

SUPREME COURT  
OF BRITISH COLUMBIA

DEC 23 2021 MS

SEAL  
ABBOTSFORD  
REGISTRY



No.



01697

Abbotsford Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Caroline Mostertman and Ted Dykman

23DEC21 2104368 35614: RISP 200.000  
35614 01697

PLAINTIFFS

and

The City of Abbotsford,  
Fraser Valley Regional District,  
Her Majesty the Queen in right of the Province of British Columbia,  
ABC Company No. 1,  
ABC Company No. 2,  
ABC Company No. 3

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **THE PLAINTIFFS' CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### *Overview*

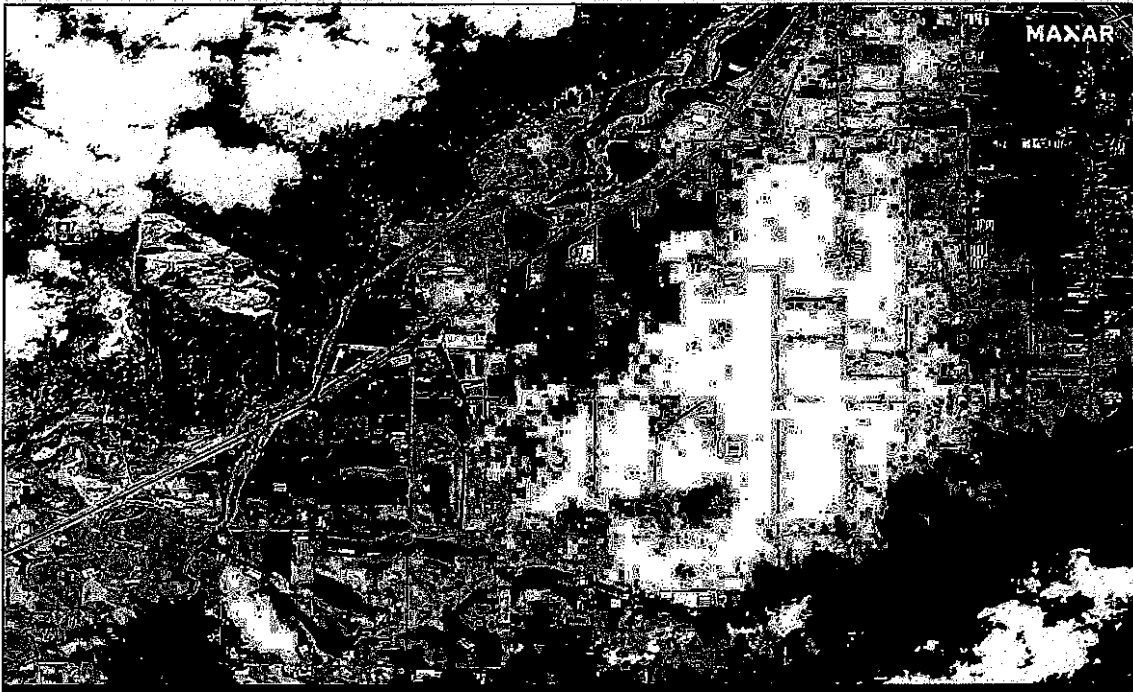
1. On November 14, 2021, the Sumas Prairie, located in the City of Abbotsford, British Columbia, began flooding after several days of severe weather, resulting in catastrophic damage to the real and personal property of residents living in the region (the “**Sumas Flood**”). The Sumas Lake Reclamation dike in Abbotsford is an embankment approximately 16.8 kilometers in length (the “**Sumas Dike**”). Many residents of the Sumas Prairie rely on the Sumas Dike to prevent floodwaters from reaching their land. However, on November 16, 2021, the Sumas Dike gave way in two places, allowing intense floodwaters uncontested access to their real and personal property. Residents of the Sumas Prairie, who had not been adequately notified of the impending disaster, watched helplessly as ravenous floodwaters tore through their land, burying their personal property and destroying their crops and farmland.

2. The City of Abbotsford (“**Abbotsford**”), the Fraser Valley Regional District (“**FVRD**”) and the Province of British Columbia (the “**Province**”) failed to warn the Plaintiffs and Class Members of the impending and foreseeable Sumas Flood in a timely manner. The Defendants also failed to implement emergency measures and warnings when they knew or ought to have known that a flood impacting the Sumas Prairie was the foreseeable consequence of the weather preceding the Sumas Flood.

3. Adequate and timely warning of the severe weather events would have been life-changing for those whose livelihoods were rooted in the Sumas Prairie. But for the Defendants’

grossly negligent failure to warn, residents whose property was shielded by the Sumas Dike could have moved their equipment, inventory, chattels and other movables out of the Sumas Prairie or to higher ground. They could have reinforced the Sumas Dike, which was known to be extremely vulnerable to flooding, just as they sandbagged and protected the Barrowtown Pump Station when it was at risk of flooding in the days after the start of the Sumas Flood. But for the Defendants' grossly negligent failure to warn, residents in the Sumas Prairie whose property was not shielded by the Sumas Dike, but was foreseeably prone to flooding from heavy rainfall, could have similarly reduced their damages by transferring their equipment, inventory, chattels and other movables out of the Sumas Prairie or to higher ground.

4. The Defendants' failure to warn of the severe weather preceding the Sumas Flood and failure to implement emergency measures and warnings devastated the residents of the Sumas Prairie who did not have the benefit of reasonable and timely warning to reduce or eliminate the consequences of this predictable, foreseeable and preventable disaster. Through this suit, the Plaintiffs and Class Members seek to hold the Defendants accountable for their gross negligence and to recover their losses.



*A satellite image showing floodwater in the Sumas Prairie as a result of the Sumas Flood, dated November 15, 2021*

*The Parties*

5. The Plaintiff Caroline Mostertman is a resident and business owner in the Sumas Prairie, British Columbia. She owns property and businesses situated in the Sumas Prairie in an area historically protected by the Sumas Dike, identified by the Parcel ID of 000 820 555.
6. The Plaintiff Ted Dykman is a resident and business owner in the Sumas Prairie, British Columbia. He owns property and businesses situated at or around the Sumas Prairie outside of an area historically protected by the Sumas Dike, identified by the Parcel IDs of 004 397 916, 000 861 740, 011 157 852, 007 858 591 and 027 966 984.
7. The Plaintiffs bring this action on their own behalf and on behalf of the following classes:
  - a. All individuals or legal persons that owned or had an interest in property situated in the Sumas Prairie in the area guarded by the Sumas Dike at the time of the Sumas Flood (the “**Sumas Dike Class**” and “**Sumas Dike Class Members**”); and
  - b. All individuals or legal persons that owned or had an interest in property situated in the Sumas Prairie outside of the area guarded by the Sumas Dike at the time of the Sumas Flood (the “**General Flood Class**” and “**General Flood Class Members**”).
8. Collectively, the Sumas Dike Class and the General Flood Class are the “**Class**” or “**Class Members**”.
9. The Defendant the City of Abbotsford (“**Abbotsford**”) is a municipal body incorporated under the laws of the Province of British Columbia that encompasses part of the Sumas Prairie with an address for service at 32315 South Fraser Way, Abbotsford, BC V2T 1W7.
10. The Defendant the Fraser Valley Regional District (“**FVRD**”) is a body corporate duly incorporated under the laws of the Province of British Columbia with an address for service at 1-45950 Cheam Avenue Chilliwack, BC V2P 1N6. The FVRD is a local government body that

encompasses the municipalities of Abbotsford, Chilliwack, Harrison Hot Springs, Hope, Kent, Mission, as well as eight unincorporated Electoral Areas.

