

# OCHAPOWACE FIRST NATION



**OCHAPOWACE**  
N A T I O N

## Status Update for Water Claim

This newsletter provides an update to the Ochapowace First Nation (“Ochapowace”) membership regarding Ochapowace’s efforts to be added to the list of Impacted First Nations. Being added to the list of Impacted First Nations would allow Ochapowace to obtain compensation under the First Nations Drinking Water Advisory Class Action (the “**Water Class Action**”) settlement agreement. The Water Class Action also allows individuals to apply for compensation if they are a member of an Impacted First Nation. We have retained McKercher LLP Barristers & Solicitors (“**McKercher**”) as our legal counsel to assist us in our efforts.

For Ochapowace or our members to benefit from the terms of the settlement agreement, we must succeed in being added to the list of “Impacted First Nations.” An Impacted First Nation means a First Nation whose First Nations lands were subject to a long-term drinking water advisory (which includes boil water, do not consume, and do not use), which lasted at least one (1) year between November 20, 1995, and June 20, 2021.

Ochapowace is not yet considered an Impacted First Nation and by extension is not yet a member of the Water Class Action that can benefit from the settlement. Chief and Council are working with McKercher to prepare the relevant material for our submission to be added as an Impacted First Nation. The submitted materials will be assessed by the administrator of the Water Class Action in accordance with the test established by the court.

Ochapowace will apply to join the Water Class Action before the claim deadline of March 7<sup>th</sup>, 2024. However, we do not expect a decision from the administrator on whether Ochapowace qualifies as an Impacted First Nation until after the deadline date. This means, if Ochapowace is successful in being added to the list of Impacted First Nations, there will be no time for individual Ochapowace members to submit their claim after the administrator’s decision and before the claim deadline of March 7<sup>th</sup>, 2024.

**It is strongly advised that members of Ochapowace make a claim immediately**, and before the claim deadline of March 7, 2024, to have any chance of receiving individual compensation from the Water Class Action. To qualify, you must:

- have been an ordinary resident of Ochapowace at some point between November 20, 1995, and June 20, 2021; and
- have been subject to a water advisory that lasted at least one (1) year (this will coincide with any period your residence was not hooked up to the Water Treatment Plant).

There are three types of claims that can be made: 1) Individual Claim; 2) Specific Injuries Claim; and 3) Representative Claim. **Please review the remainder of this newsletter.**

### Individual Claim Form

Compensation is available for eligible individuals that were ordinarily a resident and lived on an Impacted First Nation during a long-term drinking water advisory that lasted continuously for at least one (1) year between November 20, 1995, and June 20, 2021.

To make a claim you must fill out and submit the individual claim form found at this link: <https://firstnationsdrinkingwater.ca/index.php/claim-forms/>. The form will prompt you to check if Ochapowace is listed among Impacted First Nations or if your name appears on a Band Council

February 2024

### Water Class Action

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Confirmation List. Neither option will apply to you as Ochapowace has not compiled a Band Council Confirmation List due to limited records and there has not been a determination regarding our status as an Impacted First Nation yet.

You must provide your name, key information about yourself, payment information, the times and locations that you were living on Ochapowace or another Impacted First Nation, you will acknowledge and agree to certain key terms by signing the authorization form, and you must have someone over the age of eighteen (18) witness the signature. Please adhere to the checklist.

Since Ochapowace will not be listed as an Impacted First Nation, **you must include Ochapowace as an 'Other First Nation' when listing your period of residence.**

The dates of the water advisory will coincide with the period of time your home was not hooked up to the Water Treatment Plant. Please note that the Water treatment plant was opened in 1994 and expanded on       , 2006.

It is important to note that due to limitations periods, individuals born before November 20, 1995, are eligible for compensation only for events that happened after November 20, 2013, to June 20, 2021. If it is determined that Ochapowace's water advisory ended before November 20, 2013, you would not be eligible. There are exceptions if you were unable to bring a claim before November 20, 2013, due to a physical, mental, or psychological condition.

### Specific Injuries

For those who have suffered additional harms associated to serious and specific injuries caused by unclean water, please fill out Part 4 of the Individual Claim Form. There are two (2) levels of compensation which are associated to harm: a) Level 1 Harm (minimum of one month of consecutive days); and b) Level 2 Harm (minimum one year of consecutive days). To be eligible for either, you **must** meet all the criteria listed in the Individual Claim Form.

