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COURT FILE No. \_\_\_\_\_

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**BETWEEN**

**Innu Nation Inc.**

**PLAINTIFF**

**AND:**

**Churchill Falls (Labrador) Corporation  
Limited**

**FIRST DEFENDANT**

**AND:**

**Hydro-Québec**

**SECOND DEFENDANT**

**Notice to Defendant(s)**

You are hereby notified that the plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within 30 days after service hereof upon you, you cause to be filed with the Supreme Court of Newfoundland and Labrador at St. John's, a defence and unless within the same time a copy of your defence is served upon the plaintiff(s) or the plaintiff's solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$500 (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitor(s) within 30 days from the service of this notice upon you, then this proceeding will be stayed.

TO: Hydro-Québec  
Whose address for service is:  
Édifice Jean-Lesage  
75, boulevard René-Lévesque Ouest  
Montréal, QC H2Z 1A4

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**Notice to Defendant(s)**

You are hereby notified that the plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within 10 days after service hereof upon you, you cause to be filed with the Supreme Court of Newfoundland and Labrador at St. John's, a defence and unless within the same time a copy of your defence is served upon the plaintiff(s) or the plaintiff's solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$500 (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitor(s) within 30 days from the service of this notice upon you, then this proceeding will be stayed.

**TO: Churchill Falls (Labrador) Corporation Limited**  
Whose address for service is:  
Hydro Place  
500 Columbus Drive, PO Box 12500  
St John's, NL A1B 3T5

**Form 5.03A**  
(rule 5.03)

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**STATEMENT OF CLAIM**

**Introduction**

1. The defendants Hydro-Québec and Churchill Falls (Labrador) Corporation Ltd. have been collaborating on a common enterprise, the Churchill Falls Hydro-Electric Project, which did, and continues to do, great damage to a large area that is of deep significance to the Innu of Labrador, whom Innu Nation Inc. represents. The Defendants have been deriving great profit from this enterprise for decades. The Plaintiffs come to this Court for a measure of justice, through the disgorgement of the profits that the Defendants have derived from the Project, or in the alternative, through restitutionary relief or compensatory damages.

## **The Plaintiffs**

2. Innu Nation Inc. (hereafter “Innu Nation”) represents the Innu of Labrador, including in land claim and self-government negotiations with Canada and Newfoundland and Labrador. Its head office is situated at Sheshatshiu, NL A0P 1M0. The Innu of Labrador are a people with a population of approximately 3200 who now primarily reside in two separate communities: the reserves set aside for Mushuau Innu First Nation and Sheshatshiu Innu First Nation (collectively, the “Innu of Labrador” or the “Innu”). These First Nations are First Nations having the capacity of Bands within the meaning of the *Indian Act*, RSC 1985, c I-5 (“*Indian Act*”). The Innu are an Aboriginal people within the meaning of s. 35 of the *Constitution Act, 1982*, and an Indigenous people within the meaning of the United Nations Declaration on the Rights of Indigenous Peoples. The Innu and their ancestors have lived, used, and protected the lands and waters of their traditional and ancestral territories since time immemorial.
3. Innu Nation is a corporation incorporated under the laws of Newfoundland and Labrador to represent the rights and interests of the Innu of Labrador.
4. The Innu have, since time immemorial, occupied, depended upon, conducted their daily lives and buried their dead in the lands which the Innu call “Nitassinan” (which means “Our Land” in Innu-aimun and which includes much of current-day Labrador).



## **The Defendants**

5. The First Defendant, Churchill Falls (Labrador) Corporation Limited (“CFLCo”), is a body corporate incorporated pursuant to the *Canada Business Corporations Act*, with its registered head office situated at Hydro Place, 500 Columbus Drive, St. John’s, NL A1B 0C9. CFLCo generates electricity from the Churchill Falls Generating Station (“CFGS”) in Labrador and transmits it for delivery elsewhere.
  
6. The Second Defendant, Hydro-Québec, is a wholly owned Crown corporation of the Government of Québec, incorporated pursuant to a special act of the Legislature of the province of Québec, with its registered head office situated at 75 René-Lévesque Boulevard West, 20th Floor, Montreal, QC H2Z 1A4. It was created pursuant to s.3 of the *Hydro-Québec Act*, CQLR c H-5. It generates, transmits and distributes electricity, including the bulk of the electricity produced at CFGS.
  
