

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**GRASSY NARROWS FIRST NATION**

Plaintiff

- and -

**THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT  
OF ONTARIO**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date

Issued by

Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue  
Toronto, ON M5G 1R7

**TO: HIS MAJESTY THE KING IN RIGHT OF CANADA**  
**c/o Attorney General of Canada**  
Ontario Regional Office – Department of Justice Canada  
120 Adelaide Street West – Suite #400  
Toronto, Ontario  
M5H 1T1

[agc\\_pgc\\_toronto.lead-dceej@justice.gc.ca](mailto:agc_pgc_toronto.lead-dceej@justice.gc.ca)

Lawyers for the Defendant

**AND TO: HIS MAJESTY THE KING IN RIGHT OF ONTARIO**  
**c/o Attorney General of Ontario**  
Crown Law Office - Civil  
720 Bay Street, 8th Floor  
Toronto ON M7A 2S9  
Tel: 416-326-4008

[cloc.reception@ontario.ca](mailto:cloc.reception@ontario.ca)

Lawyers for the Defendant

## CLAIM

### A. Relief sought

1. Grassy Narrows First Nation (“**Grassy Narrows**”), also known as Asubpeeschoseewagong Anishinabek, seeks the following relief:
  - a) Declaration that the provincial and/or federal Crown owe legal and/or equitable and/or fiduciary duties and/or obligations arising from the honour of the Crown (collectively, “**Duties**”) to protect Grassy Narrows’ rights under Treaty 3, including from:
    - i) the effects of mercury and other Pollutants (as defined below) discharged by the pulp and paper mill in Dryden, Ontario, into the English and Wabigoon River System (as defined below) (the “**Contamination**”); and
    - ii) the cumulative impacts of Industry and Land Use (as defined below);
  - b) Declaration that the provincial and/or federal Crown have breached the Duties owed to Grassy Narrows with respect to their rights under Treaty 3 (“**Treaty Rights**”);
  - c) Declaration that the provincial and/or federal Crown have unjustifiably infringed the rights of Grassy Narrows under Treaty 3 contrary to s. 35 of the *Constitution Act, 1982* by:
    - i) failing to protect against and/or remedy the effects of the Contamination on Grassy Narrows’ Treaty Rights, including on Grassy Narrows’ cultural security and way of life; and
    - ii) permitting the cumulative effects of Industry and Land Use to deprive Grassy Narrows of the meaningful exercise of their Treaty Rights;
  - d) Injunctive and/or declaratory relief, including on an interlocutory basis,
    - i) prohibiting the provincial and/or federal Crown from authorizing, undertaking, or permitting the continuation of Industry and Land Use, including Contamination, in, around, or upstream from Grassy Narrows’ Territory in such a manner as to further breach the Duties owed by the Crown to Grassy Narrows, or unjustifiably infringe Grassy Narrows’ Treaty Rights, and/or without their free, prior, and informed consent;

- ii) requiring the provincial and/or federal Crown to take such actions, including regulatory actions, as are required to cease the breach of Duties, or unjustified infringement, including but not limited to:
  - remediating and protecting the River System, and Grassy Narrows Territory, and the fish and wildlife and their habitats therein in a timely manner in collaboration with Grassy Narrows;
  - establishing and implementing, with Grassy Narrows, timely enforceable mechanisms to assess, manage, abate, and/or prevent cumulative impacts of the Contamination and Industry and Land Use so as to ensure and protect Grassy Narrows' Treaty Rights and/or inherent self-determination and governance rights in the future;
  - respecting Grassy Narrows' Indigenous laws with respect to their Territory, including the Grassy Narrows Indigenous Protected Area; and/or
  - establishing and implementing, with Grassy Narrows, timely and enforceable mechanisms to harmonize Crown law and Grassy Narrows law with respect to Grassy Narrows Territory, including the Grassy Narrows Indigenous Protected Area; and
- iii) requiring the provincial and/or federal Crown to fulfill their Duties to Grassy Narrows;
- e) Negotiating with Grassy Narrows in good faith to establish and implement, with Grassy Narrows, timely and enforceable mechanisms to increase Grassy Narrows' control and ownership over the lands and resources which they depend upon for the exercise of their Treaty Rights;
- f) Compensation for breach of one or more of the Crown's Duties and/or unjustified infringement, and/or damages assessed in a manner akin to equitable compensation or otherwise;
- g) Punitive damages;
- h) Interest;
- i) Costs; and

- j) Such further and other relief as this Honourable Court may deem just and appropriate.

**B. Facts**

**1. The Parties**

**(a) *The plaintiff***

2. Grassy Narrows is an Anishinaabe nation with traditional territory in northwestern Ontario (the “**Territory**”).
3. Grassy Narrows is an Aboriginal people within the meaning of s. 35(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act (UK), 1982*, c. 11, and a band within the meaning of the *Indian Act*, RSC 1985 c. I-5.
4. Grassy Narrows holds cognizable legal interests in its Territory, including in its reserve lands and waters within and adjacent thereto.
5. Grassy Narrows people engage in Anishinaabe practices on the Territory, use their Indigenous language of Anishinaabemowin, and have laws, cultural practices, and beliefs in protecting the lands and waters in their Territory that sustain their way of life. Grassy Narrows people have long occupied and cared for their Territory and relied on the River System for their sustenance, economic livelihoods, and social and ceremonial practices.
6. Grassy Narrows people follow the teachings of their Elders to be responsible for the Territory and *Manachitootaa Aki* [to protect the land]. They are the Indigenous guardians of the Territory.
7. Grassy Narrows’ practices of hunting, trapping, fishing, gathering medicines and foodstuffs, and trading pre-exist European settler contact and the signing of Treaty 3. They have been central to the Grassy Narrows Anishinaabe way of life since time immemorial. These resource-based practices provide for Grassy Narrows people, their families and community. They have always been, as they continue to be, essential to Grassy Narrows people’s sense of self and identity, culture, and social and economic wellbeing.
8. Grassy Narrows has approximately 1,700 members, of which approximately 1,000 live on the English River No. 21 reserve (the “**Reserve**”), which is on the English River. The Reserve is approximately 4,145 hectares and situated approximately 90 kilometers northeast of Kenora, Ontario.

