

Court File No. CV-23-00029205-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MISSANABIE CREE FIRST NATION, on behalf of all TREATY 9 FIRST NATIONS,  
and CHIEF JASON GAUTHIER, on his own behalf and on behalf of all members of  
MISSANABIE CREE FIRST NATION and on behalf of all members of TREATY 9  
FIRST NATIONS

Plaintiffs (Moving Parties)

and

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the  
ATTORNEY GENERAL OF CANADA,  
HIS MAJESTY THE KING IN RIGHT OF ONTARIO,  
as represented by the  
ATTORNEY GENERAL OF ONTARIO

Defendants (Respondents)

(Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

**RESPONDING MOTION RECORD OF THE DEFENDANT,  
HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

**March 31, 2025**

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**INDEX**

TAB	DOCUMENT	PAGE
1.	Affidavit of Gabriela Verdicchio	5
Exhibit A	Statement of Claim - <i>Brunswick House First Nation v His Majesty the King in right of Ontario et al</i> (Court File No. CV-24-00721169-0000)	12
Exhibit B	Statement of Claim - <i>Chief Russell Wesley et al., v Her Majesty the Queen in right of Ontario et al</i> (Court File No. CV-22-00000004-0000)	30
Exhibit C	Statement of Claim - <i>Constance Lake First Nation v Her Majesty the Queen in right of Ontario et al</i> (Court File No. CV-19-589335)	88

Exhibit D	Amended Amended Statement of Claim - <i>Ginoogaming First Nation v His Majesty the King in right of Ontario et al</i> (Court File No. CV-20-00646347-0000)	109
Exhibit E	Second Amended Statement of Claim - <i>Grand Chief Matthew Coon Come et al v Her Majesty the Queen in right of Ontario et al</i> (Court File No. CV-16-552834)	129
Exhibit F	Statement of Defence and Crossclaim of His Majesty the King in right of Ontario - <i>Grand Chief Matthew Coon Come et al v Her Majesty the Queen in right of Ontario et al</i> (Court File No. CV-16-552834)	157
Exhibit G	Statement of Claim - <i>Attawapiskat First Nation et al v His Majesty the King in right of Ontario et al.</i> , (Court File No. CV-23-00701700-0000)	195
Exhibit H	Amended Statement of Claim - <i>Chapleau Cree First Nation et al v His Majesty the King in right of Ontario</i> (Court File No. CV-22-00688037-0000)	248
Exhibit I	Notice of Application to the Divisional Court for Judicial Review - <i>Taykwa Tagamou Nation v His Majesty the King in right of Ontario et al.</i> , (Court File No. DC-23-00002195-00JR)	267

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

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Plaintiffs (Moving Parties)

-and-

**HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the  
ATTORNEY GENERAL OF CANADA, HIS MAJESTY THE KING IN RIGHT  
OF ONTARIO, as represented by the ATTORNEY GENERAL OF  
ONTARIO**

Defendants (Respondents)

(Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

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**AFFIDAVIT OF GABRIELA VERDICCHIO**

**Affirmed on March 31, 2025**

I, **GABRIELA VERDICCHIO**, of the City of Toronto, in the Province of Ontario,  
**MAKE OATH AND SAY:**

1. I am an Articling Student, employed at the Ministry of the Attorney General, Crown Law Office - Civil. I am assisting counsel for the His Majesty the King in right of Ontario ("**Ontario**") in this proceeding.
2. I make this affidavit for the purpose of responding to the Motion for Certification in this proceeding and for no other or improper purpose.
3. I have reviewed the Amended Fresh as Amended Statement of Claim dated October 31, 2024 ("**Claim**"), and the Notice of Motion of the Plaintiffs (Motion for Certification)

dated July 29, 2024. In addition, I have communicated with other counsel within my office in order to obtain information about other proceedings concerning Treaty 9. Following those communications, I have reviewed relevant pleadings in those proceedings.

4. As a result, I have knowledge of the facts which I state in this affidavit. When I state facts that are not within my personal knowledge, I identify the source of my information and belief, all of which I do verily believe to be true.
5. The proposed representative plaintiffs in this matter are:
  - a. Missanabie Cree First Nation, on behalf of all Treaty 9 First Nations; and
  - b. Chief Jason Gauthier, on his own behalf and on behalf of all members of Missanabie Cree First Nation and on behalf of all members of Treaty 9 First Nations.(together the “**Plaintiffs**”)
6. In the Claim, the Plaintiffs seek certification of their action as a class proceeding and related relief under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6. The particulars of the Claim can be found beginning at paragraph 8 of the Claim. The Plaintiffs’ allegations relate to historic events concerning the making and implementation of Treaty 9.
7. I reviewed various pleadings from different proceedings where First Nations located or alleged to be located in the Treaty 9 territory have sued the Crown. These are proceedings of which counsel in my office have carriage.
8. In the matter of *Brunswick House First Nation v His Majesty the King in right of Ontario et al* (Court File No. CV-24-00721169-0000), the Statement of Claim contains allegations of breaches of the Crown’s fiduciary duty and the Crown’s

duty of good faith in relation to obligations under Treaty 9. Attached hereto and marked as **Exhibit “A”** is the Statement of Claim in that proceeding.

9. I have communicated with counsel for Ontario in *Brunswick House First Nation*. I am informed by them, and I do verily believe that the litigation is inactive, although it is not stayed. The parties are presently in settlement negotiations.
10. In the matter of *Chief Russell Wesley et al v Her Majesty the Queen in right of Ontario et al* (Court File No. CV-22-00000004-0000), the Statement of Claim seeks Aboriginal Title. The Statement of Claim also includes allegations regarding breaches of fiduciary duty by the Crown in relation to obligations under Treaty 9. Attached hereto and marked as **Exhibit “B”** is the Statement of Claim in that proceeding.
11. I have communicated with counsel for Ontario in *Chief Russell Wesley*. I am informed by them and do verily believe that the claim is active but has not progressed beyond the initial pleadings stage.
12. In the matter of *Constance Lake First Nation v Her Majesty the Queen in right of Ontario et al* (Court File No. CV-19-589335), the Statement of Claim contains allegations related to the negotiation and implementation of Treaty 9. The Statement of Claim seeks a declaration that the Crown did not uphold the Honour of the Crown in its dealings with Treaty beneficiaries. The plaintiffs also allege exploitation of Treaty lands and that the Crown failed to apply the Treaty terms in an equitable manner. Attached hereto and marked as **Exhibit “C”** is the Statement of Claim in that proceeding.
13. I have communicated with counsel for Ontario in *Constance Lake*. I am informed

by them and do verily believe that the litigation is inactive, although it is not stayed. The parties are presently in settlement negotiations.

14. In the matter of *Ginoogaming First Nation v His Majesty the King in right of Ontario et al* (Court File No. CV-20-00646347-0000), the Amended Amended Statement of Claim contains allegations that the Crown breached its duty to Treaty beneficiaries in the negotiation and implementation of Treaty 9. The Claim seeks a declaration that there was a breach of the duty to consult in respect of mineral exploitation and development authorizations within Treaty 9 territory. Attached hereto and marked as **Exhibit “D”** is the Amended Amended Statement of Claim in that proceeding.
15. I have communicated with counsel for Ontario in *Ginoogaming*. I am informed by them and do verily believe that Ontario has not yet served a Statement of Defence but it is not stayed.
16. In the matter of *Grand Chief Matthew Coon Come et al v Her Majesty the Queen in right of Ontario et al* (Court File No. CV-16-552834), the Second Amended Statement of Claim seeks a declaration of Aboriginal title and existing Aboriginal rights over land within the Treaty 9 territory. Attached hereto and marked as **Exhibit “E”** is the Second Amended Statement of Claim in that proceeding.
17. In that matter, the Statement of Defence and Crossclaim of His Majesty the King in right of Ontario alleges facts in relation to the negotiation, content, effect, and implementation of Treaty 9. Attached hereto and marked as **Exhibit “F”** is the Statement of Defence and Crossclaim of His Majesty the King in right of Ontario in that proceeding.
18. I have communicated with counsel for Ontario in *Grand Chief Matthew Coon*

*Come*. I am informed by them and do verily believe that the claim is being actively litigated by the parties.

19. In the matter of *Attawapiskat First Nation et al v His Majesty the King in right of Ontario et al* (Court File No. CV-23-00701700-0000), the Statement of Claim contains allegations as to the existence and breach of Crown duties under Treaty 9 and in relation to the implementation of Treaty 9. Attached hereto and marked as **Exhibit “G”** is the Statement of Claim in that proceeding.
20. I have communicated with counsel for Ontario in *Attawapiskat First Nation*. I am informed by them and do verily believe that the parties are actively litigating the claim.
21. In the matter of *Chapleau Cree First Nation et al v His Majesty the King in right of Ontario* (Court File No. CV-22-00688037-0000), the Amended Statement of Claim alleges the existence and breach of Crown duties in the negotiation and implementation of Treaty 9. Attached hereto and marked as **Exhibit “H”** is the Amended Statement of Claim in that proceeding.
22. I have communicated with counsel for Ontario in *Chapleau Cree First Nation*. I am informed by them and do verily believe that the parties are actively litigating the claim.
23. In the matter of *Taykwa Tagamou Nation v His Majesty the King in right of Ontario et al* (Court File No. DC-23-00002195-00JR), the Notice of Application to the Divisional Court for Judicial Review contains allegations about the negotiation, and implementation of, Treaty 9. Attached hereto and marked as **Exhibit “I”** is the Notice of Application to the Divisional Court.

24. I have communicated with counsel for Ontario in *Taykwa Tagamou Nation*. I am informed by them and do verily believe that the parties are actively litigating the application.

**AFFIRMED by GABRIELA VERDICCHIO** of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on March 31, 2025, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

*Carleigh Hobson*

**Commissioner for taking affidavits, etc.**

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires October 21, 2027.

A handwritten signature in black ink, appearing to read 'G. Verdicchio', written over a horizontal line.

**GABRIELA VERDICCHIO**

Court File No. CV-23-00029205-00CP

**MISSANABIE CREE FIRST NATION ET AL**  
Plaintiffs (Moving Parties)

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO ET AL**  
Defendants (Responding Parties)

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Proceeding under the *Class*  
*Proceedings Act*, 1992, S.O. 1992, c.6)

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**AFFIDAVIT OF**  
**GABRIELA VERDICCHIO**

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Lawyers for the Defendant,  
His Majesty the King in right  
of Ontario

THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.



Court File No. \_\_\_\_\_

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

BRUNSWICK HOUSE FIRST NATION

**PLAINTIFF**

– and –

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

**DEFENDANT**

– and –

ATTORNEY GENERAL OF CANADA

**DEFENDANT**

*(Court seal)*

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

**ENDORSEMENT OF SERVICE**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date .....

Issued by

.....  
Local Registrar  
330 University Ave.  
Toronto ON M5G 1R8

**TO:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**  
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## CLAIM

### OVERVIEW

1. Brunswick House First Nation ("**BHFN**") brings this action to address the longstanding, significant impacts on its Treaty rights and way of life as a consequence of the establishment and operation of the Chapleau Crown Game Preserve (the "**Game Preserve**").

