

Form 4.02A

2025



Hfx. No. 5 4 4 8 9 8

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

SHARMAN FELLS, TONY NICKERSON AND NICK HILTON

PLAINTIFFS

- AND -

**HIS MAJESTY THE KING, AS REPRESENTED BY THE ATTORNEY
GENERAL OF CANADA**

DEFENDANT

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

Notice of Action

TO: The Attorney General of Canada
Attention: David Hansen
Department of Justice Canada
Atlantic Regional Office
5251 Duke Street
Suite 1400, Duke Tower
Halifax, NS B3J 1P3

Action has been started against you

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiffs state the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #902-424-4900).

When you file a document, you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiffs designate the following address:

Wagners
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, Nova Scotia
B3J 1S9

Documents delivered to this address are considered received by the plaintiffs on delivery.

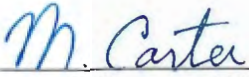
Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature


Signed this 8th day of July, 2025.


For: **Raymond Wagner, KC**
Maddy Carter

Solicitors for the Plaintiffs

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on July 8, 2025.


Prothonotary

JACLYN GLENCROSS
Deputy Prothonotary

Form 4.02B**Statement of Claim****Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28****OVERVIEW**

1. From approximately 1982 to 1997, the Defendant, through Transport Canada, operated a fire-fighting training area at the Yarmouth Airport (the “Airport”). As part of its operations, the Defendant used fire-fighting foam, known as Aqueous Film Forming Foam (“AFFF”), at the fire training area at the Airport (the “Contaminated Site”). AFFF contains PFAS.
2. As a result of the Defendant’s improper use, handling, application, storage and disposal of the AFFF, and the substances to which the AFFF was applied, and as a result of the Defendant’s lack of containment and remediation, PFAS derived from this AFFF use (the “Contaminants”) have been permitted to migrate from the Contaminated Site to the groundwater in an area in Yarmouth County, in the Province of Nova Scotia. This area is known as Arcadia, or Upper Chebogue. It is bounded in the west by the Airport, in the south by Lewis Road, in the east by the Chebogue River, and in the north by Nova Scotia Highway 3. The boundary outlined in Schedule “A” indicates this area (the “Affected Area”).
3. The Plaintiffs and Class Members rely on the groundwater as drinking water, as they draw their water supply from wells, not municipal services. There are detectable levels of the Contaminants in the well water in the Affected Area.
4. The Defendant has admitted that the Contaminated Site is the source of the Contaminants detected in the Affected Area.

5. The Plaintiffs and Class Members have suffered a diminution in value of their properties as a result of the PFAS-contamination of the groundwater in the Affected Area, along with other damages described herein.
6. The Plaintiffs and Class Members have been, and continue to be, exposed to PFAS as a result of the Defendant's conduct. This exposure is hazardous to their health. However, the Plaintiffs and Class Members do not seek recovery of damages in this proceeding for any individual personal injuries that may have been caused by their exposure to this PFAS, the source of which is the Defendant's conduct, nor do they waive such claims.

PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

7. Per- and Polyfluoroalkyl Substances, or PFAS, are a class of thousands of human-made substances including but not limited to Perfluorooctanoic acid (PFOA), Perfluorooctanesulfonic acid (PFOS), Perfluorobutanoic acid (PFBA) and Perfluorobutanesulfonic acid (PFBS). The common characteristic of PFAS is their perfluoroalkyl moiety, or group of atoms. PFAS are extremely stable in the environment and do not break down easily. PFAS are referred to as "Forever Chemicals."
8. PFAS can move readily through water, soil, and air, and can contaminate large areas. Many PFAS have been shown to be transported long distances through the atmosphere, in waterbodies, and within groundwater. As a result, PFAS can be found in drinking water in areas with groundwater wells that are far away from the location where they entered the natural environment or water table.
9. Pathways for exposure of humans to PFAS from AFFF use include direct contact (ingestion, inhalation, and/or dermal) with soil, surface water, groundwater, sediment, dust, and/or other environmental media. Ingestion of impacted drinking water and indirect contact through the consumption of foods (e.g. plants and animals) harvested or hunted from the land are considered significant exposure pathways.

