class Members to suffer a substantial and unreasonable interference with the Properties, including their use, safe habitation, resale, development, and enjoyment.

b. Negligence**i. Nalcor**

47. Nalcor, including its subsidiary companies and affiliates involved in the Project as referenced herein, owe the Plaintiff and Class Members a duty of care in the design,

engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of the Project. Nalcor's operations are conducted in close proximity to the Properties. It is reasonably foreseeable that acts or omissions by Nalcor with respect to the Project could cause significant harm to the Properties.

48. Nalcor owes Class Members the duty to prevent injury or damage to their properties downstream of the Project and to minimize or eliminate any such hazardous conditions.
49. The duty of care owed to Class Members requires Nalcor to take reasonable steps to avoid injury or damage to the Plaintiff's and Class Members' properties that was foreseeable as a result of its negligence. At all material times hereto, the standard of care applicable to Nalcor's activities required it to take reasonable steps to prevent, minimize or eliminate damage to the Class Members' properties.
50. Nalcor has breached this standard of care. Particulars of the negligence of Nalcor includes the following:
 - (a) not installing or employing any or adequate control measures on the Project;
 - (b) constructing, developing, engineering and building sandbars at the mouth of the Churchill River;
 - (c) choosing to manipulate the Churchill River water flow without due regard to downstream residents;
 - (d) permitting and/or ignoring the increase of water levels above 21.5 meters in the dam's reservoir;
 - (e) choosing to install no or no adequate safety booms;
 - (f) not measuring ice thickness on a regular basis or at all;

- (g) inadequately or incompletely monitoring water levels, including by not compiling complete and appropriate weir flow data;
- (h) ignoring or choosing not to comply with the requirement to notify the Province's Department of Environment and Conservation in the case of events hazardous to property downstream, and eliminate or minimize such conditions;
- (i) ignoring or choosing not to comply with the Canadian Dam Association Dam Safety Guidelines;
- (j) choosing not to conduct up to date flood and dam breach studies;
- (k) not constructing an appropriate diversion or drainage ditch between the Churchill River and/or Mud Lake and the Properties to address the risk of potential flooding, and ignoring recommendations to do so;
- (l) choosing not to include written flood handling/operating procedures or guidelines in its operations, maintenance and surveillance documentation; and
- (m) any other such negligence as may arise from the evidence.

51. The damage caused to the Properties is a foreseeable result of Nalcor's negligence. The flooding of the Properties has caused, and continues to cause, damage to the Plaintiff and Class Members as pleaded herein. Nalcor's failure to exercise a sufficient standard of care in relation to the Project has caused or materially contributed to the damages suffered by the Plaintiff and Class Members.

ii. The Province

52. The Province, through the Department of Environment and Conservation, is responsible for approving water works (including dams, ditches and canals) in the Province, and for regulating the construction and safety of such works pursuant to the *Water Resources Act*.

53. The Province has chosen to effect compliance with the *Water Resources Act* by adopting policies that include: (a) requesting and reviewing dam safety reports; (b) reviewing and evaluating seepage flow data; (c) issuing recommendations to mitigate flooding risks; (d) maintaining dam inventory databases; and (e) directing owners or operators of dams or other structures to arrange for safety inspections and to submit reports to the minister and take other necessary steps, including repairs or alterations to the dam or other structures to prevent damage to properties.
54. The Province owes the Class Members a duty to use due care in giving effect to, or putting into operation, its policies concerning the Project. The Province has breached the applicable standard of care.
55. The Province has displayed complete disregard for the adverse effects on the Plaintiff's and Class Members' properties, in breach of the standard of care applicable to it.
56. Particulars of the operational negligence of the Province include the following:
 - (a) inadequate, incomplete and delayed oversight of the Defendants' compliance with the *Water Resources Act*, a result of which the flooding was unmonitored and unmitigated and caused damage to the Properties;
 - (b) inattention to the Project's flooding issue and its foreseeable effect on properties downstream, despite its oversight mandate;
 - (c) choosing not to systematically or thoroughly request and review dam safety review reports from the Defendants, instead letting gaps in mandatory periodic reports go unaddressed;
 - (d) inadequate and incomplete maintenance of its dam inventory database;
 - (e) choosing not to upgrade instrumentation on water monitoring stations, the cost of which is a shared responsibility with the other Defendants; and

(f) any other such negligence as may arise from the evidence.

57. The Plaintiff and Class Members have suffered damages as a result of the Province's actions and omissions, which fell below the standard of care applicable to it. The damages the Plaintiff and Class Members have suffered are a foreseeable consequence of the Province's actions and omissions.

IV. RELIEF SOUGHT

58. The Plaintiff and Class Members have suffered harm and damages, for which the Defendants are jointly and severally liable. The Plaintiff seeks the following relief on his own behalf and on behalf of the Class:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class;
- (b) general damages (including damages for interference with property rights resulting from the material physical damage caused by the Defendants);
- (c) 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);
- (d) special damages for medical expenses and expenses incurred in the diagnosis and treatment of diseases and illness, both physical and psychological, related to the flooding caused by the Defendants;
- (e) damages for the funding of a "Medical Monitoring Program", supervised by the Court, for the purpose of retaining appropriate health and other experts to review

and monitor the health of the Plaintiff and Class Members, and to make recommendations about their treatment;

- (f) pre-judgment interest;
- (g) costs; and
- (h) such further and other relief as this Honourable Court may deem just.

DATED at the City of Halifax, in the Province of Nova Scotia, this 22nd day of November, 2017.



RAYMOND F. WAGNER, Q.C.
Counsel for the Plaintiffs
Wagners
1869 Upper Water Street
Suite PH301, Historic Properties
HALIFAX, NS B3J 1S9
Tel: 902-425-7330
Email: raywagner@wagners.co

TO: THE DEFENDANTS

Nalcor Energy
500 Columbus Drive
P.O.Box 12800
St. John's NL A1B 0C9

Her Majesty the Queen in Right of Newfoundland and Labrador
Department of Justice and Public Safety
Civil Division
Confederation Building
St. John's, NL A1B 4J6

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this *23rd* day of *November*, 2017.

Sgt. Marlene Kenney

COURT OFFICER

2017 7673 CP

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)**

BETWEEN:**JOHN CYRILLE CHIASSON****PLAINTIFF****AND:**

**NALCOR ENERGY and HER MAJESTY THE
QUEEN IN RIGHT OF NEWFOUNDLAND
AND LABRADOR**

DEFENDANTS

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

NOTICE TO DEFENDANTS

You are hereby notified that the Plaintiff may enter judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without further notice to you unless within 10 days after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at Saint John's a defence and unless within the same time a copy of your defence is served upon the Plaintiff or the Plaintiff's solicitor at the Plaintiff's solicitor's stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the Plaintiff or the Plaintiff's solicitor within 10 days from the service of this notice upon you, then this proceeding will be stayed.

TO: THE DEFENDANTS

Nalcor Energy
500 Columbus Drive
P.O.Box 12800
St. John's NL A1B 0C9

Her Majesty the Queen in Right of Newfoundland and Labrador
Department of Justice and Public Safety
Civil Division
Confederation Building
St. John's, NL A1B 4J6