

## NOTICE OF FILING

### Details of Filing

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File Number:	VID312/2021
File Title:	MINNIE MCDONALD v COMMONWEALTH OF AUSTRALIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos".

Registrar

### Important Information

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Form 59  
Rule 29.02(1)

## Affidavit

No. VID312/2021

Federal Court of Australia  
District Registry: Victoria  
Division: General

**MINNIE MCDONALD**

Applicant

**COMMONWEALTH OF AUSTRALIA**

Respondent

Affidavit of: **Michael McCarthy**  
Address: Hutton McCarthy, Level 17, 19 Smith Street Mall  
Darwin, Northern Territory, 0800  
Occupation: Solicitor  
Date: 6 August 2025

I, **Michael McCarthy**, of Level 17, 19 Smith Street Mall, Darwin in the Northern Territory, Solicitor, affirm:

1. I am a partner at Hutton McCarthy. I have day to day carriage of this matter. Pursuant to order 6 of the orders of Mortimer CJ made 20 December 2024 in this proceeding, Tom Hutton and I are the Legal Advisors to the Administrators for the purposes of clause 31 of the Settlement Distribution **Scheme**, which is Schedule 1 to the **Deed** of Settlement dated 30 August 2024.
2. I am authorised to make this affidavit on the Administrators' behalf.
3. I make this affidavit in support of the Administrators' interlocutory application that the Court extend the Administration Finalisation Date to be the date which is 42 weeks after

Filed on behalf of (name & role of party)	Julia Kaye, David Orr and Sal Algeri of Deloitte, Administrators of the Settlement Distribution Scheme	
Prepared by (name of person/lawyer)	Michael McCarthy	
Law firm (if applicable)	Hutton McCarthy	
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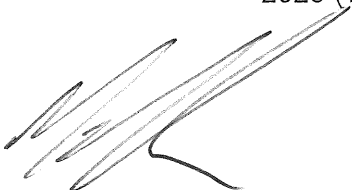
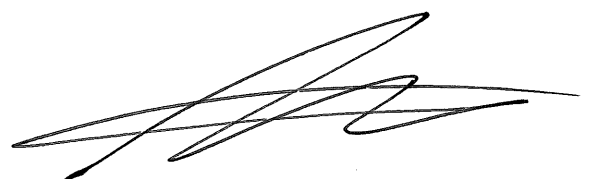
[Version 3 form approved 02/05/2019]

the Registration Date. However, I confirm that it is estimated that final payments to Eligible Claimants and Eligible Descendant Claimants will be made by the date which is 23 weeks after the Registration Date. For reference, if the Registration Date were 30 November 2025, then:

- (a) Eligible Claimants and Eligible Descendant Claimants can expect to receive payment by 10 May 2026; and
  - (b) administration of the Scheme will be complete by 20 September 2026.
4. I make this affidavit from my own knowledge, save where I state otherwise. Where I depose to matters on information or belief, I believe those matters to be true.
  5. Capitalised terms in this affidavit are the same terms defined either in clause 1.1.1(a) of the Deed, or clause 2 of the Scheme.

**Steps the Administrators are required to take following the Registration Date**

6. The Deed and the Scheme set out a number of steps the Administrators are required to take to finalise the administration of the Scheme following the Registration Date and prior to the Administration Finalisation Date. Those steps are set out, below.
  - (a) First, the Administrators must review all outstanding Registration Forms and determine whether the Claimants are Eligible Claimants pursuant to clause 43 of the Scheme or Eligible Descendant Claimants pursuant to clause 44 of the Scheme.
  - (b) Second, if the Administrators are unable to be independently reasonably satisfied of the eligibility of the Claimant based on the information contained in the Registration Form, they seek further information or documentation from the Claimant pursuant to clauses 43(d)(i) and 44(c)(i) of the Scheme.
  - (c) Third, if the Administrators determine the Claimant to be a living Eligible Claimant, they arrange for an Interim Payment of \$10,000.00 to be made to the Eligible Claimant, pursuant to Order 1(b) of the Orders of Mortimer CJ made 20 December 2024 and clause 2.11 of the Deed.
  - (d) Fourth, the Administrators must determine the quantum of the Eligible Claimant Payment pursuant to clause 49 of the Scheme. The Eligible Claimant Payment will depend upon a number of matters which will only be confirmed following the Registration Date, including the number of Eligible Claimants, the Applicant's Actual Costs, and the Litigation Funder's commission, and will be subject to further orders of the Court contemplated by order 12 of the Orders of Mortimer CJ dated 28 May 2025 (Third Tranche Orders).