10. PFAS (excluding only certain limited fluoropolymers) constitute a danger to human life or health. Exposure to PFAS has the potential to cause adverse effects to multiple organs and systems, including the liver, kidney, thyroid, immune system, nervous system, metabolism, body weight, reproduction and development.
11. The presence of PFAS in drinking water poses a substantial danger to human health.
12. PFAS-containing AFFF was used in the past as a fire suppressant agent. AFFF was used to fight liquid fuel fires, and to train firefighters to do so, at sites including airports.
13. The dispersive use of AFFF during training and fire events broadly releases PFAS and has greatly contributed to PFAS contaminated sites in Canada. Contaminated sites where PFAS-containing AFFF has been used represent “hot spot” areas where elevated levels of PFAS may be found, posing risks to human health and the environment not just at the site but also off-site, because of migration via surface and groundwater, or by wind transport or overspray of the AFFF product during use.
14. Although PFAS may be ubiquitous in the environment, higher PFAS concentrations have generally been found in proximity to points of release of AFFF; research as far back as 2002 has indicated this. Research as far back as 2011, conducted in the United States, identified firefighters as having on average a higher presence of PFAS in their bodies than the general population. People living in the vicinity of sites contaminated with PFAS, such as those associated with the use of AFFF, may be disproportionately exposed to higher levels of PFAS.
15. The concentrations of PFAS in the Affected Area and at the Contaminated Site have been identified to be above various guidelines levels. The Defendant has acknowledged that PFAS-contamination at the Contaminated Site is the source of the contamination of the Affected Area.

FEDERAL REGULATION OF PFAS IN CANADA

16. The Defendant has long been aware of the hazards of PFAS.
17. For example, in 2006, the Government of Canada adopted a Risk Management Strategy for PFOS, a type of PFAS. It stated that the ultimate environmental objective was to reduce concentrations of PFOS in the Canadian environment to the lowest level possible.
18. Since at least 2007, testing of PFAS concentrations in drinking water has occurred in parts of Canada.
19. Measurement of PFAS in the air has occurred as far back as 2002, with research published as early as 2005.
20. In 2008, the *Perfluorooctane Sulfonate and Its Salts and Certain Other Compounds Regulations* (SOR/2008-178) were enacted in Canada to prohibit the manufacture, import, sale, and use of PFOS, with a limited number of exemptions to allow for the transition to alternatives. Effective December 23, 2016, these Regulations were repealed, with the substances then controlled under the *Prohibition of Certain Toxic Substances Regulations, 2012* (SOR/2012-285).
21. Since at least 2014, scientific research has recommended a preventive and precautionary approach to PFAS.
22. AFFF that contain certain regulated PFAS are currently prohibited in Canada under the *Prohibition of Certain Toxic Substances Regulations, 2012*, with a few exemptions. Since 2016, these exemptions have accommodated the transition to alternatives to PFOA and/or long-chain Perfluorocarboxylic Acids and the residual levels of PFOS that remain in firefighting equipment from historical use of the substance. However, these regulations are currently being revised, and the proposed *Prohibition of Certain Toxic Substances Regulations, 2022* would further restrict these exemptions.

23. In April 2021, the Government of Canada published an intention to move forward with activities to address PFAS as a class, resulting in a draft State of PFAS Report being published in May 2023 and an Updated Draft State of PFAS Report being published in July 2024. These were a joint effort of Health Canada and Environment and Climate Change Canada. A final State of PFAS Report was published in March 2025.
24. The State of PFAS Report provides an overview of the sources, fate, occurrence and potential impacts of PFAS on the environment and human health. It provides that the most efficient method to reduce PFAS concentrations in many receiving media, and the only method to reduce PFAS concentrations in ambient environmental media, continues to be upstream management and minimization.
25. Health Canada has water and soil guidelines addressing PFAS in the environment. Current guidelines are formally still 200 nanograms per litre (200 ng/L). However, in 2023, Health Canada published a new, lower “objective” for PFAS in drinking water, of 30 ng/L. The objective of 30 ng/L applies to the sum of 25 specific PFAS, and serves to reduce potential exposure to PFAS through drinking water while the formal guidelines are being revised.
26. In 2023, Health Canada stated that PFAS concentrations across Canada are generally at levels below the new proposed objective. However, Health Canada acknowledged that concentrations of PFAS in drinking water may be higher at locations where fire-fighting foams containing PFAS were used, such as training sites or where used to put out a fire.

