

Court File No. CV-19-006325580000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CHIEF GERALD LEWIS and ISKATEWIZAAGEGAN NO. 39 INDEPENDENT FIRST
NATION**

Applicants

AND

**THE CITY OF WINNIPEG, and HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

Respondents

AFFIDAVIT OF CHIEF GERALD LEWIS

**In support of APPLICATION UNDER Rules 14.05(3)(d) and (h), and 38 of the *Rules of
Civil Procedure***

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I, Gerald Lewis, of Shoal Lake No. 39 in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am Chief of the Iskatewizaagegan No. 39 Independent First Nation, and as such have knowledge of the matters hereinafter deposed to.

I. The Applicant, Chief Gerald Lewis

2. I have lived all my life in Iskatewizaagegan No. 39. I have raised my children on the reserve. As such, I am very familiar with the land and the water, both with regard to their natural history and to their political history. I also have a deep personal knowledge of this community, its successes and injustices as are laid out in this affidavit, and more generally.
3. In addition to being Chief, I am self-employed. For the past 20 years, I have operated an automotive recycling business in my own and nearby First Nation communities. I employ members of these communities in this business, support local mechanical businesses, and organize local clean ups to gather up derelict vehicles and parts to be recycled.
4. I began my political career in 2000 when I was elected to the Band Council. I maintained that role until 2010. In 2016, I returned to governance and was elected Chief. I have served as Chief since that time.

II. The Applicant, Iskatewizaagegan No. 39 Independent First Nation

5. Iskatewizaagegan No. 39 Independent First Nation (IIFN or "the Nation") is an Anishinaabe community located in Northwestern Ontario.

6. The total registered population of our Nation is 585, with 297 people living on reserve. The main sources of employment in our community are band administration, education, and health care.
7. Our community contends with issues related to health, education, and infrastructure. In particular, housing urgency is high. Of the 154 existing housing units, 147 of those have mold issues and are in deteriorating conditions. There is a need for a new sewage treatment plant and for an upgrade to the roads.
8. IIFN entered into a Treaty relationship with the Crown on October 3, 1873. Through Treaty #3, the Anishinaabe and Crown agreed to share 55,000 square miles of territory that spans from west of Thunder Bay to north of Sioux Lookout in Ontario and along the international border to the province of Manitoba. Treaty #3 territory is populated by 28 First Nation communities with a total population of approximately 25,000 people.
9. Though the Canadian state and courts have interpreted Treaty #3 as a surrender of title to traditional territory, to my understanding, the Anishinaabe did not surrender any land. Rather, the Treaty was intended to reserve certain areas of land for the Anishinaabe, with the rest to be shared between the Anishinaabe and the settlers.

III. Our Sacred Water, Shoal Lake

10. Shoal Lake is a part of the Shoal Lake watershed and the larger “Rainy River – Lake of the Woods – Winnipeg River” drainage basin. The watershed crosses provincial boundaries with 54% of the watershed located in Ontario and 46% in Manitoba. Attached to this my affidavit as “**Exhibit A**” is a true copy of a map of Shoal Lake and the Nation’s land, by

the CBC for article, "A century of water: As Winnipeg aqueduct turns 100, Shoal Lake finds freedom", June 2, 2019.

11. For more than 6,000 years, Indigenous peoples have lived in the Shoal Lake area. The Iskatewizaagegan First Nation peoples living in the area today are descendants of these original Anishinaabe inhabitants and maintain a close connection to their ancestral and traditional territory.
12. Shoal Lake is not only part of our ancestral territory, but considered to be within reserve lands, land set aside for the community's exclusive use, benefit and occupation. Shoal Lake is a vital part of the economy and vital to the exercise of our constitutionally protected Aboriginal and treaty rights.

IV. The Respondent, Winnipeg

13. In the early 1900s, Winnipeg was looking for a source of safe and clean drinking water. In 1912, Shoal Lake was identified as an ideal source for drinking water for the city.
14. I have been informed by legal counsel, Meaghan Daniel, and verily do believe that in 1913, the City of Winnipeg and certain smaller municipalities formed and incorporated the Greater Winnipeg Water District (GWWD), which was created and tasked to obtain the necessary approvals to take water from Shoal Lake. It was established by *An Act to Incorporate the "Greater Winnipeg Water District"* S.M. 1913, c. 22 (February 15, 1913), which, at Chapter 22, gave it "full power to acquire, hold and alienate both real and personal estate for all its purposes." Attached to this my affidavit as "**Exhibit B**" is a true copy of the relevant excerpt from *An Act to Incorporate the Greater Winnipeg Water District*.