**(b) *The defendant Ontario***

9. His Majesty the King in Right of the Province of Ontario (“**Ontario**”) is named in these proceedings pursuant to the *Crown Liability and Proceedings Act, 2019*, SO 2019, c. 7, Sch. 17, and, pursuant to the *Constitution Act, 1867*, is the emanation of the Crown that purports to hold the beneficial interest to the lands and waters material to the issues in this proceeding.
10. Pursuant to ss. 92(5), 92(13), 92A, and 109 of the *Constitution Act, 1867*, Ontario purports to have legislative jurisdiction and power to manage and regulate: (i) the lands and waters material to the issues in this proceeding; and (ii) “non-renewable natural resources, forestry resources and electrical energy” on or under those lands and waters, subject to Grassy Narrows’ rights, including inherent and Aboriginal rights, the promises made to Grassy Narrows pursuant to Treaty 3, and the requirements and obligations associated with s. 35 of the *Constitution Act, 1982*.

**(c) *The defendant Canada***

11. The Attorney General of Canada (“**Canada**”) is the representative of His Majesty the King in Right of Canada, pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50.
12. Canada purports to exercise legislative jurisdiction in respect of “Indians, and Lands reserved for the Indians” and “Inland Fisheries” pursuant to ss. 91(24) and 91(12) of the *Constitution Act, 1867*, and other matters, subject to Grassy Narrows’ rights, including inherent and Aboriginal rights, the promises made to Grassy Narrows pursuant to Treaty 3, and the requirements and obligations associated with s. 35 of the *Constitution Act, 1982*.

**(d) *Both Ontario and Canada***

13. Both Ontario and Canada are emanations of the Crown and:
  - a) are responsible for upholding promises the Crown made to the Anishinaabe in entering into Treaty 3;
  - b) owed and continue to owe Duties to Grassy Narrows at all material times;
  - c) are responsible for upholding the recognition and affirmation of Grassy Narrows’ existing Treaty Rights pursuant to s. 35 of the *Constitution Act, 1982* and for not unjustifiably infringing those Treaty Rights.

14. Reference in this Statement of Claim to “the Crown” includes either or both of the defendants to the extent of their respective obligations to Grassy Narrows except where otherwise stated.

## **2. The Treaty**

15. Grassy Narrows exercises rights under Treaty 3 (the “**Treaty**”).
16. The Treaty was signed on October 3, 1873, by a group of Anishinaabe Chiefs on behalf of their communities and by treaty commissioners Alex Morris, Lieutenant Governor of the province of Manitoba and the Northwest Territories; Indian Commissioner Joseph Provencher; and Simon Dawson, on behalf of the Crown.
17. Treaty 3 covers approximately 55,000 square miles (142,449 km<sup>2</sup>) in northwestern Ontario and eastern Manitoba. Since 1912, all of the Treaty 3 area, except for a small portion that lies within the borders of Manitoba, has been within the borders of Ontario.
18. The Treaty was negotiated against the historical backdrop of British Columbia agreeing to join Confederation on the condition that Canada build a transcontinental railway. The right-of-way for that proposed railway ran along a route known as the “Dawson Route”, in what is now known as northwestern Ontario and eastern Manitoba. Travelers using that route were required to traverse lands and waters held and controlled by the Anishinaabe.
19. In 1873, the Anishinaabe Chiefs who negotiated Treaty 3 with the Crown treaty commissioners were focused on protecting the Anishinaabe way of life for the present and coming generations. They were only prepared to treat if the Crown promised that the Anishinaabe way of life would continue in the future as in the past. They were in no rush to make a deal and were unwilling to compromise their traditional fishing, hunting, trapping, food and medicine gathering, trading, and ceremonial practices.
20. The Anishinaabe Chiefs’ adherence to the Treaty was contingent on the Crown’s promise that they would retain their way of life, including their traditional fishing, hunting, trapping, and rice harvesting activities as before.

### **(a) Grassy Narrows’ Treaty Rights**

21. Treaty 3 created reciprocal rights and obligations on the part of the Crown and Grassy Narrows. The Crown required and sought the consent of the Anishinaabe to:  
  
(a) build a transcontinental railway and to establish an immigration travel route along the “Dawson Route”; and

(b) open up for settlement parts of the tract of land that had been continuously owned, occupied, and controlled by the Anishinaabe since time immemorial.

22. The consent sought by the Crown was provided by the Anishinaabe in exchange for solemn promises in favour of the Anishinaabe, through the Treaty Commissioners, in the course of the negotiation and conclusion of Treaty 3, including:
  - a) Anishinaabe harvesting rights would be protected by the Treaty “so long as the sun shone and the waters flowed” and would continue as they had in the past. The Crown provided express, solemn assurances that the Anishinaabe would be free as before to hunt, fish, trap, and harvest throughout the Treaty 3 area as was the case before the Treaty was entered into;
  - b) apart from the Dawson Route, there would not be increasing and cumulative negative impacts on their harvesting or serious interference with their way of life;
  - c) the same means of earning a livelihood and patterns of economic activity would continue after Treaty 3 as the Anishinaabe exercised and engaged in before it, and the Anishinaabe would be expected to continue to make use of these means (collectively, the “**Treaty Rights**”).

**(b) *The Crown’s Treaty obligations***

23. Treaty 3 is a treaty within the meaning of s. 35 of the *Constitution Act, 1982*, and Grassy Narrows’ Treaty Rights are constitutional rights recognized and affirmed by s. 35(1).
24. Pursuant to the Treaty and the honour of the Crown, the Crown’s obligations to Grassy Narrows include:
  - a) to neither unjustifiably infringe, nor permit the unjustifiable infringement of, Grassy Narrows’ meaningful exercise of Treaty Rights, means of earning a livelihood, traditional activities, way of life and cultural security;
  - b) to exercise any rights of the Crown under the Treaty, including any purported right to regulate and/or use the lands and waters relied upon by Grassy Narrows or to take up lands and waters, in a manner that upholds and protects the Treaty Rights and the honour of the Crown, including acting consistently with (a);
  - c) to exercise any purported power to manage and protect the lands, waters, and resources in Grassy Narrows’ Territory in such a way that:
    - i) respects Grassy Narrows’ Treaty Rights and minimizes impacts thereto; and



- ii) ensures Grassy Narrows can continue to meaningfully exercise their Treaty Rights;
- d) to act with diligence and/or to the standard of a fiduciary in fulfilling its obligations; and
- e) to consult and/or collaborate with Grassy Narrows with respect to the exercise of Crown powers.