### RELIEF SOUGHT

2. The Plaintiff seeks:
  - a. a declaration that BHFN members hold Treaty rights to hunt and trap which are protected under section 35 of the *Constitution Act, 1982*, Schedule B to the Canada Act, 1982 (UK), 1982 c 11 ("**Constitution Act, 1982**") within the area designated as the Game Preserve;
  - b. a declaration that, since 1925, Ontario has breached the Crown's Treaty obligations to BHFN, including the Crown's honourable and fiduciary obligations, by prohibiting or otherwise restricting BHFN members from hunting and trapping in the area designated as the Game Preserve;
  - c. a declaration that, since 1925, Canada has breached the Crown's Treaty obligations to BHFN, including the Crown's honourable and fiduciary obligations, by failing to protect BHFN's Treaty rights from forced interference as consequence of Ontario's establishment and operation of the Game Preserve;
  - d. a declaration that, since 1982, Ontario's prohibitions and restrictions on hunting and trapping in the Game Preserve have constituted and

continue to constitute a *prima facie* infringement of BHFN's Treaty rights which has not been justified;

- e. an order that sections 9(1) and 9(2) of the *Fish and Wildlife Conservation Act*, 1997, SO 1997, c 41 (the "**Conservation Act**") are of no force and effect pursuant to section 52 of the *Constitution Act*, 1982 in their application to the Plaintiff in the exercise of BHFN's Treaty rights within the Game Preserve;
- f. a declaration that Ontario act with diligence to negotiate with BFHN to develop processes which ensure the Game Preserve is managed in a manner consistent with the Crown's Treaty obligations, including the Crown's obligation to ensure BFHN is able to continue to meaningfully exercise its Treaty rights and maintain its way of life;
- g. damages or compensation for losses to BHFN as a result of Ontario's breaches of the Crown's Treaty obligations, including its honourable and fiduciary obligations, from 1925 to the present;
- h. damages or compensation for losses to BHFN as a result of Canada's breaches of the Crown's Treaty obligations, including its honourable and fiduciary obligations, from 1925 to the present;
- i. damages or compensation for losses to BHFN as a result of Ontario's unjustified infringement of BHFN's Treaty rights, from 1982 to the present;
- j. costs of this proceeding; and
- k. such further and other relief as this Honourable Court may deem appropriate.

## THE PARTIES

3. The Plaintiff, BHFN, is an “aboriginal people” within the meaning of section 35 of the *Constitution Act, 1982*, and a “band” within the meaning of the *Indian Act*, RSC 1985.
4. BHFN members hold and exercise rights, including established Treaty rights, which are protected under section 35(1) of the *Constitution Act, 1982*, in Treaty 9.
5. BHFN’s original reserve, New Brunswick House Indian Reserve No. 76 (“**IR No. 76**”), was located on the northwest side of Missinaibi Lake. Today, BHFN’s community and main reserve, Duck Lake 76B Indian Reserve, is located in the Township of Gallagher.
6. The Defendant, Ontario, is vested with the administration, control and beneficial interest in provincial lands within Treaty 9 pursuant to the *Constitution Act, 1867*, 1867, 30 & 31 Vict, c 3, subject to the rights and interests of BHFN.
7. The Defendant, Attorney General of Canada (“**Canada**”), is named as a representative of His Majesty the King in Right of Canada pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*, RSC, 1985, c C-50.

## FACTS

### BHFN's Territory & Treaty Rights

8. BHFN members are the continuation of and successors to the Nishnawbe peoples who have always occupied and cared for territory in what is now known as the James Bay region of northern Ontario (the “**Territory**”).
9. BHFN's Territory and traditional harvesting grounds centre around Missinaibi Lake and the upper Missinaibi River Basin.
10. BHFN members have always relied on hunting and trapping within their Territory for sustenance and for economic, social and cultural purposes.
11. BHFN members require access to a geographic resource base within their Territory in order to hunt and trap in accordance with their way of life.
12. BHFN's Territory is not suitable for agricultural pursuits.
13. In 1906, BHFN and the Crown entered into Treaty 9.
14. Prior to and at the time of the Treaty negotiations, BHFN members actively participated in the fur trade.
15. Treaty 9 includes both the written terms of the Treaty and oral undertakings and assurances made at the time the Treaty was negotiated.
16. At the time of the Treaty negotiations, representatives for the Crown assured BHFN they would be able to continue to hunt and trap throughout their Territory, and that there would be no forced interference with their way of life.

17. The written English text of Treaty 9 provides that BHFN would “have the right to pursue their usual vocations of hunting, trapping, and fishing,” throughout their Territory, other than those lands which “may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.”
18. Taken as a whole, Treaty 9 established a binding obligation on the Crown to manage and protect the lands, waters and resources within the Territory in a way that would allow BHFN to continue to meaningfully exercise its Treaty rights and maintain its way of life.
19. Treaty 9 is a “treaty” within the meaning of section 35(1) of the *Constitution Act, 1982*.

#### **Establishment of the Chapleau Crown Game Preserve**

20. In May 1925, Ontario issued Order in Council No. 145/125 (the “**1925 OIC**”).
21. The 1925 OIC designated 7,000 hectares of lands and waters in Treaty 9 as a “Crown Game Preserve” within the meaning of the *Ontario Game and Fisheries Act*, RSO 1914, c 262, as amended (the “**Game and Fisheries Act**”).
22. The 1925 OIC provided that, pursuant to section 8(g) of the *Game and Fisheries Act*, “it shall be unlawful to hunt, take, pursue, kill, wound or destroy, or to have in possession any bird or animal, or to be in possession of any fire-arm of any description” within the Game Preserve.

23. The Game Preserve completely surrounded Missinaibi Lake and IR No. 76, as well as significant portions of BHFN Territory which BHFN members relied on to hunt and trap.
24. BHFN was not consulted about and did not consent to the establishment of the Game Preserve.
25. Ontario did not consult with or advise the federal Department of Indian Affairs (the “**Department**”) prior to the establishment of the Game Preserve.
26. On becoming aware of the Game Preserve, representatives for the Department repeatedly advised Ontario that BHFN members had raised concerns that the Game Preserve was negatively affecting their ability to maintain their traditional livelihood and way of life in their Territory.
27. The Department further advised Ontario that as a consequence of the Game Preserve, BHFN members were being denied access to the wildlife populations and geographic resource base required to continue to hunt and trap as promised under Treaty.
28. Ontario did not take any steps to address concerns raised by the Department regarding impacts of the Game Preserve on BHFN members’ ability to hunt and trap in accordance with the Crown’s Treaty promises.
29. In 1928, IR No. 76 was sold to Ontario.
30. As a consequence of the establishment of the Game Preserve and the sale of IR No. 76, BHFN was forced to relocate to a new land base outside the Game Preserve. BHFN did not receive permanent replacement reserve lands until 1973.

## Harvesting Restrictions in the Chapleau Game Preserve

31. Since 1925, BHFN members have been prohibited under provincial legislation from hunting or trapping in the portion of their Territory designated as the Game Preserve, and from crossing through the Game Preserve with rifles or traps in order to access harvesting areas in other parts of the Territory.
32. In 1970, Ontario established the Missinaibi Provincial Park (the “**Park**”). The Park includes a portion of the Game Preserve, including part of Missinaibi Lake.
33. In 1989, Ontario expanded the boundaries of the Park to include all of Missinaibi, Brunswick, and Little Missinaibi Lakes, as well as portions of the Missinaibi and Brunswick Rivers.
34. The Park includes lands and waters at the centre of BHFN's Territory and traditional harvesting grounds.
35. In 1991, Ontario introduced an Interim Enforcement Policy which provided that status Indians would generally not be prosecuted for harvesting fish and wildlife for food, social or ceremonial use within their treaty or traditional harvesting areas, subject to exceptions. The Interim Enforcement Policy was subsequently amended in 2005 to include non-status individuals exercising Aboriginal or Treaty harvesting rights.
36. Pursuant to the Interim Enforcement Policy, provisions of provincial legislation which concern the harvest of wildlife and fish by an Indigenous person in Provincial Parks continue to apply, unless provided for in a negotiated agreement between Ontario and a First Nation.

37. The Interim Enforcement Policy does not include explicit or specific criteria to guide the exercise of Crown discretion in determining whether to prosecute individuals exercising Aboriginal and Treaty harvesting rights.
38. The Interim Enforcement Policy provides for the negotiation of arrangements between Ontario and First Nations regarding the enforcement of provincial wildlife legislation in relation to individuals exercising Aboriginal or Treaty harvesting rights.
39. To date, Ontario has not negotiated an arrangement with BHFN which recognizes, protects, or gives priority to the exercise of BHFN's Treaty rights to hunt and trap in any portion of the Game Preserve.
40. The Interim Enforcement Policy further provides for the enactment of provincial legislation which recognizes the priority rights of individuals exercising Aboriginal and Treaty rights to harvest fish and wildlife for personal or subsistence purposes.
41. To date, Ontario has not enacted legislation which recognizes, protects, or gives priority to the exercise of BHFN's Treaty rights to hunt and trap in any portion of the Game Preserve.
42. In 1997, Ontario enacted the *Conservation Act* to replace the *Game and Fish Act*, R.S.O. 1990, c. G.1. The *Conservation Act* does not recognize, protect, or give priority to individuals exercising Aboriginal and Treaty rights to harvest fish and wildlife for personal or subsistence purposes.
43. Sections 9(1) and 9(2) of the *Conservation Act* prohibit individuals from hunting, trapping, or possessing wildlife, and from possessing a firearm, trap, or other hunting or trapping device in the Game Preserve, subject to exemptions as prescribed by regulation.

44. Neither the *Conservation Act* nor its regulations include exemptions or other provisions which would allow BHFN members to hunt or trap in the Game Preserve in furtherance of their Treaty rights.

### **Impacts of the Chapleau Crown Game Preserve on BHFN**

45. As a consequence of the establishment of the Game Preserve, BHFN members were unable to hunt or trap within the Game Preserve for any purpose without risk of prosecution from 1925-1991.
46. Today, BHFN members continue to be prohibited by legislation from exercising their Treaty right to hunt and trap in the Game Preserve pursuant to sections 9(1) and 9(2) of the *Conservation Act*.
47. Pursuant to the Interim Enforcement Policy, BHFN members continue to risk prosecution for:
- a. exercising their Treaty right to hunt and trap, other than hunting and trapping for limited subsistence purposes, in any portion of the Game Preserve; and
  - b. exercising their Treaty right to hunt and trap for any purpose within the portion of the Game Preserve that includes the Park.
48. BHFN and its members have suffered and continue to suffer losses as a consequence of the establishment and operation of the Game Preserve, including:

- a. loss of access to the geographic resource base in the Territory which BHFN requires in order to hunt and trap in accordance with their way of life;
- b. loss of the ability to hunt and trap to sustain themselves and their families;
- c. loss of the ability to hunt and trap for ceremonial and cultural purposes;
- d. loss of connection to traditional knowledge;
- e. loss of connection to the Territory, including loss of connection to sacred and ceremonial sites;
- f. losses connected to physical, cultural and spiritual wellbeing; and
- g. economic losses, including losses associated with the inability to participate in the fur trade or otherwise rely on their Territory to maintain their traditional livelihoods as promised under Treaty.

### **Resource Development & Tourism in the Chapleau Crown Game Preserve**

49. Since establishing the Game Preserve, Ontario has authorized resource development, including logging, mining, hydroelectric developments, experimental trapping, private land ownership, harvesting for scientific study, exporting of surplus animals, municipal buildings, quarries, and road construction, within the boundaries of the Game Preserve.

50. Ontario has further authorized recreational and tourism operations, including a golf course, ski hill, cottage lots, camping grounds and fishing lodges, within the Game Preserve.
51. Ontario has derived and continues to derive economic benefits from resource development, recreation, and tourism in the Game Preserve.

## **SUMMARY OF LEGAL GROUNDS**

52. Since 1925, Ontario has interfered with BHFN members' ability to hunt and trap as promised under Treaty 9, including by:
  - a. enacting legislation which prohibits or restricts BHFN members from hunting and trapping for sustenance and livelihood purposes within the portion of their Territory designated as the Game Preserve;
  - b. subjecting BHFN members to risk of prosecution for hunting or trapping in the portion of their Territory designated as the Game Preserve, and for crossing through the Game Preserve with firearms or traps in order to access harvesting areas in other parts of the Territory;
  - c. interfering with BHFN's ability to sustain themselves and their families based on their traditional livelihoods; and
  - d. interfering with BHFN's ability to benefit economically from the wildlife and other resources in the Territory, including by interfering with BHFN's participation in the fur trade.

