

No. S135590  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**NOMI DAVIS, AS REPRESENTATIVE PLAINTIFF**

PLAINTIFF

AND:

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

DEFENDANT

BROUGHT UNDER THE CLASS PROCEEDINGS ACT  
[RSBC 1996] Chapter 50

**NOTICE OF APPLICATION**

APPLICANTS: Nomi Davis & Jessica Klein

TO: British Columbia Hydro and Power Authority

AND TO: Its solicitors: Lawson Lundell LLP  
1600 - 925 West Georgia Street  
Vancouver, BC V6C 3L2  
Attention: Marko Vesely

TAKE NOTICE that an application will be made by the applicants to the Judicial Management Judge at the courthouse at 800 Smithe Street, in Vancouver on April 27, 2015, at 10:00am for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order pursuant to the *Class Proceedings Act*, [RSBC 1996] ch. 50 that:

- a. This action be certified as a class proceeding;
  - b. The Residential Class be described as all persons who meet the criteria set out in Schedule “A” to this Notice of Application;
  - c. The Commercial Class be described as all persons who meet the criteria set out in Schedule “B” to this Notice of Application;
  - d. The Plaintiff Nomi Davis be appointed representative plaintiff for the Residential Class members;
  - e. The Plaintiff Jessica Klein be appointed representative plaintiff for the Commercial Class members; and
  - f. The common issues set out in Schedule “C” to this Notice of Application be certified as common issues of fact or law.
2. An order pursuant to the *Class Proceedings Act*, [RSBC 1996] ch. 50:
  - a. Directing the manner in which class members may opt into the proceeding or opt out of the proceeding in accordance with the Litigation Plan that is set out in Schedule “D” to this Notice of Application;
  - b. Approving the form, timing and method of notice (“the Notice”) to be given to the respective members of each class to notify them of the certification of the class proceedings in accordance with the Litigation Plan that is set out in Schedule “D” to this Notice of Application;
  - c. Requiring that the Defendant mail the Notice to each of its customers and pay the cost of the Notice; and
  - d. Requiring that this class proceeding be conducted in accordance with the Litigation Plan that is set out in Schedule “D” to this Notice of Application.
3. Such further and other orders as this Honourable Court may deem just.

## Part 2: FACTUAL BASIS

*The following terms referred to below are defined in the Further Amended Notice of Civil Claim: Residential Class, Commercial Class, Microwave Device, Emissions, Subject Property, Subject Premises*

1. This action involves a common assertion on behalf of Residential Class members of the following rights:
  - a. A common law right of autonomy and privacy at their domestic places of residence; a right of control over environmental exposures generated from their homes; and a right to be free from interference in that regard;
  - b. A right of free choice as to whether a Microwave Device is hosted at their respective homes so as to continuously expose them to the Emissions; and
  - c. A right to be free from physical intrusion into the private space of their respective domestic environments;  
(hereinafter “the Civil Liberties”).
2. This action involves a common assertion, by Commercial Class members, of rights analogous to the Civil Liberties with respect to their commercial premises.
3. Broadly stated, the issues in these proceedings are whether the imposition of the Microwave Device constitutes a violation of the Civil Liberties, a tortious intrusion, a trespass, a nuisance and/or a violation of the *Charter*.
4. To support the assertion that the Microwave Device amounts to any such breach, the Plaintiffs intend to advance the following argument on the basis of the facts pleaded at paragraphs 7 – 11.1 of the Further Amended Notice of Civil Claim:
  - a. The Emissions generated from the Microwave Device have biological effects.
  - b. There is a real issue of potential harm to the human body arising from exposure to the Emissions generated by the Microwave Device.
  - c. There is a reasonable basis for concern with respect to adverse health impacts from the Emissions generated from the Microwave Device.
5. In its response to paragraphs 7 – 11.1 of the Further Amended Notice of Civil Claim, BC Hydro disputes the alleged characteristics of the Emissions and adopts the positions of Health Canada and the B.C. Centre for Disease Control that the Emissions are safe. [See paragraphs 5 and 22 – 24 of the Response to Civil Claim.]