PFAS CONTAMINATION OF THE AFFECTED AREA

27. Prior to October 1997, PFAS-containing AFFF was used, or its use permitted, by the Defendant on the lands of the former fire training area of the Airport, being the Contaminated Site. This area is located on the east and south-east side of the Airport, adjacent to and at higher elevation than a community called Arcadia. The Airport itself is located at 310 Forest Street in Yarmouth, Nova Scotia, and lies approximately east of the Town of Yarmouth.

28. The community of Arcadia, Yarmouth County, Province of Nova Scotia lies south-east of and adjacent to the Contaminated Site.
29. The topography of Arcadia slopes gently from north-west to south-east, away from the Airport and toward the Chebogue River, which in turn flows south into the Atlantic Ocean, east of the Town of Yarmouth. Several small streams, brooks or waterways run from the north-west to south-east across the Affected Area. Topographically, the Affected Area drains from the north-west towards the south-east.
30. Arcadia, with a population of several hundred residents, begins at the crossroads of Nova Scotia Highway 3 and Chebogue Road. The community is bounded on the north by Highway 3, stretches several kilometres south toward Central Chebogue, west toward the Airport and east toward the Chebogue River. The community includes private homes and small businesses located along Chebogue Road, Dunhams Landing Road, Flat Iron Road, Island View Road, and Lewis Road.
31. Residences and small businesses in Arcadia are not connected to the municipal water system. They rely on groundwater wells for water used for all purposes, including drinking water.
32. Homes in Arcadia are typically single-family dwellings, occupied by families supported by fishing, employment in light industry, tourism, public and local services, or by retirees. Small businesses in the area include automotive and equipment repair shops, a small seaplants operation, a community health centre and a long-term care facility.
33. Construction of the Airport began in 1937 by the Defendant, to be used originally as a Royal Canadian Air Force facility. The Airport was used as a civilian airport after 1945, and continued to be owned and operated by the Defendant through a government department (Transport Canada and its predecessors) until October 1, 1997, when ownership was transferred from the Defendant to the Yarmouth Airport Commission Association, a non-profit society directed by the counties of Yarmouth, Argyle and Clare.

34. Terms of the Airport transfer to the Yarmouth Airport Commission Association included the obligation for the Defendant to ensure that the Airport facilities met all environmental regulations.
35. The Airport continues to operate, but air carriers no longer maintain scheduled flights to or from the Airport, which is used primarily for private planes and cargo flights.
36. In or around 1982, as part of the Airport's intended improvements to its firefighting capabilities, it procured a "chemical crash truck" to help extinguish aircraft fires and address oil spills. The truck was built on contract for the Defendant. The truck carried a mixture of water and several hundreds of liters of AFFF. When mixed with water, the AFFF produced a foam that was sprayed to extinguish fires or seal off oil spills.
37. The Airport contained a training area for the Airport's firefighters. The training area largely consisted of a mock-up of a crashed aircraft loaded with fuel. As part of the training exercises, conducted at least weekly, the fuel would be lit, and the firefighters would control and extinguish the fire with the AFFF carried in the truck.
38. Environmental testing performed on the Contaminated Site, on the lands adjacent to it, and within the Affected Area have determined there has been, and continues to be, a migration of Contaminants from the Contaminated Site into the Affected Area, and specifically into the groundwater of the Plaintiffs and Class Members.
39. On or about February 6, 2024, Transport Canada commenced a program of notifying the Plaintiffs and Class Members that it had "conducted sampling for PFAS at the Yarmouth International Airport near the property boundary and ha[d] noted the presence of PFAS in the groundwater in exceedance of Health Canada's current 2019 drinking water guidelines and screening values." The notice letter (the "Notice") states that "It has not been determined whether groundwater from the airport may be able to reach the groundwater at your property, where your well takes its water. As a precautionary measure, Transport Canada is offering to test your drinking water for the presence of PFAS at no cost to you."