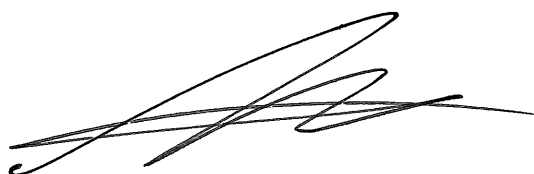
- (e) Fifth, the Administrators must issue Distribution Statements pursuant to clause 60 of the Scheme and Rejection Notices pursuant to clause 64 of the Scheme.
  - (f) Sixth, after 21 days have elapsed following the provision of all Distribution Statements, or the expiration of the 21 day period provided for a Review Determination by clause 67 of the Scheme (whichever is later), the Administrators must distribute payments to the Eligible Claimants and the Eligible Descendant Claimants pursuant to clause 70 of the Scheme.
  - (g) Seventh, depending upon the quantum of money remaining in the Settlement Fund, the Administrators must either make a further distribution to Eligible Claimants and Eligible Descendant Claimants or seek Court approval to apply the residue to an independent charity associated with First Nations people, pursuant to clauses 74–75 of the Scheme.
  - (h) Eighth, the Administrators must complete a range of other sundry administrative tasks associated with settlement finalisation, including closing the Settlement Fund Account, winding down the contact centre referred to in paragraph [6(f)] of the Administrators' first Court Report dated 1 May 2025 (**First Report**), and submitting any outstanding reports required pursuant to clauses 46–48 of the Scheme.
7. Steps (a) through (h) together will be referred to as the **Finalisation Steps**.

#### **Estimated period required to take the Finalisation Steps**

8. I am informed and believe that, on the basis that the Registration Date is extended until 30 November 2025, the Administrators estimate that they will be able to complete the Finalisation Steps, up to and including the payment of Eligible Claimants and Eligible Descendant Claimants, by 30 April 2026 (with the exception of additional residual payments made under clause 75 of the Scheme).
9. I have set out the basis for this estimate, below.

#### Time taken to receive Registration Forms

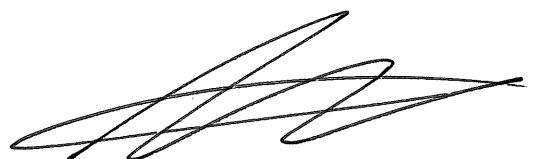
10. Pursuant to Part B of the Scheme, **Shine** Lawyers, on behalf of the Applicant, obtains and receives Registration Forms from Claimants. It conducts a preliminary review and assessment of the Registration Forms, obtaining further material where necessary, and then makes a preliminary assessment of whether the Claimant is potentially eligible or ineligible. It then provides those Registration Forms to the Administrators in fortnightly tranches so that the Administrators can assess and determine the Claimants' eligibility in accordance with the Scheme.

11. Because Shine conducts a preliminary review of Registration Forms prior to providing those Registration Forms to the Administrators, and may also attempt to obtain further information or documentation where necessary pursuant to clause 7(d) of the Scheme, this process takes a period of time. Based on the Affidavit of Sarah Jayne Thomson dated 4 July 2025, and in particular paragraphs [81]–[99], I understand a number of matters affect how long it takes for Registration Forms received by Shine to be processed and provided to the Administrators, including when the Registration Form is received, whether it contains contact details, whether the Claimant requires assistance, and the responsiveness of the Claimant to Shine’s contact attempts. On that basis, and having regard to paragraph [92] of Ms Thomson’s affidavit, I estimate that it will take approximately four weeks following the Registration Date to receive outstanding Registration Forms from Shine.