6. In the context of this factual dispute, to establish the Civil Liberties and the breaches arising therefrom, the Plaintiffs do not intend to establish with certainty that the Emissions are harmful. Rather, the Plaintiffs will argue that, as long as there is “a real issue of potential harm to the human body” or a reasonable basis for concern, the autonomy and free choice of class members should be respected. Individuals should have the right to take precautions against possible health hazards generated from their own homes and business premises.
7. It would be impractical and prohibitive for individual class members to bring single actions in the face of the factual dispute, the resolution of which is likely to involve technical issues of fact and law, experts and consideration of a potentially voluminous body of evidence. The form of the action favours its determination by way of class action.
8. With respect to each of the Residential Class and the Commercial Class, there is an identifiable class of two or more persons.
9. With respect to each of the Residential Class and the Commercial Class, the Defendant has unilaterally installed Microwave Devices at the Subject Properties/Premises of customers that have indicated to the Defendant that they oppose and/or do not consent to the installation and/or operation of the Microwave Device. Furthermore, BC Hydro has otherwise conducted itself unto some of its customers so as to bring them within the definition of the Residential Class or the Commercial Class as defined in the Further Amended Notice of Civil Claim.
10. The representative Plaintiffs have a litigation plan and do not have interest in conflict with class members.
11. The Defendant already has in place an established accounting relationship with each individual class member.
12. The Defendant already has in place an established network of postal communication with each class member.

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

1. The Plaintiffs meet the requirements for class certification under section 4 of the *Class Proceedings Act*, [RSBC 1996] ch. 50.
2. The Further Amended Notice of Civil Claim discloses a cause of action.
3. It is not plain and obvious that the Plaintiffs cannot succeed with respect to their:
  - a. Claim in tort for intrusion against seclusion or alternative claim under the *Privacy Act* [RSBC 1996] ch. 373;

- b. Claim in tort for trespass;
  - c. Claim in tort for nuisance;
  - d. Claim in contract; and
  - e. Claim on the basis of section 7 and/or 8 of the Charter.
4. The claims of class members raise issues, as set out under Schedule “C” to this Notice of Application, that are common to all the class members. In the present case, there are common issues concerning disputed facts relating to the nature and effect of the Emissions, the existence of the causes of action, the Civil Liberties and the torts arising from their alleged violation.
  5. A resolution of the common issues would significantly advance the action. If the common issues were to be resolved, they would be determinative of whether BC Hydro could mandate the installation of a Microwave Device or exact a fee in lieu thereof under threat of disconnection.
  6. The common issues predominate over issues affecting only individual class members.
  7. The form of the action is such that it can properly proceed as a class action, which is the preferable procedure for the fair and efficient resolution of the common issues.
  8. It would be practical to effect communication with class members.
  9. It would be practical to make requested relief available to the individual class members.
  10. The representative Plaintiffs would fairly and adequately represent the interests of each class respectively.

#### **Part 4: MATERIAL TO BE RELIED ON**

At the hearing of the application, the applicants will rely on the following affidavits and other documents:

1. the Affidavit of Delia Maria Aaron #1 sworn November 18, 2013;
2. the Affidavit of Delia Maria Aaron #2 sworn January 6, 2014;
3. the Affidavit of Delia Maria Aaron #3 sworn September 13, 2014;
4. the Affidavit of Nomi Davis sworn September 8, 2014;

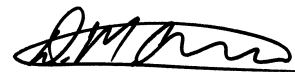
5. the Affidavit of Jessica Klein sworn September 8, 2014;
6. the Affidavit of Marcel Gamache sworn September 10, 2014;
7. the Affidavit of Margaret Sylvester sworn September 11, 2014;
8. the Affidavit of Norman Herbert Moffat sworn September 12, 2014;
9. the Affidavit of Dharmesh Natha sworn September 12, 2014;
10. the Affidavit of Ashif Halani sworn September 16, 2014;
11. the Affidavit of Una St. Clair sworn September 16, 2014;
12. the Affidavit of Tim O'Connor sworn September 16, 2014;
13. the Affidavit of Jurgen Goering sworn September 16, 2014;
14. the Affidavit of Myrle Testart sworn September 16, 2014;
15. the Affidavit of Sharon Noble sworn September 17, 2014;
16. the pleadings and proceedings filed herein and such further and other material as requested by counsel and allowed by this Honourable Court.