15. Over the years, the GWWD has evolved into the City of Winnipeg, through legislation intended to sustain the authority to take water from Shoal Lake.
16. I have been informed by legal counsel, Meaghan Daniel, and verily do believe that in 1960, the Metropolitan Corporation of Greater Winnipeg was incorporated and assumed all of the powers of the GWWD under the *Metropolitan Winnipeg Act*, S.M. 1960, c. 40. In 1971, *The City of Winnipeg Act*, S.M. 1971, c. 105 repealed the *Metropolitan Winnipeg Act* and formed the City of Winnipeg. This new City assumed all the powers of the Metropolitan Corporation of Greater Winnipeg, including the powers the Metropolitan Corporation of Greater Winnipeg had assumed from the GWWD (The City of Winnipeg Act, S.M. 1971 c. 105 at ss. 549, 550. This was restated in *The City of Winnipeg Act*, S.M. 1989-90, at s. 554. And in 2002, new legislation came into power, the *City of Winnipeg Charter Act*, S.M. 2002, c. 39 which sets out powers for the provision of water at s. 160. Attached to this my affidavit as “**Exhibit C**” is a true copy of the relevant excerpt from the *Metropolitan Winnipeg Act*. Attached to this my affidavit as “**Exhibit D**” is a true copy of the relevant excerpt from the *The City of Winnipeg Act*. Attached to this my affidavit as “**Exhibit E**” is a true copy of the relevant excerpt from the *City of Winnipeg Charter Act*.
17. The City of Winnipeg, relying on the approvals sought and obtained by the GWWD, continues to draw water from Shoal Lake today.

V. The GWWD Obtains Approvals to Take Our Water

18. The GWWD was established by *An Act to Incorporate the “Greater Winnipeg Water District”* (15 February, 1913), which, at Chapter 22 gave it “full power to acquire, hold

and alienate both real and personal estate for all its purposes.” This Act specifically contemplates compensation for such acquisitions in section 22:

The corporation shall pay to the owners or occupiers of the said lands and those having an interest or right in the said water, reasonable compensation for any land or any privilege that may be required for the purposes of the said waterworks or for the conveying of elective motive force or power.

See “**Exhibit B**”.

19. The *Act to enable the City of Winnipeg to get water outside the Province of Manitoba* (6 June, 1913) provided the authority for the GWWD to obtain water outside of the Province of Manitoba. Attached to this my affidavit as “**Exhibit F**” is a true copy of the relevant excerpt from the *Act to enable the City of Winnipeg to get water outside the Province of Manitoba*.
20. As the water sought by the GWWD was partially located in Ontario, the GWWD was required to seek authorization from Ontario to draw from it.
 - A. *Ontario’s Order in Council and Annexed Report Sets Out the Conditions for Taking Water*
21. An Order in Council was passed by the Executive Council Office of Ontario in 1913 authorizing the GWWD to take water from Shoal Lake. A true copy of Ontario’s 1913 Order in Council is attached to this my affidavit as “**Exhibit G**”.
22. The Order in Council granted the GWWD permission to take water for “domestic and municipal purposes”, and advised that this included the right to “enter upon and to divert and take water from Shoal Lake, subject to the terms, conditions, and stipulations” set out in an annexed report of the Honourable Minister W. H. Hearst of Lands, Forests and Mines.

See “**Exhibit G**”.