11. Collectively, Abbotsford and FVRD are the “**Local Authority Defendants**”.

12. The Defendant Her Majesty the Queen in right of the Province of British Columbia (the “**Province**”) is the provincial government with jurisdiction over the Sumas Prairie with an address for service at Ministry of Attorney General, PO Box 9290 Stn Prov Govt, Victoria, BC V8W 9J7.

13. The Defendant, ABC Company No. 1 (“**ABC #1**”), is a business whose legal status and ownership are unknown to the Plaintiff at this time but is well known to Abbotsford. ABC #1 was in charge of monitoring the potential for a flood and/or initiating an emergency response when the risk of a flood was detected for Abbotsford.

14. The Defendant, ABC Company No. 2 (“**ABC #2**”), is a business whose legal status and ownership are unknown to the Plaintiff at this time but is well known to the Province. ABC #3 was in charge of monitoring the potential for a flood and/or initiating an emergency response when the risk of a flood was detected for British Columbia.

15. The Defendant, ABC Company No. 3 (“**ABC #3**”), is a business whose legal status and ownership are unknown to the Plaintiff at this time but is well known to FVRD. ABC #2 was in charge of monitoring the potential for a flood and/or initiating an emergency response when the risk of a flood was detected for the Fraser Valley Regional District.

### ***Background***

#### ***The Significance of the Sumas Prairie for the Food Supply of British Columbians***

16. The Sumas Prairie is a landform located in parts of British Columbia and the State of Washington, U.S.A. Southern portions of the Fraser Valley and eastern portions of Abbotsford are located on the Sumas Prairie.

17. More than 100 years ago, the land on which Sumas Prairie farmers currently live and farm was submerged underwater. That body of water was called the Sumas Lake. In or about

1912, a federal order-in-council granted the drainage of Sumas Lake with the objective of transforming the lands in and around the bed of the Sumas Lake into fertile and productive land for the benefit of the whole province. Government authorities are at the root of why crop and livestock operations settled in Sumas Prairie in the first place.

18. Today, the Sumas Prairie is some of the most productive and fertile farmland in Canada and the Sumas Prairie farmers play an important role for food security and supply in British Columbia. The provincially controlled and operated food supply system in British Columbia makes quotas available for crop and livestock farmers. This system incentivized individuals to settle and operate in the Sumas Prairie for the eventual benefit of the food supply of all British Columbians.

19. Government authorities continue to play a central role in why crop and livestock operations are present in the Sumas Prairie, an extinct lake. However, these societal benefits exist and operate at the expense of the significant and inherent vulnerability to flooding borne by persons living and working in the Sumas Prairie.

### ***The Flood Risk in the Sumas Prairie***

20. The Sumas Prairie is known for being susceptible to devastating floods, which puts residents and businesses in the region at a significant risk of harm. This is due to the Sumas Prairie's natural characteristics, its location and its status as a floodplain. Governments responsible for the area are well-aware of the risk of flooding in the Sumas Prairie. These governments are also aware of their legislated duties to protect the region from the effects of flooding.

21. The Sumas Prairie is located at the base of both Vedder and Sumas Mountains. The bed of Sumas Lake sits below sea level and is at a lower elevation than both the Fraser and Nooksack Rivers. The natural geography of the Sumas Lake before it was drained allowed it to collect rainwater and rising river waters from the surrounding mountains and rivers.

22. The Fraser River is the longest river in British Columbia. It rises at Fraser Pass and flows for 1,375 kilometers south through British Columbia before depositing into the Strait of

Georgia. The Fraser River has overflowed its banks and caused disastrous flooding in the Sumas Prairie in the past, most notably in 1894 and 1948.

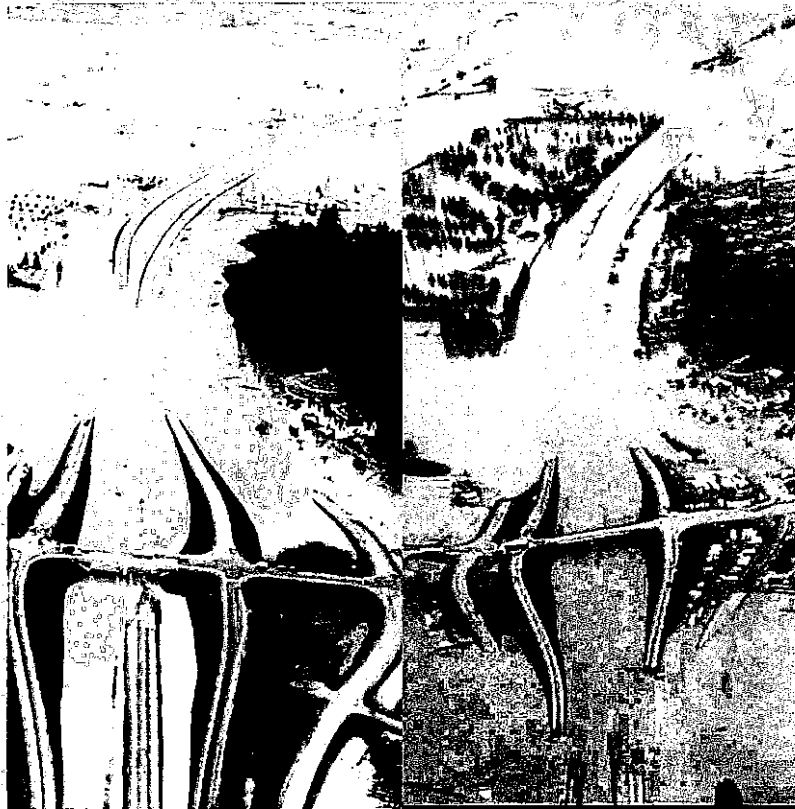
23. The Nooksack River is located in the State of Washington, close to the southern border of British Columbia. Ordinarily, the Nooksack River is entirely contained in the United States of America. It begins from the banks of Mount Baker in the State of Washington, flows through northern Washington and deposits into Bellingham Bay. The Nooksack River has overflowed its banks and caused disastrous flooding in the Sumas Prairie in the past, including as recently as 1990.

24. Because of the above characteristics, the Sumas Prairie is a floodplain. This means that all those farming and living in the area are exposed to the risk of harms and losses from flooding. History shows that these risks have manifested many times in catastrophic floods resulting in damage to communities in the Sumas Prairie. Three of the most devastating floods affecting the Sumas Prairie occurred in 1894, 1948 and 1990.

25. In May 1894, rapid snowmelt spurred by hot spring conditions caused the water levels in the Fraser River to rise dramatically (the “**1894 Flood**”). The increased water flow caused the Fraser River to breach its banks, flooding areas from Harrison to Richmond. The flooding began on May 25 and peaked on June 10. The flood was the largest ever recorded in the Lower Mainland and caused severe damage to the area.