The Court has ordered that this application be scheduled for five days commencing April 27, 2015. This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, by October 31, 2014:

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

September 19, 2014



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**David M. Aaron**  
**Counsel for the Plaintiffs**

This Notice of Application was filed by David M. Aaron, Barrister & Solicitor, whose place of business and address for service is 208 - 507 Baker Street, Nelson, BC V1L 4J2  
Tel: 250.551.6840 Fax: 866.685.7376.

**SCHEDULE “A”**  
**RESIDENTIAL CLASS DESCRIPTION**

*The following terms referred to below are defined in the Further Amended Notice of Civil Claim: Residential Class, Microwave Device, Direct Communication*

1. The Residential Class member is an adult individual resident of British Columbia;
2. The Residential Class member resides or seeks to reside at a residential property over which he or she has occupancy and possession by way of legal right (“the Subject Property”);
3. At the material time, the Defendant supplied power (or had been asked to supply power) to the Subject Property pursuant to a utility-customer relationship between the Defendant and the Residential Class member or his/her proxy;
4. The Residential Class member, by way of explicit communication before or after the installation of a Microwave Device, has indicated to the Defendant that he/she opposes and/or does not consent to the installation and/or operation of the Microwave Device at the Subject Property (“the Notice of Refusal”); and
5. One or more of the following has occurred:
  - a. Notwithstanding the Notice of Refusal, the Defendant proceeded to install and/or operate the Microwave Device at the Subject Property;
  - b. Notwithstanding the Notice of Refusal, the Defendant has failed to terminate the operation of the Microwave Device at the Subject Property;
  - c. Notwithstanding the Notice of Refusal, the Residential Class member has received information from the Defendant setting out the Defendant’s intention to install the Microwave Device at the Subject Property;
  - d. The Defendant has declined to supply power to the Subject Property as a consequence of the Residential Class member’s refusal to allow the installation of the Microwave Device at the Subject Property;
  - e. The Defendant has indicated its intention to decline to supply power to the Subject Property as a consequence of the Residential Class member’s refusal to allow the installation of the Microwave Device at the Subject Property;
  - f. The Defendant has communicated with the Residential Class member by way of the Direct Communication [as defined under heading D.3 of the Further Amended Notice of Civil Claim] or has otherwise exacted fees or

has sought to exact fees from the Residential Class member in connection with his/her:

- i. refusal to provide his/her agreement to the Microwave Device; or
  - ii. election of a meter devoid of the Microwave Device; or
- g. After having issued the Notice of Refusal, the Residential Class member responded to the Direct Communication (or some similar communication by BC Hydro), by:
  - i. acceding to the installation of the Microwave Device; or
  - ii. acceding to the payment of a fee in exchange for the Defendant's agreement to refrain from installing the Microwave Device.



**SCHEDULE “B”**  
**COMMERCIAL CLASS DESCRIPTION**

*The following terms referred to below are defined in the Further Amended Notice of Civil Claim: Commercial Class, Microwave Device*