40. The Notice also acknowledges that firefighting foams containing PFAS were used by Transport Canada at the Contaminated Site.
41. Recipients of the Notice were encouraged to participate in the drinking water sampling program, which also stated that Transport Canada would provide bottled drinking water at no cost if the results indicated “an exceedance of Health Canada’s proposed PFAS Objective”, stated to be lower than the current 2019 PFAS guidance and screening values under the Guidelines for Canadian Drinking Water Quality.
42. The Plaintiffs do not know when Transport Canada conducted the sampling for PFAS at the Airport, referenced therein, nor if sampling for PFAS at the Airport had occurred on any prior occasion. The Notice did not provide the numerical results of Transport Canada’s sampling for PFAS at the Airport.
43. During the week of February 20, 2024, water samples began to be taken from the points of entry of households within the Affected Area. Information was further gathered from residents respecting their well location and depth, water quality, water treatment, plumbing and septic systems, and regarding water usage in the residence other than drinking.
44. Beginning approximately six weeks later, residents were informed of the results of water testing by the Defendant. Test results for several dozen homes exceeded the Health Canada objective of 30 ng/L, others received test results above 0 ng/L but below 30 ng/L, and some were given test results of 0 ng/L.
45. In or about April 2024, Transport Canada began delivering bottled drinking water to the residents whose drinking water sample results were at or above the PFAS objective. As of the date of filing, said residents of the Affected Area continue to rely on bottled water.
46. On or about December 17, 2024, Transport Canada began contacting recipients of the Notice, seeking their agreement to participate in a general water chemistry sampling program “to determine if there are chemical parameters that are naturally present in your

drinking water that may impact the efficiency of water treatment systems designed to remove PFAS.” It was communicated that while bottled water is used as an immediate measure to protect public health and ensure access to safe drinking water, Transport Canada was undertaking an evaluation of in-home drinking water treatment systems as an alternative measure.

47. During the week of January 6, 2025, water samples were taken for this purpose from the points of entry of households within the Affected Area.
48. On February 14, 2025, residents of additional homes within the Affected Area, within an expanded area from that tested the year before, began to receive letters from the Defendant (Transport Canada).
49. Drinking water testing within this expanded area began the week of February 24, 2025. Information was also gathered from residents respecting their well location and depth, water quality, water treatment, plumbing and septic systems, and regarding water usage in the residence other than drinking.
50. As with their neighbours tested earlier, residents within this expanded area also received test results at or over the objective of 30 ng/L, above 0 ng/L but below 30 ng/L, and of zero ng/L. Bottled water was also offered to residents in this area when sampling results were at or above the PFAS objective.
51. In the Notice and in subsequent communications with residents in the Affected Area, the Defendant has invited Class Members to directly contact a representative of Transport Canada to obtain further information and engage in direct discussions. Representatives of the Defendant have engaged in direct conversations with Class Members about the steps being taken by the Defendant in relation to the PFAS contamination of the Airport and the Affected Area.

52. The Plaintiffs say that prior to February 2024, Class Members did not or could not reasonably know that injury, loss or damage had been caused to their real property, or that such injury, loss or damage was caused by the Defendant, or that such injury, loss or damage was sufficiently serious to warrant a legal proceeding.
53. The full extent and geographic scope of the migration of PFAS from the Contaminated Site to the Affected Area, and potentially beyond the Affected Area, is presently unknown to the Plaintiffs and Class Members.
54. PFAS test results from the same groundwater source may vary at different points in time due to various factors, including dilution, groundwater flow, and interactions with soil. This variability in results underscores the uncertainty experienced by the Plaintiffs and Class Members, regardless of their own individual test results to date. While a Class Member may receive test results of zero ng/L at a discrete point in time, the negative impacts caused by the presence of the Contaminants in the Affected Area are uniform, due to the variability in results, and proximity to neighbors with results in excess of the objective.
55. On or about June 2, 2025, Transport Canada sent a letter (the “June 2025 Notice”) to residents of the Affected Area “to provide an update on Transport Canada’s response to the presence of Per- and polyfluoroalkyl substances (PFAS) in the Yarmouth Area.”
56. According to the June 2025 Notice, at that time 91% of contacted residents had participated in the water sampling program. The June 2025 Notice outlined the continued and next steps Transport Canada was taking. Transport Canada said it would continue to provide bottled water to residents at no cost when sampling results are at or above the “PFAS Objective” (described as 30 ng/L).
57. Consistent with the variability of water sampling results described in paragraph 54 above, Transport Canada said next steps included “[r]esampling of drinking water for homes below the PFAS Objective” in Spring 2025, to occur twice a year. Next steps further included commencement of a “limited drinking water treatment system pilot program” to

begin in Spring 2025. The stated goal of the pilot program was to “ensure that the selected treatment system can successfully reduce the level of PFAS in residential drinking water and to determine the frequency of maintenance of the treatment system.”