You must provide the type of harm you suffered, the medical diagnosis, your symptoms, name of health care practitioner, type of practitioner, the type of harm, and provide a sworn declaration signed by a guarantor (Chief, Councillor, elected official, Notary Public, Commissioner of Oaths, lawyer, doctor, accountant, police officer, or anyone else listed on the list on the FAQ section of the [www.firstnationsdrinkingwater.ca](http://www.firstnationsdrinkingwater.ca) website), and copy of government issued ID. Please observe the checklist.

You are not required to provide supporting documentation or testimony. If you want to do so, when you submit your claim, you may provide: a) medical records of the injury and cause; b) other records including written records, photographs, and videos of the injury and its causes; c) a written statement; or d) oral testimony.

### Representative Claim Form

If you are applying as a representative on behalf of a person with a disability, a loved one who has died, or a minor child, you must fill out and submit the representative claim form found at this link: <https://firstnationsdrinkingwater.ca/index.php/claim-forms/>.

The Representative Claim Form will ask that you provide the name and key information for the person you are claiming for, key information about yourself, payment information, the times and locations the person lived on Ochapowace or another Impacted First Nation, you will acknowledge and agree to certain key terms by signing the authorization form, and you must have someone over the age of eighteen (18) witness the signature. Please observe the checklist.

Since Ochapowace will not be listed as an Impacted First Nation, you must include Ochapowace as an 'Other First Nation' when listing your period of residence.

If you are claiming a specific injury on behalf of another person, you must fill out the same section as described above. You must also ensure it is properly sworn and the declaration is witnessed by the guarantor.

If you are claiming on behalf of a person with a disability, Fill out Part 6.

The person you are claiming for must meet the definition of a 'Person Under Disability' and you must be the personal representative that has been appointed pursuant to provincial or federal legislation to manage their property or finances. **You must be legally appointed.**

You must provide information regarding yourself as the representative, relationship to the claimant, information about their incapacity, and provide documentation proving you have been legally appointed such as a power of attorney, protection mandate, or provincial or territorial court appointment order, a copy of your government issued ID, and their government issued ID.

If you are claiming on behalf of a minor child, Fill out Part 7.

The person must meet the definition of a 'minor child' (generally under the age of 18 years old) and you must be that minor child's personal representative [1 - you are the parent, 2 - you are not parent but you have custody over the child, or 3 - you are not the parent but have legal guardianship over the child's property], you must provide a copy of your government issued ID, the child's government issued ID, and documentation showing you are eligible to be the minor child's representative.

If multiple people file a claim as the personal representative of the same minor child, additional documentation will be required. This may jeopardize your claim as you may not have time to unless the administrator determines otherwise.

If you are claiming on behalf of a minor child, you must fill out and submit the Saskatchewan Minor Attestation Form, regarding where the money will go, found at this link: <https://firstnationsdrinkingwater.ca/index.php/claim-forms/>.

If you are claiming on behalf of a person who died with an estate, Fill out Part 8.

If the person died on or after November 20, 2017, their estate is eligible to make a claim. If they died prior to November 20, 2017, they are not eligible due to limitation periods.

You must have been named as the executor of their estate or appointed to represent the estate by 1) a provincial or Territorial court order; 2) by the Government of Canada Administration Letter or; 3) the First Nation where the deceased person resided. You must provide the names of the estate representatives, provide copy of your government issued ID, evidence of the date the

person died, including their name, and copy of the document appointing you as estate representative.

[If you are claiming on behalf of a person who died without an estate, Fill out Part 9.](#)

If you want to make a claim for someone's who has died but no one has been appointed to represent their estate, you must provide a declaration, identify your relationship to the person, provide your name, list other living family members, attach a copy of your government issued ID, attach a document showing the date the person died and their name, and evidence of your relationship to the deceased person.

## General Advice on Claim Forms

**You must read each claim form carefully.** Review and follow the checklists. You must ensure you are providing all information requested. The information provided in the claim forms or on the First Nations Drinking Water website trumps any information provided in this newsletter.