**(c) *English and Wabigoon River System***

- 25. The English and Wabigoon River system flows through Grassy Narrows' Territory. Grassy Narrows has long relied on the fish and other resources of this river system, including its tributaries and lakes, including for sustenance, livelihood, spiritual, cultural, and economic activities.
- 26. The Wabigoon River flows out of Wabigoon Lake near the City of Dryden. It flows downstream through the town of Dryden, past the pulp mill described further below, then continues for approximately 85 kilometers until it flows into and through Clay Lake.
- 27. About 150 kilometers downstream from Dryden, the Wabigoon River joins the English River system at Ball Lake and continues as the English River. Grassy Narrows' Reserve, English River No. 21, is located on the banks of the English River downstream of the confluence of the Wabigoon and English Rivers.
- 28. The river system described above, including related ecosystems, tributaries, wetlands, riparian areas, and riverbanks, is referred to herein as the "**English and Wabigoon River System**" or the "**River System**".

**3. Industry and Land Use on, near, or upstream from Grassy Narrows' Territory and Contamination of the River System**

**(a) *Crown authorizations***

- 29. For decades, the Crown has authorized and/or regulated Crown and/or third party Industry and Land Use that adversely impacted and continues to adversely impact Grassy Narrows' Territory and Treaty Rights, including:
  - a) Dryden Mill operations, including authorizing and/or regulating, or otherwise allowing/failing to prevent, the Contamination, including mercury and other Pollutants on or near the mill site, the discharge of effluent including Pollutants into the River System, and artificial high-water flow events;

- b) industrial logging and related activities such as scarification, roads, fire suppression, herbicide and pesticide applications, and silviculture;
- c) mining tenures, exploration and development; including but not limited to a significant increase in staking of claims in or affecting Grassy Narrows' Territory;
- d) dams, diversions, hydroelectric transmission lines, and hydroelectric generating stations;
- e) air pollution;
- f) potential nuclear waste disposal sites;
- g) road construction and maintenance and other forms of encroachment;
- h) hunting by individuals who are not Treaty 3 beneficiaries without adequately monitoring the health and abundance of wildlife populations in the Territory, and/or without ensuring sufficient abundance of healthy wildlife populations to support the meaningful exercise of Grassy Narrows' Treaty Rights;
- i) water use and fisheries, including issuance of commercial and sport fishing licenses, quotas, seasons, consumption guidelines, boat caches, lodge permits, and control of invasive species; and
- j) other activities that adversely impact Grassy Narrows' land, water, and air, and Treaty Rights. (Collectively, the "**Industry and Land Use**").

**(b) *Hydro Damming of River System***

- 30. In 1957 and 1958, Ontario Hydro completed two major hydroelectric projects on the English River. Those projects included: (i) the diversion of water from the Albany River to the English River watershed (the Root River diversion); and (ii) the construction of the Caribou Falls generating station, downstream from the prior location of Grassy Narrows' Reserve.
- 31. Before these projects were completed, the English River's natural flow regime had already been altered by the Lac Seul storage dam, which was built in 1929, the Ear Falls generating stations, whose units were installed between 1929 and 1948, and the Manitou Falls dam and generating station, which were built in 1956 upstream from Grassy Narrows on the English River.

32. Other dams were constructed in the Wabigoon River watershed including the Dryden Dam, Wainwright Dam, two dams on the Eagle River, and the Snowshoe Dam in another tributary of the English River, the Chukuni River.
33. These diversion, dam, and hydroelectric projects have affected Grassy Narrows' ability to exercise its Treaty Rights, including by artificially raising and lowering water levels, impacting mercury cycling, flooding land, and impacting resources in Grassy Narrows' Territory.

*(c) Dryden Mill discharge of mercury and other Pollutants Prior to 1985*

34. In 1913, the Dryden Timber and Power Company opened a pulp and paper mill in Dryden, Ontario.
35. In 1962, the mill was owned by Reed Ltd ("**Reed**"). Reed constructed a chlor-alkali plant adjacent to the mill and operated to produce pulp and paper at the mill (together, along with associated properties and facilities created over the years, the "**Dryden Mill**"). The ownership of the Dryden Mill has changed over the years.
36. At all material times the Dryden Mill operated under the regulatory authority of the governments of Ontario and/or Canada.
37. The Dryden Mill discharged various substances into the Wabigoon River, including toxins such as mercury, phenols, chlorinated compounds (eg, dioxins and furans), and other substances, including sulphates and organic waste, such as wood bark, organic carbon, pulp and sanitary waste, as well as caused other alterations of water quality (collectively, some or all of these are referred to as "**Pollutants**").
38. The Dryden Mill discharged approximately 9,000 kg of inorganic mercury into the Wabigoon River from 1962 until October 1970.
39. In or about 1970 the Province of Ontario required a change of operating parameters with respect to the discharge of mercury.
40. From about 1970 to 1975 the Dryden Mill continued to discharge significant amounts of mercury albeit at a purported decreased rate.
41. In or about 1975 the Dryden Mill purported to cease the use of mercury in its industrial process, although it continued to discharge some mercury, including approximately 10 kg per year well into the 1980s. The Dryden Mill continues to this day to discharge other Pollutants into the River.

42. Inorganic mercury is a metal toxic to humans if sufficient quantities are ingested, or fumes inhaled. Mercury can combine with organic molecules to form ethyl- or methylmercury, which increases the availability and toxicity of the metal to humans and wildlife.
43. When mercury was discharged into the River System, it was transported downstream and, over time, it transferred from the water column to sediments and into food chains. Mercury entered, and continues to enter, fish and is bioaccumulated in fish. Mercury poses serious health harms to humans who consume contaminated fish and particularly to Grassy Narrows people, who are subsistence fishers.

**(d) *The Crown's knowledge of the Contamination***

44. At all material times, the Crown was aware that effluent containing mercury and other Pollutants was being discharged into the River System from the Dryden Mill.
45. Before and by no later than 1969, Ontario and Canada were also aware that:
  - a) mercury was accumulating in fish in the River System downstream of the Dryden Mill;
  - b) consuming fish with high levels of mercury was harmful to human health; and
  - c) Grassy Narrows consumed and relied on fish in the River System.
46. In or about 1970, Ontario ordered all companies in Ontario to stop discharging effluent containing mercury.
47. In or about 1970, Ontario banned all commercial fishing on the River System downstream of Dryden.
48. Ontario and Canada conducted various studies and monitoring during the 1970s, 1980s, and into the 1990s to:
  - a) ascertain the level of mercury and other Pollutants in the mill effluent and in the River System;
  - b) determine whether mercury levels were decreasing;
  - c) assess what options were available to remediate the River System; and/or
  - d) measure the health effects upon Grassy Narrows members and community.
49. On or around June 5, 1978, Ontario and Canada entered into the *Canada-Ontario Agreement Respecting Mercury Pollution in the Wabigoon-English River System* which

established the Wabigoon-English Mercury Study Steering Committee composed of Federal and Provincial scientists (the “**Steering Committee**”) to assess and recommend remedial measures for the River System.