23. The first of these terms was the condition that “full compensation be made to the Province of Ontario and also to all private parties whose lands or properties may be taken, injuriously affected or in any way interfered with...” A true copy of Minister Hearst’s Report dated October 1, 1913, is attached to this my affidavit as “**Exhibit H**”.
24. The second condition required the GWWD to “abide by and conform to any and all rules, regulations or conditions regarding the ascertainment of the quantity of water being taken, and as to the inspection of works and premises, and the manner of carrying out the proposed works that the government of Ontario may at any time see fit to make or enact....” See “**Exhibit H**”.
25. The third condition limited the water’s use to those “purposes for which municipalities and residents therein ordinarily use water, and not for generation of hydraulic or electric powers” and limited the quantity to “never, at any time, exceed one hundred million gallons per day”. See “**Exhibit H**”.
26. The fourth condition required the GWWD to construct “such remedial works as may be necessary to prevent or remove” any injurious effects to the water levels of the Lake of Woods at the Town of Kenora, and to pay the Town of Kenora any “damages the said Town shall sustain by reason of the taking of the water as aforesaid...” The fifth and final condition provided that any dispute between the Town of Kenora and GWWD be settled and determined by arbitration under the *Ontario Arbitration Act*. See “**Exhibit H**”.
27. The 1913 Order in Council was declared to be legal, valid, and binding through the *Greater Winnipeg Water District Act (Ontario) 1916*, S.O. 1916, c. 17. Attached to this my affidavit as “**Exhibit I**” is a true copy of the *Greater Winnipeg Water District Act (Ontario)*.

28. The 1913 Order in Council has been incorporated by reference into legislation currently in force in Ontario. The *Ontario Water Resources Act*, RSO 1990, Chapter 0.40 s. 34.3(3) allows for “[a] transfer of water pursuant to the order of the Lieutenant Governor in Council dated October 2, 1913 respecting the Greater Winnipeg Water District.” Attached to this my affidavit as “**Exhibit J**” is a true copy of the relevant excerpt from the *Ontario Water Resources Act*.

B. Approval of the International Joint Commission Incorporates Ontario’s Conditions

29. The GWWD also required approval from the International Joint Commission (IJC), due to the potential impacts of the water diversion from Shoal Lake on the Lake of the Woods, a boundary water between Canada and the United States.
30. The IJC is a Canada-United States body created pursuant to the 1909 Boundaries Water Treaty between the U.S. and Britain. The Treaty was signed pursuant to a treaty signed between the United States and Great Britain pertaining to Boundary Waters, establishing the International Joint Commission to provide approval for uses, obstructions or diversions of boundary waters.
31. In 1914, the IJC approved the GWWD’s use and diversion of waters from Shoal Lake and the Lake of the Woods. The IJC granted permission to the GWWD subject to certain conditions and assumptions. Based on the amount of water sought by the GWWD, it was assumed that there would likely be no effect on other water bodies. Specifically, the GWWD warranted to the IJC that the diversion of waters would not injuriously affect the interest or rights of any parties, and in addition, that “full compensation” for any damage due to the taking of water was provided for pursuant to the condition contained the GWWD statute and Ontario Order in Council. The purpose for the taking of water was limited to

domestic and sanitary purposes by the inhabitants of the GWWD. The IJC Order also relied upon the assurance that a failure to observe any of the outlined conditions would carry with it the "loss and cancellation of the franchise." In addition, the IJC order stated that the present approvals and permissions would not prejudice the rights of any "person, corporation, or municipality" to damages or compensation due in whole or part to the diversion. A true copy of the International Joint Commission's Order of Approval is attached to this my affidavit as "**Exhibit K**".

VI. The Applicant's land or property has been "taken, injuriously affected, or otherwise interfered with"

32. What is often considered to be part of the geography, or a valuable natural resource to settler Canadians is a critical part of identity to the Anishinaabe of Shoal Lake. This water gives my community life and we in turn define ourselves by our responsibility for the protection of such a gift.
33. Since prior to contact, the Anishinaabe have used the waters of Shoal Lake and its surrounding lands for survival and trade. Shoal Lake has provided an abundance of sturgeon, blueberries and wild rice. The ricing days were of particular significance to my community as they were highly organized and led by particular elders. A number of blueberry harvesting sites are located on the Shoal Lake watershed.
34. In addition to these ongoing gathering activities, fishing also remains significant, so much so that our fishers organize youth fishing activities to ensure the skills, traditional teachings and other cultural and spiritual knowledge will be shared while out on the lake.

35. Shoal Lake is also home to the gardening islands, or Gitiigani Minis, islands used to grow various vegetable crops. Farming took place on the islands to protect crops from people outside of the community who typically did not have canoes, and to avail of good quality soil.
36. The combination of harvesting natural resources from the water and lands abutting Shoal Lake for use by our Nation, and for trade with fur-traders and settlers, has been the basis of our economy, as well as our cultural and spiritual connection to the land, upon which our Nation's history and identity is based.