26. In May 1948, warm spring conditions caused the Fraser River to breach its banks, breaking the Fraser River dike and flooding the Sumas Prairie (the “**1948 Flood**”). While the degree of flooding was less severe than the 1894 Flood, the urban development in the area meant that the economic toll was greater. The consequences of the 1948 Flood included the destruction of 2,300 houses, extreme damage to railways in the area, the evacuation of 16,000 people and more than \$250 million in damage in today’s dollars.

27. In November 1990, heavy rainfall caused the Nooksack River to overflow its banks, flooding the Sumas Prairie (the “**1990 Flood**”). As a result of the 1990 Flood, Highway 1 was closed for 26 hours and thousands of people in Canada and the United States were forced to evacuate from their homes.



1990 Flood vs. 2021 flood at Highway 1's Whatcom interchange in Abbotsford. (BC Archives/City of Abbotsford)

*Images depicting the damage to Highway 1 in Abbotsford, British Columbia, after the 1990 Flood (left) and the Sumas Flood (right)*

28. The above-described natural geography before the lake was drained has not changed since the days of Sumas Lake. Rainwater flows to the area down from Vedder and Sumas Mountain and rising river water from the Fraser River and Nooksack River naturally flow to the area now known as the Sumas Prairie. The difference today, and the reason the region is now referred to as the Sumas Prairie and not Sumas Lake, is the massive human-made infrastructure intended to pump water out of the former lakebed and prevent the flow of rising river waters from penetrating the area.

#### ***The Fragile Flood Protection Infrastructure of Sumas Prairie***

29. The Sumas Dike is a “dike” under the *Dike Maintenance Act*, RSBC 1996, c. 95. As the public authority designated as having responsibility for this dike, also known as “diking authority” under the *Dike Maintenance Act* and “local authority” under the *Emergency Program Act*, RSBC 1996, c 111 (the “EPA”), the Defendant Abbotsford is the responsible authority of the Sumas Dike.



30. The purpose of the Sumas Dike is to prevent flooding into the Sumas Prairie by redirecting floodwaters away from the Sumas Lakebed and into the Sumas River channel.

31. The Barrowtown Pump Station, situated between Sumas Mountain and Highway 1 in eastern Abbotsford, sucks water out of the Sumas Prairie's fields using the four largest drainage pumps in Western Canada. Without the Barrowtown Pump Station, which is managed by Abbotsford, operating and draining the Sumas Prairie, widespread flooding would be realized in 2-7 days depending on the weather.

32. The Defendants knew that despite the Sumas Dike, a breach in the Nooksack River would likely cause flooding in the Sumas Prairie as a result of floodwaters overflowing the height of the dike.

33. In July 2015, Northwest Hydraulic Consultants Ltd. prepared an engineering report for the Ministry of Forests, Lands, and Natural Resource Operations detailing the state of dikes in the Lower Mainland (the "**Report**"). The Report gave the crest (height) of the Sumas Dike a rating of one out of four – the lowest possible grade – and deemed it "unacceptable". Additionally, the Report found that the Sumas Dike was more than two feet lower than it should be and would be unable to stop waters flowing from the Nooksack River if the River overflowed.

34. In fact, the Report declared that water overtopping the Sumas Dike was "expected during the Nooksack overflow". The Report left no questions about whether the Sumas Dike was effective enough to withstand future flooding, concluding "The dike design profile likely needs to be updated. The dike geometry is substandard, causing concern." The Report, commissioned by the Province, made it clear that if the Nooksack River were to overflow again, which it had many times in the past, it would pose a severe risk of harm to individuals and their property in the Sumas Prairie. The Sumas Dike was inadequate to prevent this harm and government authorities knew this. At the time of the Sumas Flood of 2021, there were policies in place to fix the diking system in the Sumas Prairie that had yet to be implemented.

### ***Provincial Roles and Responsibilities in Flood Risk Governance***

35. The Defendant Province has responsibilities and duties with regards to flooding in British Columbia. The provincial ministries responsible include, but are not limited to, the Ministry of

Forests, Land, Natural Resource Operations and Rural Development (“FLN”), Emergency Management BC operating under the Ministry of Public Safety and the Solicitor General (“EMBC”) and the Ministry of Agriculture.

36. The duties governing the actions by the Province are vested in and flow from various provincial statutes, including but not limited to the *Emergency Program Act*, and associated regulations including the *Emergency Program Management Regulation*, BC Reg 477/94 (the “EMPR”); the *Dike Maintenance Act*; the *Local Government Act*, RSBC 2015, c 1; and the *Environmental Management Act*, SBC 2003, c 53.

37. For example, pursuant to s. 7 of the *EMPR*, the ministers referred to in Schedule 2 hold specific duties in the event of an emergency or disaster, whether declared or not, which include:

- (a) must cause the minister's emergency plan and procedures to be implemented
  - (i) in accordance with the directions, if any, of the Lieutenant Governor in Council, and
  - (ii) in a manner that is, to the greatest extent possible, coordinated and consistent with the implementation of the emergency plans and procedures of every other minister referred to in Schedule 2,
- (b) must make staff and resources available, to the greatest extent possible, on the request of the Lieutenant Governor in Council, the director or any other minister carrying out emergency measures, and
- (c) may, on the request of a local authority, provide to the local authority such advice and assistance as is practicable in respect of emergency response.

38. In addition, pursuant to s. 6 of the *EMPR*, specific ministries are designated responsible for the emergency measures regarding flood hazards. FLN is the designated minister responsible for managing, implementing and operating emergency measures related to flooding hazards. In this respect, FLN produced a plan and methodology for the provincial flood management policy implementation called the “**Provincial Flood Emergency Plan**”.

39. The Provincial Flood Emergency Plan delegates responsibilities to government ministries and actors in the mitigation, preparedness, response and recovery from flooding hazards. Despite general direction on paper for the activation of high-level government response units (such as the Provincial Emergency Coordination Centre or Provincial Regional Emergency Operation

Centers) and for the generation and distribution of flood risk advisories, alerts and warning (via the River Forecast Centre, the “RFC”), the Province breached their duty to implement their emergency response, including but not limited to failing to monitor the risks, warn impacted communities and implement flood response measures.

40. The Provincial Flood Emergency Plan acknowledges that climate change increases the likelihood and the severity of the natural risk hazard of flooding in the Sumas Prairie, which demonstrates the ever-increasing risk of harm to the Plaintiffs and Class Members caused by the Province breaching its statutory and common law duties.

### ***Local Authorities’ Roles and Responsibilities in Flood Risk Governance***

41. The Local Authorities Defendants have roles and responsibilities related to flood risk mitigation, preparedness, response and recovery.

42. Under s. 1 of the *Emergency Program Act*, the municipal council of Abbotsford and the board of FVRD are “local authorities” for the purpose of the duties and powers set out therein. As such, they are at all times responsible for the direction and control of their respective local authority’s emergency response. The powers and duties of these local authorities flow from and are guided by legislation that includes, but is not limited to, the *Emergency Program Act*, the *EMPR*, the *Community Charter*, SBC 2003, c. 26, the *Local Government Act*, RSBC 2015, c. 1 and all related municipal by-laws, such as the *Emergency Measures Bylaw*, Bylaw No. 1142-2002. The *Emergency Measures Bylaw* provides the legal authority for the City of Abbotsford Emergency Plan.