50. By or in or about 1981, the Crown had knowledge that sediments in the River System provided a toxic source of mercury for up to 100 years if left untreated without active remediation measures, and in a contaminated state.
51. By at least the 1980s, the Crown knew or ought to have known that sulphates and organic waste contribute to the methylation of mercury in aquatic ecosystems.
52. In or around February 1984, the Steering Committee completed a technical report entitled *Mercury Pollution in the Wabigoon-English River System of Northwestern Ontario, and Possible Remedial Measures*. As the Crown was aware, the report confirmed that, although mercury pollution levels were gradually decreasing in the River System, mercury levels in fish, in the absence of intervention, would remain “unacceptably high for many years.”
53. The Steering Committee recommended that the Crown actively remediate the River System and conduct further studies of remediation methods with the objective of ameliorating mercury pollution levels in the River System.
54. Ontario and Canada formed a Senior Federal-Provincial Technical Committee composed of public servants (the “**Senior Technical Committee**”) to review the Steering Committee recommendations.
55. At all material times the Crown knew or ought to have known of Grassy Narrows’ reliance upon the fish in the River System for the carrying out of their way of life protected under Treaty 3, and of the serious adverse impacts and harm upon their rights, health and well-being, and interests resulting from the Contamination of the River System.

**(e) *Harm to Grassy Narrows***

56. The Contamination of the River System did and continues to negatively affect Grassy Narrows, including by impacts to the environment on which Grassy Narrows members depend for the exercise of their Treaty Rights, and impacts to the ability to safely fish for food, to fish commercially, to earn a livelihood, and to maintain a way of life, as described further below at paragraphs 101-104.

57. The Contamination has also caused and continues to cause harms to health and well-being, social and economic well-being, culture, spirituality, security, and way of life of Grassy Narrows.
58. Grassy Narrows people suffer myriad conditions associated with the Contamination of the River System and related ecosystems and in particular associated with mercury in the River System.

***(f) Grassy Narrows' 1977 lawsuit***

59. In 1977, Grassy Narrows and Wabaseemoong Independent Nations (then called the Islington Indian Band) filed a lawsuit against Reed, Dryden Chemicals Ltd and Dryden Paper Company Ltd. Great Lakes Forest Products Ltd ("**Great Lakes Forest Products**" or "**GLFP**") was subsequently added as a defendant when it purchased the mill from Reed in or around December 1979. The lawsuit against the four mill owners (collectively, the "**Mill Owners**") sought damages for harm caused by the discharge of mercury and other pollution into the River System beginning in 1962, as well as an order requiring the Mill Owners to remediate the River System.

***(g) Royal Commission on Northern Environment***

60. In 1977, the Government of Ontario established the Royal Commission on the Northern Environment in response to public concerns over, *inter alia*, the release of mercury from the Dryden Mill and its impacts on Grassy Narrows, as well as over Ontario's granting of cutting rights to Reed, in 1976, over a large tract of intact forest north of Grassy Narrows.
61. The Royal Commission's mandate included examining the adverse effects of industrial development, including forestry, mining, and hydro-electric activities, on the northern environment and its residents, with a particular emphasis on Indigenous nations like Grassy Narrows.
62. In 1978, the Royal Commission issued an interim report that described the situation of Grassy Narrows in relation to mercury pollution as intolerable and shocking. The interim report recommended the Crown consider methods to ensure Grassy Narrows' access to resources and supportive programs, and other measures to ensure viable community economies. It also recommended that immediate tripartite negotiations commence with the federal and provincial Crown and, *inter alia*, take account of the wishes and needs of Grassy Narrows.
63. Grassy Narrows, Ontario, and Canada accepted the Commission's interim recommendation to enter negotiations.

**(h) 1978 Memorandum of Understanding**

64. On December 15, 1978, Canada, Ontario, Grassy Narrows, and Wabaseemoong Independent Nations entered into a memorandum of understanding (the “**1978 MOU**”).
65. The 1978 MOU appointed a mediator to assist the parties in addressing in good faith certain issues, including the pollution of the environment affecting Grassy Narrows, with the objective of reaching resolutions that would alleviate the adverse effects of the pollution on the health, economic, social, cultural, and environmental wellbeing of Grassy Narrows people, and contribute to the long-term viability of the community.
66. As a matter of law and/or equity, the Crown had an obligation to identify and implement measures that would address the harm to the River System and ensure the safe and meaningful exercise of Grassy Narrows’ Treaty Rights.

**(i) Ontario indemnifies Great Lakes Forest Products**

67. In 1979 and 1982, Ontario provided an indemnity to GLFP to facilitate its purchase of the Dryden Mill from Reed. Ontario agreed to assume payment of any liability in excess of \$15 million with respect to certain claims arising from the mercury and other pollution discharged by Reed and its predecessors.

**(j) 1984 Agreement with Canada**

68. In 1984, pursuant to the 1978 MOU process, Canada and Grassy Narrows reached a bilateral agreement (the “**1984 Agreement with Canada**”). Under this agreement, *inter alia*, Canada committed to undertake ongoing mercury testing of fish samples from waters fished by Grassy Narrows as well as hair and blood samples from Grassy Narrows members.
69. Canada further committed to provide funding to Grassy Narrows for negotiations between Grassy Narrows, Ontario, Reed, and GLFP, and other parties, and committed to Grassy Narrows to endeavour to ensure such negotiations were successfully concluded.
70. Canada further affirmed the continuing nature of its obligations with respect to
  - a) the medical treatment of Grassy Narrows people suffering ailments directly or indirectly attributable to mercury pollution; and
  - b) the provision of socioeconomic supports and services, including health care, mercury testing, and assistance with alternate food supplies.