53. Ontario's prohibitions and restrictions on hunting and trapping in the Game Preserve have meaningfully and significantly diminished the exercise of BHFN's Treaty rights.
54. Ontario's prohibitions and restrictions on hunting and trapping in the Game Preserve impose unreasonable limitations on the exercise of BHFN's Treaty rights and have resulted in undue hardship on BHFN members.
55. Ontario's prohibitions and restrictions on hunting and trapping in the Game Preserve are part of an unstructured discretionary administrative regime which infringes BHFN's Treaty rights.
56. Ontario has not demonstrated the Game Preserve was established for a valid conservation objective.
57. In the alternative, Ontario has not provided BHFN with any studies, data or other information which confirm the need for ongoing restrictions and prohibitions on hunting and trapping within the Game Preserve for the purpose of supporting a valid conservation objective.
58. Ontario has authorized and continues to authorize activities in the Game Preserve, including resource development, tourism, and recreational activities, which are inconsistent with the objective of conservation.
59. Since 1925, Ontario has had reasonable, credible notice that its conduct in respect of the Game Preserve was and continues to be contrary to the Crown's Treaty obligations to BHFN, including the obligation to ensure BHFN members would be able to continue to hunt and trap in their Territory in accordance with their way of life.
60. Since 1925, Canada has been aware that, as a consequence of Ontario's conduct in respect of the Game Preserve, BHFN members have been unable to hunt and trap in their Territory in accordance with their way of life.

61. Despite this notice, Ontario and Canada have failed to act with diligence, or at all, to protect BHFN's Treaty rights or uphold the Crown's Treaty promises.
62. Ontario's and Canada's conduct in respect of the Game Preserve constitutes a persistent pattern of error and indifference which substantially frustrates the Crown's Treaty promises.
63. Ontario's and Canada's conduct in respect of the Game Preserve is contrary to the honour of the Crown.
64. Since 1982, Ontario's prohibitions and restrictions on hunting and trapping in the Game Preserve have constituted a *prima facie* infringement of BHFN's Treaty rights.
65. Ontario has not justified the *prima facie* infringement of BHFN's Treaty rights.
66. Neither Ontario nor Canada have compensated BHFN for losses associated with BHFN's inability to exercise its Treaty rights within the Game Preserve.
67. The Plaintiff is entitled to relief against the Defendants to address breaches of the Crown's Treaty obligations and the Crown's obligations under section 35 of the *Constitution Act, 1982*.
68. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario.

## ENACTMENTS

45. The Plaintiff pleads and relies on:

- a. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3;
- b. *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;
- c. *Crown Liability and Proceedings Act*, RSC, 1985, c C-50;
- d. *Fish and Wildlife Conservation Act*, 1997, SO 1997, c 41;
- e. *Ontario Game and Fisheries Act*, RSO 1914, c 262;
- f. *The James Bay Treaty – Treaty No. 9*, Made in 1905 and 1906, and Adhesions Made in 1929 and 1930; and
- g. such further and other statutory instruments as counsel may advise and this Honourable Court may permit.

**DATED:** MAY 29, 2024

**FIRST PEOPLES LAW LLP**

230-55 Murray St.  
Ottawa, ON K1N 5M3  
Tel: (613) 722-9091  
Fax: (613) 722-9097

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**KATE GUNN (LSO #56724D)**

[kgunn@firstpeopleslaw.com](mailto:kgunn@firstpeopleslaw.com)

*Counsel for the Plaintiff*

Court File No. \_\_\_\_\_

**BRUNSWICK HOUSE FIRST NATION**  
*Plaintiff*

- and -

**ONTARIO, et al**  
*Defendants*

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO, ONTARIO

**STATEMENT OF CLAIM**

**FIRST PEOPLES LAW LLP**

230-55 Murray St.  
Ottawa, ON K1N 5M3  
Tel: (613) 722-9091  
Fax: (613) 722-9097

**BRUCE MCIVOR (LSO # 78586P)**

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**KATE GUNN (LSO #56724D)**

[kgunn@firstpeopleslaw.com](mailto:kgunn@firstpeopleslaw.com)

*Counsel for the Plaintiff*

THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.

**PETER T. HOLLINGER, B.A., LL.B.\***  
**Barrister and Solicitor**

805 E. Miles Street  
Thunder Bay, Ontario  
P7C 1J8

TELEPHONE: (807) 344-1313  
FACSIMILE: (807) 344-1340

January 11, 2022

WITHOUT PREJUDICE

via email no.: [AGC\\_PGC\\_OTTAWA@JUSTICE.GC.CA](mailto:AGC_PGC_OTTAWA@JUSTICE.GC.CA)

Attorney General of Canada  
Civil Litigation Section  
Department of Justice Canada  
50 O'Connor Street, 5<sup>th</sup> Floor  
Ottawa, ON K1A 0H8

via email no.: [cloc.reception@ontario.ca](mailto:cloc.reception@ontario.ca)

Her Majesty the Queen in Right of Ontario  
Minister of the Attorney General  
Crown Law Office (Civil Law)  
McMurtry-Scott Building, 4<sup>th</sup> Floor  
720 Bay Street  
Toronto, ON M7A 2S9

ATTENTION: Jeffrey Claydon,  
via email no.: [Jeffrey.Claydon@ontario.ca](mailto:Jeffrey.Claydon@ontario.ca)

David Feliciant,  
via email no.: [David.Feliciant@ontario.ca](mailto:David.Feliciant@ontario.ca)

Dear Sirs/Madames:

**RE: CAT LAKE FIRST NATION v. CANADA AND ONTARIO**

Please be advised that I have been retained by Cat Lake First Nation with respect to a Aboriginal Title Claim.

\*Professional Corporation

- 2 -

Further to Notice of the Aboriginal Title Claim by email dated November 5, 2021, enclosed herein please find the issued Statement of Claim which is being served upon you pursuant to Sections 15 and 18 of the *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c. 7, Sched. 17, and pursuant to Sections 1 and 3 of the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, Ontario Regulation 76/20.

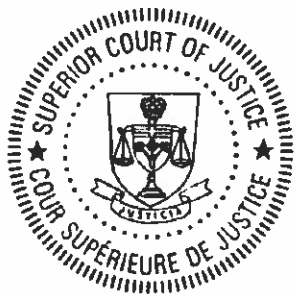
I look forward to hearing from you.

Yours truly,



**PETER T. HOLLINGER**

PTH/wr  
encl.  
cc. clients



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued  
 Délivré par voie électronique : 07-Jan-2022  
 Thunder Bay

**CHIEF RUSSELL WESLEY, AND DEPUTY CHIEF ELLEN OOMBASH  
 AND COUNCILLORS ABRAHAM KEESICKQUAYASH, PERCY OOMBASH, IRENE  
 GRAY-OOMBASH and JOSIE OOMBASH ON THEIR OWN BEHALF AND ON  
 BEHALF OF ALL OTHER MEMBERS OF THE OJIBWAY NATION WHO  
 ARE MEMBERS OF CAT LAKE FIRST NATION**

PLAINTIFF(S)

and

(Court seal)

**ATTORNEY GENERAL OF CANADA, and HER MAJESTY THE QUEEN IN RIGHT  
 OF ONTARIO**

DEFENDANT(S)

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s).  
 The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this Court Office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN

2

AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by an means within five year after the action was commenced unless otherwise ordered by the court.

Date: \*

Issued by

---

Clerk of the Court

Address of court office:

125 N. Brodie Street  
THUNDER BAY, ON P7C 0A3

*(Name and address of each defendant)*

TO: ATTORNEY GENERAL OF CANADA  
Civil Litigation Section  
Department of Justice Canada  
50 O'Connor Street, 5<sup>th</sup> Floor  
Ottawa, ON K1A 0H8  
via email no.: AGC\_PGC\_OTTAWA@JUISTICE.GC.CA

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
Crown Law Office (Civil Law)  
Ministry of the Attorney General  
McMurtry-Scott Building  
4<sup>th</sup> Floor, 720 Bay Street  
Toronto, ON M7A 2S9  
via email no.: cloc.reception@ontario.ca

## **CLAIM**

**1. The Plaintiff(s) claim(s):**

- a. A declaration that the Plaintiffs have Exclusive Aboriginal Title to the lands, water, and lands under water in the area outlined in the map attached hereto as Schedule 1, that is valid, subsisting, and unextinguished. Or, in the alternative, a declaration that the Plaintiffs have valid, subsisting, and unextinguished Exclusive Aboriginal Title as well as Joint Exclusive Aboriginal Title to the lands outlined on the map attached hereto as Schedule 1 (hereafter jointly referred to collectively as the "Aboriginal Title Area").
- b. A declaration that the Defendants have disregarded the Plaintiffs' Aboriginal Title and Aboriginal Rights by dealing with the Aboriginal Title Area without consent, consultation, accommodation, negotiation of a Treaty, or compensation.
- c. A declaration that the Defendants have breached their fiduciary duty to the Plaintiffs by failing to protect the Plaintiffs' Aboriginal Title and Aboriginal Rights when dealing with the use, occupation, possession, ownership or exploitation of land and resources by government agencies and by private parties.
- d. A declaration that the Defendants have failed to uphold the Honour of the Crown in their dealings with the Plaintiffs, and with the Plaintiffs' Aboriginal Title Area.
- e. A declaration that the Defendants were and are required to meaningfully

consult, accommodate and negotiate with the Plaintiffs in good faith with respect to all use, occupation, possession, ownership, exploitation of resources, economic development and any dealings whatsoever with respect to the lands and water within the Aboriginal Title Area.

- f. A declaration that the Defendants have benefited from and have facilitated unjust enrichment of private parties by their infringements upon the Plaintiffs' Aboriginal Title Area with a corresponding detriment to the Plaintiffs.
- g. A declaration that the Defendants are to hold the monetary equivalent of any benefits derived from the infringement of the Plaintiffs' Aboriginal Title and Aboriginal Rights, the breach of fiduciary duty, or the Defendants' or private parties' unjust enrichment, in trust at favourable interest for the benefit of the Plaintiffs.
- h. An order for, or a declaration that the Plaintiffs are entitled to the return of the exclusive use and occupation of the Plaintiffs' lands and resources within the Aboriginal Title Area.
- i. In addition, or in the alternative, an order or a declaration that the Defendants must enter into good faith negotiations with the Plaintiffs for the reconciliation of their Aboriginal Title with the assertion of sovereignty by the Crown.
- j. A reference, or accounting as necessary, to determine the appropriate compensation for the infringement of Aboriginal Rights, and the financial opportunities and benefits lost by the Plaintiffs in the Aboriginal Title Area while being managed by the Defendants.
- k. An accounting of all revenues, profit, taxes, stumpage, dues, royalties and

other similar benefits acquired by or accruing to the Defendants and/or their servants, agents or contractors in respect of the Exclusive Aboriginal Title Area.

- l. Damages and compensation for the Plaintiffs' loss of use of Aboriginal Title Lands and resources as a result of the occupation and possession of the lands and resources by the Defendants and others authorized by the Defendants.**
- m. Damages and compensation for the Plaintiffs' loss of use of Aboriginal Title Lands and resources as a result of the Defendants' making improvident financial arrangements to allow third parties to make use of the Plaintiffs' Aboriginal Title Lands, without obtaining the fair market value from the third parties' use of the resources therein.**
- n. Damages and compensation for breach of fiduciary duty, infringement of Aboriginal Title, and unjust enrichment, in relation to those parts of the Aboriginal Title Area in which the Plaintiffs' Aboriginal Title has been interfered with.**
- o. An interlocutory and final order returning all lands subject to mining claims, mining permits, lands licensed and leased, and patented lands initially obtained by third parties by virtue of having filed a mining claim and then having converted the mining claim to a licence, lease, or patented land with the cooperation of the Province of Ontario pursuant to the *Mining Act*, R.S.O. 1990, c. M.14, *Mining Amendment Act*, R.S.O. 2009, c. M.14, their predecessors, and other Provincial legislation.**
- p. A declaration that the Defendants' legislation that permitted mining activity on**

the Plaintiffs' lands pursuant to the *Mining Act*, R.S.O. 1990, c. M.14, the *Mining Amendment Act*, R.S.O. 2009, c. M.14, and amendments thereto, is unconstitutional as a *prima facie* infringement of the Plaintiffs' Aboriginal Title and Aboriginal Rights pursuant to Section 35(1) of the *Constitution Act*, 1982.

