

CANADA

PROVINCE OF QUEBEC
DISTRICT OF QUÉBEC

(CLASS ACTION)

SUPERIOR COURT

No. 200-06-000088-073

GHISLAIN PICARD

Plaintiff

v.

**THE ATTORNEY GENERAL OF
QUÉBEC**

Defendant

-and-

AGENCE DU REVENU DU QUÉBEC

Defendant

SETTLEMENT AGREEMENT

June 30, 2011

WHEREAS Mr. Ghislain Picard undertook this class action with the support of the Assembly of First Nations of Quebec and Labrador (“the AFNQL”) on behalf of all Indians who are members of the Group;

WHEREAS litigation was suspended in March 2008 and a negotiation process was undertaken to allow for an eventual settlement;

WHEREAS a mechanism was implemented in 1987 to refund the fuel tax and whereas certain Indians took advantage of it;

WHEREAS an agreement-in-principle was reached on March 9, 2011, and the Parties agreed that this litigation would be settled out of court in accordance with the principles set out in the said agreement-in-principle and that these principles would be made explicit in the settlement agreement, subject to approval by the court;

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

For the purposes of the Settlement Agreement only, including its preamble:

- 1.1. **“Settlement Administrator”** (*Administrateur du règlement*) - means the person named in accordance with paragraph 6.5 of this Settlement Agreement.
- 1.2. **“AFNQL”** (*APNQL*) - means the Assembly of First Nations of Quebec and Labrador.
- 1.3. **“Notice of Final Settlement”** (*Avis final de règlement*) - means the notice that seeks to inform Group Members that the Court has approved the Settlement Agreement.
- 1.4. **“Quebec band”** (*Bande du Québec*) - means:
 - a) one of the bands within the meaning of s. 2 of the *Indian Act* (R.S.C., 1985, c. I-5) whose reserve or settlement is located in Quebec, in whole or in part, as well as the bands of the Nation Micmac de Gespeg and Wolf Lake First Nation;
 - b) the Naskapi Nation of Kawawachikamach, a Naskapi band within the meaning of the *Cree-Naskapi (of Quebec) Act* (S.C. 1984, c. 18).
- 1.5. **“Legal counsel for the Plaintiff”** (*Conseillers juridiques du Demandeur*) - means M^e Éric David and the law firm of Dionne Schulze SENC.
- 1.6. **“Compensation”** (*Compensation*) - means the amount paid by the Administrator to each of the Group Members who files a claim in accordance with section 6 of the Settlement Agreement.
- 1.7. **“Court”** (*Cour*) - means the Superior Court of Quebec.
- 1.8. **“Defendants”** (*Défendeurs*) - means the Attorney General of Québec and the Agence du revenu du Québec.
- 1.9. **“Period for filing a claim”** (*Délai de réclamation*) - means the period during which Group Members shall submit their claim under pain of forfeiture of their right to receive Compensation. This period ends at midnight on the 365th day following publication of the Notice of Final Settlement.
- 1.10. **“Plaintiff”** (*Demandeur*) - means Mr. Ghislain Picard.
- 1.11. **“Settlement Agreement”** (*Entente de règlement*) - means this Agreement, including its preamble.

- 1.12. **“Group or Group Member”** (*Groupe ou Membre du Groupe*) - means all Indians who are members of the group, as defined in the decision of the Honourable Justice Jean Lemelin rendered on May 7, 2007.
- 1.13. **“Professional fees and disbursements”** (*Honoraires et déboursés*) - refer to the professional fees and disbursements set out in section 5 of the Settlement Agreement.
- 1.14. **“Settlement Amount”** (*Montant du règlement*) - means the amount paid by the Defendants, as set out in section 3 of the Settlement Agreement.
- 1.15. **“Party or Parties”** (*Parties ou Partie*) - means the signatories to the Settlement Agreement.
- 1.16. **“Class Action”** (*Recours collectif*) - means the class action brought by the Plaintiff in file no. C.S.Q. 200-06-000088-073 (previously C.S.M. 500-06-000201-034) and all pleadings, exhibits and depositions filed or exchanged as part of this proceeding.

2. APPROVAL OF THE SETTLEMENT

- 2.1. The Settlement Agreement is conditional upon approval by the Court.
- 2.2. The Parties shall support approval of the Settlement Agreement by the Court.
- 2.3. The Plaintiff shall file a motion before the Court to obtain orders approving the Settlement Agreement and related matters, and seeking, among other things, a bar order against further litigation in accordance with the terms and conditions set out in this agreement, the appointment of a Settlement Administrator and authorization for the Minister of Revenue to communicate, if necessary, confidential information about Group Members to the Settlement Administrator.

3. SETTLEMENT AMOUNT

- 3.1. The Defendants shall pay a sum of twenty-seven million dollars (\$27,000,000) as the Settlement Amount to settle this case.
- 3.2. As a result of the particular circumstances of the Group Members, the Settlement Amount shall be distributed as follows:
 - a) an amount of \$ 2,700,000 to the AFNQL in a fund for the benefit of all Group Members as a whole;
 - b) an amount of \$ 24,300,000 to Group Members in accordance with articles 1031 to 1036 of the *Code of Civil Procedure*;

the whole as full and final settlement of the Class Action, including capital and interest.

- 3.3. The Settlement Amount described in sub-paragraph 3.2 a) shall be paid to the AFNQL upon expiry of a 60-day period following the date of approval of the Settlement Agreement by the Court.
- 3.4. The Defendants shall be exempt from any liability, financial obligation or debt, of any nature whatsoever, with respect to the investment, use, administration or distribution of the Settlement Amount.

4. RELEASE AND DISCLAIMER

- 4.1. Group Members provide a full and final release to the Defendants with respect to all claims, petitions, actions, suits, causes of action and damages, including punitive and exemplary damages, whenever and however they may have been incurred, debts, obligations and liabilities of any nature whatsoever, known or unknown, including capital, interest, fees and penalties that the Group Members or all other persons have, have had or could have had directly, indirectly, for another or in a derivative manner or in any other capacity, personally or in subrogation, related to or flowing from, in any manner whatsoever, the facts and points at issue which were relied upon or which could be relied upon in the Class Action or any other related proceeding.

This release is effective as soon as the amounts set out in paragraph 3.2 are distributed.

- 4.2. Group Members expressly renounce solidarity and the benefits of solidarity (or, as the case may be, obligations *in solidum*) with respect to the Defendants and all other persons.
- 4.3. Payment to the AFNQL of the Professional fees and disbursements set out in section 5 constitutes a complete and total release of the Defendants with respect to these amounts.
- 4.4. Group Members shall withdraw all actions and therefore renounce all rights to file new actions that one or more of them has or could have had, individually or jointly, with respect to claims which are the subject of the release to the Defendants or any other person, partnership or entity.
- 4.5. The Parties shall request a bar order against further litigation or its equivalent as well as declarations under the terms of their motion for approval of the Settlement Agreement seeking the prohibition of all claims for contribution, indemnity or otherwise, whether alleged on another's behalf or not, including interest and fees, as related to claims which are the subject of this release, which have been or could have been filed by any person against the Defendants or any other entity of the Government of Quebec.
- 4.6. The release provided by this Agreement does not apply to any tax paid after June 30, 2011.

5. **PROFESSIONAL FEES AND DISBURSEMENTS**

- 5.1. The Defendants shall reimburse the AFNQL in an amount to be determined and verified upon presentation of the supporting documents, to cover legal fees as already agreed upon, as well as the Professional fees and disbursements of the AFNQL's legal counsel, experts and external consultants, as well as the time of AFNQL staff spent on the matter, up to the date of approval of the Settlement Agreement by the Court.
- 5.2. The provisional total of the amount described in the preceding paragraph is \$908,301.14, as of the date of this Agreement, not including expenses incurred by the AFNQL after June 8, 2011.
- 5.3. The supporting documents referred to in paragraph 5.1 shall be presented within 30 days of approval of the Settlement Agreement by the Court and payment of the Settlement Amount described in the same paragraph shall be made to the AFNQL at the expiry of a 60-day period following the date of approval of the Settlement Agreement by the Court.

In the event of a disagreement as to the admissibility or reasonableness of an amount claimed pursuant to this section, the Parties shall submit the issue to the Court.

6. **DISTRIBUTION OF THE SETTLEMENT**

- 6.1. Each Group Member who intends to receive Compensation shall file a claim with the Settlement Administrator within the Period for filing claims set out in paragraph 1.9:
 - a) by means of a form intended for this purpose;
 - b) by attaching supporting documents confirming, on the date the claim is filed:
 - i. the claimant's status as an Indian registered in the Indian Register within the meaning of s. 6 of the *Indian Act*;
 - ii. his or her date of birth;
 - iii. his or her place of residence.

Each Group Member, if s/he is neither a resident of Quebec or Akwesasne, nor a member of a Quebec band, shall also attach proof that s/he paid the fuel tax on at least one purchase of fuel in Quebec before July 1, 2007.

No claim shall be paid to a Group Member who has died before filing the claim.

- 6.2. Within 180 days after expiry of the Period for filing claims, the amount of \$24,000,000 shall be distributed to Group Members who are members of a Quebec band and who have filed a claim as required.

This amount shall be distributed based on the following criteria:

- a basic amount for those between the ages of 18 and 24;
- double the basic amount for those between the ages of 25 and 34;
- triple the basic amount for those between the ages of 35 and 44;
- four times the basic amount for those between the ages of 45 and 54;
- five times the basic amount for those between the ages of 55 and 64;
- six times the basic amount for those 65 years and older;

provided, however, that this compensation shall be reduced by 50% in the case of a Group Member who is a member of a Quebec Band but who resides outside of Quebec or Akwesasne.

- 6.3. Within 180 days after expiry of the Period for filing claims, an amount not exceeding \$300,000 shall be distributed among Group Members who file a claim as required and who are neither members of a Quebec Band, nor residents of Quebec or Akwesasne; each of these Group Members shall receive compensation not exceeding \$50. That part of the \$300,000 not distributed shall be added to the \$24,000,000 and distributed in accordance with paragraph 6.2.
- 6.4. New terms and conditions for distribution and implementation of the settlement shall be agreed upon if the Parties are both of the opinion that an insufficient number of Group Members have made individual claims. In the event of a disagreement, the Parties shall submit the issue to the Court.
- 6.5. After consultation with the AFNQL (including with respect to the contents of a call for tenders), an administrator to be chosen by the Defendants shall carry out the distribution and shall in any case be held harmless with respect to any errors or omissions committed in the exercise of his or her functions.
- 6.6. An oversight committee made up of representatives of the Plaintiff and the Defendants shall be established in order to ensure the orderly distribution and implementation of the settlement and, more particularly, to ensure that a sufficient number of Group Members file individual claims.
- 6.7. The Settlement Administrator may take all necessary measures and communicate with claimants in order to obtain information and documents to ensure the accuracy of the claim and has the power, in that case, to review his or her decision.

A Group Member may contest a final decision by the Settlement Administrator that does not grant his or her claim, whether in whole or in part, by submitting a written declaration to the Settlement Administrator, indicating the grounds for contestation. This written declaration shall be sent no later than 60 days following the date of the decision by the Settlement Administrator who shall provide a copy to legal counsel for the Parties without delay.

A review committee composed of a representative selected by the AFNQL and a representative selected by the Defendants shall analyze the contested claims in order to resolve them in good faith. In the event of a disagreement between the committee members regarding the decision under review, or where a decision is not reached within 60 days of sending the written declaration, the issue shall be submitted to the Court within a 30-day period. The Court's decision concerning the matter shall be final and without appeal.

- 6.8. The costs of distribution and implementation of the settlement payable to the Settlement Administrator shall be assumed by the Defendants. The Defendants shall also assume those costs incurred by the AFNQL with respect to the oversight committee and review of decisions by the administrator, in accordance with the terms set out in section 5 concerning "Professional fees and disbursements".
- 6.9. The amount paid to each Group Member who files a claim shall not be applied to the payment of a debt due in accordance with a Quebec fiscal law or the *Act to facilitate payment of support* (R.S.Q., c. P-2.2).

7. COOPERATION BY THE AFNQL

- 7.1. The AFNQL undertakes to cooperate with respect to communications and the involvement of Group Members in distribution and in the implementation of the settlement.
- 7.2. Such cooperation shall be without prejudice to the rights and powers of the First Nations as they concern the particular realities of each community. The Defendants shall assume the costs related to such cooperation, provided they have been approved by the Defendants and upon production of supporting documents.

8. FUEL TAX REFUNDS IN ACCORDANCE WITH THE EXISTING MECHANISM

- 8.1. Revenu Québec shall continue to refund the fuel tax in accordance with the existing mechanism to Indians who apply with respect to tax paid before July 1, 2001.

9. INTEREST

- 9.1. The amounts mentioned in this agreement shall not bear interest.

10. ADMINISTRATION AND IMPLEMENTATION

- 10.1. Within a reasonable period following the signing of the Settlement Agreement, the Parties shall ask the Court to issue an order approving the form, content, date and method

of publication of the Notice of Final Settlement proposed and provided for in article 1025 of *Code of Civil Procedure*.

- 10.2. Within a reasonable period following the signing of the Settlement Agreement, the Parties shall agree on the wording, in French and English, of the Notice of Final Settlement.
- 10.3. The Parties shall propose that the proposed Notice of Final Settlement be published once in each of the following publications: *The Eastern Door* (Kahnawake), *Indian Times* (Akwasasne), *Innuvelle* (Uashat), *Micmac-Maliseet Nations News* (Truro, N.S.), *The Nation* (Montréal) and *Windspeaker* (Edmonton) and, in a form adapted for radio, on the following stations:

CKON-FM Akwasasne Mohawk Radio;
CKRK K-103 FM Mohawk Radio Kahnawake;
CHRQ Gespegewag Communications Society (Listuguj);
CHUT-FM Radio Communautaire MF Lac Simon;
CFWR-FM Winneway;
CKAG Société de Communication Ikito Pikogan (Abitibiwinni);
CHNT Timiskaming;
CKWE-FM Kitigan Zibi Anishinabeg (Maniwaki);
CJCK-FM Naskapi Radio (Kawawachikamach);
and the stations of the Société de Communications Attikamekw - Montagnais (SOCAM), which are:
CFLR - 89,9 FM Radio Papanassi Inc. (Unamen-shipit);
CFNQ - 89,9 FM Ushashumek Natshkuaniu Kaiamumistuk (Nutashkuan);
CHME-FM Radio Essipit Haute Côte-Nord;
CHMK - 93,1 FM Manouane Kitotakan (Manawan);
CHUK-FM Corporation Médiatique Teuehikan (Mashteuiatsh);
CIMB-FM Radio Ntetemuk (Betsiamites);
CIHW - 100,3 FM (Wendake);
CIBE - 89,9 FM Pakuashipi Paushtuk Kainmiumishtuk;
CKAU Corporation de Radio Kushapetsheken Apetuamiss Uashat;
CKKE - 89,9 FM Corporation Montagnaise Innu Kaiamiumistuk Ekuanitshit;
CRKA - FM Radio Kue Attinukan (Matimekush);
RCKW - 89,9 FM / 750 AM Wemotaci Kitotakan Inc.

- 10.4. The cost of publication of the proposed Notice of Final Settlement and of all other notices ordered by the Court shall be paid by the Defendants.

11. NO ADMISSION

- 11.1. The Parties make no admission as to the extinctive prescription applicable to this litigation, nor as to their respective liability, nor as to the legality of the mechanism to refund fuel tax that was implemented in 1987 and they agree that the only purpose of the settlement agreement is to arrive at a negotiated resolution and thereby avoid long and expensive litigation.
- 11.2. Whether or not the Settlement Agreement is approved, the Parties agree that the Settlement Agreement and its contents, the negotiations as a whole, the documents and discussions related to the Settlement Agreement as well as the actions or measures taken in order to reach the Settlement Agreement cannot be deemed or interpreted as being an admission of the violation or validity of any statute or regulation, nor of fault or liability on the part of the Parties, nor the veracity of one or more claims made in the Class Action or any other proceeding.
- 11.3. The Parties also agree that neither this settlement nor any other document related to it shall be produced as evidence in the context of an action or proceeding before a court, tribunal or agency, except to seek judicial approval of this Settlement Agreement or to give effect to it and to apply the provisions of this agreement or if compelled by an order of the court, a regulatory body or any other government agency.
- 11.4. The Parties agree that this Settlement Agreement is without prejudice to the legislative and constitutional immunities which the Defendants, Group Members or Bands may enjoy or which they may claim.

12. MISCELLANEOUS PROVISIONS

- 12.1. The Parties and the Settlement Administrator may apply to the Court to obtain directions with respect to the implementation and administration of this Settlement Agreement.
- 12.2. All motions required by this Settlement Agreement, particularly motions to obtain directions, shall be the subject of a notice to the Parties.
- 12.3. Notices and delivery of documents to a Party, as required in accordance with the terms of this Settlement Agreement, may be provided or carried out by any commonly-accepted means, other than email, and shall not be effective until the date and time of actual delivery to the Party in question at the address of legal counsel for the Plaintiff or the Defendants.
- 12.4. In the Settlement Agreement:

- a) the separation into paragraphs and the insertion of headings are only intended to facilitate its reading and have no effect on the interpretation of this Settlement Agreement;
 - b) the expression “Settlement Agreement,” “this agreement” and similar expressions refer to this Settlement Agreement and not to any paragraph or specific part of this Settlement Agreement.
- 12.5. The Court retains exclusive jurisdiction over all matters related to the interpretation, implementation and execution of this Settlement Agreement as it concerns the Class Action.
- 12.6. This Settlement Agreement is governed by and interpreted in accordance with the laws that apply in the province of Quebec.
- 12.7. This Settlement Agreement constitutes the entire agreement between the Parties and replaces all prior or concurrent related agreements, undertakings, negotiations, declarations, communications, promises, understandings, agreements in principle and memoranda of agreement connected thereto.
- 12.8. This Settlement Agreement shall only be amended in writing and with the consent of all the Parties involved, and such amendment shall be approved by the Court.
- 12.9. Each of the Parties confirm and recognize the following:
- a) the terms of the Settlement Agreement and their effect have been explained to each of the Parties or their respective representatives by the respective legal counsel;
 - b) each Party or their respective representative understands each of the terms of the Settlement Agreement, as well as its effect;
 - c) no Party has decided to sign the Settlement Agreement based on an assertion, statement or inducement (whether significant, false, negligently made or otherwise) by another Party.
- 12.10. The Settlement Agreement has been the subject of negotiations and discussions between the Parties, each Party having had the opportunity to be represented and advised by competent legal counsel such that the statutes, case law or interpretive rules that provide or could provide that this agreement is to be interpreted against the Defendants to the Settlement Agreement shall be of no force or effect.
- 12.11. The Parties renounce their right subsequently to ask that the Settlement Agreement be set aside for any reason, including due to an error of law or fact, and they agree that the Settlement Agreement applies to all claims known and unknown as of the date of this agreement.

- 12.12. The Parties agree that no public statement shall be made regarding the Class Action or the Settlement Agreement that contradicts in any way the terms of the Settlement Agreement. For greater certainty, the Parties agree that no public statement regarding the Class Action shall indicate that the Settlement Agreement was negotiated, agreed upon or approved by the Court with or following any admission or conclusion as to liability or fault, and without any admission or conclusion as to the veracity of any of the facts alleged in the Class Action.
- 12.13. The Parties agree to respect the confidentiality of the negotiations, discussions, documents and expert reports communicated to each of the Parties as part of the Class Action.
- 12.14. Each of the undersigned holds out that he has the power to conclude and sign the Settlement Agreement.
- 12.15. The aforementioned statements shall survive the signing and the implementation of the Settlement Agreement.
- 12.16. The Settlement Agreement may be signed in multiple copies that, as a whole, are deemed to constitute one and the same agreement, and a facsimile signature is deemed to be the original signature for the purpose of signing the Settlement Agreement. The Settlement Agreement may be delivered and may be set up entirely against another party in its original form, in a facsimile or in any other electronic form, provided that it has been duly signed.

13. NON-DEROGATION

- 13.1. The Settlement Agreement does not constitute a treaty within the meaning of section 35 of the *Constitution Act, 1982* and shall in no way be interpreted as amounting to an abrogation, derogation, negation or recognition of an aboriginal right, treaty right or any other right.