**(k) *Royal Commission on the Northern Environment Final Report***

71. By at least 1978, Ontario was aware that authorizing further industrial activities in, around, or upstream of Grassy Narrows' Territory would or was likely to exacerbate the impacts of the Contamination on Grassy Narrows' Treaty Rights.
72. On June 28, 1985, the Royal Commission on the Northern Environment released its final report, which found, *inter alia*, that the northern environment, its residents, and in particular Indigenous communities like Grassy Narrows, were extremely vulnerable to the impacts of large-scale resource industry and that there were no measures in place to ensure that the environment was not irreparably harmed in the process of industrial activities.
73. The Royal Commission recommended, *inter alia*, greater protection of the natural environment, including through greater regulation, prevention, and control of the adverse effects of industrial activities, and greater involvement of residents, including Indigenous nations, in decision-making.
74. The Royal Commission expressed particular concern about the poor living conditions in Indigenous communities like Grassy Narrows, and their vulnerability to industrial activities like logging, mining, hydro-electric activities, and the building of access roads. The Royal Commission recommended, *inter alia*,
  - a) Crown lands be granted to Indigenous communities, with rights similar to Indigenous rights in reserve lands, to provide a better land base to support their social, economic and cultural viability, including their hunting, fishing, and trapping activities.
  - b) Indigenous land use areas be designated in which priority is given to Indigenous hunting, fishing, and trapping over other resource users.
75. The Royal Commission further recommended that until the claims of Grassy Narrows were settled, the Government of Ontario should not grant any cutting rights to Great Lakes Forest Products, or any subsequent owner of the Dryden Mill in forest land outside existing company management units.
76. Throughout this period, and at all material times in its negotiations with the Crown, Grassy Narrows advocated for greater recognition of ownership, access to, protection of, and control over lands, waters, and resources in their Territory, including as a necessary part of addressing damage caused by the Contamination and Industry and Land Use.



*(l) 1985 Memorandum of Agreement*

77. In November 1985, Canada, Ontario, Wabaseemoong Independent Nations, Grassy Narrows, Reed, and GLFP entered into a memorandum of agreement (the “**1985 Agreement**”), addressing issues described therein as follows:

The discharge by Reed and its predecessors of mercury and any other pollutants into the English and Wabigoon and related river systems, and the continuing presence of any such pollutants discharged by Reed and its predecessors, including the continuing but now diminishing presence of methylmercury in the related ecosystems since its initial identification in 1969, and governmental actions taken in consequence thereof, may have had and may continue to have effects and raise concerns in respect of the social and economic circumstances and the health of the present and future members of the Bands (the “issues”).

78. At all material times throughout negotiations leading up to the 1985 Agreement, Grassy Narrows was reliant upon the Crown for information, including scientific, technical, fiscal and health related information relevant to the issues. This included information respecting the discharge and continuing presence of mercury and other Pollutants in the River System and their impacts upon Grassy Narrows, as well as the means for and efforts to address the discharge and continuing presence of mercury and other Pollutants in the River System and at or nearby the Dryden Mill site.
79. During the negotiations of the 1985 Agreement, Ontario and Canada each determined they would not pursue any remediation other than “natural remediation” (i.e. they would take no action to remediate the Contamination). However, the Crown withheld from Grassy Narrows its decision to pursue “natural remediation” of (i.e., to not actively remediate) the River System until after Grassy Narrows had signed the 1985 Agreement.
80. At all material times, including prior to and after the 1985 Agreement, the Crown did not provide Grassy Narrows with full, accurate and/or necessary information relevant to the protection of their rights.
81. Mercury and other Pollutants released from the Dryden Mill by Reed and its predecessors between 1962 and 1979 remain in the soil, sediment, water, fish, wildlife, and other biota of the River System (including at or nearby the Dryden Mill site) to this day.
82. Further, following Reed’s sale of the Dryden Mill to GLFP in December 1979, the Dryden Mill with the knowledge of and/or pursuant to authorization from the Crown has continued to discharge Pollutants into the River System, including sulphates and organic waste, and to otherwise operate in ways that have contributed to, exacerbated and/or

prolonged negative impacts on Grassy Narrows' Treaty Rights and on their collective health and social, cultural, and economic well-being.

83. In or about early 2024, Grassy Narrows became aware of scientific results demonstrating that elevated levels of sulphates and organic carbon in the Dryden Mill's effluent significantly increase the level of mercury methylation in the River System and therefore the amount of methylmercury in the fish that Grassy Narrows people eat.
84. Contrary to Crown representations, methylmercury is not diminishing in key parts of the ecosystem including in the fish that Grassy Narrows people eat.

***(m) Crown's continuing Duties to Grassy Narrows***

85. Throughout this period, both Crowns made assurances of their continuing obligations beyond those set out in the 1985 Agreement.
86. The Crown made representations to Grassy Narrows, and/or took steps to persuade and/or induce Grassy Narrows to participate in negotiation of and enter into the 1985 Agreement.
87. The 1985 Agreement did not discharge the Crown from its Duties continuing after 1985 to take such actions as necessary to protect the fish, wildlife, and ecosystems upon which Grassy Narrows' Treaty Rights depend and to prevent and abate harms suffered by Grassy Narrows people, including in the exercise of their Treaty Rights, including:
  - a) Remediating the impact of the Contamination on the River System to ensure the meaningful and safe exercise of Grassy Narrows' Treaty Rights;
  - b) Sufficiently monitoring the River System to ensure the Contamination and further Pollutants are remediated and/or prevented to ensure the meaningful and safe exercise of Grassy Narrows' Treaty Rights;
  - c) Ensuring that Grassy Narrows has sufficient, necessary, and appropriate information and capacity supports to determine whether mercury levels in the River System, including in the fish and other biota, and/or at or nearby the Dryden Mill site, and/or the Pollutants discharged by the Dryden Mill, are safe for the exercise of Treaty Rights;
  - d) Regulating and preventing Industry and Land Use on, in, or nearby the River System, which contribute to or exacerbate the Contamination, including industrial logging and related activities, road building, mining, damming, alterations of water flows, and the further discharge of Pollutants into the ecosystem;

- e) Providing protection for, and/or financial support as necessary to rehabilitate and/or restore Grassy Narrows' safety, economy, culture, society, and way of life in the face of the Contamination; and
  - f) Providing
    - i) medical treatment and health, educational, economic and social supports to treat, abate, mitigate, and/or otherwise alleviate the health and social impacts of the Contamination on Grassy Narrows members; and
    - ii) compensation to Grassy Narrows for losses to the community relating to the health and social impacts of the Industry and Land Use, including Contamination, on Grassy Narrows members, including for losses arising from the failure to address, through medical treatment or otherwise, such impacts.
88. Grassy Narrows and Ontario continued negotiations seeking to resolve the 1978 MOU Issues after the 1985 Agreement was executed. These negotiations were intended to address Grassy Narrows' need for, *inter alia*:
- a) increased access to, protection of, ownership and control over lands and natural resources in their Territory;
  - b) measures to provide sources of traditional livelihood (such as commercial fishing, trapping, wild rice harvesting, and guiding);
  - c) improved education and training for youth; and
  - d) compensation for the Contamination.
89. Ontario unilaterally terminated the negotiations in or about 1997.
90. At or around the same time, Canada unilaterally terminated its funding and support for Grassy Narrows' negotiations with Ontario.
91. Ontario's obligations to Grassy Narrows under the 1978 MOU remain outstanding.
92. At all material times, the Crown was aware that Grassy Narrows sought to ensure its people could continue to safely and meaningfully exercise their Treaty Rights and to continue their way of life by hunting, trapping, fishing, and harvesting wild rice, food stuffs, and medicines as their ancestors had done in the past, and to live healthy, dignified and secure existences as an Anishinaabe Nation.