43. As set out in s. 5 of the *Emergency Measures Bylaw*, when the Council, Mayor or Emergency Management Coordinator are of the opinion that an emergency exists or appears imminent, or a disaster has occurred or threatens the city, they have the power to implement the City of Abbotsford Emergency Plan. The definitions of “emergency” and “disaster” in the Bylaw are as follows:

**"Disaster"** means a calamity that:

- (a) is caused by accident, fire, explosion or technical failure, or by the forces of nature; and
- (b) results in serious harm to the health, safety or welfare of people, or in widespread damage to property.

"Emergency" means a present or imminent event that:

- (a) is caused by accident, fire, explosion or technical failure, or by the forces of nature; and
- (b) requires prompt coordination of action or special regulation of persons or property, to protect the health, safety or welfare of people or to limit damage to property;

44. The Local Authorities Defendants are responsible for the maintenance of their flood protection infrastructure, dikes and dams within their geographical boundaries, as well as flood mitigation projects.

45. The *Emergency Protection Act* provides that local authorities are responsible for flood response and the protection of properties within their jurisdictions. If a local authority requires access to the emergency powers in the *Emergency Program Act*, including the ability to order an evacuation of its citizens, a state of local emergency must be declared. Local Emergency Operation Centres may be activated to conduct post-disaster needs assessments and response. Through communication and integration with EMBC regional operations, local authorities may request resources and capabilities, conduct planning and share information to assist with recovery operations. Local authorities also have a responsibility to maintain an individual or organization to lead and coordinate recovery efforts.

46. The conduct of the Local Authority Defendants in the days and hours leading up to the Sumas Flood diverged from what was needed to "protect the health, safety, or welfare of people or to limit damage to property." By failing to adequately monitor the developing flood risk and warn the residents and businesses in the Sumas Prairie of that risk, the conduct of the Local Authority Defendants caused serious harm to the health, safety and welfare of the Plaintiffs and Class Members and widespread damage to property.

### ***The Sumas Flood***

47. The Defendants knew or ought to have known of the impending danger that the weather events preceding the Sumas Flood posed to the Sumas Prairie. The Defendants had a duty to warn the Plaintiffs and Class Members of the severity of the pending weather events and to issue adequate and timely warnings. Despite the well-documented history of flooding and consequential devastation in the Sumas Prairie, the Defendants failed to provide any or adequate

warning to the Plaintiffs and Class Members of the severe weather events preceding the Sumas Flood when the Defendants knew or ought to have known that the Sumas Flood was inevitable.

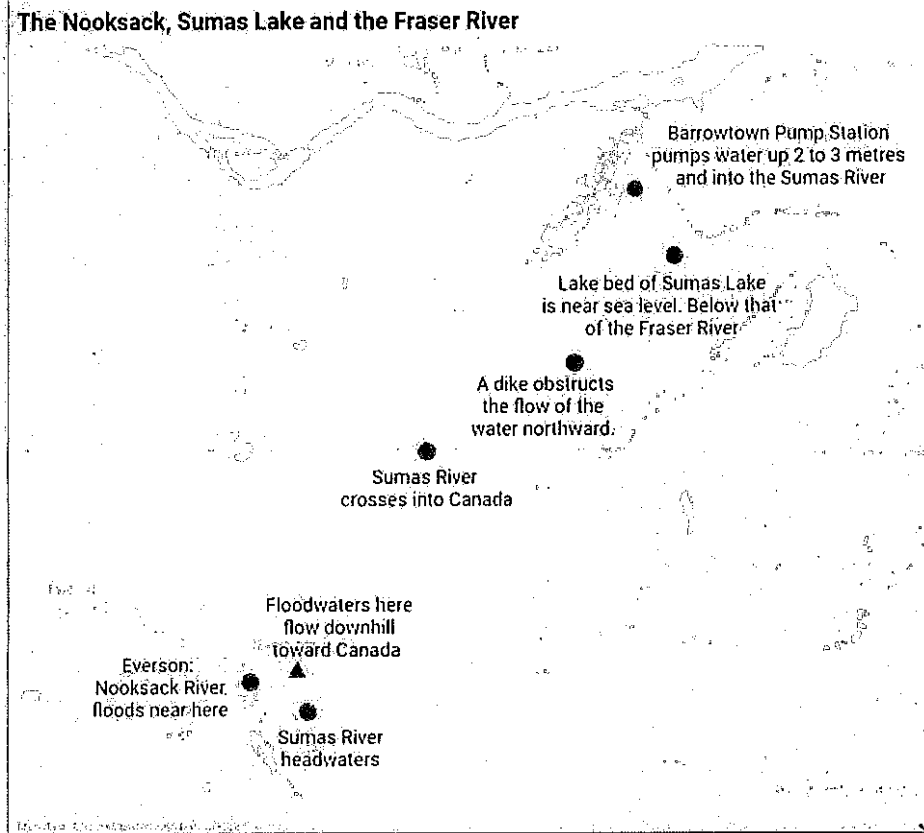
48. On or around Friday November 12, 2021, Environment Canada forecasts tremendous amounts of rain between November 13 and November 16, 2021.

49. In the morning of Saturday, November 13, 2021, torrential rain began to fall across most of British Columbia, including on parts of Abbotsford, the Fraser Valley, the Sumas Prairie, and parts of the State of Washington near the border between Canada and the U.S.A.

50. The rainfall was a result of an “atmospheric river” which pummeled the area. An atmospheric river is a large, narrow stream of water vapor travelling through the sky that brings heat and precipitation from the tropics to the poles. The atmospheric river that impacted British Columbia and the State of Washington brought with it intense rainfall. Parts of the Fraser Valley experienced one month’s worth of rainfall in only two days.

