

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.  
JUSTICE W.D. NEWTON

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FRIDAY, 20th DAY OF  
NOVEMBER, 2020

B E T W E E N:

HELENE MARIE KNAPAYSWEET and ALLISON JESSICA NAKOGEE

Plaintiffs

and

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

Defendant

Proceedings under the *Class Proceedings Act, 1992*

**CERTIFICATION ORDER**

**THIS MOTION** made by the plaintiffs for certification of this action as a class action proceeding was heard this day at Thunder Bay, Ontario.

**ON REVIEWING** the motion record and the consent of the parties filed and on hearing submissions from the counsel for the Plaintiffs, this Court Orders as follows:

1. **FOR THE PURPOSES OF THIS ORDER**, the following definitions apply:
  - (a) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (b) “**Class**” and “**Class Members**” means all persons who were passengers on the Polar Bear Express train operated by Ontario Northland Transportation Commission

(the “Defendant” or “Ontario Northland”) on May 30, 2018, when it derailed approximately 37 kilometers south of Moosonee, Ontario, excluding Ontario Northland’s employees;

- (c) **“Class Counsel”** means Petrone & Partners and Cambridge LLP;
- (d) **“Defence Counsel”** means Lloyd Burns McInnis LLP;
- (e) **“Notice”** means the notice of this Order and the Opt Out Date which is attached hereto as Schedule “A”;
- (f) **“Ontario Northland”** means Ontario Northland Transportation Commission;
- (g) **“Opt Out Date”** means 60 days from the Certification Order; and
- (h) **“Short Form Notice”** means the summary version of the Notice which is attached hereto as Schedule “B”.

2. **THIS COURT ORDERS** that this action is certified as a class proceeding.

3. **THIS COURT ORDERS** that the Class is defined as:

*All persons who were passengers on the Polar Bear Express train operated by the Ontario Northland Transportation Commission (the “Defendant” or “Ontario Northland”) on May 30, 2018, when it derailed approximately 37 kilometers south of Moosonee, Ontario, excluding Ontario Northland employees.*

4. **THIS COURT ORDERS** that Helene Marie Knapaysweet and Allison Jessica Nakogee are hereby appointed as the representative plaintiffs, *nunc pro tunc*, of the Class.

5. **THIS COURT DECLARES** that the common issues in this proceeding are:

- a) Did Ontario Northland owe a duty of care to the Class Members when the Polar Bear Express derailed on May 30, 2018?

- b) If yes, what was the standard of care? Did Ontario Northland breach the aforementioned standard of care, and if yes, when and how?
- c) Was Ontario Northland in breach of contract to the Class Members when the Polar Bear Express derailed on May 30, 2018? If yes, when and how?
- d) Should Ontario Northland pay prejudgment and postjudgment interest? If yes, at what annual interest rate(s)?

6. **THIS COURT DECLARES** that the relief sought by the Class is as set out in paragraph 2 of the Statement of Claim.

7. **THIS COURT ORDERS** that the Notice attached hereto as Schedule “A” and the Short Form Notice attached hereto as Schedule “B” are hereby approved.

8. **THIS COURT ORDERS** that the Class shall be given Notice in accordance with the following program:

- a) Publishing the Short Form Notice once in the following newspapers: the Timmins Daily Press and Cochrane Times, within fifteen (15) days of the certification order;
- b) Posting of the Notice by Class Counsel on the following websites within fifteen (15) days of the Certification Order:
  - (i). [www.petronelaw.ca](http://www.petronelaw.ca); and
  - (ii). [www.cambridgellp.ca](http://www.cambridgellp.ca)
- c) Delivery of the Notice by counsel for Ontario Northland to Girones Lawyers and Meunier Carrier Lawyers, counsel for certain passengers on the Polar Bear Express that derailed on May 30, 2018, via facsimile and email;

- d) Delivery of the Notice by regular mail and/or email by Class Counsel to Moose Cree First Nation band office (attention Chief and Council) located at 22 Jonathan Cheechoo Drive, P.O. Box 190, Moose Factory, Ontario, P0L 1W0, with a request to post the Notice publicly at the band office;
- e) Posting of the Notice by Ontario Northland at the Moosonee Train Station and Cochrane Train Station; and
- f) Delivery of the Notice by regular mail and/or email by Class Counsel or Ontario Northland to any person who requests it.

9. **THIS COURT DECLARES** that the notice program satisfies the requirements of section 17 of the *Class Proceedings Act*.

10. **THIS COURT ORDERS** that Ontario Northland shall pay the reasonable costs associated with implementing the notice program.

11. **THIS COURT ORDERS** that, within 30 days of the Certification Order, Class Counsel and Counsel for Ontario Northland shall report to the court by affidavit, confirming their compliance with their obligations under paragraph 8 of this Order.

12. **THIS COURT ORDERS** that a Class Member may only opt out of this action by sending an election to opt out, by ordinary mail, fax, email or courier which election must be received or post marked on or before the Opt Out (which shall be 60 days from the Certification Order), and must be signed by the Class Member or such Class Members' authorized representative, stating that the Class Member opts out of this class action and also stating the Class Member's full name, address, email address, and telephone number:

**BY REGULAR MAIL OR COURIER TO:**

**PETRONE & PARTNERS**

Barristers & Solicitors

76 Algoma Street North

Thunder Bay ON P7A 4Z4

Attention: Ontario Northland Class Action

**OR BY FAX TO:**

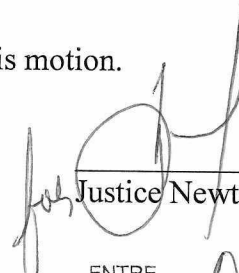
Petrone & Partners fax number: (807) 345-8391

**OR BY EMAIL TO:**

lori@petronelaw.ca

Subject: Ontario Northland Class Action

13. **THIS COURT ORDERS** that no Class Member may opt out of this action after 5:00 p.m. eastern time on the Opt Out Date which shall be 60 days from the Certification Order.
14. **THIS COURT ORDERS** that Lori Kruse and/or Gavin W. Freitag of Petrone & Partners shall, within 15 days following the opt out deadline, report to the Court and to Defence Counsel by affidavit and advise as to the names and addresses of those persons, if any, who have opted out of this class action.
15. **THIS COURT ORDERS** that no person may opt out a minor or a mentally incapable Class Member from this action without the permission of the court after notice to The Children's Lawyer and/or the Public Guardian and Trustee as the case may be.
16. **THIS COURT ORDERS** that there be no costs of this motion.

  
Justice Newton

ENTRE INSUIT	0	BOOK REGISTRAR	
DATE	DEC 01 2020	PER POUR	
No.	8034		
No.			

*Schedule "A"*

**NOTICE OF CERTIFICATION OF THE ONTARIO NORTHLAND TRANSIT  
COMMISSION (POLAR BEAR EXPRESS) DERAILMENT CLASS ACTION**

This Notice may affect your rights. Please read carefully

**THE CLASS ACTION**

This action in the Ontario Superior Court of Justice arises out a train derailment which occurred approximately 37 kilometres south of Moosonee on May 30, 2018 at approximately 5:45 p.m. The defendant is Ontario Northland Transportation Commission.

This notice is directed to the **CLASS MEMBERS**, who are all persons who were passengers on the Polar Bear Express on May 30, 2018, when it was derailed approximately 37 kilometers south of Moosonee, Ontario, excluding Ontario Northland Transportation Commission's employees.

**CERTIFICATION**

On (date), Justice Newton certified this action as a class proceeding. The Court has not determined the merits of the action. The certification order is posted at, [www.petronelaw.ca](http://www.petronelaw.ca) and [www.cambridgellp.ca](http://www.cambridgellp.ca).

**DO NOTHING IF YOU WISH TO PARTICIPATE**

**Class Members** are automatically included in the class action and need not do anything at this time if they wish to participate. They will be bound by the judgment in the action whether favourable or not.

**OPT OUT ONLY IF YOU WISH TO BE EXCLUDED**

If you are a **Class Member**, as described above, but wish to be excluded and not bound by any future Order made in this class action, you must send a signed statement indicating that you wish to be excluded from this class action, containing your name, email address, address, and telephone number, by prepaid mail, fax or email to

**PETRONE & PARTNERS**

Barristers & Solicitors  
76 Algoma Street North  
Thunder Bay ON P7A 4Z4

**Lori Kruse (50691J)**  
**Gavin W. Freitag (34277V)**  
Tel: (807) 344-9191  
Fax: (807) 345-8391  
Email: [lori@petronelaw.ca](mailto:lori@petronelaw.ca)

If your election is to opt out is not received or post marked by 5:00 p.m. eastern time on [DATE] you will be bound by all Orders made in this action.

If a **Class Member** cannot personally make an election to opt out, the person making the election for the **Class Member** must provide their personal information, together with a copy of the document that permits the person to act on the **Class Member's** behalf, such as a will, Certificate of Appointment (death) or Power of Attorney (incapacity).

No person may opt out a minor or mentally incapable person without permission of the court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as appropriate.

A person who opts out cannot participate in the class action, will not be bound by any future order made in the class action, and will not be eligible for any recovery in the class action but may be eligible to pursue an individual claim.

### **DO NOT OPT OUT IF YOU WISH TO PARTICIPATE IN THE CLASS ACTION.**

If you do not opt out of the class action on or before 5:00 p.m. eastern time on [DATE] you will be a **Class Member**.

### **CLASS COUNSEL FEES AND DISBURSEMENTS**

The plaintiffs and Class Counsel signed a retainer agreement providing for the payment to Class Counsel of fees, disbursements and applicable taxes, to be paid out of the recovery in the class action as follows (the "Retainer Agreement").

The **Retainer Agreement**, which must be approved by the Court to be effective, provides for a contingency fee of 15% if the class action is settled without a contested certification, and 35% in all other circumstances other than a non-contested certification and settlement. If the class action is successful, legal fees will be deducted from your recovery.

After the class action is resolved, there may be individual issues that remain outstanding. If a **Class Member** wishes to retain a lawyer to assist with these issues, the **Class Member** may be required to pay additional fees, in addition to the amounts set out above.

### **NO COST TO CLASS MEMBERS**

No member of the Class will be responsible for paying the legal costs of the Defendant if the action were unsuccessful.

If the action is not successful, the members of the Plaintiff Class will not be responsible for any legal costs nor will they have any other financial obligations. Class Counsel is solely responsible for incurring those costs and risks.

## **INFORMATION**

This Notice was approved by the Ontario Superior Court of Justice. The court offices will be unable to answer any questions about the matters in this notice. Please direct questions for Class Counsel to:

### **PETRONE & PARTNERS**

Barristers & Solicitors  
76 Algoma Street North  
Thunder Bay ON P7A 4Z4

**Lori Kruse (50691J)**

**Gavin W. Freitag (34277V)**

Tel: (807) 344-9191

Fax: (807) 345-8391

Email: [lori@petronelaw.ca](mailto:lori@petronelaw.ca)

## **INTERPRETATION**

This Notice is a summary of some of the terms of the Certification Order. If there is a conflict between the provisions of this Notice and the terms of the Certification Order, the Certification Order prevails.

*Schedule "B"*  
**NOTICE OF CERTIFIED CLASS PROCEEDING**

**Regarding:** Ontario Northland Transportation Commission  
Proceedings Under the *Class Proceedings Act*, 1992  
Claim File No. CV-19-0090-00CP (Thunder Bay)  
Passenger Train (Polar Bear Express) Derailment- May 30, 2018

If you were a **passenger** on board the Polar Bear Express which departed Moosonee, Ontario, en route to Cochrane, Ontario on **May 30, 2018** and derailed at approximately 37 kilometers south of Moosonee, at approximately 5:45 p.m., **you may be eligible for compensation.**

A class action law suit has been commenced to pursue compensation for passengers (excluding Ontario Northland employees) impacted by this derailment.

The class action law suit has been certified and is proceeding to a mediation aimed at negotiating a settlement. A case management Judge with the Superior Court of Justice has been appointed to oversee this class action.

If you were a passenger, your rights may be affected by the class action and the proposed settlement track.

Please contact us for more information:

**Petrone & Partners**  
76 North Algoma Street  
Thunder Bay, ON P7A 4Z4

**Lori Kruse**  
Tel: (807) 344-9191  
Fax: (807) 345-8391  
Email: [lori@petronelaw.ca](mailto:lori@petronelaw.ca)

PLEASE NOTE THAT all passengers are automatically INCLUDED in the class action. **If you DO NOT want to be part of the class action, you must opt out** by sending a signed statement by prepaid mail, fax or email to class counsel (name and contact listed above) containing your name, address, email address, and telephone number, and indicating that you wish to opt out and be excluded from this class action,

If you opt out, you will NOT be included in any negotiated settlement and will not receive a payment from this class action. You will have to pursue your own action at your own cost.

For more information about opting out, please contact class counsel (name and contact listed above).

HELEN KNAPAYSWEET et al  
Plaintiffs

v. ONTARIO NORTHLAND TRANSPORTATION COMMISSION  
Defendant

Court File No. CV-19

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
THUNDER BAY

**CERTIFICATION ORDER**

**Petrone & Partners**  
Barristers & Solicitors  
76 Algoma Street North  
Thunder Bay ON P7A 4Z4

**Lori Kruse (50691J)**  
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Tel: (807) 344-9191  
Fax: (807) 345-8391  
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**Cambridge LLP**  
331-333 Adelaide Street West  
Suite 400  
Toronto ON M5V 1R5

**R. Douglas Elliot**  
Tel: (416) 477-7007  
Fax: (289) 293-0318

Lawyers for the Plaintiffs