#### Duplicate Registration Forms

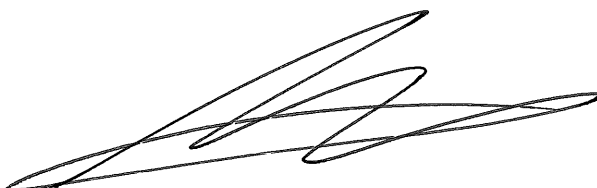
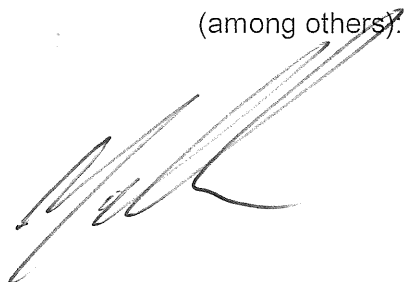
12. I am informed and believe that when a tranche of Registration Forms is first received from Shine, the Administrators undertake a preliminary assessment to determine if there are any duplicates, where the same individual has submitted multiple Registration Forms in respect of the same person. These do not include genuinely separate claims where, for example, a person submits two Registration Forms, one in respect of each of their two parents, nor where two siblings with similar details submit Registration Forms claiming on behalf of the same deceased parent. In order to prevent, insofar as is possible, the processing of duplicates, I am informed and believe that the Administrators and their staff undertake the following steps.
- (a) The information from the Registration Forms is extracted into a database with standardised fields for personally identifiable data values such as name, date of birth, family information and workplace information, to allow for comparison across Registration Forms.
  - (b) Data from each Registration Form (**record**) is computationally compared against all other records using a combination of exact and approximate matching techniques.
  - (c) A weighted scoring system is applied to assess the likelihood that two or more records relate to the same individual.
  - (d) All records which surpass a defined similarity threshold are automatically linked together and assigned a common “Group ID”. Each Group ID represents a collection of records which relate to the same person (for example, a deceased parent on whose behalf multiple descendants claim).



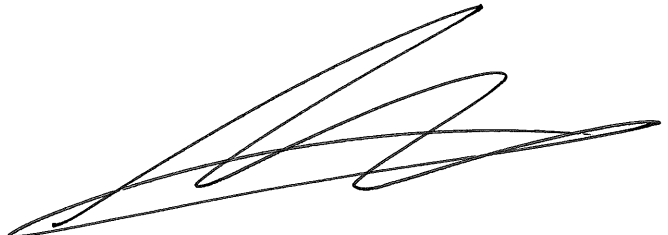
- (e) Records assigned the same Group ID are then manually reviewed by a person to determine whether they are false positives, for example siblings with similar details, or to determine if they are genuine duplicates.
  - (f) Where the records are not genuine duplicates, but do relate to the same person, further work is undertaken to map out the relationship between those Claimants and the person on whose behalf the claim is made. For example, identifying who are the Children and/or Spouses.
  - (g) To guard against the risk of genuine duplicates being missed, particularly because many Claimants may be known by different names or have legitimate documentation reflecting different dates of birth, another manual check is conducted prior to payments being made to ensure payments are not made to the same Claimant twice for the same claim.
13. I am informed and believe that approximately 7% of the Registration Forms received by the Administrators so far are genuine duplicates.
14. Further, I am informed and believe that the Administrators and their staff undertake the process set out above each time a new tranche of Registration Forms is received, which is approximately every 2 weeks, and that the Administrators are implementing an additional technological process by which supporting documentation attached to a Registration Form is scanned to identify whether it has been used across multiple Registration Forms; for example, the same photo identification.

#### Incomplete Registration Forms

15. Once the Administrators receive the Registration Forms, they must assess them against the criteria set out in clauses 43–44 of the Scheme to determine if the Claimants are Eligible Claimants or Eligible Descendant Claimants, or neither.
16. I am informed and believe that, at present, a significant proportion of the Registration Forms received by the Administrators contain insufficient detail to allow the Administrators to be independently reasonably satisfied of the eligibility of the Claimants.
17. In particular, as at 29 July 2025, the Administrators have received 7,184 Registration Forms from Shine Lawyers (**Shine**), of which 3,514 Registration Forms have been assessed by the Administrator as incomplete or as requiring further verification, a proportion of 49%. Registration Forms received which have been assessed as incomplete or as requiring further verification by the Administrators are for the following reasons (among others):