7. This Statement of Claim is being served on Hydro-Québec outside of the Province by virtue of Rule 6.07(c), (h), and (j) of the *Rules of the Supreme Court, 1986*, SNL 1986, c 42, Sch D.
  
8. The Defendants and their predecessors were involved in the construction, and are involved in the ownership and operation, of a series of dikes, reservoirs, and dams in addition to CFGS, all of which are located on the watershed of and on the Upper Churchill River, as well as associated transmission lines and other equipment in Labrador, called the Churchill Falls Hydro-Electrical Project (“the Project”).

### **The Innu Way of Life in Nitassinan**

9. Nitassinan includes the watershed of a large river named Mishtashipu (or "Great River") by the Innu. Mishtashipu is 856 km long and now drains an area of over 90,000 km<sup>2</sup>, which comprises a large portion of the traditional Innu territory of Nitassinan. Nitassinan is mostly situated within the boundaries of modern-day Labrador. For the purposes of this litigation, Innu Nation only puts the parts of Nitassinan within the boundaries of Labrador at issue, and only seeks remedies in respect of lands within the boundaries of Labrador.

10. William Martin, a trader with the Hudson's Bay Company, named Mishtashipu "the Hamilton River" in 1821, and this name was used on Canadian maps until 1965, at which time the English name of the river was changed to "the Churchill River".

11. The Innu daily activities ("Daily Activities") in Nitassinan, including in the watershed of Mishtashipu, have included the following activities since time immemorial:

- a. Hunting and trapping wildlife, and fishing, for food, clothing, shelter, medicine, tools, trade, ceremonies and other purposes;
- b. Using natural resources such as flora and other natural resources for food, clothing, shelter, medicine, tools, shelter, trade, ceremonies and other purposes;
- c. Using rivers, streams and water bodies for transportation, food and cultural purposes;
- d. Naming geographically and culturally significant places for the purposes of navigation, documentation of community history and other purposes;



- e. Exercising spiritual and cultural practices dependent on geographic sites, natural resources and species;
- f. Transmitting traditional knowledge regarding the history, uses and values of various aspects of the Innu people, animals, flora, lands and resources in the area;
- g. Developing and using traditional laws for managing, protecting and appropriately using the lands and resources, including for cultural activities; and
- h. Engaging in cultural activities including practices and ceremonies related to birth, social development, death and the interment and commemoration of the dead at culturally appropriate sites and in a culturally appropriate manner.

12. Daily Activities included those practices, customs, and traditions which were integral to the distinctive culture of the Innu at the time of first contact with Europeans.

13. The ancestors of the Innu were in exclusive possession of Nitassinan at the time of the assertion of British sovereignty. Innu law governed their relationship with Nitassinan, and the plants, animals and other beings found on and in the lands and waters. To the extent that other groups were present on Nitassinan it was with the permission of the Innu people and in accordance with Innu law. The Innu never signed any treaty or land surrender agreement with the French, British or Canadian governments, including for the Mishtashipu watershed.

14. In recent years, Newfoundland and Labrador and Canada have recognized and acknowledged that the Innu have a legitimate and unresolved Aboriginal title and Aboriginal rights claim to a significant area of Labrador. The Innu, Canada, and Newfoundland and Labrador are participating in negotiations to resolve this outstanding land claim.

15. On November 18, 2011, the Innu of Labrador, Canada and Newfoundland and Labrador signed an Agreement-in-Principle with respect to the Innu claim to lands in Labrador, confirming the intention of the parties to enter into a final agreement to settle the land claim.