- q. An interlocutory and final order cancelling all mining claims, mining permits, leases, licenses and returning all patented lands initially obtained by third parties by virtue of having filed a mining claim and then having converted the mining claim to a licence, a lease or patented land with the cooperation of the Province of Ontario pursuant to the *Mining Act*, R.S.O. 1990, c. M.14, *Mining Amendment Act*, R.S.O. 2009, c. M.14, their predecessors, and other provincial legislation.
- r. Damages for the Defendants' conveyance or authorization of a transfer of title or interest of the Aboriginal Title Area land to innocent third party purchasers.
- s. In the alternative, damages or equitable compensation for infringement of the Plaintiff's rights or claim to the Aboriginal Title Area prior to any extinguishment by the Defendants, and for failure to pay compensation at the time of extinguishment.
- t. Damages for unjust enrichment, constructive trust and the accounting as requested in sub-paragraphs 1(f), 1(g) and 1(j) above.
- u. Aggravated, exemplary and punitive damages for infringement of Aboriginal Title, breach of fiduciary duty, failure to uphold the Honour of the Crown, and unjust enrichment.
- v. Particulars of all damage amounts will be provided prior to trial.

7

- w. Such interim and interlocutory orders, including injunctions, as may be necessary to preserve the Plaintiffs' Aboriginal Title and Aboriginal Rights pending a trial herein.
  - x. Pre-judgment and Post-judgment interest in accordance with the *Courts of Justice Act*;
  - y. Pre-judgment and Post-judgment interest in accordance with market interest rates in the discretion of the Court in accordance with Section 31(5) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
  - z. Costs of this action on a substantial indemnity basis, together with applicable H.S.T.
  - aa. Such further and other relief as this Honourable Court deems just, including such orders as this Court may determine necessary to enforce the Plaintiffs' Aboriginal Rights and Title, and to compensate the Plaintiffs for infringement of title, breach of fiduciary duty and unjust enrichment.
2. The Plaintiff, Chief Russell Wesley, is the Chief of Cat Lake First Nation. The Plaintiff, Ellen Oombash, is the Deputy Chief of Cat Lake First Nation. The Plaintiffs, Abraham Keesickquayash, Percy Oombash, Irene Gray-Oombash and Josie Oombash, are Councillors of the Cat Lake First Nation Council, each having been duly elected to Cat Lake First Nation's Council to represent the First Nation as the government of the Band pursuant to the provisions of the *Indian Act*, R.S.C. 1985, c. I-5, as amended.

3. The members of the Cat Lake First Nation consist of all persons who appear on the Band List maintained by the First Nation. The Plaintiffs say the said persons are entitled to the relief claimed herein collectively through their First Nation government.
4. The Plaintiffs have their principal place of residence at Cat Lake First Nation Indian Reserve in the District of Kenora, in the Province of Ontario.
5. The Cat Lake First Nation members are an Aboriginal people within the meaning of s. 35 of the *Constitution Act*, 1982. The term "Indian" is used in this pleading as a historical term. The "Indians" referred to herein are Indigenous people who inhabited and occupied the Aboriginal Title Area in question before first contact with the Europeans. The Osnaburgh Band of Indians refers to Mishkeegomang First Nation.
6. The Cat Lake First Nation is part of the Ojibway, Oji-Cree people, an Indigenous people who were living in organized societies and occupying the land of what is now Canada, as their ancestors had done before the Europeans arrived. The Anishnawbe people in general, and the Cat Lake First Nation in particular, were organized according to their own customs, traditions and laws collectively, as well as in component groups, which for ease of reference will be referred to here as bands. The Cat Lake First Nation would be considered a band under this terminology.

7. The Defendant, the Attorney General of Canada ("Canada"), is the representative of Her Majesty the Queen in Right of Canada, pursuant to s.23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50. Her Majesty the Queen in Right of Canada:
- a. has executive and legislative authority in Canada, by and with the advice of the Parliament of Canada, with respect to Indians and the lands reserved for Indians, pursuant to s.91(24) of the *Constitution Act, 1867*;
  - b. is the successor in Canada to, and is subject to, all of the obligations, duties and liabilities which His Majesty the King or Her Majesty the Queen (the "Imperial Crown"), the Province of Upper Canada, and the Province of Canada, owed to the Plaintiffs, except for those obligations, duties and liabilities conferred or imposed exclusively upon the Defendant, Her Majesty the Queen in Right of Ontario, under the *Constitution Act, 1867*, or otherwise by law.
  - c. is the Minister of Her Majesty the Queen in Right of Canada who is responsible for the statutes of Canada and the constitution of Canada, and who represents Her Majesty the Queen in Right of Canada in litigation concerning the constitution of Canada. The Plaintiffs plead and rely on Sections 21 and 23 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
8. The Defendant, Her Majesty the Queen in Right of Ontario ("Ontario") represents the interests of the Crown in Right of the Province of Ontario. The Plaintiffs plead and rely on Sections 13, 14, 15 and 18(1) of the *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c. 7, Sched. 17.

9. Reference to the "Crown" herein is intended to refer to the Crown in all her emanations, whether it be Provincial, Federal or Imperial, both before and after confederation in 1867. "Defendants" refers to the Defendants in this claim, being the governments of Canada and Ontario as emanations of the Crown;
10. The Defendants are, either alone or together, successors to all of the obligations, duties and liabilities of the Imperial Crown owed to the Plaintiffs. Reference in this document to "the Crown" includes both said Defendants to the extent of their respective obligations, duties and liabilities.
11. The Defendant, Her Majesty the Queen in Right of Ontario ("Ontario");
  - a. became, on July 1, 1867, the recipient of authority to exercise, administer and have control over the Crown interest in all lands, mines, minerals and royalties situate within the Province of Ontario "belonging" to the former Province of Canada, and became the recipient of all sums due or payable for such lands, mines, minerals or royalties, subject to any trusts existing in respect thereof, and to any interest other than that of the then Province of Canada, pursuant to s.109 of the *Constitution Act, 1867*;
  - b. has asserted on behalf of the Crown primary responsibility for managing and controlling the lands and waters within the Aboriginal Title Area indicated on the map attached hereto as Schedule 1 without regard for the Plaintiffs' rights therein; and
  - c. is the successor in the Province of Ontario to, and is subject to, all of the

11

obligations, duties and liabilities which the Imperial Crown had or owed to the Plaintiffs, except for those obligations, duties and liabilities conferred or imposed on Her Majesty the Queen in Right of Canada under the *Constitution Act, 1867*, or otherwise by law.

12. Notice of the Statement of Claim was served on the Ontario Crown by electronic transmission to the Crown at the Crown Law Office (Civil Law) of the Ministry of the Attorney General, McMurtry-Scott Building, 4<sup>th</sup> Floor, 720 Bay Street, Toronto, ON M7A 2S9 to email number [cloc.reception@ontario.ca](mailto:cloc.reception@ontario.ca) on November 5, 2021 in accordance with Sections 1 and 3 of the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, Ontario Regulation 76/20, and Sections 15 and 18 of the *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c. 7, Sched. 17.
13. Cat Lake First Nation states that both Defendants, being emanations of the Crown, are jointly and severally liable under this claim, each to the extent of their respective jurisdictional competence.
14. Prior to assertion of sovereignty by the Crown, and prior to contact with Europeans, the ancestors of the current Cat Lake First Nation members had Aboriginal Title to, and exercised Aboriginal Rights in the Aboriginal Title Area outlined in the Map attached hereto as Schedule 1.

**Aboriginal Title:**

15. The First Nation is a band, tribe, community or society which is presently recognized by Canada. Its existence has continued since the time of, and prior to, the assertion of sovereignty by the Crown over the Aboriginal Title Area.
16. The First Nation is also part of a larger society or nation known as the Anishnawbek.
17. According to the customs, laws and practices of the Ojibway or Oji-Cree, title and control of territory was divided among the bands and resided with the bands as separate collectives. Title and control resided at the band level and this included the right to dispose of lands. At all material times, the Plaintiffs asserted their exclusive title and control of the Aboriginal Title Area according to said customs, laws and practices, except to the extent it has been interfered with by the Defendants or third parties authorized by the Defendants.
18. The Plaintiffs currently use and occupy the Aboriginal Title Area for a variety of purposes, including traditional pursuits. This present use and occupancy has continued since the time of, and prior to, the assertion of sovereignty by the Crown of the area. The Plaintiffs maintain a substantial connection to the Aboriginal Title Area, except to the extent that it has been interfered with by the Defendants or third parties authorized by the Defendants.
19. At all material times, the Plaintiffs' occupancy of the Aboriginal Title Area was

**exclusive.**

20. **The *Royal Proclamation* of 1763 and Crown policy regarding First Nations which underlies, and is reflected in, the *Royal Proclamation* of 1763, recognized Aboriginal Title. The Aboriginal Title Area lies within the territory reserved to Indians under the *Royal Proclamation* of 1763, known as "Indian Territory".**
21. **The Aboriginal Title Area was exclusively occupied by the Plaintiffs at the relevant time. This exclusive occupation included, but was not limited to physical occupation of the lands, construction of dwellings, hunting, fishing, trapping and other food gathering activities carried out on the land; the use of forestry and other available resources by the Plaintiffs' predecessors, and social, ceremonial, healing and spiritual activities conducted within such Aboriginal Title Area. The Aboriginal Title Area was occupied by the Plaintiffs' predecessors at the time of the assertion of sovereignty and has continued to be occupied in an unbroken chain up until the present time. The Plaintiffs maintain a substantial cultural connection to the Aboriginal Title Area.**
22. **According to the customs, laws and traditions of the Ojibway, or Oji-Cree Nation in general, and the Cat Lake First Nation in particular, the title and control of territory was dealt with at the band level. Any derogation or alienation would have to be conducted at the band level. The Cat Lake First Nation has, at all relevant times, asserted title and control over the Aboriginal Title Area pursuant to its customs, laws,**

and traditions, and has at no time assented to derogation or alienation of the territory. Any derogation or alienation which has occurred, has been the result of actions by the Defendants without the consent of the Plaintiffs.

23. This Aboriginal Title Area is part of a larger territory consisting of the Joint Exclusive Aboriginal Title Area which was jointly occupied by the Plaintiffs, and a number of other Ojibway or Oji-Cree First Nations. At the time of first contact with Europeans, as well as the time of assertion of sovereignty, the occupation, use, control and possession of the Joint Exclusive Aboriginal Title Area was governed at the band level by such Aboriginal First Nations. The Plaintiffs at all relevant times had a system of self-government that included, but was not limited to, the use, occupation, possession and control of the Aboriginal Title Area and all the resources related to it. The Plaintiffs claim Aboriginal Title and Aboriginal Rights in the Aboriginal Title Area.