A. Impacts of Winnipeg's Taking Water

37. The taking of water from Shoal Lake has injured, infringed, and otherwise interfered with our Nation's rights and interests to not only the water, but also to the enjoyment of our reserve lands, all without recognition, much less compensation, contrary to the IJC's orders, and Ontario's Order in Council. From the beginning, the needs of settler Canadians have been prioritized over the responsibility and interests of Anishinaabe. For the Anishinaabe, this has meant the loss of sovereignty, loss of some of the best land on the reserve, and loss of the traditional burial areas.
- i. Building the Aqueduct Removed Land from Our Reserve and Ancestral Territory*
38. In order to take the water, massive infrastructure was required: the aqueduct. Water is taken from Shoal Lake through the west end of Indian Bay and is delivered through a 150 km aqueduct to the GWWD. The aqueduct runs along a right of way or grant of land, authorized by the federal government in 1916. The Shoal Lake to Winnipeg aqueduct and water supply operation began operation in 1919. Attached to this my affidavit as "Exhibit L" is a true copy of the City of Winnipeg website "Shoal Lake and Winnipeg's Drinking

Water”, describing some of the history and mechanics of the aqueduct, accessed December 17, 2019.

ii. *To Protect Winnipeg's Drinking Water Supply Our Development Potential is Restricted*

39. In the late 1900s, a Memorandum of Agreement, also known as the “Shoal Lake Tripartite Agreement”, was entered into by Shoal Lake 40, Manitoba and Winnipeg governing future development by these parties on Shoal Lake. Shoal Lake 40 was interested in building cottages along Shoal Lake, and Winnipeg feared that the developments would impact the quality of the City’s drinking water. The City and Province agreed to pay \$6 million to a Trustee as consideration for regulation of activities on the reserve and to be distributed by the federal government to fund alternative development projects. The agreement “maintains” traditional hunting, fishing, trapping, wild rice cultivation, and harvesting rights on Shoal Lake 40’s reserve. In return, Shoal Lake 40 agreed to abandon cottage development on its land and spend \$2 million of the entrusted funds on a waste management system within the first 5 years of the agreement. Through the agreement, the parties agreed to settle disputes through “arbitration alone and not by recourse to any Court by way of action of law.” Attached to this my affidavit as “**Exhibit M**” is a true copy of the Memorandum of Agreement between Shoal Lake 40, Her Majesty in Right Queen of the Province of Manitoba, and the City of Winnipeg, dated June 30, 1989.
40. While our Nation was present at some negotiations regarding this, we were not signatories of the Tripartite Agreement. No approval for this agreement has ever been granted by our Nation, nor have we ever signed any other agreement related to the water, or enjoyed any compensation for the loss of land, property or injurious effects or interference.

iii. Water Taking has had Ecological Impacts

41. Our Nation has observed the following ecological impacts from Winnipeg's water taking and development required for Winnipeg to access the water:
- a. detrimental impacts to the ecosystem in Shoal Lake, including in particular in Indian and Snowshoe Bays with regard to valuable spawning areas for fish and other wildlife;
 - b. destruction of culturally significant rice beds;
 - c. changing water quality and water quantity available to our Nation; and
 - d. depletion of lands and wetlands available to our Nation.
42. These impacts have been exacerbated by the deliberate flooding of Shoal Lake using waters from the Lake of the Woods by means of the Ash Rapids. The City of Winnipeg states that it does not control lake levels and cannot flood the lake as there is no control structure on the outlet of Shoal Lake at Ash Rapids. However, the Lake of the Woods Control Board regulates lake levels of the Lake of the Woods by operating dams which have affected Ash Rapids, which in turn have an impact on Shoal Lake. See "Exhibit L", City of Winnipeg website "Shoal Lake and Winnipeg's Drinking Water".
43. One significant impact of the changing water levels is the detrimental impacts it has had on the spawning grounds of fish in Shoal Lake. Our community members are concerned that the health of the fish they are eating is negatively impacted by a decrease in water quality. Fishers catch fish that have warts and lesions, and then throw them back not knowing if they are safe to eat.
44. This detrimental impact of changing water levels on fish ecosystems on Shoal Lake was anticipated by Canada before the aqueduct was even created. In a letter written in 1914 to

the International Joint Commission, the Canadian Department of Marine and Fisheries described the impacts on fish and fisheries based on the lowering of water levels in lakes and tributary streams:

The spawning grounds of spoonies which spawn in comparatively shallow areas such as sturgeon, wall-eyed or yellow pickerel, maskinonge, jackfish or pike, perch, various species of bass, the sunfish and especially catfish, small cyprinoids, suckers, and kinds of fish upon which more important fish feed, are injured by being dried up and exposed to fatal influences of heat and cold.