**(n) *Canada's and Ontario's failure to meet continuing Duties to Grassy Narrows***

93. After the 1985 Agreement was signed, neither Ontario nor Canada took any or sufficient steps to monitor and remediate the River System from negative impacts of the Industry and Land Use, including the Contamination, or to prevent further negative impacts, despite:
  - a) Scientific and/or government recommendations;
  - b) Evidence, after 1985, that “natural remediation” was not resulting in a sufficient decrease in mercury levels in the ecosystem, including in fish and/or other biota to be safe for the practice of Treaty Rights;
  - c) Evidence that mercury levels in fish were and are continuing to cause harm to Grassy Narrows people;
  - d) Evidence that Industry and Land Use, including the Dryden Mill operations and effluent, industrial logging and related activities, fire suppression, dam and diversion operation, and mining activity, were contributing to or exacerbating the Contamination and causing adverse impacts on Grassy Narrows’ exercise of Treaty Rights and community health, including, *inter alia*, by
    - i) contributing to erosion and transport of mercury-contaminated sediment;
    - ii) increasing the mercury loading to the aquatic environment; and
    - iii) discharging Pollutants, including sulphates and organic waste, into or nearby the River System that contribute to net methylation of mercury, its bioavailability, and/or biomagnification.
94. The Crown authorized and/or regulated the Industry and Land Use without any or adequate regard to the cumulative impacts of the Industry and Land Use, including the impacts of the Contamination on Grassy Narrows’ meaningful exercise of its Treaty Rights.
95. More specifically, the Crown authorized and/or regulated the Industry and Land Use, including the discharge of Pollutants, without considering, assessing or monitoring whether or to what extent the authorized activities would or did
  - a) exacerbate or trigger the release of mercury into the River System, and/or otherwise increase the mercury load, net methylation, bioavailability, and biomagnification in the ecosystem; or

- b) impede the exercise of Grassy Narrows' Treaty Rights, particularly in light of the ongoing impacts of the Contamination on Grassy Narrows' Treaty Rights.
96. At all material times, Grassy Narrows was vulnerable to the discretion and power of the Crown to protect Grassy Narrows' rights and was reliant upon the Crown to fulfill its obligations to protect the fish, wildlife, and related ecosystems upon which their Treaty Rights, health, safety, economy, culture, society and way of life depend.
  97. Canada and Ontario instead have denied, minimized, ignored, and/or given conflicted messaging about the continuing high levels of mercury in the River System and fish, the impact of Industry and Land Use, including the Dryden Mill's discharge of Pollutants, on mercury levels in the River System and fish, the health risks posed by fish consumption to Grassy Narrows, and harms to Grassy Narrows.
- (o) *Contamination persists***
98. The Contamination and Crown failures resulted in, and continue to result in, high mercury concentrations in fish, which are central to Grassy Narrows' way of life, culture, traditions, economy, and diet.
  99. Although the mercury levels found in water, sediment, fish and other biota in the River System initially declined following 1970, after 1985 the decline slowed, plateaued and/or reversed trajectory (i.e. mercury levels increased).
  100. Mercury levels in fish on which Grassy Narrows people rely remain elevated beyond safe levels for human consumption, particularly by vulnerable populations like Grassy Narrows and particularly by children and women of childbearing age.

#### **4. Cumulative effects of the Contamination and Industry and Land Use**

101. The environment and resources on which Grassy Narrows depend are compromised, with adverse impacts on Grassy Narrows people's way of life, health and well-being, culture, and economic and social development.
102. Separately and cumulatively, the Contamination, Industry and Land Use have interfered with Grassy Narrows' Treaty Rights, including by:
  - a) contaminating air, land, and water in, around, and/or upstream of the Territory;
  - b) causing, exacerbating, and/or triggering the release of Pollutants, including mercury, sulphates, and organic waste in the River System and the environment

on which Grassy Narrows people rely, compounding the adverse health, environmental, socioeconomic, and cultural effects;

- c) destroying and degrading, interfering with and losing access to Territory important to hunting, trapping, fishing, gathering, and wild ricing; teaching and practicing spirituality, medicines, and ceremonies; key habitation sites; and traditional travel ways;
  - d) impacting wildlife habitat and populations, including by altering the migration patterns of wildlife and fragmenting and/or degrading wildlife habitat;
  - e) increasing access to Grassy Narrows' Territory by hunters who are not Treaty 3 beneficiaries, which has impacted the abundance and quality of resources on which Grassy Narrows people have traditionally relied;
  - f) reducing the abundance, quality of, and access to traditional plants and medicines;
  - g) interfering with, diminishing, and/or degrading the spiritual and cultural integrity of the Territory and Grassy Narrows' relationship with it;
  - h) interfering with Grassy Narrows' ability to carry on their traditional fishing, hunting and harvesting practices and their preferred means of exercising their Treaty 3 Rights; and
  - i) depriving Grassy Narrows of use and enjoyment of their Territory and of their Reserve land including for purposes for which the latter was allotted, including access to fish and to carry on their way of life in a meaningful, healthy, and safe manner.
103. Separately and cumulatively, the Contamination and Industry and Land Use have caused Grassy Narrows people to suffer and to continue to suffer, including by causing and/or contributing to:
- a) High levels of mercury in fish, resulting in
    - i) inability to safely consume a critical traditional food source;
    - ii) inability to participate in the commercial fishing/guiding industry; and

- iii) associated inability to participate in traditional activities and cultural and ceremonial practices, and transmit cultural and ecological knowledge to younger generations;
- b) significant harms to human health and wellbeing, including but not limited to
  - i) widespread disease, physical and mental health conditions, neurological degeneration, conditions impacting learning, suicide, and premature mortality associated with mercury exposure; and
  - ii) food insecurity, nutritional deficits, and stress due to loss of access to safe, abundant, and nutritious traditional foods;
- c) significant social and cultural harms arising from all of the foregoing, including
  - i) associated social disruption, poverty, suicide, educational challenges, interference with families, and extensive harm to Grassy Narrows' way of life as guaranteed under Treaty 3;
  - ii) associated and intergenerational impacts on the ability of Grassy Narrows people to live, enjoy security of the person, exercise their Treaty Rights, inherent rights, engage in their traditional cultural practices, parent Grassy Narrows children in the community, and transmit cultural and ecological knowledge and traditions to younger generations;
  - iii) increased need for, and lack of access to, adequate health care, social services, and education.
- d) Monetary losses, including
  - i) loss of revenue from participation in the commercial fishing/guiding industry and/or loss of economy;
  - ii) increased expenditures on store-bought foods due to loss of access to traditional food sources; and
  - iii) increased health care, education, and social services-related costs, or lost opportunity and suffering resulting from failure/inability to provide/access adequate health, education, and social services.