**Pre-Treaty Period:**

24. The Plaintiffs state there was an Hudson Bay Company Post at the present day site of the Cat Lake Reserve as early as 1788.
25. The Plaintiffs state that Archdeacon Thomas Vincent of the Albany Mission, on a trip to Cat Lake between 1895 and 1899, recorded the presence of a Cat Lake Chief. At that time, the Cat Lake Indians were distinct and separate from the Osnaburgh Band, each having their own separate headman. The Cat Lake Indians lived a 7 to

**10 day paddle from Osnaburgh.**

- 26. The Plaintiffs state that the records of the early European travels indicate that the people of Cat Lake occupied the lands in the vicinity of the Plaintiffs' present day community for more than a century prior to Treaty 9 being signed at Osnaburgh.**
- 27. The Journal of another clergyman in 1896, the Reverend Fairies, Anglican Missionary, stationed on a more permanent basis at the Fort Hope Hudson's Bay Company Post, reported that a large number of Indians traded, and spent the summer at Cat Lake, and from there the Reverend took periodic trips to neighbouring Indian communities, including Osnaburgh. From his report it is evident that an Indian community existed at Cat Lake which was separate from Osnaburgh.**
- 28. The Plaintiffs state that the presence of a sizable indigenous community at Cat Lake, comprised of somewhere between 30 to 50 families, is well documented in the years preceding the making of Treaty No. 9 in 1905. As well, the Hudson's Bay Company journals reveal over many years that the Cat Lake Band had its own Chief and headmen, one of the features of a distinct First Nation Band.**
- 29. The Cat Lake Indians traded at the Cat Lake Post and did not trade at or travel to the Osnaburgh Hudson Bay Company Post.**
- 30. The Plaintiffs state they were never part of the Osnaburgh Band (Mishkeegomang**

First Nation) and were always a distinct separate First Nation. The Hudson Bay Company established a permanent trading post at Osnaburgh and an intermittent trading post at Cat Lake where the Plaintiffs had always lived. This enabled the Cat Lake Indians to trade with the Hudson Bay Company 2-3 times a year at Cat Lake when the Cat Lake Post was open, without the necessity of the Cat Lake Indians travelling by canoe for seven days to the Trading Post at Osnaburgh. The Cat Lake Post was initially started by the Hudson Bay Company to make it easier for the Cat Lake Indians to trade with the Hudson Bay Company and prevent the Cat Lake Indians from trading with competitors.

**1905 Treaty 9 Signing:**

31. The Plaintiffs state that Cat Lake First Nation was not present at the signing of Treaty 9 at Osnaburgh, or elsewhere in July of 1905 when commissioners on behalf of the Defendants attended in the territory for the purpose of making a Treaty.
32. The Plaintiffs state that Cat Lake First Nation was not present at any signing of Treaty 9 in 1906 near Root Portage or elsewhere.
33. The Plaintiffs were not invited to attend, nor did they attend the signing of any of the Adhesions to Treaty 9 in 1929-1930.
34. By 1901, Canada was considering a treaty with the Indians north of the height of land, being the northern boundaries of the Robinson Superior Treaty (1850) and

Treaty 3 (1873). In 1901, the boundary of the Province of Ontario extended only to the Albany River. North of the Albany River was the Keewatin District still controlled by Canada. The proposed Treaty would cover that part of the Province of Ontario between the Robinson Superior Treaty Area, Treaty 3 and the Albany River.

35. On December 12, 1901, some of the Indians who were residents north of the Robinson Superior Treaty, and Treaty 3 boundaries, petitioned the Superintendent General of Indian Affairs to have a treaty signed with them in order to protect their lands that were being encroached upon by miners and others. The petition was prepared and forwarded by Hudson Bay Company employees to the Defendants. The Indigenous people in this area were impoverished due to the lack of game which was a consequence of the introduction of the fur trade, and mining companies had begun to encroach upon the Indian lands. Some of the Indigenous people wanted a Treaty and others opposed the encroachment of the non-Indigenous people.
36. Between 1902 and 1904, Canada initiated discussions with Ontario as to how a Treaty in this area would be negotiated and what the terms would be. None of the First Nations who later signed the Treaty were involved in these discussions. Correspondence was exchanged over the years between senior Canada and Ontario officials. The signing of Treaty 3 in Ontario in 1873 had resulted in litigation between Canada and Ontario which was outstanding in the Court of Exchequer in 1905. Ontario had taken exception to Canada making promises in Treaty 3 which

Ontario had to pay for. Canada and Ontario took several years before agreeing as to how they would divide the financial responsibilities between the two governments for a new treaty (which would become Treaty 9), and how and where such treaty would be signed. The exact terms of the contemplated Treaty including the exact language was agreed to by Canada and Ontario before the Treaty signing expedition was organized.

37. Canada made arrangements with Ontario and the Hudson Bay Company for a treaty process to proceed. Travel and logistical arrangements were made by the Hudson Bay Company who maintained a series of trading posts in the area, and who had an interest in facilitating the signing of a Treaty. The Treaty annuity payments would be mostly spent at the Hudson Bay Company Posts.

**Treaty Signing Protocol:**

38. The Plaintiffs state that Canada, over the years, had developed a process or protocol for making Treaty with Indian Bands taking into account the requirements of the *Royal Proclamation* of 1763, and the *Dorchester Regulations*, December 26, 1794.
39. This protocol contained the fundamentals from the 1763 *Royal Proclamation*, and the *Dorchester Regulations*, December 26, 1794. The protocol stipulated that the purchase of Aboriginal Lands must be conducted at "some public meeting or assembly of the said Indians." The public meeting was specified to be with "the

Chiefs and Leading Men of the Nation". The Crown was instructed to have interpreters present who understood the local language. A copy of the written version of the Treaty was to be there, and was to be given to the First Nation.

40. The Plaintiffs state in addition, that over the years Canada had added to the protocol that the Treaty Commissioners would give advance notice to the First Nations of the intention to make Treaty. This would allow for the Band Members to have time to travel to the Treaty conference. For Treaty 9, the Defendants agreed that for the Indian Bands near the CN Railway, one month's notice was considered sufficient, whereas for the Indian Bands at the more removed Northern Posts, the plan was to give notice in December for a June/July treaty meeting.
41. The protocol involved the Commissioners presenting the Treaty. The Treaty would be translated by an interpreter. Questions were asked and the Commissioners responded orally. Usually the Chief and headmen considered the treaty terms presented and retreated overnight to discuss the proposal with leading men and Band Members present. Usually the treaty was agreed to and signed the next day after being presented by the Defendants. At the time of the actual signing, speeches by the Chief were made to the people assembled as to their intentions with respect to signing the Treaty. The treaty making process followed conventions used by Europeans dealing with the Aboriginal people during the fur trade. The conventions are outlined by Historian, J.R. Miller as follows:

"In addition to the initial negotiations by which newcomers secured

entrance and permission to operate the First Nation's territory, each new season fur traders renewed their relationship by means of a series of ceremonies that were rooted in Aboriginal custom. On the approach of a brigade of Indian canoes bringing pelts to the post, the Chief trader would order that the cannon be fired as a salute to the arriving party. Next, the chief trader or another senior officer would proceed to where the party had landed and welcome them officially. Then the chief trader would entertain the visitors in the post at a highly ritualized meeting. The Indians' trading captain and the post's senior official would smoke the pipe, exchange greetings again, inquire as to how the respective parties had fared since their last meeting, and express sympathies for untoward developments such as major illness and death that the other group had suffered. The officer would provide food to the visitors, and the two parties would exchange presents. The Indians would give the chief trader a collection of skins gathered from their party, and the officer later would provide clothing. If the company supplied alcohol to the Indians, they would take it to their encampment to consume it communally, along with any remaining foods. Only after such welcoming ceremonies did trading actually start, usually beginning on the next day."

42. The Treaty Commissioners travelled with gifts for the Chief and headmen, and sufficient money to pay each Band Member \$4.00 as a one-time payment paid to Band Members at the time of first signing Treaty 9, and \$4.00 for the first year's annuity payment for a total of \$8.00 for initially signing the Treaty. The Defendants would pay the Hudson Bay Company to provide sufficient food for a feast to be held following the actual signing of the Treaty. The Commissioners would come home with a signed Treaty.
43. The Plaintiffs state that at the time of making Treaty, especially the remote First Nations had no legal counsel or even access to a lawyer, let alone funding to pay for a lawyer.

44. The Plaintiffs state that although it was the practice to have an interpreter present at the Treaty signing to translate the written words in the Treaty, the linguistic patterns of European languages and the concepts referred to were not familiar with the Ojibway or Oji-Cree. The translation would not provide the Ojibway a clear understanding of what was being stated in the Treaty. Many English words had no Ojibway counterparts.

45. The first stop on the Treaty 9 signing was at Osnaburgh (Mishkeegomang First Nation) in early July, 1905. The Commissions took the train to Dinorwick, and were transported in canoes by Hudson Bay Company employees north to Osnaburgh.

**July, 1905 Treaty Signing at Osnaburgh:**

46. The Treaty Commissioners for the Treaty 9 expedition to Osnaburgh consisted of two Commissioners from Canada, whose responsibility was to outline the financial terms which Canada was agreeing to pay, and one Commissioner from Ontario to oversee the size and specific location of Reserve Lands, which Ontario was to give.

47. The Plaintiffs state that in 1905 when Canada and Ontario set out to sign Treaty 9, it was Canada's intention that Treaty 9 would cover only lands in the Province of Ontario, and that the Treaty would not be signed with Bands wholly within in the District of Keewatin (Canada). Where the Bands were located on the Albany River (the intended Northern Boundary of the new Treaty), and the hunting grounds of the Albany River Bands were both in Keewatin (Canada) and in Ontario, the Treaty

Commissioners were instructed to take all of the Albany River First Nation band members into Treaty including the band members from that Band that hunted in Keewatin, so as to avoid an arbitrary division of Band members.

48. The Plaintiffs state that at this particular time, Canada wanted to avoid making Indian Treaties with Indian Bands located in the District of Keewatin, as Canada believed those Bands would include Metis people who would therefore be treated differently than the Metis people in Ontario. This would be a political embarrassment for Canada.
49. Since Cat Lake was wholly within the Keewatin District and not on the Albany River, and well west of the Albany River, the possibility of taking Cat Lake into Treaty does not appear in any of the Federal Government or Hudson Bay Company's official correspondence prior to the Treaty Commissioners' first stop at Osnaburgh located on the Albany River. A number of Albany River Hudson Bay Company posts were specifically named as Treaty 9 signing locations. The Cat Lake Post was not one of them.
50. Accordingly, advance notice of the impending Treaty 9 signing ceremony was not delivered to the Plaintiffs prior to the July, 1905 signing at Osnaburgh.
51. The Plaintiffs state that although the HBC knew where the Cat Lake Band was located, the Treaty Commissioners did not. They believed that Cat Lake was close

enough to Osnaburgh so as to be part of Osnaburgh. The Hudson Bay Company Post manager failed to clarify this misunderstanding. It was to the Hudson Bay Company's financial benefit to ignore this misunderstanding so as to add more Band Members to the annuity payment lists. Money paid to people on the annuity payment list would be spent at the Hudson Bay Company Trading Posts.

52. The Plaintiffs state that the Defendants' Commissioners had not properly informed themselves prior to the Treaty negotiations as to the location of the First Nations in the region. Maps of the region were not accurate at that time. The Commissioners were all from southern Ontario and had little knowledge of Northern Ontario and Keewatin.
53. Prior to the Commissioners arriving at Osnaburgh, on June 20, 1905 the Hudson Bay Company brigade boat had arrived at Osnaburgh from Cat Lake with the last of the furs that Hudson Bay Company had traded with the Cat Lake Indians at Cat Lake that spring. This meant that all of the Cat Lake people that had come to the Cat Lake Trading Post in the spring with their winter furs, traded there, and had left Cat Lake to go back to their respective trapping areas around Cat Lake.
54. The Plaintiffs state that in July, 1905 when the Treaty 9 was signed in Osnaburgh, the Cat Lake Band Members were not even at Cat Lake, let alone Osnaburgh.
55. The Treaty Commissioner (3) arrived at Osnaburgh on July 11, 1905.