...The resorts of young fish of more valuable species are also destroyed. These fish, after hatching out, resort to inshore shallows and the shores of islands where their special food abounds. They are also safe from the attacks of nature fish, in such shallow areas. When those areas disappear through the lowering of the water they are often replaced by deep water areas with abrupt margins, and the effect both upon the fish and upon their food-supplies, is disastrous. Thus crayfish, a kind of fresh-water lobster, abound in gravelly shallows and form the special food of bass, pickerel, and esteemed kinds of [fish], and when the water is lowered, these crayfish perish in vast numbers.

... Any changes in the level of the water are ruinous to fish in the ways indicated, especially if these areas are old-established bays and hallow inshore flats. It is a strange feat that when lakes are lowered and now shallow areas are formed by the receding water, the found of older areas is not created anew nor are the conditions reproduced readily which are appropriate to make them good spawning grounds. Newly formed shallows instead of becoming feeding grounds or spawning grounds, become the resort of enemies of [fish] of various kinds such as bull-frogs and various species of toads and frogs which are a menace to young fish, and which occur far less frequently in abundance on old-established gravelly areas which are the favorite resorts of young fish.

Attached to this my affidavit as "**Exhibit N**" is the letter from Canada's department of Marines & Fisheries, signed E.E. Prince, to the International Joint Commission, dated January 2, 1914.

45. Additionally, a number of issues related to the development and taking of water from our reserve land and Shoal Lake have impacted the quality of the water and the land. Community members describe how the water used to be clear, but it is no longer clear and there is now a need for a water treatment plant.

46. A biology professor at the University of Winnipeg, Professor Eva Pip, has been studying water quality in Shoal Lake and the surrounding rivers and bays since 1982. She has taken hundreds of measurements and states, “We have seen the tremendous, tremendous change in the quality of the water during that time ... [including the presence of] cryptosporidium parasites, giardia parasites, coliform bacteria, and toxins.” Attached to this my affidavit as “**Exhibit O**” is a true copy of Allison Vuchnich’s article, “Bacteria, parasites and toxins—water quality ‘negligence’ at Shoal Lake 40” for *Global News*, dated November 6, 2015.

iv. Cultural, Spiritual & Economic Impacts

47. Our Nation’s inability to develop on Shoal Lake has impacted our Nation’s ability to use our traditional territories, including waters and lands, which affects our ability to exercise our rights, such as:

- a. liberty rights: including the freedom and security to pursue vocations and obtain clothing, shelter, food and water and pursue cultural activities in the First Nation’s traditional territories in and around Shoal Lake;
- b. hunting, fishing, trapping, gathering rights: including the sustainability of these cultural and economic activities on and around Shoal Lake; and,
- c. spiritual rights: including the First Nation’s relationship and sacred connection with the land and its ability to protect heritage, sacred and burial sites, access land for healing purposes, educate our children in traditional ways, and pursue recreational activities.

48. These negative impacts are ongoing, and escalate every year that they are allowed to continue.

VII. Iskatewizaagegan First Nation's Assertion of our Rights

49. Our Nation has repeatedly articulated the impacts of Canadian settler development on Shoal Lake, our reserve land, and our cultural practices, and sought reparations for these negative impacts.
50. Recent generations have made numerous attempts to engage in negotiations and consultation regarding these ongoing impacts with Winnipeg and Manitoba. Our efforts were unable to commence prior to this due to the colonial impacts of Residential Schools on preceding generations.
- A. The Judicial Review of Winnipeg's Proposal to Sell Water to Neighbouring Municipalities***
51. In 2011, Winnipeg proposed a service sharing policy that would have involved taking additional water from Shoal Lake to sell or distribute to neighbouring municipalities. The basic terms of the agreement would have provided water and sewer services to neighbouring municipalities. Revenue from the program was to be allocated to the City of Winnipeg's regional roads capital budget. Attached to this my affidavit as "Exhibit P" is a true copy of the Service Sharing Policy by the City of Winnipeg, dated November 24, 2011.
52. Following these announcements, a round of communication and action between our Nation and the City of Winnipeg developed, as well as the re-engagement of the International Joint Commission.
53. Our Nation retained lawyers at Olthuis Kler Townsend to file for judicial review of the City's decision to negotiate water sharing agreements with neighbouring municipalities, due to Winnipeg's lack of authority to do so. The application sought a declaration that Winnipeg must stay within the limits of its authority inherited from Winnipeg Water