1. The Commercial Class member is designated as a commercial customer by the Defendant;
2. The Commercial Class member carries out all or part of its business at a commercial premises over which it has occupancy and possession by way of legal right (“the Subject Premises”);
3. At the material time, the Defendant supplied power (or had been asked to supply power) to the Subject Premises pursuant to a utility-customer relationship between the Defendant and the Commercial Class member or its proxy;
4. The Commercial Class member, by way of explicit communication, has indicated to the Defendant that it opposes and/or does not consent to the installation and/or operation of the Microwave Device at the Subject Premises (“the Notice of Refusal”); and
5. One of the following has occurred:
  - a. Notwithstanding the Notice of Refusal, the Defendant proceeded to install and operate the Microwave Device at the Subject Premises;
  - b. Notwithstanding the Notice of Refusal, the Defendant has failed to terminate the operation of the Microwave Device at the Subject Premises;
  - c. Notwithstanding the Notice of Refusal, the Commercial Class member has received information from the Defendant setting out the Defendant’s intention to install the Microwave Device at the Subject Premises;
  - d. The Defendant has declined to supply power to the Subject Premises as a consequence of the Commercial Class member’s refusal to allow the installation of the Microwave Device at the Subject Premises;
  - e. The Defendant has indicated its intention to decline to supply power to the Subject Premises as a consequence of the Commercial Class member’s refusal to allow the installation of the Microwave Device at the Subject Premises; or
  - f. The Defendant has exacted fees, sought to exact fees or threatened to exact fees from the Commercial Class member in connection with the

latter's refusal to allow (or obstruction of) the installation of the Microwave Device at the Subject Premises.

## **SCHEDULE “C” COMMON ISSUES**

*The following terms referred to below are defined in the Further Amended Notice of Civil Claim: Emissions, Microwave Device, Residential Class, Commercial Class*

### **Emissions**

1. Do the Emissions generated from the Microwave Device have biological effects?
2. Is there is a real issue of potential harm to the human body arising from exposure to the Emissions generated by the Microwave Device?
3. Is there a reasonable basis for concern with respect to adverse health impacts from the Emissions generated from the Microwave Device?

### **Rights claimed**

4. Do Residential Class members have a common law right of autonomy and privacy at their domestic places of residence; a right of control over environmental exposures generated from their homes; and a right to be free from interference in that regard?
5. Do Residential Class members have a right of free choice as to whether a Microwave Device is hosted at their respective homes so as to continuously expose them to the Emissions?
6. Do Residential Class members have a right to be free from physical intrusion into the private space of their respective domestic environments?

(hereinafter “the Civil Liberties”)

### **Rights violated**

7. Does the installation and/or operation of the Microwave Device at the home of a Residential Class member, against his/her will, constitute a violation of any of the Civil Liberties? If so, does the Defendant otherwise violate individual rights by declining to supply power or levying a fee in the event that the Residential Class member declines to accede to a violation of that Civil Liberty?
8. Does the Defendant commit the tort of intrusion upon seclusion (or violate the *Privacy Act* [RSBC 1996] ch. 373) by installing and operating a Microwave Device at the home of a Residential Class member against his/her objections? If so, does the Defendant otherwise violate rights by declining to supply power or levying a fee in the event that the Residential Class member declines to accede to such an intrusion?

9. Does the Defendant commit the tort of trespass or nuisance by entering a residential property and leaving behind a continuously operating Microwave Device against the express will of a Residential Class member? If so, does the Defendant otherwise violate individual rights by declining to supply power or levying a fee in the event that the Residential Class member declines to accede to such trespass or nuisance?

### **Government authorization**

10. Are sections 7 and/or 8 of the *Canadian Charter of Rights and Freedoms* interfered with where the government authorizes the Defendant to install and operate a Microwave Device at the home of a Residential Class member against his/her will or withhold supply or levy a fee in lieu thereof? If so, is the interference justified under section 1 of the Charter?

### **Contract**

11. Does the statutorily-imposed contract between BC Hydro and each Residential Class member, when applied in conformity with the Charter, entitle the Defendant to install and operate a Microwave Device at the Class member's home against his/her will or withhold supply or levy a fee in lieu thereof?

### **Commercial Premises**

12. Is a commercial premises like a domestic home in terms of constituting a space in which the principal proprietor has a right of autonomy, control and free choice over the installation/operation of a Microwave Device? Do any of the above-referenced Civil Liberties, torts, Charter rights or contractual limitations apply with respect to commercial premises for the benefit of Commercial Class members?