56. The Plaintiffs state that people from Cat Lake were not present at the Treaty signing with the exception of 4 people, 2 of whom were present solely because they were hired by the Hudson Bay Company to paddle the Commissioners canoes. The Cat Lake Band had not been given advance notice as Canada did not anticipate that Cat Lake would be taken into Treaty in 1905. Cat Lake's Chief and Leading Men were not present at Osnaburgh. The Cat Lake Band did not sign the Treaty. The Cat Lake Band did not get a copy of Treaty 9. No version of Treaty 9 exists with the name of Cat Lake's Chief on it. No feast was held at Cat Lake.
57. The Plaintiffs state that none of the requirements of the *Royal Proclamation* of 1763 were followed by the Defendants with respect to the Cat Lake Band in 1905.
58. Treaty Commissioner, Samuel Stewart's journal indicates the following version of the proceedings:
- "Osnaburgh was the first point in which treaty was to be made and we felt some little anxiety as to how the Indians would receive our proposals. The first step taken by us was to request the Indians to appoint representative men to confirm with the Commissioners. These having been selected, eight in number, a meeting was held at which the terms of the treaty were made known to them. . . . On being informed that they could continue to live as they and their forefathers had done and that they could make use of any lands not disposed of by the government they appeared to be satisfied but asked to be given to the following day to enable them to talk over the terms of the agreement with the members of the band which request was at once agreed to.
- They were also informed that a feast would be given to the Indians and that the material for the same would at once be provided.
- On the morning of the 12<sup>th</sup> of July the Indians notified the

Commissioners that they were ready to give their answer to the proposals made to them, and on the meeting being again convened Chief Missabay speaking for the Indians said that after giving the subject full consideration they had decided it would be much to their advantage to enter into treaty. The other representatives having expressed their concurrence with the remarks made by the Chief the treaty was signed and witnessed with all due formality and was (illeg crossed out words) at once proceeded with. We paid in all nearly 350 which number included an Indian his three wives and seventeen children.

The next order of business was the feast for which preparations had been going forward from the previous day. The good things supplied included bannock plain and with raisons, bacon, pork, and tea. A plentiful supply of pipes and tobacco was also provided and to all these goods (illeg) ample justice was done by old and young.

Before partaking of the feast the old Chief Missabay, who it may be stated is totally blind but whose wisdom is admitted by the entire band made an eloquent speech expressing the thanks of the band for the generous measure in which they had been treated and giving advice to the growing men as to their future conduct."

59. The Plaintiffs state that none of the three Commissioners present at the Treaty ceremony made any mention of the Cat Lake Band. Commissioner Scott made mention in his diary of the fact that the Cat Lake Cranes were not present.
60. On July 6, 1905, one of the Treaty Commissioners on his way to Osnaburgh to sign Treaty 9, made comments in his diary that he was aware that members of the Cat Lake Band traded at Lac Seul, several days paddle southwest of Osnaburgh. The Plaintiffs state that this indicates that the Defendants' Commissioners were aware that there was an Indian Band at Cat Lake.

61. An individual named Oombash signed the Treaty. Commissioner Stewart referred to Oombash as Chiefman Oombash from Cat Lake River.

"At 5:30 had conference with Chiefman Oombash from Cat Lake River, David Noowayah, Skunk, John Shap and others all of whom afterwards signed the Treaty. Ordered a feast and prepared payroll with Williams. Fine day but very hot. Copied Paylists, Indian has feast Missabays speech - signed Treaty. Paid in Afternoon 278-elected Chief and presented flag - at Cat Lake: there are 30 families of Crane Indians. Oombash will try to get them into Tr. next year...169."

62. Commissioner Stewart's journal indicates that he believed Oombash was a member of the Osnaburgh Band. On July 6<sup>th</sup> the same Commissioner noted:

"Several members of our crew including Oombash the dandy of the party belonged to Osnaburgh and were welcomed by their friends."

63. The Plaintiffs state that Oombash was not the Chief of the Cat Lake Band, and the reason Oombash was present at the signing was that he and his son were hired by the Hudson Bay Company Post at Osnaburgh to be part of the brigade that paddled and travelled with the Commissioners from Dinorwic to Osnaburgh in July, 1905 for the Treaty ceremony. Oombash frequently worked for the Hudson Bay Company at Osnaburgh, and lived between Cat Lake and Osnaburgh.

64. The Cat Lake Band trading at the Cat Lake Post, including the Crane clan, were not present when the Treaty was made, and the Treaty Commissioners noted this. The only exception are four individuals who were at Osnaburgh when the Treaty was signed, two of whom were hired as employees of the HBC to paddle the

commissioners' canoes. When the size of the reserves at Osnaburgh were calculated in 1905, the Cat Lake Band was not included in the population figure used to determine the treaty land entitlement of the Osnaburgh Band.

65. The Plaintiffs state that the Commissioners' false impression that the Cat Lake Band actually traded at the Osnaburgh Post and was part of the Osnaburgh Band, was the start of Canada's and Ontario's misunderstanding that by signing the Indians at Osnaburgh to Treaty 9, they had also somehow signed the Cat Lake Band to Treaty 9. Clearly the Commissioners were unfamiliar with how the two separate Bands traded with the Hudson Bay Company.
66. The Plaintiffs state that an Order-in-Council from Canada dated July 3, 1905 gave the Treaty Commissioners their specific authority as to what Bands the Commissioners could take into Treaty. The Plaintiffs state that in view of the Order-in-Council dated July 3, 1905, the Treaty Commissioners had no legal authority or jurisdiction to sign the Cat Lake Band to Treaty 9.
67. After the Treaty signing in 1905 with the people who became known as the Mishkeegomang First Nation at Osnaburgh, some of the Cat Lake peoples names were added to the Osnaburgh payroll by the Hudson Bay Company Post manager at Osnaburgh, even though they had not been present at Osnaburgh when the Treaty was signed. It was in the financial interests of the Hudson Bay Company Post manager to have as many individuals as possible receiving annual annuity

payments to spend at their Posts. The Defendants' Treaty Commissioners did not add these names to the annuity lists, the Third Party Hudson Bay Company added the Cat Lake Band Members names to the Treaty 9 pay lists.

68. When the same Hudson Bay Company manager tried to add more Cat Lake individuals to the Treaty pay list in August, 1905, Canada refused to pay annuities to these added people unless they appeared in person at Osnaburgh.
69. Canada was beginning to become aware that some of the people on the pay lists were from Cat Lake, and that Canada had not intended to take the Cat Lake Band into Treaty as it was wholly located in Keewatin.
70. In the years subsequent to 1905, \$4.00 per year annuity payments were made to some Cat Lake Band members on an intermittent basis. Most Cat Lake Band members never did receive the initial \$4.00 one-time payment for signing the Treaty.
71. The Plaintiffs state that the Mishkeegomang First Nation Chief had no authority from the Cat Lake Chief or people to enter into Treaty 9 on behalf of the Plaintiffs. There is no evidence of the Mishkeegomang First Nation Chief travelling to Cat Lake to meet the people or of the Cat Lake people travelling to Mishkeegomang First Nation to meet with the Mishkeegomang First Nation Chief for any purpose associated with the treaty.

72. The Plaintiffs state that after the Treaty signing in July, 1905, the Defendants were confused as they were aware that the Cat Lake people did not sign Treaty 9, yet some Cat Lake people's names were on the Treaty annuity pay lists.
73. The Plaintiffs state that in the Treaty Commissioner's Report, the Commissioner indicated that Oombash would try and get the Cat Lake people into Treaty next year.

**1906 Cat Lake "Taken Into Treaty":**

74. The Plaintiffs state that local officials of Canada and Ontario knew that the Treaty Commissioners had not gone to Cat Lake and the Cat Lake people had not gone to Osnaburgh to sign Treaty 9, yet Cat Lake individuals' names were on the annuity list, and therefore officials in Ottawa and Toronto came to the mistaken belief that the Cat Lake Band was part of the Osnaburgh Band.
75. In 1906, prior to the local Indian Agent travelling to Osnaburgh to make the first annuity payments at Osnaburgh after the Treaty signing, the Defendant Canada's Department Secretary instructed the local Indian Agent that should he meet with the Cat Lake Indians at Osnaburgh he should take them into Treaty.
76. The Plaintiffs state that the Defendant Canada's aforesaid instructions clearly contravened the provisions of the *Royal Proclamation of 1763*, and the *Dorchester Regulations*, December 26, 1794, and was outside the terms of the Order-in-Council previously issued on July 3, 1905.

77. The Plaintiffs state that the Defendants gave no advance notice to the Cat Lake Band of their intention to sign the Cat Lake Band to Treaty 9 in 1906. There were no instructions for the Indian Agent to go to Cat Lake.
78. The Plaintiffs state that this instruction from a senior official of the Defendant Canada confirms that the Defendant Canada believed that the Cat Lake Band had not signed Treaty 9 in 1905 at Osnaburgh.
79. The Plaintiffs state that upon his return from Osnaburgh in 1906, Canada's local Indian Agent reported to his superior that he had "taken the Cat Lake Band into Treaty".
80. The Plaintiffs state that there is no indication in Canada's Indian Agent's report where or when he took the Cat Lake Band into Treaty.
81. In the Indian Agent's report, there is a hand written notation in the margin next to his words "I took this Band into Treaty". The notation is "where are the papers". The Plaintiffs state that this comment is likely made by another employee of Canada who was looking for a copy of Treaty 9 signed by the Cat Lake Band.
82. The Plaintiffs state that there is no evidence in the historical records that the Indian Agent had a copy of the Treaty with him when he travelled north to Osnaburgh.

83. The Plaintiffs state that the Indian Agent travelled to Osnaburgh as planned but did not travel to Cat Lake.
84. The Plaintiffs state that around the same time, by coincidence, a group of Cat Lake people were travelling south with a police officer by canoe to be witnesses at a murder trial in Kenora, Ontario. In a chance encounter, the south bound Cat Lake group ran into the north bound local Indian Agent travelling by canoe near the Root River.
85. The Plaintiffs state that an oral account from a travelling Cat Lake witness which was subsequently recorded, states that the Cat Lake people were told by the white people travelling north that they were on their way to Osnaburgh to make Treaty. The "Commissioner" talked to them about the Treaty, and said they should think about signing it. The Commissioner wanted them to give him a decision the following morning. The Cat Lake people were reluctant. The next day the Cat Lake group told the Commissioner they could not give the Commissioner an answer about signing Treaty 9, and the Cat Lake people proceeded on to Kenora.
86. The Plaintiffs state that the local Indian Agent misrepresented to the Cat Lake people that he was a Treaty Commissioner.
87. Despite the fact that the Cat Lake people did not give an answer the next day, the

local Indian Agent paid the Cat Lake individuals \$4.00 a piece being the yearly annuity payment, but did not make the initial \$4.00 one-time payment that was paid to Band Members at the time of first signing Treaty 9.

88. The Plaintiffs state that the 1906 encounter of the Indian Agent with the Cat Lake people did not follow Canada's protocol for Treaty signing. The Indian Agent was not an appointed Treaty Commissioner. There was no advance notice to Cat Lake. No Treaty document was signed by the Cat Lake people. The Cat Lake Band and Cat Lake Chief were not present when they encountered the Indian Agent. There is no evidence that any translation of the Treaty language took place. There was no ceremony, no feast.
89. The Plaintiffs state that the Indian Agent had no legal authority to take the Cat Lake Band into Treaty, as his action contravened the *Royal Proclamation* of 1763, and the *Dorchester Regulations*, December 26, 1794, and the *Order-in-Council* dated July 3, 1905.
90. The Plaintiffs state that the Defendants' activities in 1905 and 1906 failed to adhere the Plaintiffs to Treaty 9, but it did continue to create enough confusion in the Defendants' bureaucracies that government officials continued to consider the Cat Lake Band to be part of the Osnaburgh Band who had signed Treaty 9 on July 11, 1905.

91. The Plaintiffs state that in subsequent years officials of the Defendants' Canada and Ontario did not know what actually had happened and perpetuated the mistaken belief that the Cat Lake Band signed Treaty 9 in 1905 or 1906 as part of the Osnaburgh Band.

**1929-1930 Adhesions:**

92. The Plaintiffs state that by 1929-1930, the mistaken belief of Canada and Ontario that Cat Lake was part of the same Band as the Mishkeegomang Band had become firmly entrenched in the bureaucracies. The Plaintiffs state that there is no evidence that the Canada or Ontario's Governments bothered to research and learn about the Cat Lake Band's history.
93. The Plaintiffs state that pursuant to the *Ontario Boundary Extension Act* of 1912, the Province of Ontario was extended to include all of the Plaintiffs' Aboriginal Title Area.
94. In 1929, the Defendants Canada and Ontario entered into an Agreement regarding the terms for signing Indian Bands in the newly added territory as Adhesions to Treaty 9.
95. The terms of Adhesion agreed to by Canada and Ontario were to be similar to the 1905 terms of Treaty 9.

96. When in 1929, the Defendants' Treaty Commissioners were planning their Treaty Adhesion expedition, they drew a line on a map, the A-B line, expressing their intention to take into Treaty 9, all First Nations in the Province of Ontario north of the A-B line.
97. The A-B line started at Cat Lake and ended at Hudson Bay. In their report explaining the A-B line, the 1929 Commissioners stated that in addition to taking into Treaty 9 the First Nations north of the A-B line, they should also confirm the status of those Indians in the territory between the A-B line and the Albany River's previous northern boundary of Treaty 9. That area included the Cat Lake Band's Aboriginal Title Area.
98. Canada concluded a series of First Nation Band Adhesions to Treaty 9 in 1929 and 1930, in the area north of the A-B line that had previously been the District of Keewatin.
99. Despite the fact that the Cat Lake Band had not been taken into Treaty in 1905 or 1906, and that no Reserve land was allocated for them in 1905 or 1906, the 1929-30 Treaty Adhesions Commissioners made no attempt to sign the Plaintiffs to the 1929-1930 Treaty 9 Adhesions or provide a Reserve to the Plaintiffs at that time.
100. The Plaintiffs state that despite the A-B line starting at Cat Lake, and with the previous confusion over the status of Cat Lake with Treaty 9, no efforts were made

by the Defendants' Commission in 1929-1930 to confirm the status of the Cat Lake Band, as they had been instructed to do. No treaty negotiations were conducted with Cat Lake in the 1929-30 Treaty 9 Adhesion process. No reserve was provided for Cat Lake in 1929-30.

101. The Plaintiffs state that Cat Lake was not a signatory to the Treaty, and has never adhered to the Treaty.
102. The Plaintiffs state that throughout the Treaty 9 signing history, the Defendants were aware of the Cat Lake Band. After 1905-1906 and continuing after 1929-1930, the Defendants treated the Plaintiffs as if they were a signatory to Treaty 9.
103. The Defendants have made many and varied representations over the years to the Plaintiffs' people that the Plaintiffs were bound by Treaty 9. Funding and annuities were paid to the Plaintiffs as if the Plaintiffs were signatories.
104. The Plaintiffs state that in subsequent years the only way the Defendants would give the Plaintiffs a reserve was to have the Osnaburgh Band vote to divide the Osnaburgh Band into the Osnaburgh and Cat Lake Bands. Both Osnaburgh and Cat Lake knew they had never been one Band. The Osnaburgh Band refused to vote to divide their Band in two because the Defendants insisted that as part of this process the Osnaburgh Band would have to pay Ontario for the new reserve lands for the Cat Lake Band at Cat Lake. The Osnaburgh Chief and Council did not

understand why they instead of Canada should pay for another Band's Reserve.

105. After 1905 (Treaty at Osnaburgh) and 1929-1930 Adhesions (Keewatin Territory), the Cat Lake Band petitioned the Department of Indian Affairs on several occasions to be recognized as a separate Band, to be able to receive their own Reserve at Cat Lake. In 1936, 113 people from Cat Lake signed a petition in which they requested a Reserve containing 3½ square miles. Officials in the Department of Indian Affairs, at that time considered allocating 500 acres for the Cat Lake Band but in the end did nothing.
106. It was not until April of 1970, that 538 acres at Cat Lake were formally transferred to Canada, and identified as Indian Reserve 63C. The new Cat Lake Reserve was located where the Cat Lake people had always lived.
107. In June, 1970, Canada formally approved the division of the Osnaburgh Band, and recognized a separate band at Cat Lake, despite the fact that Cat Lake and Osnaburgh had always been separate. No payment was made by the Osnaburgh Band.
108. In August, 1999, the Cat Lake Band negotiated an Addition to Reserve with the Federal Government and the Province of Ontario, under which 5.436 square miles of land were added to Reserve 63C.

109. The Plaintiffs state that they hold unceded Aboriginal Title to the area of land which they and their ancestors occupied and continue to occupy as show on the Map attached as Schedule "1". This is more particularly described as the land, water and land under water which they regularly used and continue to use for hunting, fishing, trapping, gathering and otherwise exploiting resources and over which they exercised and continue to exercise control.
110. The Plaintiffs state that they had and have an unbreakable attachment to this their homeland. It is integral to their culture, history, values, institutions, laws, practices, principles, and traditions, and to their relationship with the animals, the trees, the rocks and all other things within it. It is the source of their subsistence and medicines. Subject to partial dispossessions and infringements referred to below, they treated this land as exclusively theirs and only permitted outsiders temporary use of parts of it.
111. The Plaintiffs say this is the territory that the Crown was obligated to treat for before the Crown appropriated any part of it for itself or others.
112. Cat Lake First Nation has never surrendered or otherwise alienated its interests in this territory.

**Infringement:**

113. The Defendants have interfered with the Plaintiffs' Aboriginal Title over the

Aboriginal Title Area through the issuance of Crown patents, tenures, leases and other forms of alienation to third parties, and by the appropriation and use of parts of the said area by the Defendants and third parties.

114. The Plaintiffs claim that the said interference by the Defendants and third parties is inconsistent with, in conflict with, and in derogation of their Aboriginal Title over the Aboriginal Title Area, including its inescapable economic component and the right of exclusive use and occupation flowing from it.

**Honour of the Crown:**

115. According to the *Royal Proclamation of 1763* and Crown policy regarding First Nations which underlies, and is reflected in, the *Royal Proclamation*, the Plaintiffs could not alienate their lands to anyone but the Crown. This gave the Crown a monopoly and placed the Plaintiffs in a vulnerable position in relation with the Crown.
116. The Honour of the Crown requires the Crown to act in the best interests of the Plaintiffs at all times.
117. The Plaintiffs state that the Honour of the Crown requires the Defendants to treat the Cat Lake Band with the same respect and dignity afforded to other First Nations in Treaty negotiations and signing.

118. The Plaintiffs plead and rely upon the *Royal Proclamation* of October 7, 1763; the principle of imperial constitutional law that the rights of Indigenous people will be acknowledged and respected, section 91(24) of the *Constitution Act*, 1867; section 35 of the *Constitution Act*, 1982; the *Indian Act*, R.S.C. 1985, as amended, and all predecessors thereto, including legislation of the Province of Canada respecting Indians; and the United Nations Declaration of the Rights of Indigenous People.
119. The Plaintiffs state that the Defendants were in a fiduciary relationship with the Defendants, and the Defendants have breached that fiduciary duty insofar as the Defendants have taken financial benefit from the Plaintiffs' lands without consent and without accounting to the Plaintiffs.
120. To the extent the said *Royal Proclamation* of 1763 recognizes their claim and title to lands and water, including lands under water, the Plaintiffs allege they were connected with and under the protection of the Crown, within the meaning of the said *Proclamation*, at all material times.
121. The Plaintiffs plead that although they have been wrongfully dispossessed, and their Aboriginal Rights and Title have been infringed, they do not ask this Court to in turn dispossess persons who hold title from the Crown and are in good faith occupation of portions of their Aboriginal Title Area (with the exception of mining lands obtained initially by third parties by virtue of having filed a mining claim).

122. The Plaintiffs allege that some of the aforesaid wrongful dispossession is manifested in Crown grants to private parties. The Plaintiffs do not request that such titles or allocations be vacated by the Court (with the exception of patented lands obtained initially by third parties by virtue of having filed a mining claim) but if the Court awards damages pursuant to the alternative claims herein, the Plaintiffs ask that such damages be assessed so the Plaintiffs receive compensation commensurate with the benefits conferred by such grants or allocations.

123. The Plaintiffs further allege that some of the wrongful dispossession of Cat Lake's Aboriginal Title Area is in the form of licences or easements for transportation, communication, and electrical transmission. The Plaintiffs do not request that such interests be vacated by the Court; but if the Court awards damages, pursuant to the alternative claims herein, the Plaintiffs ask that such damages be assessed so the Plaintiffs receive compensation commensurate with the benefits conferred by such licences or easements.

**Mining Interests:**

124. The Plaintiffs state that various mining activities have occurred on their Aboriginal Title Lands in the past and continue.

125. The Plaintiffs state that the mining activities have occurred on their Aboriginal Title Lands by virtue of the *Mining Act*, R.S.O. 1990, c. M.14, the *Mining Amendment Act*, R.S.O. 2009, c. M.14, the *Public Lands Act*, R.S.O. 1990, c. P.43, and other

legislation of the Defendant Ontario.

126. The Plaintiffs state that the free entry mining regime which forms part of the above-mentioned Ontario mining legislation is unconstitutional or is inoperative to the extent that it confers rights to private parties in respect of the lands that are part of the Aboriginal Title Area contrary to the rights recognized by section 35(1) of the *Constitution Act, 1982*.
127. The Plaintiffs state that the free entry mining regime administered by Ontario allows for the alienation of rights of the Plaintiffs' lands by virtue of a mining claim being filed without any prior notice, consultation, accommodation or consent by the Plaintiffs.
128. The Plaintiffs state that throughout the implementation of the free entry mining regime, Ontario and various private mining interests have had substantial financial resources to advance their mining activities, whereas the Plaintiffs have had limited financial resources, manpower, education, training and knowledge to enable its employees and people to participate in and respond to mining activities on its Aboriginal Title Lands.
129. The Plaintiffs state that its culture and identity form a collective property and financial regime where all activities by Chief and Council must be reported to the Band Members, who in turn must be informed and consulted with prior to the

**Plaintiffs arriving at a consensus as to what should be done. This cultural process takes time. The Plaintiffs state that the Ontario mining regime permits mining activity at all levels without meaningful consultation, and does not accommodate and respect the above aspects of the Plaintiffs' culture and identity.**

- 130. The Plaintiffs state that they have not had sufficient financial resources and manpower to document what Ontario has been permitting mining prospectors and miners to do on their lands.**
- 131. The Plaintiffs state that the mining activities on the Aboriginal Title Lands conducted to date have affected and modified the said lands to such an extent that the Plaintiffs' Band Members' cultural relationship with the lands has been interrupted, and in some cases destroyed.**
- 132. The Plaintiffs state that once a mining claim is registered, Ontario allows the holder of the claim to conduct certain activities on the lands, shoreline and water that compromise and alter the lands without even any notice to the Plaintiffs. Such a claim holder is entitled to apply for permission to carry out further exploration and development of a claim up to and including the establishment of a mining operation. The holder of the claim was entitled eventually to be allowed by the Defendant Ontario to convert portions of their mining claims to patented lands to encourage mining development. This mining program permanently alienates the said lands from the Plaintiffs.**

133. The Plaintiffs state that all mining activities and permits by Ontario effectively prevent the Plaintiffs from using and enjoying parts of its Aboriginal Title Lands, and from effectively asserting such title in any effective way.
134. The Plaintiffs request an interlocutory and final order including an injunction or declaration that any rights or interests of private parties that may be associated with mining claims registered under the Ontario *Mining Act*, R.S.O. 1990, c. M.14, and *Mining Amendment Act*, R.S.O. 2009, c. M. 14, the *Public Lands Act*, R.S.O. 1990, c. P.43, and other legislation passed by the Defendant Ontario are subject to the Plaintiffs' Aboriginal Title and may be exercised only with the free, prior and informed consent of the Plaintiffs.
135. The Plaintiffs further allege that large portions of their traditional lands have been licenced to participants in the forest industry. The Plaintiffs say that the privileges conferred by such licences severely and unjustifiably infringe their land interests and cultural activities on the lands and water. The Plaintiffs ask for an interlocutory and final order that all such new or renewed licences, or interests derived therefrom, require the free, prior and informed consent of the Plaintiffs before they are effective.
136. The Plaintiffs further allege that portions of their traditional lands have been appropriated by the Crown, for its own use, or for conservation, preservation, or recreation purposes, including provincial parks. The Plaintiffs say that these

purposes have a lower priority than their land interests, and ask that the declarations requested herein include that all such appropriations should be transferred to the Plaintiff First Nation.