District granted by the 1913 Ontario Order in Council and the International Joint Commission Order of January 1914. In the alternative, the application sought a declaration that Winnipeg breached its duty to consult and accommodate and should consult with and accommodate our Nation over the proposal of taking of water outside of the agreement. Attached to this my affidavit as "**Exhibit Q**" is a true copy of the Notice of Application for Judicial Review filed with the Queen's Bench Winnipeg Centre Court, dated May 22, 2012.

54. On April 18, 2013, the IJC wrote to the City solicitor indicating its agreement with our Nation's position, specifically stating that the intent of a water sharing agreement would be inconsistent with the terms and conditions of the IJC's 1914 order governing the diversion of water from Shoal Lake. Attached to this my affidavit as "**Exhibit R**" is a true copy of the Letter of the International Joint Commission, signed by Camille Mageau and Dr. Charles A. Lawson, addressed to Thor Hansell, dated April 18, 2013.
55. In response, Winnipeg rescinded its decision to enter into water sharing agreements with other municipalities, but did not engage with our Nation to resolve the underlying issue regarding the need for consultation and accommodation.

B. Invoices for Use of Water

56. Our Nation began to send invoices to the City of Winnipeg on November 17, 2011, the 138th anniversary of the signing of Treaty #3, for the water the City was taking from Shoal Lake. Attached to this my affidavit as "**Exhibit S**" is a true copy of an Invoice addressed to the City of Winnipeg for the water being taken from Shoal Lake, dated November 17, 2011.

57. A letter attached to this invoice stated clearly that these invoices did not absolve the City for past usage of the waters of Shoal Lake without authorization. In a letter to the Mayor of Winnipeg accompanying our invoice, legal counsel Terence Douglas explained:

As you aware, the First Nation is reasserting its rights to the water of Shoal Lake pursuant to Treaty #3, its inherent Aboriginal rights, and its inherent Indigenous rights as recognized by international law. At no time has the First Nation agreed to Winnipeg's use of the water of Shoal Lake, water which is not only sacred to the First Nation and its members, but also is an integral part of their identity as Indigenous peoples ... Enclosed with this letter is an invoice in relation to the City of Winnipeg's use of the water of Shoal Lake. This invoice is reflective of the City of Winnipeg's average usage of fifty-two (52) million gallons per day for the period of October 3-31, 2011. You will note that the start of the billing date coincides with the 138th anniversary of the signing of Treaty #3 where the autonomous communities of the Anishinaabe Nation agreed to share the resources within its traditional territories with the immigrants to its traditional territories. The First Nation stresses that the sharing of such resources requires its cooperation and authorization.

Attached to this my affidavit as "**Exhibit T**" is a true copy of the letter from Terence Douglas addressed to Mayor Sam Katz, dated November 18, 2011.

58. The City of Winnipeg responded to the repeated invoices sent for the cost of the water from Shoal Lake. In a letter sent on November 7, 2011, the City stated that, "there exists no contract of sale or purchase of Shoal Lake water and therefore no invoice may exist nor basis exist for payment for the water." Attached to this my affidavit as "**Exhibit U**" is a true copy of a letter addressed to Terence Douglas from the Winnipeg Legal Services Department, signed by Director of Legal Services Leonard E. Strijack, dated November 7, 2011.

59. In a press release from our Nation regarding the invoice, we stated: "The bill is only for current usage and in no way absolves the City of Winnipeg of its indebtedness to the Nation for past usage." Attached to this my affidavit as "**Exhibit V**" is true copy of a Press Release

from IIFN regarding sending an invoice to the City of Winnipeg for taking water, dated November 18, 2011.

60. The Province of Manitoba agreed to conversation with us but refused to discuss any historical claims. We registered our disagreement with this decision. Attached to this my affidavit as “**Exhibit W**” is a true copy of a letter from IIFN addressed to the Honourable Eric Robinson, Minister of Local Government, dated September 6, 2011.