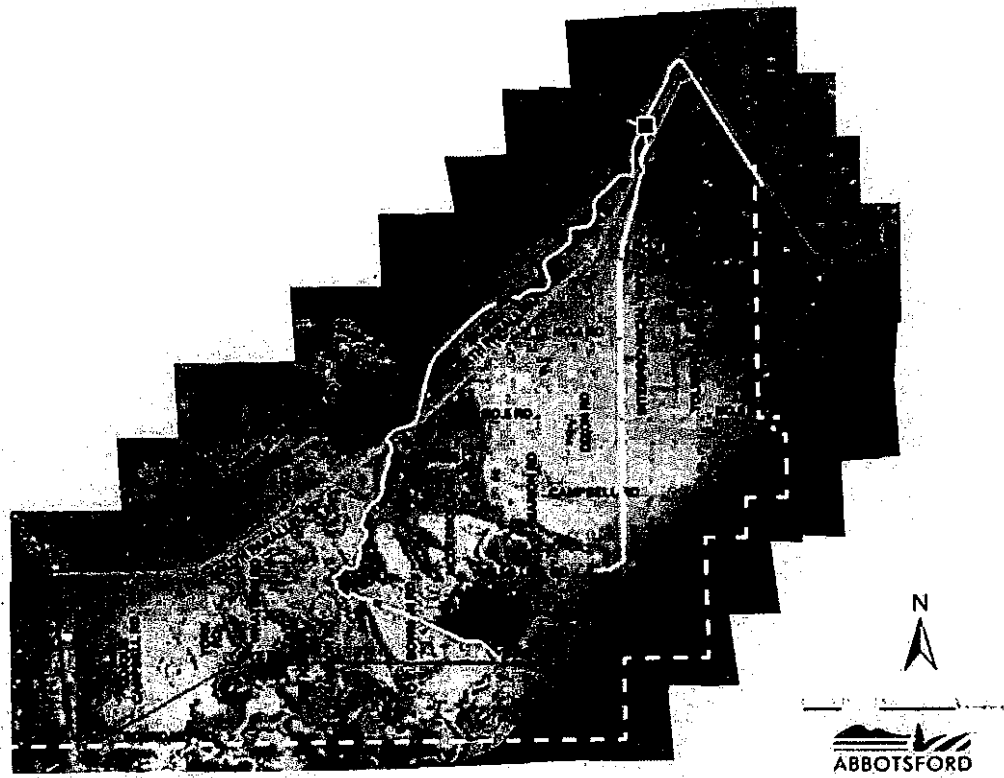
51. On or about Saturday, November 13, 2021, the Nooksack River, located in the State of Washington, overflowed its banks as a result of the rain brought on by the atmospheric river. The City of Lynden, Washington State – a 17-hour drive from the City of Sumas and the Abbotsford Border closed main streets due to water on roads.

52. The resulting floodwaters started to make their way north to the Canadian border. The floodwater ended up in the Sumas River, which then flowed northeast and crossed the border into the City of Abbotsford.

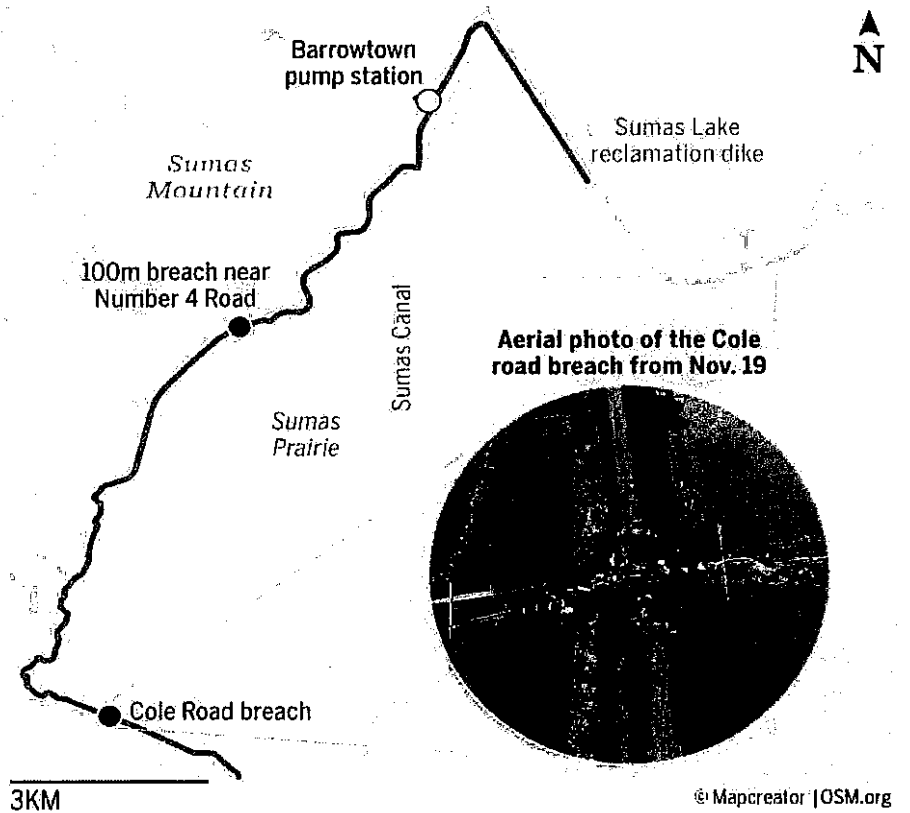


*A graphic explaining how floodwaters from the overflowing Nooksack River (orange triangle) flow north into Canada*

53. In the early hours of Tuesday, November 16, 2021, the Sumas Dike overflowed and, later in the day, gave way in two places. The main breach occurred near No. 4 Road and was 100 meters wide by nine meters deep. The second breach occurred west of Bowman Road and south of Cole Road. These breaches caused water to flow into the Sumas Prairie and resulted in the Sumas Flood.



*Map depicting the Sumas Dike (yellow line). The two red sections depict the main breach (on the right) and the secondary breach (on the left) which allowed floodwater to flow into the Sumas Prairie*



*An aerial photo depicting the secondary breach near Cole Road*

54. The Barrowtown Pump Station, essential to limiting flooding in the region, almost failed as well. On the evening of Tuesday, November 16, 2021, the Defendant Abbotsford stated that they expected the Barrowtown Pump Station to get overrun with floodwaters and fail. Had this occurred, even more catastrophic flooding would have resulted. A group of 150 approximately individuals comprising mostly volunteers and farmers built a sandbag dam around the Barrowtown Pump Station, preventing it from being overrun and failing.

55. At all material times, the Defendants knew or ought to have known that:

- a. the weather preceding the Sumas Flood would cause the Nooksack River to overflow;
- b. the floodwater from the Nooksack River would flow towards the Sumas Prairie;
- c. the Sumas Dike was inadequate to prevent floodwater from flowing into the Sumas Prairie;
- d. the floodwaters from the Nooksack River would breach the Sumas Dike; and



e. when the floodwaters from the Nooksack River breached the Sumas Dike, the Plaintiffs and Class Members would be harmed.

56. If the Defendants had provided adequate and timely warning to the Plaintiffs and Class Members of the severity of the impending weather events preceding the Sumas Flood and implemented emergency measures and warnings, the damages suffered as a result of the Sumas Flood would have been prevented or lessened.

### ***Warnings in the State of Washington***

57. In the State of Washington, a general warning of flooding was issued on Monday, November 8 2021 by the National Oceanic and Atmospheric Administration (the "NOAA"). The NOAA next issued a flash flood warning on Wednesday, November 10, 2021.

58. On Thursday November 11, 2021, the highest-level flood warning was issued. Weather forecast data available to the Defendants at noon on November 11 showed the potential for record rainfall in the Fraser Valley Regional District.

59. On Friday November 12, 2021, the Lynden Chamber of Commerce reported the Environment Canada weather alert calling for a tremendous amount of rain between November 13 and 15, 2021 and Randy Small of Whatcom County communicated regular weather reports.

60. On Saturday November 13, 2021, American authorities, such as the City of Sumas and the City of Lynden, located in Washington State, communicated to residents that a flood was coming. Residents were advised to prepare for flooding and to remove or elevate belongings that were in the flood path. A call for volunteers to come together was also issued.

61. On the same day, Saturday November 13, 2021, City of Everson Mayor John Perry said predictions show river to reach flood stage Monday morning of November 15, 2021 and crest in Everson on Monday afternoon on November 15, 2021.