- (a) they do not contain all required information, such as workplace location and date of work;
  - (b) they do not provide identification, a statement by a Trusted Referee, or genealogical material from a Native Title Representative Body required pursuant to item 1 of the tables set out in clauses 43–44 of the Scheme;
  - (c) in the case of Potential Descendant Claimants, they do not provide information or documentation sufficient to satisfy the Administrator of the relationship required pursuant to item 3 of the table set out in clause 44 of the Scheme;
  - (d) the details provided in the Registration Form are inconsistent with documentation provided, such as the name or date of birth of the Claimant;
  - (e) the banking details provided pursuant to items 5 of the tables set out in clauses 43–44 are incomplete, invalid, or have a name discrepancy; or
  - (f) the Registration Form provides insufficient information to enable the Administrators to be independently reasonably satisfied of the other matters set out in clauses 43–44 of the Scheme.
18. I am informed and believe that when the Administrators receive incomplete Registration Forms, staff employed by the Administrator attempt to contact the Claimant to obtain further information and supporting evidence, as necessary, pursuant to clauses 43(d)(i) and 44(c)(i) of the Scheme.
19. The Administrators attempt to make contact with the Claimant through all the methods provided by the Claimant, including emails, telephone calls, and SMS text messages. This process typically takes a number of weeks: there are in the order of two-thirds of the inconclusive claims where an incomplete Registration Form has been identified and the process of seeking additional information has taken in excess of two weeks and remains open. This is explicable for the following reasons:
- (a) Claimants are often not contactable on the telephone numbers provided in their Registration Form. Many of the Claimants live in remote communities. In my experience, many remote communities have no or limited mobile reception, and mobile devices are sometimes shared with other persons, and are regularly changed, so that making telephone contact with a Claimant in a remote community can be difficult.



- (b) Where the Administrators are unable to speak with the Claimant, but reach a voicemail system, they leave a voicemail and request call back. Those call backs are often not made, or where they are, are done days or weeks later.
  - (c) Where the Administrators make contact with a Claimant and explain that further information or documentation is required, Claimants often struggle to provide that information or documentation. That is commonly because:
    - (i) they have limited access to email, or require assistance to compose and send emails;
    - (ii) they require more time to locate and obtain the further information or documentation; or
    - (iii) they are unable to locate and obtain the further information or documentation, because they do not know it or it has been lost.
  - (d) Where the Claimant is able to access and provide further information or documentation, those materials are often sent to Shine. There is then an associated delay for the information or documentation to be provided by Shine to the Administrators.
20. Given the variation in the response times of claimants at present, it is difficult to provide an estimate as to how long it will take to receive and consider the requested information and documents from Claimants. I am informed and believe that on the best estimate of the Administrators, 6 weeks should be allowed to ensure a reasonable opportunity is provided to Claimants to provide further information and documents to establish their eligibility.

#### Holiday and shut down period

21. In addition to the matters set out above, if the Registration Date is set on or about 30 November 2025, the Finalisation Steps will occur in the lead up to and over the end of year period.
22. I am informed and believe that the Administrators' offices will temporarily close between approximately 22 December 2025 and 5 January 2026 as part of the end of year shutdown. During that time, the Administrators and their staff will not be at work. Further, a number of staff involved in the administration of the Scheme will likely take periods of leave throughout December and January in addition to the office closure period. This will impact on the Administrators' capacity to undertake the Finalisation Steps.
23. Further, in my experience working with people living in remote communities, it is very likely that many of the Claimants, and the service providers who may be present in



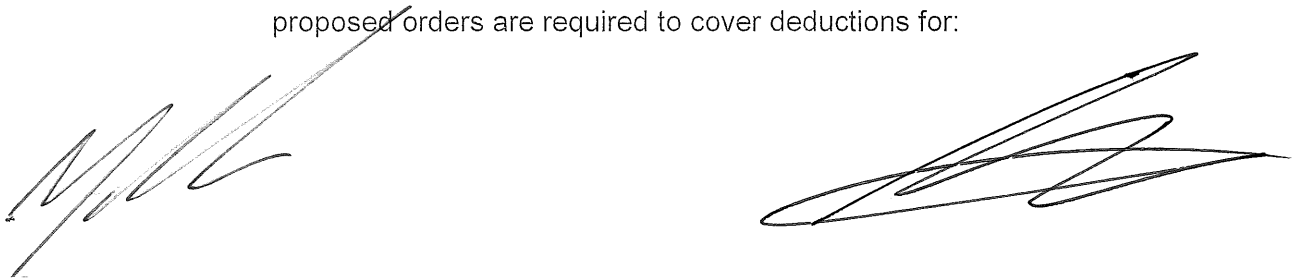


community and would typically be able to assist Claimants, will be travelling our otherwise unavailable during the holiday period.