104. The Crown has not acted with diligence and/or put adequate measures in place to protect Grassy Narrows' rights and way of life under Treaty 3, including but not limited to protecting the environment in Grassy Narrows' Territory.

**C. Legal Basis**

**1. Breach of Treaty**

105. Grassy Narrows has Treaty Rights recognized and affirmed by s. 35(1) of the *Constitution Act*, 1982.
106. The Crown, as represented by both Ontario and Canada, is bound by the Treaty and both levels of government are responsible for upholding and fulfilling its promises.
107. As a party to the Treaty, the Crown at all material times had notice of the Treaty's contents and was aware of its obligations under the Treaty.
108. Actions by the Crown on Treaty lands, including regulation or taking up of lands, are subject to and burdened by the Crown's obligations to Grassy Narrows under the Treaty, the Constitution, and the Crown's equitable and/or fiduciary duties, and/or obligations arising from the honour of the Crown. The rights and obligations at stake should be interpreted in accordance with international law including the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP").
109. The Crown must act in a way that seeks to preserve and accomplish the intended purposes of the Treaty, and to ensure Grassy Narrows' continuing meaningful exercise of the Treaty Rights.
110. The Crown's obligations under the Treaty include the obligation to protect and maintain the health of the environment and resources necessary to the exercise of Grassy Narrows' Treaty Rights, including to protect the fish and other resources on which Grassy Narrows rely, and to respect and maintain cultural security for Grassy Narrows and their way of life.
111. As particularized elsewhere, the provincial and/or federal Crown has breached the Treaty.
112. A claim for breach of treaty is a *sui generis* claim and a successful claimant is entitled to equitable compensation, or, in the alternative, damages assessed in a manner akin to equitable compensation.



**2. Breach of equitable and fiduciary duties and/or obligations arising from the honour of the Crown**

**(a) Treaty Rights**

- 113. Grassy Narrows' Treaty Rights are a cognizable legal interest over which the Crown has exercised discretionary control at material times.
- 114. Upon authorizing and/or becoming aware of potential impacts to Grassy Narrows' Treaty Rights from the discharge of mercury and other Pollutants from the Dryden Mill and/or the Contamination, Ontario and Canada have equitable and/or fiduciary duties and/or obligations from the honour of the Crown to Grassy Narrows.
- 115. Ontario and Canada have equitable and/or fiduciary duties and/or honour of the Crown obligations to Grassy Narrows arising from their exercise of discretionary control over the Contamination of the River System and/or Land Use and Industry in the Territory, and/or arising from their undertaking or commitments made to Grassy Narrows, including to support their recovery from and/or remediate and/or address negative impacts of the Contamination and Industry and Land Use.

**(b) Reserve Interests**

- 116. Grassy Narrows has a cognizable legal interest in its Reserve lands and in the waters within or adjacent thereto (the "**Reserve Interests**")
- 117. Access to and use of the River System for fishing is an essential part of Grassy Narrows' Reserve Interests.
- 118. The Crown owes Duties to Grassy Narrows with respect to their Reserve Interests and has breached its Duties in failing to act to protect the environment, fish, and use of the Reserve and vicinity from Contamination, to the detriment of the Reserve Interests.

**(c) Discretionary control**

- 119. Ontario and/or Canada exercised discretionary control over and/or made undertakings with respect to Grassy Narrows' Treaty Rights and/or Reserve Interests and/or health and way of life and/or other cognizable interests when they
  - a) authorized and regulated the operation of the Dryden Mill, including effluent from the Mill;

- b) interposed themselves in the negotiation and settlement of Grassy Narrows' litigation against the Mill Owners;
- c) purported to study and/or monitor, and to represent themselves as studying and/or monitoring, the River System and/or Dryden Mill site, and/or Grassy Narrows' health with the purpose of addressing adverse impacts upon Grassy Narrows from Contamination;
- d) purported to address the impacts of the Contamination and the Industry and Land Use, or aspects of them, including effects on Grassy Narrows' Treaty Rights, including through
  - i) commitments made in the 1978 MOU;
  - ii) negotiation of the Canada-Ontario Agreement Respecting Mercury Pollution in the Wabigoon-English River System and the establishment of the Wabigoon-English Mercury Study Steering Committee and Senior Technical Committee to study remediation options;
  - iii) acceptance of the interim recommendations of the Royal Commission on the Northern Environment;
  - iv) commitments made in the 1984 Agreement with Canada;
  - v) negotiation of the 1985 Agreement and undertakings and representations made during the negotiation of the 1985 Agreement;
  - vi) with respect to Ontario, ongoing negotiations in relation to the Crown's ongoing obligations under the 1978 MOU;
- e) determined to pursue "natural remediation" and "monitoring" of the River System;
- f) decided to take no or insufficient action to monitor and remediate the River System and/or Dryden Mill site; and/or
- g) authorized and regulated the Industry and Land Use and Pollutants.

At all material times, in exercising discretionary control over Grassy Narrows' Treaty Rights, health and way of life, the Crown owed fiduciary duties to Grassy Narrows.