### **Remedy**

13. What Charter remedy, general damages, exemplary damages and/or punitive damages should be awarded in relation to any of the above-referenced Civil Liberty violations, torts or Charter violations?
14. Should any of those damages be assessed in the aggregate?

**SCHEDULE “D”**

No. S135590  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**NOMI DAVIS, AS REPRESENTATIVE PLAINTIFF**

PLAINTIFF

AND:

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

DEFENDANT

BROUGHT UNDER THE CLASS PROCEEDINGS ACT  
[RSBC 1996] Chapter 50

**PLAINTIFFS’ PROPOSED LITIGATION PLAN**

**Introduction**

1. After disposition of the certification motion, assuming success for the Plaintiffs, the Plaintiffs will ask the court to set a schedule for the remaining steps in the action. Subject to input from the Defendant, and directions from this Honourable Court, the Plaintiffs propose the following litigation plan.

**Notice and opt-out / opt-in**

2. The Plaintiffs propose that notice to the respective classes be in the form appended as Schedule “A” to this Litigation Plan (“the Notice”). A separate notice is proposed for each class.
3. The Plaintiffs will ask the Court to order that the Notice be mailed by the Defendant to each of its customers and that the costs of the Notice be paid by the Defendant.
4. The Plaintiffs propose that the Notice be mailed within 30 days of the entry of the certification order.

5. The Plaintiffs propose that the opt-out/opt-in date be set for 90 days after the date that the Notice is mailed.
6. The Plaintiffs propose the following opt-out procedure:
  - a. a person may opt out of the class proceeding by sending a written election to opt out to a person designated by the Court before a date fixed by the Court; and
  - b. no class member may opt out of the class proceeding after the expiration of the opt-out period.
  - c. The Plaintiffs will ask the Court to appoint a person to receive the opt-out notices and report to the Court the number of persons who opted out by the date fixed by the Court.

#### **Litigation relating to the common issues**

7. The Plaintiffs anticipate that the litigation of the common issues will follow a fairly traditional pre-trial and trial plan and propose that a case management conference be arranged within 30 days of the certification order to address the following issues:
  - a. pleadings - confirm that pleadings are closed, that all contemplated amendments have been concluded and that all parties have been joined;
  - b. identification and simplification of issues - ensure that liability and damages issues have been simplified and narrowed as much as possible;
  - c. discovery - the Plaintiffs propose that lists of documents be exchanged on the common issues within 60 days of the case management conference and that the examinations for discovery on the common issues be scheduled within 90 days after lists of documents have been exchanged.
  - d. expert evidence - the Plaintiffs anticipate the exchange of detailed expert reports. All expert reports will be exchanged within 90 days of the completion of examinations for discovery, unless the Court orders otherwise.
  - e. trial date and length of trial - the Plaintiffs propose that the trial of the common issues be set for a period of three weeks and commence 90 days after the last expert reports have been served. The Plaintiffs anticipate that the trial date can be set at the first post-certification case management conference.

### **Case Management and Interlocutory Applications**

8. Subject to the availability of the Court and counsel, the Plaintiffs propose meetings before the case management judge every 90 days unless the parties agree or the Court directs that such hearings are not required or are required on a more frequent basis.
9. Unless a particular application is a matter of urgency, all interlocutory applications will be heard at these regular case management hearings.
10. Any party bringing an interlocutory application will file application material at least 14 days prior to the case management conference. The respondent(s) will file any responding material 7 days prior to the conference. The applicant(s) will file any written argument 5 days prior to the hearing. The respondent(s) will file any written argument 3 days prior to the hearing. The Court will determine whether any additional oral argument is required and direct the parties accordingly.