### **The Project**

16. The main works which comprise the Project include:

- a. A series of dikes and control structures along a 64 km stretch of waterways in the watershed of Mishtashipu (or the "Churchill River"), resulting in the diversion or drainage of an area of approximately 72,000 km<sup>2</sup>;
- b. A reservoir named the "Smallwood Reservoir", covering an area of over 6,500 km<sup>2</sup>, to contain the water diverted by the dikes;
- c. A power generation station to use water from the Smallwood reservoir and another reservoir (the Ossokamanuan Reservoir) to generate electricity;
- d. A town, named "Churchill Falls", to service the construction and operation of the Project;
- e. Three side-by-side power lines in a cleared right-of-way measuring over 200 metres in width, from CFGS to the Quebec border, used to transport the



electricity from CFGS to the Hydro-Québec electricity grid and to purchasers in Quebec and beyond; and

- f. Access and other roads to service the construction and operation of all of the above.

17. Commencing in or about 1960, the Defendants CFLCo and Hydro-Québec or their corporate predecessors began planning toward a common plan to realize the Project. In or about 1966, the Defendants signed a Letter of Intent outlining their common enterprise, which was revised in negotiations that concluded with the signing of a May 12, 1969 agreement (the “1969 Power Contract”).

18. Pursuant to the terms of the 1969 Power Contract, CFLCo contracted with, and Hydro-Québec agreed to purchase, virtually all of the power produced at CFGS until 2016. Before the completion of the construction of the Project, the Defendants agreed on terms for the renewal of the 1969 Power Contract until 2041.

19. During the planning and construction of the Project, the Defendants were aware that the Project would be situated on the traditional territory of the Innu. Despite this, at no time during the construction or subsequent operation of the Project did the Defendants discuss with the Innu the impacts of the Project, take steps to minimize its impacts to the Innu’s way of life and/or their ability to carry out the Daily Activities in Nitassinan as a result of the Project, or compensate the Innu for harms done to the lands and resources upon which the Innu have depended since time immemorial.

### **The Project is a Common Enterprise of the Defendants**

20. The Project was, and continues to be, a common enterprise of Hydro-Québec and CFLCo, as they worked on a concerted action to plan and construct it, and now work on a concerted action to operate it. Facts demonstrating the concerted action of Hydro-Québec and CFLCo include:

- a. Hydro-Québec, pursuant to the 1969 Power Contract, guaranteed the purchase of the vast majority of the electricity produced by CFGS, whether it needed it or not, thus assuming the risks associated with both the Project and the uncertainty of market prices for electricity;
- b. Hydro-Québec provided a guarantee for large amounts of construction cost overruns, eventually providing a guarantee for all cost overruns;
- c. Hydro-Québec provided a completion guarantee, which enabled financing for the Project to be secured;
- d. Hydro-Québec ensured that the Project was constructed to meet its own technical requirements to enable it to accept electricity generated by the Project into its own transmission grid;
- e. Hydro-Québec constructed a high-voltage transmission line to the Québec-Labrador border to enable it to accept power from the Project; and
- f. Other than via Québec, no other path for the transmission of electrical energy generated by the Project to North American markets was found to be feasible, and Hydro-Québec had, and continues to have, a monopoly on the transmission and sale of electrical energy into and through Québec.



21. For the above reasons, the Project could not have been realized without Hydro-Québec. Hydro-Québec was in a common enterprise to construct the Project with CFLCo.

22. Furthermore, no lease or licence which the Defendants purport to hold, and no agreement to which either of them are a party, are competent, either constitutionally or legally, to authorize interference with and infringement of the Plaintiff's rights and interests.

### **Impacts of the Project on the Innu Way of Life**

23. The effects of the construction and operation of the Project have deprived the Innu of the way of life that they have engaged in since time immemorial (the "Effects").

24. Without limiting the generality of the foregoing, the Defendants, through their actions to construct and operate the Project, have deprived the Innu of the way of life that they have engaged in since time immemorial in the following ways (among others):

- a. Depriving the Innu of the ability to engage in any Daily Activities in the 5,700 km<sup>2</sup> area of the Smallwood Reservoir, the area in and around the generating station and the community of Churchill Falls, the area in and around the transmission corridor for the transmission line to Quebec and beyond, and in other lands subject to flooding as a result of the construction of the Project;