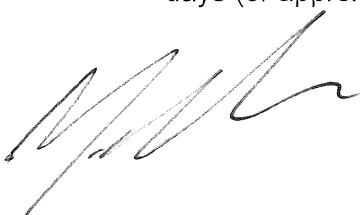
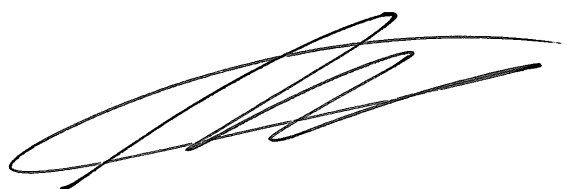
24. I estimate that the above issues are likely to delay the progress of the Administrator's work by approximately 2 weeks.

**Additional time needed to complete the administration**

25. The Deed initially contemplated that the Administrators would have six months following the Registration Date to complete the administration prior to the Administration Finalisation Date. Subject to orders from the Court, clause 2(u) of the Scheme defined Registration Date to be six months after the date of Settlement Approval, while clause 1.1.1(a) of the Deed defined the Administration Finalisation Date to be twelve months after the date of Settlement Approval.
26. On the basis of the matters set out above, I estimate that the completion of the Finalisation Steps, up to and including the Distribution of Final Settlement Entitlements to Eligible Claimants and Eligible Descendant Claimants, is likely to take 23 weeks, or approximately 6 months, from the Registration Date on the following bases:
- (a) it will take approximately 4 weeks for Shine to undertake a Preliminary Review and for the Administrators to receive all Registration Forms;
  - (b) subject to the number of Registration Forms received, it will take approximately 6 weeks for the Administrators to review those Registration Forms to identify and remedy any duplicate or incomplete Registration Forms, including reaching out to Claimants, accounting for an additional delay associated with the end of year holiday period;
  - (c) it will take approximately 1 week to make a final determination of eligibility in relation to outstanding Registration Forms following the gathering of further information or material;
  - (d) it will take approximately 2 weeks to issue Interim Payments to any remaining living Eligible Claimants who have not yet received one, and to issue Rejection Notices to those Claimants who are determined not to be Eligible Claimants or Eligible Descendant Claimants;
  - (e) it will take approximately 3 weeks for proposed orders covering remaining deductions to be provided to the court in accordance with Order 21 of the Third Tranche Orders and for those proposed orders to be ruled on, noting that the proposed orders are required to cover deductions for:



- (i) the payment of the remainder of the Litigation Funder's commission, the quantum of which will depend upon the final number of Eligible Claimants pursuant to Order 14(a) of Third Tranche Orders and which may therefore only be known once all Registration Forms have been processed and determined;
  - (ii) the payment of the Applicant's Actual Costs, the quantum of which may only be known once Shine has completed its Preliminary Review and provided all Registration Forms to the Administrators, and following the steps required by Orders 3–13 of the Third Tranche Orders including possible determination by the Court pursuant to the same; and
  - (iii) Distribution to Eligible Claimants and Eligible Descendant Claimants, the quantum of which will depend upon the final number of Eligible Claimants and the amount of money in the Settlement Fund after accounting for all other deductions; and
- (f) it will take approximately 1 week to issue Distribution Statements to all Eligible Claimants and Eligible Descendant Claimants, setting out their estimated Settlement Entitlement;
- (g) it will take approximately 4 weeks for Reviews requested by Claimants to be reviewed and determined, noting that:
- (i) there is a fixed 21-day (or 3-week) period following the issuing of Distribution Statements in which Claimants may lodge a request for Review pursuant to clause 62 of the Scheme;
  - (ii) it will take approximately 1 week for the Administrator to consider the request and either correct the error or refer it to the Independent Counsel, pursuant to clause 65 of the Scheme; and
  - (iii) if requests for Review are sent to the Independent Counsel, additional time will be required pursuant to clauses 66–67 of the Scheme; and
- (h) it will take approximately 2 weeks to make final payments to Eligible Claimants and Eligible Descendant Claimants.
27. On the basis of the timeframe set out above, Eligible Claimants and Eligible Descendant Claimants will receive their Final Settlement Entitlement by the date 23 weeks after the Registration Date, except for those whose bank account details are not correct.
28. Pursuant to clause 2(gg) of the Scheme, there is then an extended period of time of 120 days (or approximately 17 weeks) during which the Administrators must continue to