### **Judgment**

11. The Plaintiffs will seek judgment on the common issues at the end of the common issues trial.

### **Individual Issues Determination**

12. If the Defendant is wholly successful on the common issues, the case will be at an end and no individual issues determination will be required.
13. If the Plaintiffs are successful on the common issues, in whole or in part, an orderly process for the resolution of any remaining issues may be required. Within 60 days of the issuance of a judgment for the Plaintiff on any of the common issues, the parties will convene for argument under s. 27 of the Class Proceedings Act to determine the appropriate course for any outstanding issues.

## SCHEDULE “A” TO PLAINTIFFS’ PROPOSED LITIGATION PLAN

### **NOTICE TO BC HYDRO RESIDENTIAL CUSTOMERS CERTIFICATION OF BRITISH COLUMBIA CLASS ACTION**

#### **REGARDING “SMART METERS”**

*Read this notice carefully as it may affect your rights.*

#### THE CLASS ACTION

This notice is directed to all BC Hydro customers who meet the following criteria set out below.

A class action is pending in the British Columbia Supreme Court seeking relief against:

- a) BC Hydro’s imposition of meters containing radiofrequency-emitting transmitters (“the Microwave Device”), sometimes referred to as “smart meters”;
- b) BC Hydro’s levying of a fee on its customers who refuse the installation of the Microwave Device; and
- c) BC Hydro’s refusal to supply power to those who refuse the installation of the Microwave Device and refuse to pay the opt-out fee.

#### THE CERTIFICATION ORDER

Madam Justice Adair certified the action *Davis v. British Columbia Hydro and Power Authority* (“the Class Action”) as a class proceeding and appointed Nomi Davis as the representative plaintiff of the Residential Class defined as follows:

- 1. The Residential Class member is an adult individual resident of British Columbia;
- 2. The Residential Class member resides or seeks to reside at a residential property over which he or she has occupancy and possession by way of legal right (“the Subject Property”);
- 3. At the material time, BC Hydro supplied power (or had been asked to supply power) to the Subject Property pursuant to a utility-customer relationship between BC Hydro and the Residential Class member or his/her proxy;
- 4. The Residential Class member, by way of explicit communication before or after the installation of a Microwave Device, has indicated to BC Hydro that he/she opposes and/or does not consent to the installation and/or operation of the Microwave Device at the Subject Property (“the Notice of Refusal”); and



5. One or more of the following has occurred:

- a. Notwithstanding the Notice of Refusal, BC Hydro proceeded to install and/or operate the Microwave Device at the Subject Property;
- b. Notwithstanding the Notice of Refusal, BC Hydro has failed to terminate the operation of the Microwave Device at the Subject Property;
- c. Notwithstanding the Notice of Refusal, the Residential Class member has received information from BC Hydro setting out BC Hydro's intention to install the Microwave Device at the Subject Property;
- d. BC Hydro has declined to supply power to the Subject Property as a consequence of the Residential Class member's refusal to allow the installation of the Microwave Device at the Subject Property;
- e. BC Hydro has indicated its intention to decline to supply power to the Subject Property as a consequence of the Residential Class member's refusal to allow the installation of the Microwave Device at the Subject Property;
- f. By way of direct communication with the Residential Class member, BC Hydro has sought to exact fees from the Residential Class member in connection with his/her:

- i. refusal to provide his/her agreement to the Microwave Device; or
- ii. election of a meter devoid of the Microwave Device; or

(hereinafter "the Direct Communication")

- g. After having issued the Notice of Refusal, the Residential Class member responded to the Direct Communication (or some similar communication by BC Hydro), by:
  - i. acceding to the installation of the Microwave Device; or
  - ii. acceding to the payment of a fee in exchange for BC Hydro's agreement to refrain from installing the Microwave Device.

#### YOU MAY STILL OBJECT

If you oppose or do not consent to the installation or operation of a Microwave Device at your Subject Property and you have yet to inform BC Hydro of your opposition, you may do so by writing BC Hydro a letter and stating "I oppose the installation and/or operation at my service address of a radiofrequency-emitting meter."

You may send such a letter even if you have already been subject to the installation of a Microwave Device at your Subject Property.