Once you have completed your claim form, you may submit in one of the following ways:

*By Regular Mail:*

Drinking Water Class Action Claims Administrator, c/o Deloitte  
PO BOX 160 STN Adelaide  
Toronto, ON, M5C 2J2, Canada

*By Email:*

[firstnationswater@deloitte.ca](mailto:firstnationswater@deloitte.ca)

*By Fax:*

(647) 738-5206

## Background of the Water Class Action

On October 11, 2019, Curve Lake First Nation ("**Curve Lake**"), Chief Emily Whetung, Neskantaga First Nation ("**Neskantaga**"), and former Chief Christopher Moonias filed a statement of claim in the Federal Court (the "**Federal Action**"). On November 20, 2019, Tataskweyak Cree Nation ("**Tataskweyak**") and Chief Doreen Spence filed a statement of claim in the Manitoba Court of Queen's Bench ("**Manitoba Action**", and together with the Federal Action, the ("**Actions**"). After the Actions were certified, the Courts appointed these individuals and First Nations as representative plaintiffs ("**Representative Plaintiffs**") for the class action.

A class action is a lawsuit where a group of people collectively bring a legal claim against a defendant or defendants. The group is usually referred to as a "class", and they will typically share common legal issues, injuries, or share in a common harm.

The Representative Plaintiffs negotiated with Canada, and on December 22, 2021, the Courts approved a settlement agreement (the "**Settlement Agreement**"), between Canada and the Representative Plaintiffs worth approximately eight billion dollars (\$8,000,000,000.00) for First Nations that meet the class and criteria set out in the Settlement Agreement.

In his December 22, 2021, judgment, Chief Justice Glenn Joyal of the Manitoba Court of King's Bench explained that the Settlement Agreement compensates First Nation individuals who have lived under a drinking water advisory for a year or more and provides First Nations with compensation and assistance in securing safe drinking water through future infrastructure funding. Chief Justice Joyal indicates that the Settlement Agreement is historic, as it is the first settlement to tackle the problem of drinking water advisories on First Nation reserves.

Chief Justice Joyal describes the nature of drinking water advisories on First Nations in Canada. He explains that authorities issue drinking water advisories when testing indicates that the water supply is or may be unsafe. There are three (3) types of drinking water advisories: boil before use, do not consume, and do not use. Long-term drinking water advisories are those that have been in place for more than one (1) year. The Settlement Agreement only applies to individuals residing on First Nations that have been subject to a long-term drinking water advisory and to those First Nation communities.

Chief Justice Joyal canvasses the affidavit evidence provided by the Representative Plaintiffs and other Class Members in support of the Settlement Agreement. The affidavits explained the importance of safe water for the physical, spiritual, emotional, psychological, cultural, or economic health of individuals and communities. Elders provided evidence emphasizing the role water plays in ceremony and how contaminated water results in the breakdown of knowledge transmission. Class Members also discussed the tragic relationship between poor drinking water, mental health, and youth suicide. Likewise, they noted that contaminated water has forced members to relocate, relocation which perpetuates the history of displacement of Indigenous peoples from their lands and the separation of families. Each of the Representative Plaintiffs gave additional evidence indicating that they often have rashes, skin conditions, they have contracted E.coli, the need to have to purchase bottled water and the resulting economic hardships, stomach infections, cancer diagnosis, and many other impacts.

The statement of claims for the Actions alleged that Canada is responsible for the establishment of drinking water systems on reserves and that Canada has chronically underfunded First Nations' water needs, that Canada failed to ensure that Class Members have access to potable water of adequate quality and quantity, and that they breached various legal duties. They submitted that the class members are denied adequate access to clean drinking water; unable to adequately wash and care for themselves and their families; and are prevented from performing traditional ceremonies and spiritual practices. They further submitted that Canada has always taken responsibility for water systems on reserves but has never provided adequate funding and that they knew it was inadequate.

Chief Justice Joyal goes on to summarize the Settlement Agreement and indicates that it contemplates and ensures both retrospective and prospective compensation. The Settlement Agreement provides First Nations and individuals resident on those First Nations with compensation for lack of regular access to safe drinking water. The Settlement Agreement also commits Canada to work with First Nations to provide access to clean water and requires Canada to construct and fund appropriate water systems for First Nation communities.

## Next Steps

Chief and Council has been working with McKercher to assemble the submission documents. The Administrator has requested that we submit our package by Friday February 23, 2024.

McKercher will submit the submission package by Friday February 23, 2024. However, it is unclear when the administrator will determine whether Ochapowace is an Impacted First Nation. If Ochapowace is added to the list of Impacted First Nations, you may be eligible for individual compensation so long as you submitted a claim form before March 7, 2024. If Ochapowace is not added to the list of Impacted First Nations, no member of Ochapowace will be eligible for compensation under the Water Class Action.