- b. Compromising the ability of the Innu to engage in any Daily Activities in the 72,000 km<sup>2</sup> area of the Mishtashipu watershed where waters have been diked or diverted;
- c. Destroying burial, ceremonial and habitation sites throughout the Project area;
- d. Destroying the tools and materials stored in cache sites in the 5,700 km<sup>2</sup> area flooded by the Smallwood Reservoir;
- e. Fragmenting wildlife habitat and disrupting migration patterns in the Project area;
- f. Harming the availability and health of fish in the Project area as a result of mercury poisoning caused by the extensive flooding required for the Smallwood Reservoir;
- g. Diminishing the abundance, diversity and quality of available wildlife and flora for harvesting in the region as a result of the Project and its associated activities;
- h. As a result of harming access to healthy game, fish and natural flora, contributing to a change in the traditional eating habits of the Innu and an associated deterioration in health;
- i. Depriving the Innu of the ability to visit and reverence burial and ceremonial sites used for thousands of years in the Project area;
- j. Severing the spiritual and cultural ties of the Innu with their traditional lands in the Project area, thus impeding the exercise of spiritual and cultural practices and undermining their freedom of religion;

- k. Depriving the Innu of the ability to use the land in its natural condition in a manner consistent with the cultural values and beliefs of the Innu; and
- l. As a result of the above, creating psychosocial damage, socioeconomic losses and cultural losses for the Innu.

25. Although other residents of Labrador were negatively affected by the Project, it caused the Innu special and particular damage.

26. The Defendants have failed to even attempt to justify these impacts on the Innu during the planning, construction and operation of the Project by:

- a. Failing to fully inform themselves of the Innu's Daily Activities;
- b. Failing to fully inform themselves about the impact, or potential impact, of the Project on the Innu's Daily Activities;
- c. Failing to provide the Innu with any, or adequate, information relevant to the authorizations and/or proposed authorizations for the Project;
- d. Failing to provide the Innu with an adequate opportunity to respond to and comment on the Project;
- e. Failing to provide the Innu with sufficient resources to adequately respond to and comment on the Project;
- f. Failing to meaningfully address the Innu's concerns with respect to the Project; and
- g. Failing to ensure that the Innu's way of life was minimally affected by the Project.



### **Benefits to the Defendants**

27. As a result of the construction and operation of the Project, the Defendants have received extensive financial benefits. Each defendant profited from low-cost electricity generated at CFGS, which they have caused to be transmitted to market and resold at market rates.

28. For instance, Hydro-Québec has received, and continues to receive, power at substantially below market rates under the 1969 Power Purchase Agreement, and will continue to do so until 2041, and perhaps beyond that time, absent any change to that Agreement.

29. These benefits are a direct result of the construction and operation of the Project, including the flooding required to create the Smallwood Reservoir. The Defendants were able to generate low-cost electricity only by causing catastrophic damage to Nitassinan, visiting the Effects on the Innu, and destroying their ability to carry out their Daily Activities.

### **Impact on Aboriginal Rights and Title**

30. The Plaintiffs have rights to use and enjoy Nitassinan, free from unreasonable or unlawful interference. These rights are recognized under Canadian and International law and protected by the law of Aboriginal title and Aboriginal rights. Canadian and International law provide for redress, including restitution and/or the payment of just, fair and equitable compensation, for breaches of Aboriginal title and Aboriginal rights.



31. In the alternative, the Daily Activities of the Innu included the exercise of rights that constitute property rights, akin to profit-à-prendre, and are deserving of the same legal protections.

32. As detailed above, the Effects of the Project have occasioned serious impacts on Nitassinan and on the ability of the Innu to continue Aboriginal practices, customs and traditions.

### **Role of Nalcor Energy**

33. Nalcor Energy and its predecessors also participated in the construction and operation of the Project, but Nalcor Energy is not named as a defendant here because it has reached a settlement with the Plaintiffs.

### **The Defendants Have Infringed the Innu's Aboriginal Title**

34. The Defendants have infringed the Innu's Aboriginal title by entering and constructing the Project upon Nitassinan without justification or the Innu's authorization, akin to the tort of trespass.

### **The Defendants Have Infringed the Innu's Aboriginal Rights**

35. The Defendants have infringed the Innu's Aboriginal rights by compromising or eliminating the Innu's ability to exercise the Daily Activities and their other Aboriginal rights on portions of Nitassinan impacted by the Project.