By sending such a letter to BC Hydro by \_\_\_\_\_, you will satisfy the criterion (at point #4 above) for inclusion in the Residential Class.

#### WHAT TO DO IF YOU MEET THE CLASS DEFINITION

If you meet the definition of a Residential Class member, your rights will be affected by this proceeding.

If you do not wish to participate in the Class Action you must take action to exclude yourself by opting out of the Class Action. If you do not opt out of the Class Action, you will be automatically included in the Class Action and bound by the terms of any judgment or settlement in the Class Action whether favourable or not. You will be entitled to share in the amount of any award or settlement recovered in the Class Action. If you wish to opt out of the Class Action you must do so on or before \_\_\_\_ by sending a written election signed by you as the Class member stating that you are opting out of the Class Action to: David M. Aaron, Barrister & Solicitor, by mail at Box 479, Nelson, BC, V1L 5R3 or by email at [david@legalmind.ca](mailto:david@legalmind.ca) or by fax at 1-866-685-7376.

No Class member will be permitted to opt out of the Class Action after \_\_\_\_\_. If you opt out by the deadline, it means that you can bring your own lawsuit and will not be bound by the result in this lawsuit. It also means that you cannot collect any money that might ultimately be paid to Class members as a result of this lawsuit.

#### FEES

Class counsel has entered into an agreement with the representative plaintiff with respect to legal fees and disbursements. The agreement must be approved by the Court to be effective. Members of the Class will not be personally liable to pay Class counsel any legal fees or disbursements.

#### ADDITIONAL INFORMATION

Any questions about the matters in this notice should NOT be directed to the Court because its administrative structure is not designed to address this type of inquiry. The certification order and other information may be obtained by visiting the website at [www.davisclassaction.ca](http://www.davisclassaction.ca)

Questions for counsel should be directed by mail, email or fax to:

David M. Aaron, Barrister & Solicitor  
Box 479, Nelson, BC, V1L 5R3  
[david@legalmind.ca](mailto:david@legalmind.ca) Fax: 1-866-685-7376

## INTERPRETATION

This notice is a summary of the terms of the certification order. If there is any conflict between the provisions of this notice and the terms of the certification order, the certification order shall prevail. The certification order may be reviewed at the website [www.davisclassaction.ca](http://www.davisclassaction.ca)

**NOTICE TO BC HYDRO COMMERCIAL CUSTOMERS  
CERTIFICATION OF BRITISH COLUMBIA CLASS ACTION**

*Read this notice carefully as it may affect your rights.*

**REGARDING “SMART METERS”**

**THE CLASS ACTION**

This notice is directed to all BC Hydro customers who meet the following criteria set out below.

A class action is pending in the British Columbia Supreme Court seeking relief against:

- a) BC Hydro’s imposition of meters containing radiofrequency-emitting transmitters (“the Microwave Device”), sometimes referred to as “smart meters”;
- b) BC Hydro’s levying of a fee on its customers who refuse the installation of the Microwave Device; and
- c) BC Hydro’s refusal to supply power to those who refuse the installation of the Microwave Device and refuse to pay the opt-out fee.

**THE CERTIFICATION ORDER**

Madam Justice Adair certified the action *Davis v. British Columbia Hydro and Power Authority* (“the Class Action”) as a class proceeding and appointed Jessica Klein as the representative plaintiff of the Commercial Class defined as follows:

- 1. The Commercial Class member is designated as a commercial customer by the Defendant;
- 2. The Commercial Class member carries out all or part of its business at a commercial premises over which it has occupancy and possession by way of legal right (“the Subject Premises”);
- 3. At the material time, BC Hydro supplied power (or had been asked to supply power) to the Subject Premises pursuant to a utility-customer relationship between BC Hydro and the Commercial Class member or its proxy;
- 4. The Commercial Class member, by way of explicit communication, has indicated to BC Hydro that it opposes and/or does not consent to the installation and/or operation of the Microwave Device at the Subject Premises (“the Notice of Refusal”); and
- 5. One of the following has occurred:

