

**ONTARIO
SUPERIOR COURT OF JUSTICE**

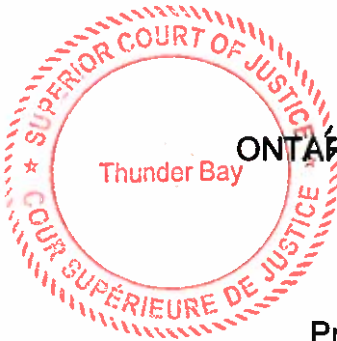
BETWEEN

(Court Seal)

HELENE MARIE KNAPAYSWEET and ALLISON JESSICA NAKOGEE
Plaintiffs

and

ONTARIO NORTHLAND TRANSPORTATION COMMISSION
Defendant



Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

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: JAN 31 2019

Issued by:  _____ Registrar

Address of court office: Superior Court of Justice
125 Brodie Street North
Thunder Bay ON P7C 0A3

TO: Ontario Northland Transportation Commission
555 Oak Street East
North Bay, ON P1B 8L3

CLAIM

DEFINED TERMS

1. The following terms and definitions apply throughout this statement of claim:
 - (a) **“Helene”** means Helene Marie Knapaysweet;
 - (b) **“Allison”** means Allison Jessica Nakogee;
 - (c) **“CJA”** means the *Court of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (d) **“Class”** and **“Class Member”** means all persons who were passengers on the Polar Bear Express (a passenger train operated by Ontario Northland Transportation Commission via the Ontario Northland Railway system) which, on May 30, 2018, departed from Moosonee, Ontario, en route to Cochrane, Ontario, and which derailed at approximately 5:45 p.m. approximately 37 kilometers south of Moosonee, Ontario;
 - (e) **“ONTC”** is the Ontario Northland Transportation Commission which is a transportation agency established by the Province of Ontario (Her Majesty the Queen as Represented by the Minister of Northern Development and Mines) to provide transportation services known as the Ontario Northland Railway in Northern Ontario which includes the Polar Bear Express;
 - (f) **“ONR”** means the Ontario Northland Railway system operated by the ONTC in Northern Ontario which includes the Polar Bear Express;
 - (g) **“HMQ”** means Her Majesty the Queen as Represented by the Minister of Northern Development and Mines responsible for the establishment of the

ONTC and the administration of the *Ontario Northland Commission Act*,
R.S.O. 1990, c. O. 32;

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- (h) **“CPA”** means *Class Proceedings Act, 1992*, S.O. 1992, C. 6;
- (i) **“Excluding Persons”** means employees of ONR who were passengers on the Polar Bear Express; and
- (j) **“Polar Bear Express”** means the ONR train known as the Polar Bear Express, which departed from Moosonee, Ontario, at or about 5:00 p.m. on May 30, 2018, en route to Cochrane, Ontario, and which derailed at approximately 5:45 p.m. approximately 37 kilometers south of Moosonee.

RELIEF CLAIMED:

2. Helene and Allison claim on their own behalf and on behalf of the other Class Members:
- (a) An order pursuant to the *CPA* certifying this action as a class proceeding and appointing Helene and Allison as the representative Plaintiffs of the Class;
- (b) A declaration that the Defendant, ONTC, was negligent and is liable in damages;
- (c) A declaration that the Defendant, ONTC, was in breach of contract and is liable in damages to the representative Plaintiffs and the other Class Members;

- (d) General damages in the amount of \$10 million for negligence and breach of contract, or such other sum as this court finds appropriate at the trial of the common issues;

- (e) Pre-judgment interest and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (f) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, the costs of distribution of an award under s. 24 or 25 of the *CPA*, including the costs of notice associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *CPA*;
- (g) An order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues; and
- (h) Such further and other relief as to this Honourable Court seems just.

BACKGROUND:

3. Helene resides on the Fort Albany First Nation in the Province of Ontario. On May 30, 2018, Helen was a passenger aboard ONR's Polar Bear Express when it left the tracks (derailed) at approximately 5:45 p.m. approximately 37km outside of Moosonee, Ontario.