### **The Defendants Have Trespassed upon Nitassinan**

36. The Defendants have trespassed upon Nitassinan by entering and constructing the Project upon Nitassinan. The Defendants' trespass, which has compromised or eliminated the Innu's ability to use or access portions of Nitassinan impacted by the Project, is continuing and without justification.

### **The Defendants Have Committed Nuisance Against the Innu**

37. The Effects constitute a private nuisance on the rights and interests of the Innu as they constitute a substantial and unreasonable interference with the Innu's occupation and enjoyment of portions of Nitassinan impacted by the Project.

38. The Effects constitute a public nuisance on the rights and interests of the Innu as they materially affect the reasonable comfort and convenience of the Innu, and the Innu have suffered special damages to their Aboriginal rights and title as a result.

### **The Defendants Have Breached the Innu's Right to Profit-à-Prendre**

39. The Defendants have breached the Innu's right to profit-à-prendre by compromising or eliminating the Innu's ability to take resources from portions of Nitassinan impacted by the Project.

### **The Defendants Have Been Unjustly Enriched**

40. The Defendants have been unjustly enriched by the construction and operation of the Project at the expense of the destruction and diminishment of the Innu's way of life.

41. The benefits of the construction and operation of the Project have accrued to the Defendants, while it has caused great deprivation to the Innu in its Effects on them and their way of life.

42. There is no juristic reason for the transfer of benefit from the Plaintiffs to the Defendants.

**The Innu are Entitled to Damages for the Defendants' Wrongful Conduct**

43. The Innu claim an accounting of the profits that the Defendants have derived from the operation of the Project.

44. The Innu claim disgorgement of the profits that the Defendants have derived as a result of their tortious conduct.

45. In the alternative, the Innu seek restitution for the Defendants' unjust enrichment, or compensatory damages for their tortious conduct, in the following amounts:

- a. \$4 billion (\$4,000,000,000) from the defendant Hydro-Québec; and
- b. the net amount of \$150,000,000 from the defendant CF(L)Co after the application of the indemnity provisions in the settlement referred to in paragraph 33 for the indemnification of Nalcor Energy and related parties and Newfoundland and Labrador.

46. The Plaintiffs also claim:

- (a) Pre- and post-judgement interest;



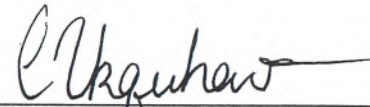
- (b) Their costs of this action on a substantial indemnity basis; and
- (c) Such further relief as this Honourable Court deems just.

47. The Plaintiffs rely on the following enactments:

- a. *Constitution Act, 1867*;
- b. *Constitution Act, 1982*, section 35;
- c. *Indian Act*, RSC 1985, c. I-5; and
- d. *Rules of the Supreme Court, 1986*, SNL 1986, c 42, Sch D.

48. The Plaintiffs propose that this action be tried in Happy Valley-Goose Bay.

**DATED** at the City of St. John's, in the Province of Newfoundland and Labrador, on the 5<sup>th</sup> (day) of October, 2020.



per: Nancy Kleer  
Solicitor for the Plaintiffs

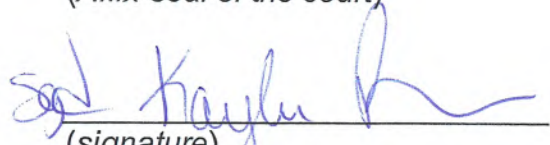
Whose address for service is:  
Olthuis, Kleer, Townshend LLP  
Barristers & Solicitors  
250 University Avenue, 8th Floor  
Toronto, ON M5H 3E5

TO: Hydro-Québec  
Whose address for service is:  
Édifrice Jean-Lesage  
75, boulevard René-Lévesque Ouest  
Montréal, QC H2Z 1A4

AND TO: Churchill Falls (Labrador) Corporation Limited  
Whose address for service is:  
Hydro Place  
500 Columbus Drive, PO Box 12500  
St John's, NL A1B 3T5

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador this  
5th day of October, 2020.

(Affix seal of the court)

A handwritten signature in blue ink, appearing to read "Kayla R.", written over a horizontal line.

(signature)

Registrar/Registry Clerk

COURT  
OFFICER