- a. Notwithstanding the Notice of Refusal, BC Hydro proceeded to install and operate the Microwave Device at the Subject Premises;
- b. Notwithstanding the Notice of Refusal, BC Hydro has failed to terminate the operation of the Microwave Device at the Subject Premises;
- c. Notwithstanding the Notice of Refusal, the Commercial Class member has received information from BC Hydro setting out the Defendant's intention to install the Microwave Device at the Subject Premises;
- d. BC Hydro has declined to supply power to the Subject Premises as a consequence of the Commercial Class member's refusal to allow the installation of the Microwave Device at the Subject Premises;
- e. BC Hydro has indicated its intention to decline to supply power to the Subject Premises as a consequence of the Commercial Class member's refusal to allow the installation of the Microwave Device at the Subject Premises; or
- f. BC Hydro has exacted fees, sought to exact fees or threatened to exact fees from the Commercial Class member in connection with the latter's refusal to allow (or obstruction of) the installation of the Microwave Device at the Subject Premises.

#### YOU MAY STILL OBJECT

If you oppose or do not consent to the installation or operation of a Microwave Device at your Subject Premises and you have yet to inform BC Hydro of your opposition, you may do so by writing BC Hydro a letter and stating "I oppose the installation and/or operation at my service address of a radiofrequency-emitting meter."

You may send such a letter even if you have already been subject to the installation of a Microwave Device at your Subject Premises.

By sending such a letter to BC Hydro by \_\_\_\_\_, you will satisfy the criterion (at point #4 above) for inclusion in the Commercial Class.

#### WHAT TO DO IF YOU MEET THE CLASS DEFINITION

If you meet the definition of the Commercial Class, your rights will be affected by this proceeding.

If you do not wish to participate in the Class Action you must take action to exclude yourself by opting out of the Class Action. If you do not opt out of the Class Action, you will be automatically included in the Class Action and bound by the terms of any

judgment or settlement in the Class Action whether favourable or not. You will be entitled to share in the amount of any award or settlement recovered in the Class Action. If you wish to opt out of the Class Action you must do so on or before \_\_\_\_\_ by sending a written election signed by you as the Class member stating that you are opting out of the Class Action to David M. Aaron, Barrister & Solicitor, by mail at Box 479, Nelson, BC, V1L 5R3 or by email at [david@legalmind.ca](mailto:david@legalmind.ca) or by fax at 1-866-685-7376.

No Class member will be permitted to opt out of the Class Action after \_\_\_\_\_. If you opt out by the deadline it means that you can bring your own lawsuit and will not be bound by the result in this lawsuit. It also means that you cannot collect any money that might ultimately be paid to Class members as a result of this lawsuit.

## FEES

Class counsel has entered into an agreement with the representative plaintiff with respect to legal fees and disbursements. The agreement must be approved by the Court to be effective. Members of the Class will not be personally liable to pay Class counsel any legal fees or disbursements.

## ADDITIONAL INFORMATION

Any questions about the matters in this notice should NOT be directed to the Court because its administrative structure is not designed to address this type of inquiry. The certification order and other information may be obtained by visiting the website at [www.davisclassaction.ca](http://www.davisclassaction.ca)

Questions for counsel should be directed by mail, email or fax to:

David M. Aaron, Barrister & Solicitor  
Box 479, Nelson, BC, V1L 5R3  
[david@legalmind.ca](mailto:david@legalmind.ca)  
Fax: 1-866-685-7376

## INTERPRETATION

This notice is a summary of the terms of the certification order. If there is any conflict between the provisions of this notice and the terms of the certification order, the certification order shall prevail. The certification order may be reviewed at the website [www.davisclassaction.ca](http://www.davisclassaction.ca)

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of this notice of application

☐ with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

.....  
Signature of ☐ Judge ☐ Master

## Appendix

### THIS APPLICATION INVOLVES THE FOLLOWING:

*[Check the box(es) below for the application type(s) included in this application.]*

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☒ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts