CITATION: Egan v. National Research Council of Canada, 2026 ONSC 1429
COURT FILE NO.: CV-16-69664
DATE: 2026/03/09

ONTARIO

SUPERIOR COURT OF JUSTICE

In the Matter of a Claim under the
Class Proceedings Act, 1992, S.O. 1992, c. 6

BETWEEN:	
Gordon Egan, Kevin Kunka, Scott Petrie, and Paul Crozier Plaintiffs	Michael S. Hebert and Nathan Adams, for the Plaintiffs
– and –	
National Research Council of Canada and Carleton University Defendants	Stephanie Dion, Heather Thompson, and Genevieve Tremblay-Tardif, for the Defendants
	HEARD: January 16, 2026

REASONS ON MOTION TO AMEND THE STATEMENT OF CLAIM AND CERTIFICATION ORDER TO INCLUDE A CLAIM FOR PUNITIVE DAMAGES

R. SMITH J.

[1] The plaintiffs have brought a motion seeking the follow relief:

a. To amend paragraph 48 of their Statement of Claim and to add a new paragraph 49 regarding their claim for punitive damages;

b. To amend the Certification Order dated July 7, 2021 to add the plaintiffs' claim for punitive damages as a common issue;

c. To amend the Statement of Claim to remove Carleton University as a Defendant from the style of cause: this part of the motion is a granted on consent of the parties;

d. For an order fixing a date for a pretrial conference in this action; and,

e. For costs on a substantial indemnity basis.

[2] The proposed amended paragraph 48 and the new paragraph 49 of the Statement of Claim are attached as Schedule "A" to these reasons. Essentially, the plaintiffs' claim punitive damages on the basis that the defendant knew **or ought to have known** of possible PFAS contamination of the Class Members' drinking water by March 27, 2013. Despite the findings in the report dated on the above date, NRC failed to disclose the results of this report, the existence of PFAS contamination on the NRC lands, or to drill bore holes on the Class Members' lands to determine the extent of any PFAS contamination of their drinking water.

[3] NRC has brought a cross motion seeking to strike portions of the fresh as amended Statement of Claim that were dismissed in the Certification Order dated July 7, 2021, namely the plaintiffs' claim for punitive damages as a common issue and a number of other parts of the plaintiffs' fresh as amended Statement of Claim as set out in paragraph 9 of the defendant's cross motion.

[4] The defendant also submits that the court should dismiss plaintiffs' motion to amend its Statement of Claim and to amend the Certification Order to add punitive damages as a common issue as the claim for punitive damages has no reasonable prospect of success.

Motion to Amend the Pleadings and the Certification Order re Punitive Damages

[5] The issue of punitive damages was not certified as a common issue at the motion for certification due to a lack of sufficient evidence of a deliberate delay in notifying Class Members that their drinking water may be contaminated by PFAS chemicals. The Statement of Claim alleged

that the NRC knew that the Class Members' drinking water had been contaminated with PFAS chemicals and delayed advising them for 2.5 years.

[6] The Certification Order permitted the plaintiffs to bring a motion to amend it to certify punitive damages as a common issue if they discovered additional evidence from productions or during the discovery process that would justify certification of punitive damages as a as a common issue.

[7] The plaintiffs have proposed an amendment to paragraph [48] and a new paragraph [49] of their Statement of Claim stating that "NRC knew or ought to have known" that PFAS chemicals had migrated in the groundwater and into the Class Members' drinking water. The revised paragraph [48] and the new paragraph [49] are attached as Schedule "A" hereto.

[8] The plaintiffs rely on a number of reports that opine that NRC previously knew about the possible migration of PFAS chemicals onto the Class Members' lands and also on the evidence of Gary Fudge given at discovery:

a. Golder's reporting in 2009 stated that it inferred that the groundwater was flowing towards the Class Members' lands, attached to it the highest risk rating that Golder had in its grading, and questioned if NRC's discharges into the natural environment should be allowed to continue (emphasis added);

b. All of the recommendations by Aqua Terre in 2004 and Golder in 2009, contained in their reports pertaining to environmental concerns with the discharge of fire-fighting wastewater, were not passed up the authority chain at NRC;

c. As at 2014, the NRC had no controls in place to prevent PFAS migration offsite towards the Class Members' lands (emphasis added);

d. As at the date of the examination for discovery, there were no groundwater boreholes or monitoring wells drilled on the Class Members' lands in order to assess the extent of PFAS groundwater contamination, as recommended on several occasions by the Ministry;