**(d) Breach of Duties**

120. At all material times preceding and during the negotiation of the 1985 Agreement, and continuing to the present, the Crown owed and owes Grassy Narrows Duties to protect the fish, River System, and Territory upon which Grassy Narrows' constitutionally protected Treaty Rights depend and to protect their way of life, rights and community.
121. The Crown has breached its Duties to Grassy Narrows in failing to act to protect its interest in the environment, fish, and use of the Reserve from the Contamination and further Pollutants, including by
  - a) authorizing, enabling, allowing, and/or failing to prevent the Contamination and/or the cumulative impacts of the Industry and Land Use from unjustifiably infringing Grassy Narrows' meaningful exercise of their Treaty Rights; and
  - b) failing to fulfil its obligation to diligently implement the Treaty and protect Grassy Narrows' Treaty Rights, including by failing to take steps to prevent, assess, protect against and remediate the impacts, including cumulative impacts, of Contamination, Industry and Land Use.
122. The Crown did not meet or discharge its Treaty obligations and/or Duties during the negotiation of and/or through the 1985 Agreement.
123. After 1985, despite further harm to Grassy Narrows' Treaty Rights and collective health and social, cultural, and economic well-being, as well as new scientific information with respect to same, neither Crown took any or sufficient action to monitor and remediate the River System, the Dryden Mill site, and/or the Contamination; to prevent the discharge of further Pollutants; to mitigate and prevent harms to Grassy Narrows' Treaty Rights and their collective health and social, cultural, and economic well-being, or to fulfill the Crown's Duties.
124. After 1985, the Crown knew or ought to have known that methylmercury levels in fish and other biota in Grassy Narrows' Territory, including in the River System, were not diminishing and/or were continuing at high concentrations that posed a risk to the environment and the health of Grassy Narrows people, fish and wildlife.
125. The Crown withheld material and relevant information from Grassy Narrows at material times and induced Grassy Narrows to rely upon the Crown in protecting its interests and way of life.

126. The Crown has failed to adequately respond to the health and social crisis in Grassy Narrows as a result of the Contamination.
127. The Crown failed to act pursuant to its duty of loyalty and good faith, or in the best interest of Grassy Narrows or to endeavour to and/or to diligently fulfill its promises and obligations to Grassy Narrows.
128. The Crown's failures to uphold the promises of Treaty 3 constitute breaches of its Duties, and/or the unjustified infringement of Grassy Narrows' Treaty Rights protected under s. 35 of the *Constitution Act, 1982*.
129. Additionally, and/or in the alternative, Ontario and/or Canada breached their Duties to Grassy Narrows to protect their Reserve Interests.

### **3. Compensation and Damages**

130. The provincial and/or federal Crown's breaches of the Treaty, unjustified infringements of Grassy Narrows' Treaty Rights and/or breaches of their Duties to Grassy Narrows have caused or contributed to the losses described above which are compensable at law and/or at equity; and/or have otherwise caused compensable damage to Grassy Narrows and Grassy Narrows are entitled to equitable compensation and/or damages, including damages assessed in a manner akin to equitable compensation.
131. The degree and character of the failures by the Crown to uphold their Duties and the honour of the Crown warrant reprimand and punitive damages.

### **4. Enactments**

132. Grassy Narrows pleads and relies on the following legislation, including all past and present versions thereof:
  - a) *Asupbeeschoseewagong Anishinabek Aaki Declaration* ("Grassy Narrows' Land Declaration");
  - b) *Constitution Act, 1982*, s. 35;
  - c) Treaty No. 3 (1873);
  - d) *Royal Proclamation 1763*;
  - e) S. 91(24), 91(12), 92(5), 92(13) and 109 of the *Constitution Act, 1867*;

- f) *English and Wabigoon Rivers Remediation Funding Act, 2017*, SO 2017, c 34, Sch 14;
- g) *Fisheries Act*, R.S.C., 1985, c. F14;
- h) *Pulp and Paper Effluent Regulations*, SOR/92-269;
- i) *Ontario Fisheries Regulations, 2007*, SOR/2007-237;
- j) *Chlor-Alkali Mercury Liquid Effluent Regulations*, C.R.C., c. 811, SOR/2018-80, s. 1;
- k) *Canada Navigable Waters Act*, R.S.C., 1985, c. N-22;
- l) *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33;
- m) *Impact Assessment Act*, S.C. 2019, c. 28, s. 1;
- n) *Ontario Water Resources Act*, R.S.O. 1990, c. O.40;
- o) *Mining Act*, R.S.O. 1990, c. M.14;
- p) *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25;
- q) *Crown Timber Act*, R.S.O. 1990, c. C.51;
- r) *Game and Fish Act*, R.S.O. 1990, c. G.1;
- s) *Fish and Wildlife Conservation Act, 1997*, S.O. 1997, c. 41;
- t) *Lakes and Rivers Conservation Act*, R.S.O. 1990, c. L.3;
- u) *Aggregate Resources Act*, R.S.O. 1990, c. A.8;
- v) *Public Lands Act*, R.S.O. 1990, c. P.43;
- w) *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- x) *Environmental Assessment Act*, R.S.O. 1990, c. E.18;
- y) *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007);

- z) *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14;
  - aa) *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act*, 1986, S.O. 1986, c. 23;
  - bb) *Grassy Narrows and Islington Bands Mercury Pollution Claims Settlement Act*, S.C. 1986, c. 23; and
  - cc) Such further and other instruments as counsel may advise.
133. Grassy Narrows proposes that this action be tried in the city of Toronto, in the Province of Ontario.

June 4, 2024

**CAVALLUZZO LLP**  
474 Bathurst Street, Suite 300  
Toronto ON M5T 2S6

**Adrienne Telford, LSO# 56169T**  
[atelford@cavalluzzo.com](mailto:atelford@cavalluzzo.com)  
**Jackie Esmonde, LSO# 47793P**  
[jesmonde@cavalluzzo.com](mailto:jesmonde@cavalluzzo.com)

Tel: 416-964-1115

**RATCLIFF LLP**  
500-221 West Esplanade  
North Vancouver, BC  
V7M 3J3

**Lisa C. Glowacki**  
[lglowacki@ratcliff.com](mailto:lglowacki@ratcliff.com)

Tel: 604-988-5201

Lawyers for the Plaintiff

**GRASSY NARROWS FIRST NATION**

Plaintiffs

-and- **THE ATTORNEY GENERAL OF CANADA and HIS  
MAJESTY THE KING IN RIGHT OF ONTARIO**

Defendants

Court File No.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

**CAVALLUZZO LLP**

474 Bathurst Street, Suite 300  
Toronto ON M5T 2S6

Adrienne Telford, LSO# 56169T

[atelford@cavalluzzo.com](mailto:atelford@cavalluzzo.com)

Jackie Esmonde, LSO # 47793P

[jesmonde@cavalluzzo.com](mailto:jesmonde@cavalluzzo.com)

Tel: 416-964-1115

**RATCLIFF LLP**

500-221 West Esplanade  
North Vancouver, BC  
V7M 3J3

Lisa C. Glowacki

[lglowacki@ratcliff.com](mailto:lglowacki@ratcliff.com)

Tel: 604 - 988 – 5201

Lawyers for the Plaintiff