4. Allison resides in Moose Factory in the Province of Ontario. On May 30, 2018, Allison was a passenger aboard ONR's Polar Bear Express when it left the tracks (derailed) at approximately 5:45 p.m. approximately 37 km outside of Moosonee, Ontario.
5. The ONTC is a transportation agency established by the Province of Ontario (HMQ) with its Chair of the Commission located in Timmins, Ontario. At all material times, the ONTC provided transportation services to Northern Ontario via the ONR system which included the operation of the Polar Bear Express. At all material times, the ONTC was vicariously responsible for the acts and omissions of its ONR employees.
6. The ONTC's transportation services provided via the ONR system included ownership, operation and maintenance of trains (including the Polar Bear Express) and railways and branch lines including that which runs between Moosonee, Ontario, and Cochrane, Ontario. At all material times, the ONTC was responsible for operation and maintenance of both the Polar Bear Express train and the underlying railway tracks upon which the Polar Bear Express travelled.

THE INCIDENT:

7. On May 30, 2018, the Polar Bear Express departed from Moosonee, Ontario, destined for Cochrane, Ontario.

8. Approximately 37 kms south of Moosonee, at approximately 5:45 pm, the Polar Bear Express abruptly left the track causing five cars (consisting of three passenger cars, the dining car and a baggage car) to leave the rails and turn onto their side. Helene and Allison were two of a total of 73 passengers (not inclusive of the ONR employees) on the Polar Bear Express when it derailed.

LIABILITY:

9. The Plaintiffs plead that the Defendant was negligent and in breach of its contract with Helen, Allison and each Class Member. ONTC was, in law, responsible for the acts and omissions of its employees and agents, including those responsible for the operation and maintenance of the Polar Bear Express and the railway track between Moosonee and Cochrane.
10. The Plaintiffs claim that the derailment and resulting damages were caused by the negligence of ONTC and the ONR employees, servants or agents, for whose negligence ONTC is in law responsible, the particulars of which are as follows:
 - (a) hiring incompetent employees, servants or agents;
 - (b) operating the Polar Bear Express at an excessive rate of speed under circumstances that required a lower rate of speed;
 - (c) failing to adequately inspect the Polar Bear Express and the railway track condition prior to the attempted passage from Moosonee station to Cochrane, Ontario;

- (d) failing to properly monitor the railway track conditions while operating the Polar Bear Express;
- (e) failing to inform themselves of any existing conditions and all memos, notes, or directives of repair or other work being performed (or to be performed) on the railway track between Moosonee and Cochrane;
- (f) failing to acknowledge, monitor and/or adhere to any existing conditions of the railway track and any notes, memoranda, directives or radio control instructions regarding the railway track conditions;
- (g) failing to communicate or properly communicate with the railroad traffic controller the circumstances and/or condition of the subject railway track;
- (h) failing to abide by The Canadian Railway Operating Rules;
- (i) failing to adequately educate and instruct its workers in the proper and safe mode of operating, inspecting, maintaining and/or repairing the Polar Bear Express and the ONR railway track;
- (j) failing to establish an adequate system of operation, inspection, maintenance and/or repair of the Polar Bear Express and the ONR railway track;
- (k) permitting or allowing the Polar Bear Express to run with insufficient on-board personnel to monitor and direct the safe and proper operation of the Polar Bear Express;
- (l) failing to adequately inspect the railway tracks;
- (m) failing to train or supervise its employees to adequately inspect the Polar Bear Express and railway tracks;

- (n) failing to communicate to the railroad traffic controller, the Polar Bear Express or to anyone else that there was a slow order in place at the location of the accident;
- (o) failing to adhere to the slow order directive in place at the location of the accident;
- (p) failing to place flags or other warning devices at proper positions along the railway track to notify and warn the Polar Bear Express and other trains that there was a slow order on the railway track;
- (q) exhibiting a marked departure from the standard of conduct expected of operators of the Polar Bear Express and the railway track system;
- (r) failing to instruct others about a slow order on the subject railway track;
- (s) failing to slow the Polar Bear Express when a slow order was in place along the subject railway track;
- (t) failing to repair the railway track between Moosonee and Cochrane;
- (u) failing to ensure that the railway track between Moosonee and Cochrane were in good condition and safe for passage by the Polar Bear Express;
- (v) allowing the Polar Bear Express to proceed over railway tracks when it knew or ought to have known that the track was in poor condition, in need of repair, dangerous or otherwise not in a safe condition for use for the Polar Bear Express;
- (w) allowing the Polar Bear Express to proceed through the slow order location at an excessive rate of speed;

- (x) failing to establish, maintain and implement proper emergency response services for a derailment incident, such as this; and
- (y) failing to establish and maintain a proper communication system in the Moosonee and Cochrane corridor to ensure that the train engineers, track inspection/ repair personnel and railroad traffic controller could openly and readily communicate with each other as to existing train and track conditions.

11. The relationship between ONTC and Helene, Allison and the other Class Members was contractual in nature and required that ONTC exercise reasonable care and not act negligently. Helene, Allison and the other Class Members plead that by reason of the accident described above, ONTC is in breach of its contractual duties to them.

DAMAGES:

12. As a result of the aforesaid negligence and breach of contract by ONTC resulting in the derailment, Helene, Allison and the other Class Members have suffered personal injuries which include physical, psychological and emotional injuries and resultant damages.
13. Helen, Allison and the other Class Members remain under the care of their medical care givers and specialists. The full extent of their injuries are not yet known. The Plaintiffs continue to suffer from shock, anxiety, depression, emotional trauma,

physical pain, insomnia, weakness and diminished energy which continue to present and will continue in the future. The Plaintiffs have been subjected to extensive treatments (including physiotherapy, chiropractic treatments, massage, counselling and other healing modalities) and, notwithstanding, continue to experience difficulties resulting from their injuries. The Plaintiffs have sustained and will continue to sustain pain and suffering, loss of enjoyment of life and loss of amenities.

14. Helen, Allison and the other Class Members state that they participated in various leisure and recreational activities before the accident, most of which have been curtailed and negatively impacted as a result of the accident. In addition, their capacity to perform routine activities of daily living have been substantially impaired or interfered with following the accident.
15. As a further result of the accident and the ensuing injuries and symptoms described herein, Helen, Allison and the other Class Members have undergone and will continue to undergo in the future, hospitalization, therapy, rehabilitation and other forms of medical treatment and health care. The Plaintiffs have incurred and will likely continue to incur pecuniary losses including, but not limited to the cost of future health care and the cost of necessary purchases or services, the full particulars of which are not within their knowledge at this time.

16. Helen, Allison and the other Class Members are unable to perform household and handyman chores for themselves to the extent that they were able to do so before the accident and will require assistance in the future to complete such chores.

17. Helen, Allison and the other Class Members state that as a further result of the negligence, breach of contract and omissions of the Defendant and ensuing injuries suffered by each Plaintiff, they have incurred special damages which include, but are not limited to the following:

- (a) cost of medical expenses and reports; and
- (b) additional expenses incident to medical treatment including transportation expenses, home care expenses and medical aid expenses.

The full particulars of this claim for special damages will be provided prior to the trial of this action.

18. As a result of the derailment, Helene, Allison and the other Class Members have incurred a loss of income, which continue to date. Each Class Member's physical, psychological and emotional ability to perform his or her job has been markedly reduced and limited as a result of the accident and, in turn, his or her competitive position in the labour market has been negatively impacted and lessened which will result in future income losses, a loss of competitive advance, a loss of income earning potential and a diminution of income earning capacity.

19. The Plaintiffs plead and rely upon:

- (a) the *CJA*;
- (b) the *CPA*;
- (c) the *Railway Safety Act*, R.S.C., 1985, c. 32 (4th Supp.), including any regulations and amendments thereto;
- (d) the Canadian Railway Operating Rules, including any amendments thereto;
- (e) the *Ontario Northland Transportation Commission Act*, R.S.O. 1990, c. 0. 32, including any regulations and amendments thereto;
- (f) the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, including any regulations and amendments thereto; and
- (g) the *Crown Agency Act*, R.S.O. 1999, c. C. 48, including any regulations and amendments thereto.

20. The Plaintiffs propose that this action be tried in the City of Thunder Bay, in the Province of Ontario.

January 31, 2019

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HELEN KNAPAYSWEEET et al
Plaintiffs

v. ONTARIO NORTHLAND TRANSPORTATION COMMISSION
Defendant

Court File No. CV-19 - 0090 - 202P

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
THUNDER BAY

STATEMENT OF CLAIM

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