C. Requests for Negotiation

61. On November 29, 2011, we requested negotiations with the City of Winnipeg through letter to the City’s Executive Council:

From the outset Iskatewizaagegan has never consented to the taking of our water. In the early 1900s, Winnipeg received authorizations from Canada, Ontario and the International Joint Commission to take water from Shoal Lake in violation of the terms and conditions of Treaty #3. Specifically, the following treaty condition was violated: “...and provided also that the aforesaid reserves of lands, or any interest or right therein or appurtenant thereto, may be sold, leased or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained...” Our consent was never “first had and obtained.”

While the taking of our water is a direct violation of the treaty there were other certain terms and conditions placed on Winnipeg by the IJC. Those terms were that Winnipeg would only be using the water for ordinary municipal services for itself and certain other named municipalities, and Winnipeg was required to pay compensation for damages caused to lands or for interference with lands. Now, Winnipeg is suggesting it will adopt a new policy to use our water for purposes outside of what was provided for even in those authorizations. Adoption of this new policy cannot take place without our participation, and our consent, since selling of water and sewer services to additional water users will necessarily increase the taking of our water and heighten the impacts on our territory.

We hope that Winnipeg will choose to resolve this matter through good faith negotiations with our Nation, and give due regard to our Nation’s rights and interests. We expect that Winnipeg will forward all relevant information about the policy on selling water and sewer services it is considering to our attention, and also be in contact for meeting with us as soon as possible.

Attached to this my affidavit as “**Exhibit X**” is a true copy of the letter addressed to Manitoba Premier Greg Selinger and the City of Winnipeg’s Executive Council from IIFN Chief Eli Mandamin, dated November 29, 2011.

62. Our Nation has continuously offered to resolve matters outside of court and through good-faith negotiations. For example, in a letter to the Executive Council of the City of Winnipeg, we state:

We want to be clear, our preference is not to fight you in court, or to fight you at the International Joint Commission [but] we are prepared to do so if left with no other choice. What we want is for our rights to be respected, for our lands and waters to be protected and for our people to be able to continue to rely on our resources to sustain themselves. Our preference is to reach these objectives and to protect our rights through respectful negotiations with the City of Winnipeg. ... at this point in time, we want to extend to you again the option of negotiating a resolution of this dispute with us. We have been at odds for far too long.

Attached to this my affidavit as “**Exhibit Y**” is a true copy of the Letter addressed to City of Winnipeg Mayor Sam Katz and the City Councillors from IIFN Chief Eli Mandamin, dated February 28, 2013.


63. Again, our consistent efforts to raise concerns about the City’s use of Shoal Lake’s water are outlined in a letter to the City of Winnipeg on June 17, 2013:

We have consistently raised our concerns about how the City of Winnipeg’s use of Shoal Lake’s water has affected our rights and interests and we have consistently sought to work with federal provincial and municipal governments to address and resolve these concerns ... we similarly voiced our concern over Winnipeg’s proposal to extend water services. This was expressed to the City immediately after it initially decided to enter into these water service sharing agreements. We were ignored. In the face of further potential impacts, our Nation was forced to initiate court action and make formal submissions to the International Joint Commission to defend and protect our rights.

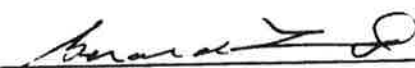
Attached to this my affidavit as “**Exhibit Z**” is a true copy of the letter addressed to City of Winnipeg Mayor Sam Katz and Province of Manitoba Premier Greg Selinger, from IIFN Chief Eli Mandamin & Council, dated June 17, 2013.

- 64. We have received no satisfactory response regarding, or even acknowledgment of, the ongoing infringement of the rights outlined in the above communications from Winnipeg or Manitoba.
- 65. Our Nation now seeks interpretation of the Order in Council, specifically, a declaration regarding our entitlement to compensation under the 1913 Ontario Order in Council.
- 66. I make this affidavit in response to the application for judicial interpretation of Ontario's 1913 Order in Council granting Winnipeg permission to take water, subject to the condition that Winnipeg provide "full compensation be made to the Province of Ontario, and also to all private parties whose lands or properties may be taken, injuriously affected or in any way interfered with", and for no other or improper purpose.

AFFIRMED BEFORE ME in the Town)
of Kenora, in the Province of)
Ontario this 20th day of December, 2019.)



A COMMISSIONER, ETC.
TERENCE DOUGLAS LSO#50186W



Chief Gerald Lewis