e. The only way to properly assess the extent of offsite PFAS groundwater contamination under the Class Members' lands was to drill boreholes or monitoring wells on the Class Members' properties;

f. Mr. Fudge could not advise why NRC had decided not to drill offsite to determine the extent of PFAS contamination of the Class Members' properties in spite of all the recommendations by the Ministry;

g. In spite of the NRC taking the position that it needed more data in order to install groundwater monitoring wells offsite. Mr. Fudge was unable to confirm what further information or testing was required, after over 11 years since PFAS was first discovered on the NRC Site, in order to commence drilling boreholes offsite to determine the extent of PFAS groundwater contamination under the Class Members' properties;

h. By March 2013, NRC had knowledge of PFAS chemicals on its own Site and NRC had multiple reports stating that the inferred groundwater flow was toward the Class Members' lands (emphasis added);

i. PFAS chemicals (in excess of available standards in 2018 and current standards since 2024) were migrating via a culvert extending out of the NRC property under the roadway, down the lane of one of the Class Members' properties and into a sink hole in front of his residence, from which it entered the groundwater flowing to the Class Members' properties (emphasis added);

j. Since it commenced operations in 1981 until 2014, a hundred (100) percent of the PFAS chemicals used as part of NRC's testing was discharged from the NRC Site directly into the environment (emphasis added);

k. Despite the NRC being aware of PFAS chemicals on its land, it never took steps, for a period of up to one and a half (1.5) years from the commencement of groundwater monitoring onsite, to drill a borehole or monitoring well on the eastern lot line of its Site to determine if there was PFAS contamination spreading

towards the Class Members' lands, which it turned out to be the case; and

l. The first time NRC became aware of the risk of offsite migration of PFAS chemicals was upon receipt of the Stantec report in March 2013; nearly three (3) years before the Class Members were first advised in December 2015 (emphasis added).

[9] The proposed new paragraph [49] in the Statement of Claim states that based on the March 27, 2013 final phase Environmental Assessment Report, NRC knew or ought to have known of possible contamination of the plaintiffs' drinking water and failed to disclose results to the plaintiffs and Class Members until December 23, 2015, a delay of 2.5 years.

[10] NRC argues that punitive damages should not be certified as a common issue based on the discovery evidence outlined above and the proposed amendment to the pleadings to state that "NRC knew or ought to have known of possible contamination of the Class Members drinking water with PFAS chemicals" should not be permitted.

[11] Rule 26.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, states:

> On a motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment (emphasis added).

[12] In *Marks v. Ottawa (City)*, 2011 ONCA 248 (CanLII) at para. 19, the Court of Appeal for Ontario set out the requirements regarding the amendment of pleadings under r. 26 as follows:

(i) An amendment should be allowed unless it would cause an injustice not compensable in costs;

(ii) The proposed amendment must be shown to be an issue worthy of trial and *prima facie* meritorious;

(iii) No amendment should be allowed which, if originally pleaded, would have been struck; and,

(iv) The proposed amendment must contain sufficient particulars.

[13] In *Andersen Consulting v. Canada (Attorney General)*, 2001 CanLII 8587 (ON CA) at para. 37 the Court of Appeal for Ontario stated that the general rule is that pleadings amendments are presumptively approved unless they:

a) cause prejudice that cannot be compensated by costs or an adjournment,

b) are shown to be scandalous, frivolous, vexatious or an abuse of the court's process, or

c) disclose no reasonable cause of action or are legally untenable.

[14] NRC submits that the proposed amendment to the statement of claim regarding punitive damages does not disclose a reasonable cause of action. NRC does not argue that it would suffer any prejudice or that the proposed amendment would cause undue delay.

[15] The plaintiffs never abandoned their claim for punitive damages and at para. [43] of the reasons for certification dated July 7, 2021, I stated as follows:

> [43] at this stage, the pleadings are deemed to be proven. If evidence is discovered that NRC knew and failed to advise the proposed class members of possible contamination of their drinking water by toxic P FAS compounds for approximately 2 years, then it is not plain and obvious that they would not be successful on such a claim. The claim is premature at this time and if such evidence is discovered, the pleadings could be amended.

[16] At para. 14 of the judgement dated April 25, 2025, I stated that there was evidence that NRC "ought to have known that PFAS compounds had migrated onto the plaintiffs' lands and could have contaminated their drinking water". At para. 16, I also stated that there was "some basis in fact that the NRC knew or ought to have known of possible contamination of the plaintiff's drinking water by 2013."

[17] At this stage of the proceedings, the facts alleged in the pleadings are deemed to be proven. NRC argues that its failure to advise Class Members that their drinking water was possibly

contaminated by toxic PFAS chemicals discharged from its testing site and its failure to drill any bore holes on Class Members' property does not disclose a reasonable cause of action, when it knew or ought to have known of the possible contamination.

[18] At this stage the merits of an allegation in a statement of claim are not to be considered in detail but should be determined at a final hearing.

[19] The test for awarding punitive damages was set out in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 36. The Supreme Court of Canada held that punitive damages were to be awarded for "malicious, oppressive and high-handed conduct" that "offends the court's sense of decency". It represents a marked departure from ordinary standards of decent behaviour.

[20] NRC submits that a claim for punitive damages has no reasonable prospect of success even if the evidence shows that NRC ought to have known that the Class Members drinking water was contaminated by PFAS chemicals and failed to advise the Class Members of possible contamination of their drinking water or to test for contamination to ensure that the drinking water was not dangerous to drink.

[21] I am not satisfied that if this conduct or lack thereof is proven that there is no reasonable prospect that punitive damages could be awarded. The failure to warn the neighbouring residents that their drinking water was or may be contaminated by PFAS chemicals may be found to "offend the court's sense of decency". For this reason, the amendment to the pleadings regarding punitive damages is granted.

[22] The requests to amend the Certification Order to add trespass and the OWRA as common issues, was not argued at the motion and are dismissed.

Disposition of Motion to Amend Pleadings and Cross Motion

[23] For the reasons noted above, I make the following findings:

a) The plaintiffs' motion to amend its Amended Amended Statement of Claim to claim punitive damages as set out in paragraphs [48] and [49] of Schedule "A" is granted;

b) The Certification Order is amended to add a claim for punitive damages as a common issue in accordance with the amended Statement of Claim;

c) The style of cause is amended to remove Carleton University as a defendant on consent and to remove Scott Petrie as a plaintiff;

d) NRC's cross motion seeking to have the plaintiffs make further amendments to their Amended Amended Statement of Claim is denied as the Certification Order sets out the common issues to be decided;

e) A pretrial date shall be set by the trial coordinator on a date, after NRC has brought its motion for summary judgement and without prejudice to NRC's ability to proceed with its motion for summary judgement.

Costs

[24] The plaintiff shall have 10 days to make brief submissions on costs, NRC shall have 10 days to respond, and the plaintiff shall have 7 days to reply.

The Honourable Justice Robert Smith

Released: March 9, 2026

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Robert Smith J.

Released: March 9, 2026

SCHEDULE "A"

Proposed amendment to original paragraph 48: The plaintiffs further state that the conduct of the NRC and Carleton University warrants an award of punitive damages. This conduct relating to the National Fire Laboratory and fire research facility operation, and in particular, their use, storage, handling, application and disposal of fire-fighting foam containing PFASs and their burning of substances containing the Contaminants was indifferent, reckless, wanton, without care, deliberate, callous, willful, in complete disregard of the rights and safety of the plaintiffs and the other Class Members warrants an award for punitive damages. When the NRC discovered the Contamination, it conducted an environmental investigation of the NRC Lands and performed testing in the Contaminated Area, but it failed to make full, prompt and candid disclosure of the results of that testing and of the Contamination to the plaintiffs and the other Class Members.

Proposed new paragraph 49: In unambiguous terms, on March 27, 2013, the NRC received a Final Phase II Environmental Site Assessment Report from its environmental consultant documenting that PFAS contamination had migrated in the soil, groundwater, and surface water, including a creek that eventually drains into the Mississippi River, all of which are located on the NRC Lands. This creek located on the NRC Lands drains across the Plaintiffs' and Class Members' lands. The NRC knew or ought to have known of possible PFAS contamination of the Plaintiffs' and other Class Members' drinking water by no later than March 27, 2013. Despite the findings of this Report, which should have alerted the NRC to the potential for offsite migration of PFAS contamination onto the properties and into the drinking water of the Plaintiffs and other Class Members, the NRC failed to disclose either the results of this Report or the existence of the PFAS contamination on the NRC Lands to the Plaintiffs and other Class Members until December 23, 2015. The NRC's delay spanning more than two and a half years in disclosing any information pertaining to PFAS contamination to the Plaintiffs and other Class Members warrants an award for punitive damages.