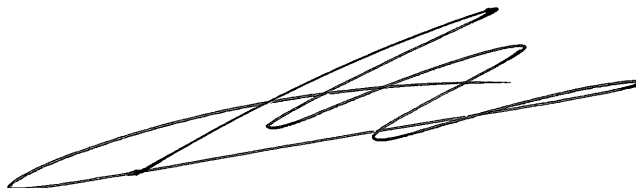



attempt to make Distributions to those Eligible Claimants and Eligible Descendant Claimants whose transfers were not successful, including by confirming proper bank account details or by obtaining such other information allowing payment to be made. After 120 days, those payments which cannot be processed become Uncollected Amounts, and form part of the Net Settlement Fund pursuant to clause 75 of the Scheme.

29. Following that period, and once the residue of funds in the Settlement Fund Account is known, I estimate the Administrators will then require a further 2 weeks to:
- (a) either make a further Distribution to Eligible Claimants and Eligible Descendant Claimants or apply to the Court to apply the residue to an independent charity associated with First Nations people pursuant to clause 75 of the Scheme; and
  - (b) complete the other sundry administrative tasks associated with settlement finalisation, including closing the Settlement Fund Account, winding down the contact centre referred to in paragraph [6(f)] of the Administrators' First Report, and submitting any outstanding reports required pursuant to clauses 46–48 of the Scheme.
30. On the basis of the above, I am informed and believe that the Administrators expect to finalise the administration of the Scheme by the date 42 weeks after the Registration Date.

### **Costs**

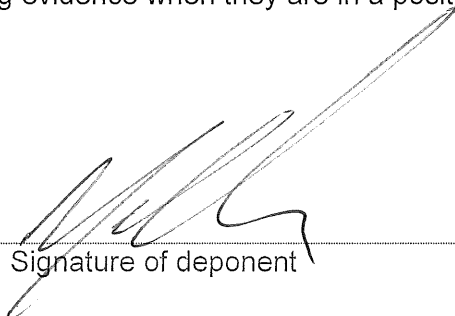
31. Pursuant to order 11 of the First Tranche of Settlement Orders, the Court approved the Administrators' estimated costs up to \$1.8 million (excluding GST) for the purposes of clause 2.15.1 of the Deed.
32. As set out at paragraph [19] of the Administrators' Second Report, between 18 November 2024 and 31 May 2025, the Administrators have incurred costs of \$469,873.
33. The Administrators have incurred further costs of \$106,138 relating to the period 18 November and 31 May 2025 and costs of \$333,401 for the month of June 2025. Costs for the month of July 2025 are to be calculated in the next week.
34. I am informed by the Administrators and believe that an increase in the approved costs is likely to be necessary to enable the Administrators to complete the administration of the Scheme. That is for the following reasons.
35. First, the Registration Forms being received by the Administrators require more work than had previously been anticipated, prior to being suitable for eligibility determination, as described at [12]–[20] above.





36. Second, any extension to the Registration Date, and therefore to the administration of the Scheme altogether, will necessarily increase costs, including with respect to fixed costs associated with the operation of the call centre, electronic portal, database and other infrastructure.
37. I am informed and believe that it is not possible for the Administrators to forecast the quantum of increase to the approved costs which will be required as at the date of signing this affidavit, including because it will be dependent on the Administration Finalisation Date ordered by the Court, if any.
38. I am informed and believe that the Administrators will file a further application for an increase in the approved costs with supporting evidence when they are in a position to do so.

Affirmed by the deponent  
at Darwin  
in the Northern Territory  
on 6 August 2025  
Before me:

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Signature of deponent

  
Signature of witness

CASIMIR ZICHY-WOTNARSKI  
Lawyer and Commissioner for oaths  
0451 186 917