62. Unlike the NOAA in the State of Washington, the Defendants did not warn the Plaintiffs and Class Members of the impending weather events. Unlike the NOAA in the State of Washington, the Defendants did not implement emergency measures and warnings.

### ***The Province's Misconduct***

63. As described above, the Province had policies in place requiring timely action when emergencies, or the potential for emergencies, arose. In the hours and days leading up to the Sumas Flood, however, the Province failed to warn or enact these measures and policies.

64. Despite the likelihood of record-setting rainfall in the days and weeks leading up to the start of the Sumas Flood, all of which was well-known to the Defendants, the Defendants failed to implement their flood warning system. Instead, the Defendants waited until the flooding was already impacting the region. The Province, in failing to warn and failing to implement their flood management policies, allowed the floods to severely impact the region. Due to the Province's failures, there was no time for residents to bolster the dikes or prepare adequately for flooding.

65. On Saturday, November 13, 2021, at 12:00 pm, the RFC issued a High Stream Advisory for the south coast of British Columbia, stating that the area expected upwards of 150 millimeters of rainfall by Monday, November 15, 2021.

66. On Sunday, November 14, 2021, the High Streamflow Advisory remained in place for the region and the notice included that a significant atmospheric river had made landfall. By 11:45 am on Sunday, November 14, 2021 the advisory was upgraded to a Flood Watch for the Chilliwack River. At 3:00 pm the Fraser Valley was upgraded to Flood Watch.

67. On Monday, November 15, 2021, at 2:45 pm the Sumas River and areas around the U.S.A. border were upgraded to a Flood Warning which was accompanied by the explanation that the Nooksack River at Cedarville was currently at a record level of approximately 15 feet and that the river had already breached its banks and was expected to spill water into low-lying terrain around the Sumas River drainage.

68. On Friday, November 19, 2021, the Sumas River Flood Warning was broadened to include the Sumas Prairie and surrounding areas. This warning remained in place until Friday, December 3, 2021.

69. These warnings were inadequate in their timing and substance, particularly when contrasted to the warnings issued by the NOAA and government authorities in the State of

Washington, which conveyed the coming flood to residents in a timely manner, advising and allowing them time to prepare and enact measures to reduce or eliminate the risk or damages.

***Abbotsford's Misconduct***

70. The City of Abbotsford issued the first Evacuation Order on Sunday, November 14, 2021 at 11:00 pm for an area in the Sumas Prairie not guarded by the Sumas Dike.

71. On Monday, November 15, 2021, at 12:00 am, Abbotsford added the Sumas Prairie to an Evacuation Alert. At 10:00 am a local state of emergency was declared for Abbotsford.

72. It was not until 5:00 am on Tuesday, November 16, 2021, that Abbotsford issued an Evacuation Order including the region in the Sumas Prairie guarded by the Sumas Dike.

73. Abbotsford failed to implement their emergency response protocol when they knew that there was an imminent risk of flooding in the Sumas Prairie.

74. Abbotsford failed to notify the public of the imminent risk of flooding and to implement mitigation strategies and response strategies in a timely manner, or at all.

75. Had Abbotsford provided adequate notice of the impending Sumas Flood, the Plaintiffs and Class Members would have been able to reduce or prevent the damages that they sustained.

***FVRD's Misconduct***

76. FVRD failed to provide timely and effective emergency notifications to individuals impacted by the Sumas Flood. Had FVRD provided adequate emergency notifications, the Plaintiff and Class Members would have been able to mitigate the damages that they sustained as a result of the Sumas Flood.

***Harm to the Plaintiffs and Class Members***

77. The Plaintiff Caroline Mostertman is a resident and business owner in Abbotsford, British Columbia. She lived in Abbotsford on November 13, 2021 on property of which she is the registered owner. She also co-owns C. P. M. Farms Ltd. Under the umbrella of C. P. M. Farms Ltd., the Plaintiff Mostertman also co-owns Ripples Winery, New Wave Distilling and Woodbridge Ponds (a plant and fish nursery).

78. As a result of the Sumas Flood, the Plaintiff Mostertman's real property was flooded and severely damaged, the full extent of which remains unknown at this time. In addition to the destruction of real property, the Plaintiff Mostertman has suffered extensive personal property damage including to wine and spirits inventory, wooden barrels, winemaking equipment, tractors, a travel trailer, two vehicles and over \$100,000.00 worth of plants.

79. Had the Defendants given adequate and timely warning of the impending risk of the Sumas Flood, or implemented emergency measures and warnings, the Plaintiff Mostertman could have reduced her damages by moving equipment, inventory, chattels and other movables out of the Sumas Prairie or to higher ground, and by helping to reinforce the Sumas Dike.

80. The Plaintiff Ted Dykman is a resident and business owner in Abbotsford, British Columbia. He lived in Abbotsford on November 13, 2021 on property on which he is the owner. Plaintiff Dykman also owns Dykman Cattle Co.

81. Due to the Sumas Flood, the Plaintiff Dykman's real property has suffered an unknown amount of damage. In addition, the Plaintiff Dykman's personal property damage includes, but is not limited to, damage to five vehicles, several electric pumps, motors, hay and grain.

82. Had the Defendants given adequate and timely warning of the impending risk of the Sumas Flood, or implemented emergency measures and warnings, the Plaintiff Dykman could have reduced his damages by moving equipment, inventory, chattels and other movables out of the Sumas Prairie or to higher ground.

83. The Plaintiffs and Class Members have suffered loss and damage because of the Defendants' gross negligence and failure to warn, including but not limited to:

- a. personal injury;
- b. loss of income earning capacity, past and future;
- c. loss of business income;
- d. cost of future care;
- e. out of pocket expenses;
- f. damages "in trust" for service provided by family members, past and future;
- g. loss of real property including residential homes and commercial property;

- h. property damages causing replacement and/or repairs;
- i. diminished value of real property;
- j. loss of personal property including livestock, pets, personal effects, family heirlooms, furniture, and items of sentimental value;
- k. loss of business property including inventory, fixtures, and goodwill;
- l. other pecuniary expenses including travel, accommodation, and storage expenses; and
- m. expenses reasonably incurred for the benefit of a person who was injured or suffered a loss as a result of the Sumas Flood.

84. The Plaintiffs and Class Members have sustained damages for the cost of medical treatment, including past and future cost of health care services provided by the government of British Columbia. The Plaintiffs and Class Members continue to undergo medical care and treatment and continue to sustain damages.

85. As a result of the Sumas Flood, the Plaintiffs and Class Members have received and in the future will continue to receive care and services from family members.

## **Part 2: RELIEF SOUGHT**

86. The Plaintiffs claim, on their own behalf and on behalf of the Class Members:
- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the “*Class Proceedings Act*”);
  - b. general damages;
  - c. past and future damages “in trust” for services provided by family members;
  - d. special damages;
  - e. punitive, exemplary, and/or aggravated damages;
  - f. prejudgment and postjudgment interest, where applicable pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and
  - g. costs of this action; and
  - h. such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

87. The Plaintiffs plead and rely on the *Class Proceedings Act*, RSBC 1996, c 50, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, and the *Supreme Court Civil Rules* and related enactments.

88. At all material times, the Defendants were responsible for monitoring the weather that preceded the Sumas Flood, assessing the level of risk to the Plaintiffs and Class Members, warning the Plaintiffs and Class Members of this risk and implementing emergency measures and warning systems.

89. At all material times, the Defendants knew or ought to have known about the risk posed to the Plaintiffs and Class Members by the weather preceding the Sumas Flood.

90. The Defendants were grossly negligent in failing to warn the Plaintiffs and Class Members of the impending and foreseeable Sumas Flood in a timely manner.

91. The Defendants were further grossly negligent in their failure to implement their emergency measures and warning systems when they knew or ought to have known that a flood impacting the Sumas Prairie was the foreseeable consequence of the weather preceding the Sumas Flood.

92. The exemption from civil liability contemplated by the *Emergency Program Act* does not apply to the Defendants as they were grossly negligent, opening them up to civil liability as per s. 18(a).

#### ***Gross Negligence***

93. Under the *Emergency Program Act*, RSBC 1996, c 111, and amendments thereto, the Local Authority Defendants are at all times responsible for the direction and control of their emergency response. Further, the Local Authority Defendants, or a person designated in the local authority's local emergency plan, have the power to implement local emergency plans. The Local Authority Defendants, or the head of the local authority, also have the power to declare a state of local emergency.

94. At all material times, the Local Authority Defendants, individually or jointly, owed the Plaintiffs and Class Members a duty to exercise reasonable care, skill and diligence to:

- a. direct and control their emergency responses in a timely manner;
- b. implement local emergency plans in a timely manner;
- c. declare a state of local emergency in a timely manner;
- d. adequately warn the Plaintiffs and Class Members of the Sumas Flood in a timely manner;
- e. monitor the weather preceding the Sumas Flood;
- f. monitor the water levels of the Nooksack River;
- g. monitor the floodwaters heading towards the Sumas Prairie after the Nooksack River breached;
- h. warn the Plaintiffs and Class Members about the impending Sumas Flood; and
- i. implement emergency measures and warning systems available.

95. The Local Authority Defendants also had a common law duty of care to warn the Plaintiffs and Class Members. The Local Authority Defendants knew or ought to have known that the flooding was imminent and the Local Authority Defendants had the necessary resources, information and ability to provide adequate warning in a timely manner. The Local Authority Defendants were grossly negligent in not providing adequate warning in a timely manner, causing the Plaintiff and Class Members to suffer damages.

96. The particulars of gross negligence against the Local Authority Defendants, singly and in combination, include:

- a. Failing to warn the Plaintiffs and Class Members of the risk of the impending Sumas Flood in a timely manner, or at all;
- b. Failing to adequately monitor weather conditions despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to their proximity to the Sumas River and Nooksack River, the history of flooding in the Sumas Prairie and the inadequacy of the Sumas Dike;
- c. Failing to adequately monitor weather conditions despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to the inadequacy of the Sumas Dike;

- d. Failing to adequately utilize existing emergency measures and warning systems to alert the Plaintiffs and Class Members of the impending Sumas Flood despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to their proximity to the Sumas River and Nooksack River;
- e. Failing to adequately utilize existing emergency measures and warning systems to alert the Plaintiffs and Class Members of the impending Sumas Flood despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to their proximity to the Sumas River and Nooksack River;
- f. Failing to use the most accurate and up-to-date weather information available in order to determine the risks facing the Plaintiffs and Class Members in a timely manner;
- g. Failing to have in place adequate flood forecast models, tools or procedures to obtain, calculate, analyze or interpret data properly, or in a timely manner to forecast the risk of flooding in the Sumas Prairie;
- h. Failing to take into account the above average precipitation and groundwater levels in, along or near the properties and businesses at our around the Sumas Prairie;
- i. Failing to take reasonable steps, in anticipation of above average precipitation and groundwater levels in, along or near the properties and businesses at or around the Sumas Prairie;
- j. Failing to oversee, implement and monitor a flood risk mitigation plan;
- k. Failing to implement and observe safeguards in order to determine the risks facing the Plaintiffs and Class Members in a timely manner;
- l. Failing to inspect and maintain its water control systems prior to the Sumas Flood, adequately or at all;
- m. Failing to inspect the Sumas Dike prior to or during the Sumas Flood, adequately or at all;
- n. Failing to promote an internal culture of safety and alertness within subsidiaries, authorities, departments, and any other of their relevant subsets;
- o. Failing to implement and enforce their own policies;



- p. Failing to properly train employees, volunteers or staff to identify what weather conditions increase the probability of flooding in the Sumas Prairie;
- q. Failing to hire sufficient and properly-trained employees, volunteers or staff who could identify what weather conditions increase the probability of flooding in the Sumas Prairie;
- r. Failing to warn each other and the Plaintiffs and Class Members of the risk caused by personnel insufficient in number and/or lacking training;
- s. Failing to meet the standard of care with respect to measures relating to emergencies or disasters as set out in the *Emergency Program Act*, associated regulations, notably the *Emergency Program Management Regulation* and the *Local Authority Emergency Management Regulation*, or any other legislation specifying or empowering emergency warning and/or management;
- t. Failing to take adequate measures to protect the Plaintiffs and Class Members and their properties and businesses from the flooding;
- u. Failing to assist the Plaintiffs and Class Members in a timely manner as to mitigate damage caused by the flooding and restore and to allow a prompt return to, their properties and businesses;
- v. Such further particulars to be provided.

97. Under the *Emergency Program Act*, and amendments thereto, the Province must prepare emergency plans respecting preparation for, response to and recovery from emergencies and disasters. The Province also has the power to implement a Provincial emergency plan and declare a state of emergency.

98. At all material times, the Province owed the Plaintiffs and Class Members a duty to exercise reasonable care, skill and diligence to:

- a. prepare emergency plans in a timely manner;
- b. implement an emergency plan in a timely manner;
- c. declare a state of emergency in a timely manner;
- d. adequately warn the Plaintiffs and Class Members of the Sumas Flood in a timely manner;
- e. monitor the weather preceding the Sumas Flood;

- f. monitor the water levels of the Nooksack River;
- g. monitor the floodwaters heading towards the Sumas Prairie after the Nooksack River breached;
- h. warn the Plaintiffs and Class Members about the impending Sumas Flood; and
- i. implement emergency measures and warning systems available.

99. The Province also had a common law duty of care to warn the Plaintiffs and Class Members. The Province knew or ought to have known that the flooding was imminent and the Province had the necessary resources, information and ability to provide adequate warning in a timely manner. The Province were grossly negligent in not providing adequate warning in a timely manner, causing the Plaintiff and Class Members to suffer damages.

100. The particulars of gross negligence against the Province include:

- a. Failing to warn the Plaintiffs and Class Members of the risk of the impending Sumas Flood in a timely manner, or at all;
- b. Failing to adequately monitor weather conditions despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to their proximity to the Sumas River and Nooksack River, the history of flooding in the Sumas Prairie and the inadequacy of the Sumas Dike;
- c. Failing to adequately monitor weather conditions despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to the inadequacy of the Sumas Dike;
- d. Failing to adequately utilize existing emergency measures and warning systems to alert the Plaintiffs and Class Members of the impending Sumas Flood despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to their proximity to the Sumas River and Nooksack River;
- e. Failing to adequately utilize existing emergency measures and warning systems to alert the Plaintiffs and Class Members of the impending Sumas Flood despite knowing that the Plaintiffs and Class Members were at an increased risk of harm from flooding due to their proximity to the Sumas River and Nooksack River;

- f. Failing to use the most accurate and up-to-date weather information available in order to determine the risks facing the Plaintiffs and Class Members in a timely manner;
- g. Failing to have in place adequate flood forecast models, tools or procedures to obtain, calculate, analyze or interpret data properly, or in a timely manner to forecast the risk of flooding in the Sumas Prairie;
- h. Failing to take into account the above average precipitation and groundwater levels in, along or near the properties and businesses at our around the Sumas Prairie;
- i. Failing to take reasonable steps, in anticipation of above average precipitation and groundwater levels in, along or near the properties and businesses at or around the Sumas Prairie;
- j. Failing to oversee, implement and monitor a flood risk mitigation plan;
- k. Failing to implement and observe safeguards in order to determine the risks facing the Plaintiffs and Class Members in a timely manner;
- l. Failing to inspect and maintain its water control systems prior to the Sumas Flood, adequately or at all;
- m. Failing to inspect the Sumas Dike prior to or during the Sumas Flood, adequately or at all;
- n. Failing to promote an internal culture of safety and alertness within subsidiaries, authorities, departments, and any other of their relevant subsets;
- o. Failing to implement and enforce their own policies;
- p. Failing to properly train employees, volunteers or staff to identify what weather conditions increase the probability of flooding in the Sumas Prairie;
- q. Failing to hire sufficient and properly-trained employees, volunteers or staff who could identify what weather conditions increase the probability of flooding in the Sumas Prairie;
- r. Failing to warn each other and the Plaintiffs and Class Members of the risk caused by personnel insufficient in number and/or lacking training;
- s. Failing to meet the standard of care with respect to measures relating to emergencies or disasters as set out in the *Emergency Program Act*, associated

regulations, notably the *Emergency Program Management Regulation* and the *Local Authority Emergency Management Regulation*, or any other legislation specifying or empowering emergency warning and/or management;

- t. Failing to take adequate measures to protect the Plaintiffs and Class Members and their properties and businesses from the flooding;
- u. Failing to assist the Plaintiffs and Class Members in a timely manner as to mitigate damage caused by the flooding and restore and to allow a prompt return to, their properties and businesses;
- v. Such further particulars to be provided.

101. The duty of care owed by the Defendants to the Plaintiffs and Class Members is informed by the inherent danger and foreseeably high risk of serious injury, death and loss of personal and real property if the Defendants fail to adequately warn or act in a timely manner.

### ***Causation and Damages***

102. Had the Defendants properly warned the Plaintiffs and Class Members of the risk posed by the weather and related circumstances that eventually caused the Sumas Flood, then the Plaintiffs and Class Members could have taken steps to prevent or mitigate their losses. For example, they could have moved their equipment, inventory, chattels and other movables out of the Sumas Prairie or to higher ground. Further or in the alternative, they could have participated in efforts to reinforce the Sumas Dike to prevent any damage from occurring.

103. As a result of the Defendants' grossly negligent conduct in failing to adequately warn the Plaintiffs and Class Members of the Sumas Flood and the weather events preceding it, the Plaintiffs and Class Members have suffered and continue to suffer losses and damages, including but not limited to:

- a. personal injury;
- b. loss of income earning capacity, past and future;
- c. loss of business income;
- d. cost of future care;
- e. out of pocket expenses;
- f. damages "in trust" for service provided by family members, past and future;

- g. loss of real property including residential homes and commercial property
- h. property damages causing replacement and/or repairs;
- i. diminished value of real property;
- j. loss of personal property including livestock, pets, personal effects, family heirlooms, furniture, and items of sentimental value;
- k. loss of business property including inventory, fixtures, and goodwill;
- l. other pecuniary expenses including travel, accommodation, and storage expenses;
- m. expenses reasonably incurred for the benefit of a person who was injured or suffered a loss as a result of the Sumas Flood.

104. At all material times, the Defendants were in a close and proximate relationship to the Plaintiffs and other Class Members. The damages suffered by the Plaintiffs and Class Members are the reasonably foreseeable consequences of the Defendants' aforementioned gross negligence and failure to warn.

105. The Defendants are jointly and severally liable for the losses and damages incurred by the Plaintiffs and Class Members that could have been avoided had the Defendants adequately warned the Plaintiffs and Class Members of the Sumas Flood.

106. In addition, the Defendants are each liable and/or vicariously liable for the actions of its employees, servants, and agents.

107. The Plaintiffs plead the provisions of the *Negligence Act*, RSBC 1996, c. 333 and any amendments thereto.

***Punitive Damages***

108. The Defendants' misconduct, as described above, is oppressive and high-handed, and departs to a marked degree from ordinary standards of decent behavior. The Defendants' actions were part of a pattern of willful disregard for the rights and safety of Class Members. The Defendants knew or ought to have known about the impending existence and degree of the Sumas Flood and failed to adequately warn the Plaintiffs and Class Members despite knowing the severe risk of grave harm if inadequate warning was provided. The Defendants actions

offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made against them.

The Plaintiffs' address for service:

Slater Vecchio LLP  
1800 - 777 Dunsmuir Street  
Vancouver, BC V7Y 1K4

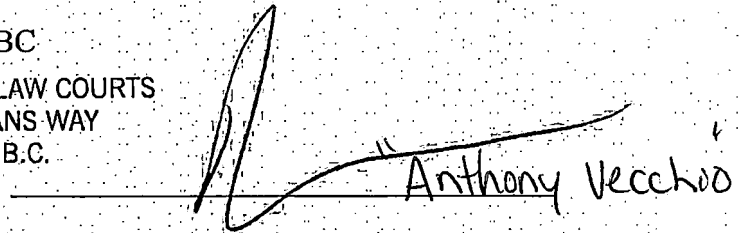
Fax number for service: 604-682-5197

Email address for service: service@slatervecchio.com

Place of trial: Abbotsford, BC

The address of the registry is: ABBOTSFORD LAW COURTS  
32375 VETERANS WAY  
ABBOTSFORD, B.C.

Date: December 23, 2021 V2T 0K1

A handwritten signature in black ink that reads "Anthony Vecchio". The signature is written over a horizontal line.

Signature of lawyer for plaintiffs

Anthony A Vecchio QC

Slater Vecchio LLP

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**Appendix**

[The following information is provided for data collection purposes only and is of no legal effect.]

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

On November 14 to 16 the Sumas Prairie experienced severe flooding, resulting in extensive personal and real property losses. The Defendants failed to warn occupants in the region of the flooding, and failed to implement their prevention, mitigation, and response policies appropriately and in a timely manner. Through this suit, the Plaintiffs and Class Members seek to hold the Defendants accountable for their grossly negligent and unlawful conduct and to recover damages.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

*Class Proceedings Act*, RSBC 1996, c 50

*Emergency Program Act*, RSBC 1996, c 111

*Emergency Program Management Regulation*, BC Reg 477/94 [includes amendments up to BC Reg 200/98]