58. The June 2025 Notice explained that “if the pilot program is successful, this in-home drinking water treatment system will replace bottled water in homes with exceedances of the PFAS Objective.” The broader installation of treatment systems at homes exceeding the PFAS Objective was anticipated to begin in Fall 2025.

REPRESENTATIVE PLAINTIFFS AND PROPOSED CLASS

59. Ms. Sharman Fells is the joint owner, along with her spouse, of the property at 30 Dunhams Landing Road, Yarmouth, Nova Scotia, B5A 5E9, Property Identification Number (“PID”) 90186156, located in the Affected Area.
60. Ms. Fells has owned the property since February 27, 1975. In October 1975, the construction of her home on the property was completed. Since June 1975, Ms. Fells and her spouse have also owned the adjacent vacant lot, PID 90186164.
61. Ms. Fells received the Notice from Transport Canada.
62. Drinking water was sampled at Ms. Fells’ property at 30 Dunhams Landing Road in February 2024. The results from water sampling conducted in March 2024 indicate a level of PFAS on her property of 75 ng/L.
63. Mr. Tony Mark Nickerson is the joint owner, along with his spouse, of the property at 69 Island View Road, Yarmouth, Nova Scotia, B5A 5E9, PID 03524728, located in the Affected Area.
64. Mr. Nickerson has owned the property since May 9, 1981. Since May 2009, Mr. Nickerson has also jointly owned, with his spouse and child, the adjacent vacant lot, PID 01845888.

65. Mr. Nickerson received the Notice from Transport Canada.
66. Drinking water was sampled at Mr. Nickerson's property at 69 Island View Road in February 2024. The result was a PFAS level of 13.6 ng/L. Drinking water was sampled at Mr. Nickerson's property at 69 Island View Road again in May 2024. The result was a PFAS level of 10.7 ng/L.
67. Mr. Nick Hilton is the joint owner, along with his spouse, of the property at 141 Chebogue Road, Yarmouth, Nova Scotia, B5A 5E9, PID 90186438, located in the Affected Area.
68. Mr. Hilton has owned the property since 2012.
69. Mr. Hilton received the Notice from Transport Canada.
70. Drinking water was sampled at Mr. Hilton's property in March 2024. The result was a PFAS level of 52.1 ng/L.
71. Each of the Plaintiffs is an owner and resident of a property located within the Affected Area. They each rely upon groundwater wells as their water source, including for drinking water.
72. The Plaintiffs seek to certify this action as a class proceeding pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28, on behalf of themselves and on behalf of members of the proposed Class, which is defined as:

All persons who own or did own real property on or after February 6, 2024 in the area within Yarmouth County, Nova Scotia more particularly described as the lands and premises within the boundary demarcated by the line on Schedule "A" (the "**Affected Area**").

73. It is expected that the Affected Area may change as further information about the migration and presence of the Contaminants becomes known.
74. The Plaintiffs, as the Representative Plaintiffs, do not have any interest adverse to any of the Class Members. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by them, that the Plaintiffs' claims raise common issues, and that a class proceeding would be the preferable procedure for the resolution of such common issues.
75. The Plaintiffs and Class Members, all of whom reside or did formerly reside in the Affected Area, use the groundwater as drinking water, as their water supply is from wells, rather than municipal services.
76. The Nova Scotia Real Estate Commission has approved for use by licensed realtors a 'Property Disclosure Statement', to be completed by a seller of real property upon request by a buyer. The Property Disclosure Statement requests information regarding water sources, known problems with water quality, the existence of a water treatment system, and the availability of well water certification documentation. Property Disclosure Statements are widely requested by buyers and required of sellers of real property in Nova Scotia, including by buyers and of sellers within the Affected Area. Since February 2024, property owners within the Affected Area have been informed about the existence of PFAS in drinking water in the Affected Area.
77. The fair market value of the properties owned by the Plaintiffs and Class Members in the Affected Area have been markedly reduced because of the discovery of the presence and extent of PFAS in the groundwater supplying wells within the Affected Area.
78. Due to the presence of unhealthy and unsafe PFAS concentrations in drinking water in the Affected Area, and because there is a stigma caused by the presence of PFAS contamination affecting properties throughout the Affected Area, the properties in the Affected Area have suffered and continue to suffer a diminution in value as a result of the PFAS contamination

in the Affected Area. The Plaintiffs and Class Members claim from the Defendant this diminution in value and marketability as damages.

79. The Plaintiffs' and Class Members' enjoyment of life has been negatively impacted since they have learned of their exposure to these toxic chemicals, because it causes stress and worry that they will become ill as a result of ingesting PFAS. Their enjoyment of life has also been negatively impacted by the need to consume bottled water instead of water more conveniently provided from their faucets. There has been substantial interference with the use and enjoyment of their properties. The diminution of value and marketability of their properties has also contributed to a reduction in their enjoyment of life.
80. The Plaintiffs and Class Members seek to recover, *inter alia*, damages equal to the diminution of value of their properties, general damages further described herein, special damages further described herein, a declaration that the Plaintiffs and Class Members are entitled to have the Defendant remediate the Affected Area or, in the alternative, to recover damages equal to the costs of removing the PFAS from their properties, and a declaration that the Plaintiffs and Class Members are entitled to have the Defendant pay for and oversee the connection of the properties in the Affected Area to the public municipal water system.

THE DEFENDANT

81. The Defendant is named as the Crown representative of the Government of Canada, in relation to the conduct of Transport Canada, a Crown agency, under subsection 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (the "CLPA").
82. Under subsection 3(b)(ii) of the *CLPA*, the Crown is liable for the damages for which, if it were a person, it would be liable in respect of a breach of duty attaching to the ownership, occupation, possession or control of property.
83. The Defendant has admitted that the Airport is the source of the PFAS found in the wells of the Plaintiffs and Class Members.

84. The release of AFFF by the Defendant was done without subsequent capture, containment or other precautions being taken to prevent the migration of PFAS into the groundwater below the Contaminated Site. The Defendant has failed to implement control and remedial measures at that site, in the lands between it and the Affected Area, and in the Affected Area sufficient to prevent the continued migration of PFAS onto, under, into and through the Affected Area, specifically into wells in the Affected Area.

CAUSES OF ACTION

Nuisance

85. The Defendant's action and inactions, including *inter alia* its handling, application, storage and disposal of PFAS-containing AFFF at the Contaminated Site, and the Defendant's lack of timely and effective remedial measures at the Contaminated Site and in the Affected Area, have caused and continue to cause substantial interference with the Plaintiffs' and Class Members' use and enjoyment of their properties.
86. Due to the presence of the Contaminants in wells in the Affected Area, the Plaintiffs and Class Members are unable to obtain safe and healthy potable water directly from the faucets in their properties, instead requiring bottled water to be brought onto the properties for consumption. The inability to directly access safe and healthy drinking water from the existing infrastructure at the properties in the Affected Area due to the presence of PFAS in the Affected Area constitutes a substantial interference with the Plaintiffs' and Class Members' property interests; access to potable water is a basic and fundamental need at a residence.
87. The presence of PFAS in the Affected Area further precludes the Plaintiffs and Class Members from safely engaging in everyday activities, such as bathing in water from their faucets, and gardening activities, including the growing of produce, because of exposure to the hazardous Contaminants.

Strict Liability

88. At all material times, the Defendant used the fire training area at the Airport, the Contaminated Site, for a non-natural or special use, being fire-fighter training that involved the use of PFAS-containing AFFF, bringing with it increased danger to others. It involved the use and release of AFFF, being a PFAS-containing product, a product likely to do mischief if it escaped.
89. The Defendant did not subsequently capture or contain the AFFF, yet it knew or ought to have known that if the Contaminants escaped the Contaminated Site, and were not remediated, they were likely to do mischief to the lands adjacent to the Airport and in the Affected Area. As a result of the Defendant's handling, application, storage and disposal of the Contaminants at the Contaminated Site, PFAS did in fact unintentionally escape onto the adjacent lands, resulting in the PFAS contamination of the Affected Area. This escape was not an intended consequence or result of the Defendant's fire-fighter training activity at the Contaminated Site.
90. As a result of the escape, and lack of reasonable remediation, and the resulting PFAS contamination of the Affected Area, damage and loss to the Plaintiffs and Class Members have been caused and continue to be caused.

Negligence

91. At all material times, the Defendant owed a duty of care to the Plaintiffs and Class Members to take reasonable care in its activities at the Contaminated Site to avoid causing damage and loss to them.
92. It was reasonably foreseeable that the Defendant's conduct with respect to its use, storage, handling, application and disposal of the Contaminants at the Contaminated Site, and its conduct with respect to the implementation of remedial measures, could cause damage and loss to the Plaintiffs and Class Members.

93. The Plaintiffs and Class Members are in a relationship of proximity to the Defendant. The close and direct relationship between the Plaintiffs and Class and the Defendant results from the following circumstances:

- a. The Affected Area is in close geographic proximity to the Contaminated Area, bringing them into a physically close and direct relationship;
- b. The Defendant's use of PFAS-containing AFFF at the Airport, which it owned at the material time, is the source of the Contaminants in the Contaminated Area and in the Affected Area;
- c. The Defendant has directly engaged in communications and interactions with the Plaintiffs and Class Members, creating a reasonable expectation that appropriate remedial action and responsibility will be taken by the Defendant, with resulting reasonable reliance created on the part of the Plaintiffs and Class Members; and
- d. The Defendant's conduct has had and continues to have a direct impact on the Plaintiffs' and Class Members' property rights.

94. None of the Defendant's impugned actions or omissions constitute core policy decisions based on economic, social, or political factors. None were the result of proactive, deliberative decisions based on value judgments considering economic, social or political considerations. Rather, they were the result of *ad hoc* decisions that caused, and failed to mitigate, harm to the Plaintiffs and Class Members.

95. The Defendant breached the standard of care in its use, storage, handling, application and disposal of the Contaminants, and in its remediation of the Contaminated Site and Affected Area, in the following ways:

- a. it chose not to properly use, store, handle, apply and dispose of the Contaminants at the Contaminated Site;
- b. it chose not to adequately train, monitor and supervise its employees, servants and agents in the proper use, storage, handling, application and disposal of the Contaminants;

- c. it chose not to take proper precautions to prevent the migration of the Contaminants into the groundwater below the Contaminated Site;
 - d. it chose not to implement timely, adequate and effective controls, mitigation and remedial measures at the Contaminated Site, the lands adjacent to the Contaminated Site, and the Affected Area, even after the hazards of AFFF were well known;
 - e. it chose not to implement adequate safety policies and procedures at the Contaminated Site; and
 - f. it chose not to provide the Plaintiffs and Class Members with timely, complete and effective warning of the presence and extent of the Contaminants discovered to have migrated via the groundwater from the Contaminated Site to the Affected Area.
96. The Defendant's breaches of the standard of care, as particularized above, have caused the Plaintiffs and Class Members to suffer the damages and losses described herein.

Breach of CEPA

97. At all material times, the Defendant was required under section 95 of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 ("*CEPA*") to take all reasonable measures consistent with the protection of the environment and public safety to remedy the danger to human health caused by the release of AFFF, a toxic substance, and to notify the Plaintiffs and Class Members of such danger, in a timely, complete and effective manner.
98. PFOS (a type of PFAS), its salts and precursors are listed in Part 1 of the list of toxic substances in Schedule 1 of the *CEPA*, and have been since 2006. In Canada, PFOS, PFOA, and LC-PFCAs (and their salts and precursors) are prohibited through regulations under the *CEPA*.
99. There has been a release of PFOS-containing AFFF into the environment. The Defendant owned or had the charge, management or control of the AFFF immediately before its release into the environment, and has caused its release.

100. The Defendant breached its statutory duties, the particulars of which are as follows:
- a. it chose not to implement timely, complete and effective methods to capture and contain the AFFF after its release at the Contaminated Site;
 - b. it chose not to implement timely, complete and effective investigative steps and controls and remedial measures at the Contaminated Site, the lands adjacent to the Contaminated Site and the Affected Area sufficient to prevent the initial and continued migration of PFAS onto, under, into and through the Affected Area, specifically into the drinking water wells in the Affected Area;
 - c. it chose not to provide the Plaintiffs and Class Members with timely, complete and effective warning of the presence and extent of PFAS discovered to have migrated via the groundwater from the Contaminated Site to the Affected Area; and
 - d. it chose not to provide the Plaintiffs and Class Members timely, complete and effective warning of the risks to their health and safety posed by the presence and extent of PFAS discovered to have migrated via the groundwater from the Contaminated Site to the Affected Area.

101. The Defendant's breaches of its duties under the *CEPA* have caused damage and loss to the Plaintiffs and Class Members as described in these pleadings. Under section 40 of the *CEPA*, the Defendant is liable to the Plaintiffs and Class Members for the damage and loss they have suffered as a result of the Defendant's contraventions of the *CEPA*.

RELIEF SOUGHT

102. As a result of the Defendant's conduct described herein, the Plaintiffs and Class Members have experienced a loss in value of their properties caused by the contamination of the groundwater in the Affected Area and the resulting stigma attached to all of the Class Members' properties. All of the properties in the Affected Area now suffer from the stigma that results from the fact that they are contaminated, may be contaminated, are suspected to be contaminated or are at least in close proximity to contaminated properties. The

uncertainties associated with the migration of the Contaminants and with the effectiveness, costs and timing of remediation contribute to the stigma.

103. Additionally, the Plaintiffs and Class Members are seeking the following declaratory relief:

- a. A declaration that the Plaintiffs and Class Members are entitled to have the Defendant implement control and remedial measures at the Contaminated Site in order to prevent the continued migration of PFAS onto, under, into or through the Affected Area;
- b. A declaration that the Plaintiffs and Class Members are entitled to have the Defendant remediate the Affected Area to such a state where the groundwater supplying the wells of the Affected Area is clean and free of the PFAS contamination, or alternatively, a declaration that the Plaintiffs and Class Members are entitled to remediate the properties in the Affected Area to completely eliminate all traces of the resulting PFAS and to have the Defendant pay the cost of their so doing as damages; and
- c. A declaration that the Plaintiffs and Class Members are entitled to have their properties connected to the public municipal water supply.

104. This declaratory relief is appropriate because this Court has jurisdiction to hear the issue in dispute between the parties, the issue is real and not theoretical, the Plaintiffs and Class Members have a genuine interest in its resolution, and the Defendant has an interest in opposing the declaratory relief sought. The declaratory relief being sought will have a practical effect.

105. The Plaintiffs repeat the foregoing paragraphs and seek the following relief:

- a. An Order certifying this proceeding as a class proceeding and appointing the Representative Plaintiffs for the Class;

- b. A declaration that the Defendant is liable to the Plaintiffs and Class in nuisance, strict liability (doctrine of *Rylands v. Fletcher*), negligence and breach of statutory duty under the *CEPA*;
- c. General damages representing *inter alia* interference with the Plaintiffs' and Class Members' use and enjoyment of their properties in the Affected Area;
- d. Special damages representing *inter alia* diminution in value and marketability of the Plaintiffs' and Class Members' properties in the Affected Area, remediation costs, costs of connection to the public municipal water system, monitoring costs, engineering and other professional costs, and financing costs as may necessarily be incurred;
- e. A declaration that the Plaintiffs and Class Members are entitled to have the Defendant implement control and remedial measures at the Contaminated Site in order to prevent the continued migration of PFAS onto, under, into or through the Affected Area;
- f. A declaration that the Plaintiffs and Class Members are entitled to have the Defendant remediate the Affected Area;
- g. In the alternative to the relief claimed in paragraph 105(f) above, a declaration that the Plaintiffs and Class Members are entitled to remediate the properties in the Affected Area to completely eliminate all traces of the resulting PFAS and to have the Defendant pay the cost of their so doing as damages;
- h. A declaration that the Plaintiffs and Class Members are entitled to have the Defendant pay the total cost of, and oversee, the connection of the properties in the Affected Area to the public municipal water system, including, without limitation, the disconnection of the wells and any required internal plumbing;
- i. Pre-judgment and post-judgment interest pursuant to the *Judicature Act*, R.S.N.S. 1989, c. 240;
- j. Costs of this proceeding; and
- k. Such further and other relief as this Honorable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia.

DATED at Halifax, in the Province of Nova Scotia, this 8th day of July, 2025.

M. Carter

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Schedule "A"