**United Nations Declaration on the Rights of Indigenous Peoples:**

137. The Plaintiffs plead and rely upon the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). September 13, 2007. UNDRIP was adopted by the UN General Assembly on September 13, 2007. UNDRIP reflects a consensus of the international community on the rights of Indigenous peoples. Both the Canadian and Ontario governments have publically committed to the full implementation of UNDRIP.
138. Article 8 of UNDRIP protects the Plaintiffs against any action that disposes them of their lands and resources so as to deprive the Plaintiffs of their cultural identity.
139. Article 11 of UNDRIP protects the rights of the Plaintiffs to pursue their cultural traditions and customs on the lands and the right to maintain, protect and develop archaeological and historical sites and artefacts.
140. Articles 12 and 13 of UNDRIP allows the Plaintiffs to protect and maintain cultural sites and the plants that grow on the lands.
141. Articles 25, 26, 29 and 32 of UNDRIP protects the Plaintiffs' Harvesting Rights

including:

- a. the Nation's right to its traditional territories, lands, waters, and environment;
- b. the right to self-determination regarding the uses of its territories; and, crucially
- c. the right to maintain and strengthen their distinctive spiritual relationship with their traditional territories.

142. The relief claimed by the Plaintiffs is more particularly as follows:

- a. A declaration that the Plaintiffs have not surrendered or otherwise alienated their traditional lands and continue to have Aboriginal Title and Aboriginal Rights to the lands and waters, including lands under water, and including the right to proactively use and manage the land; and are entitled to damages or equitable compensation for all disposessions and infringements of such rights prior to the date of the declaration; and that as a matter of reconciliation, and of adherence to the Honour of the Crown, that the Defendants are obligated to negotiate and attempt to settle in a treaty or in an adhesion to an existing Treaty, the terms under which the Plaintiffs will consent to share their territory including infringement of their aforesaid Aboriginal Rights and Title. The Plaintiffs ask that the declaration include guiding principles for negotiations, including that the Plaintiffs are entitled to compensation for disposessions and infringements on the basis referred to herein, and that the Plaintiffs' interests in the lands will be reinstated when the land is no longer used for the purposes mentioned, unless otherwise agreed. Further, that the Plaintiffs' interest in the lands will be reinstated upon the expiry of the applicable leases, licences or

land use permits, unless otherwise agreed. The Plaintiffs state that all mining activities should be stopped with respect to the mining claims, mining permits and patented lands obtained by virtue of having filed a mining claim, and then converting the mining claim to patented land with the cooperation of the Province of Ontario pursuant to the provisions of the *Mining Act*, R.S.O. 1990, c. M.14, *Mining Amendment Act*, R.S.O. 2009, c. M.14, the *Public Lands Act*, R.S.O. 1990, c. P.43, and other Provincial legislation. The said mining activities should only continue with the written consent of the Plaintiffs in the form of a Band Council Resolution signed by a quorum of Chief and Council.

- b. In the alternative, if the Court does not grant the aforesaid declaration, and the Crown has established that any of the Plaintiffs' Aboriginal Title and Aboriginal Rights were extinguished otherwise than under Treaty 9, the Plaintiffs claim damages, or equitable compensation, for breach of fiduciary duty committed prior to such extinguishment, by dispossession and infringement, and for failure to pay compensation at the time of such extinguishment. The Plaintiffs say that the Crown governments at all relevant times enjoyed a monopoly on the right to treat for the Plaintiffs' land interests, and simultaneously enjoyed the exclusive power to infringe those interests by regulation, and thus the Plaintiffs were vulnerable to the discretion and power of the Defendants. The Plaintiffs say that instead of treating for their land interest, and respecting them until dealt with in a treaty, the Crown governments acted so as to damage and deprive the Plaintiffs both prior to and at the time of such extinguishment. The Plaintiffs say this constituted a breach of fiduciary duty, and dishonoured the

Crown, and they claim equitable compensation or damages in amounts to be assessed.

- c. In the further alternative, if the Court finds that the Plaintiffs do not have unsurrendered rights and title as aforesaid and their Aboriginal Rights and Title are subject to Treaty 9, the Plaintiffs claim damages or equitable compensation for prior breaches of fiduciary duty by dispossession and infringements and for breaches of fiduciary, constitutional and contractual duties, for failure of the Crown to provide to the Plaintiffs the consideration called for in the Treaty. The Plaintiffs say that includes promises by the Crown of:
- (i) the right to hunt, fish, trap and gather as they have always done;
  - (ii) reservations of land, including water, land under water, wildlife and plant life over which they will have jurisdiction;
  - (iii) continuing land use interests jurisdictions and prerogatives in their traditional use areas; and
  - (iv) financial compensation for infringement of land interests, based on the wealth produced from the land.

The Plaintiffs say the Crown has breached each of the above promises, and claim equitable compensation or damages in amounts to be assessed.

143. The Plaintiffs say:

- a. that their compensation or damages must include amounts:
- (i) for failure of the Crown to provide for reservations of land over which they have jurisdiction, of a size and character suitable for the Plaintiffs' needs

and including all of the waters, and land under water, and wildlife and plant life therein;

- (ii) for failure of the Crown to honour the Plaintiffs' continuing land interests in their traditional use areas, and
- (iii) for failure to pay financial compensation for infringement of their land interests.

144. The Plaintiffs say that the aforesaid compensation or damages cannot be calculated by reference to market value of the affected land, because the Crown has conducted itself such that there is no market to serve as a reference. The Crown has asserted and retained legal title to virtually all of the territory, and bestows interests in the produce of the land, principally timber and minerals, at low non-market prices, to subsidize industrial resource extraction. The Plaintiffs say their lack of reserve land over which they exercise jurisdiction, and their exclusion from exercising land interests in their traditional use areas, enhance such subsidies, by depopulating the land.

**Unjust Enrichment:**

145. The Plaintiffs state that the Defendants have been enriched by the financial benefits taken from the Aboriginal Title Area without a Treaty being signed, and the enrichment corresponds to a deprivation suffered by the Plaintiffs.

146. The Plaintiffs state that there was no reason in law or juristic reason for the

Defendants retaining the benefits from the Aboriginal Title Area making the retention unjust.

147. The Plaintiffs state that the financial gains obtained by the Defendants from the Aboriginal Title should be restored to the Plaintiffs as an innocent party. The Plaintiffs plead upon the doctrine of restitution. The Plaintiffs claim they are entitled to equitable compensation for their loss.

148. The Defendants have been enriched by their appropriation, without legal authority, of the benefits derived from the use and exploitation of the Aboriginal Title Area, while the Plaintiffs have been deprived of the said benefits.

**Construction and/or Resulting Trust:**

149. The Plaintiffs say that the Honour of the Crown and the fiduciary duty owed by the Defendants to the Plaintiffs are duties of the Crown in its integrity, to be carried out by whichever of Her Majesty's governments or ministers possess the relevant power. The Plaintiffs' claims for relief are therefore against the Defendants jointly and severally.

150. The Plaintiffs state that their Aboriginal Title to the Aboriginal Title Area has never been extinguished, however the Defendants purport to own legal title to the said lands and water.

151. In addition, the Defendants have purported to convey legal title to the Plaintiffs' lands to third parties with the result that the Defendants have derived revenue and taxes from the Plaintiffs' lands.
152. The Plaintiffs state that prior to the Defendants purporting to take legal title to the Plaintiffs' Aboriginal Title Lands, the Plaintiffs were stewards of the said lands and managed the said lands in balance with the natural world so as to be able to sustain their people in perpetuity.
153. The Plaintiffs state that before the Defendants arrived, the Plaintiffs invested time and effort to maintain the lands in a balance with the natural world. The Plaintiffs state that their culture and beliefs required the Plaintiffs to maintain the natural world.
154. The Plaintiffs state that the Defendants have destroyed the balance with the natural world, and damaged the Plaintiffs' lands.
155. The Plaintiffs state as an alternative remedy to a Declaration that the Plaintiffs still hold Aboriginal Title to the lands, the Plaintiffs state the Defendants are holding the said lands in trust for the Plaintiffs pursuant to the doctrine of constructive and/or resulting trust, and title to all of the said lands should be restored to the Plaintiffs where possible. This remedy is pleaded in addition to the Defendants accounting for and restoring to the Plaintiffs any revenue, taxes and benefits derived from the

**said lands.**

**156. The Plaintiffs say the aforesaid benefits are the value of the gross benefit in each year, as if such benefit had been paid to the Plaintiffs or to trustees on their behalf, on a timely basis, and prudently invested, to the date of judgment herein. The Plaintiffs claim an estimated amount of \$2,000,000,000.00 as adjusted prior to trial after an accounting has been provided by the Defendants.**

**157. The Plaintiffs further claim:**

- a. their costs on a substantial indemnity basis, including interim and advance costs;**
- b. their interim and final disbursements, including experts fees, and out-of-pocket expenses;**
- c. such interim and interlocutory relief as may be required to prevent the Plaintiffs' land interests from being permanently damaged or altered pending final disposition of this proceeding;**
- d. pre-judgment and post-judgment interest; and**
- e. such further and other relief as this Honourable Court may deem just.**

**158. It is submitted that the Crown breached its fiduciary obligations owed to the Plaintiffs, in respect of the Aboriginal Title Area, by:**

- a. interfering with, or failing to protect against interference with, the Aboriginal Title of the Plaintiffs;**

52

- b. failing to ensure strict compliance with the protective provisions of the *Royal Proclamation of 1763*, and the *Dorchester Regulations*, December 26, 1794, and Crown policy, regarding Indian lands and their surrender, which underlies, and is reflected in, the *Royal Proclamation*; and
- c. permitting third parties to use, exploit, extract resources from, and profit from the Area without accounting to the Plaintiffs thereof;

159. The Plaintiffs further say that the Crown's conduct, as aforesaid, has been so callous, unjust, predatory, discriminatory, and contrary to the Honour of the Crown and to constitutional principles, that the Court should award a further sum for aggravated, exemplary and punitive damages as determined by the Court.

160. The Plaintiffs plead and rely upon the following constitutional and legislative enactments:

*The Royal Proclamation, 1763;*

*The Dorchester Regulations, December 26, 1794;*

*The Indian Act, R.S.C. 1985, and its predecessors;*

*The Constitution Act, 1867, sections 91(24) and 109; and*

*The Constitution Act, 1982, section 35.*

53

161. The Plaintiffs propose that this action be tried at Thunder Bay, Ontario.

Date of issue: \*

*(Name address and telephone number of plaintiff's  
solicitor or plaintiff)*

**PETER HOLLINGER LAW OFFICE  
PROFESSIONAL CORPORATION**

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LSUC #: 22440S

PETER T. HOLLINGER,  
Solicitor for Plaintiff(s)

Biw-zaaga'iganing Nitam Anishinabeg

**CES**

0 10 20 30

Scale

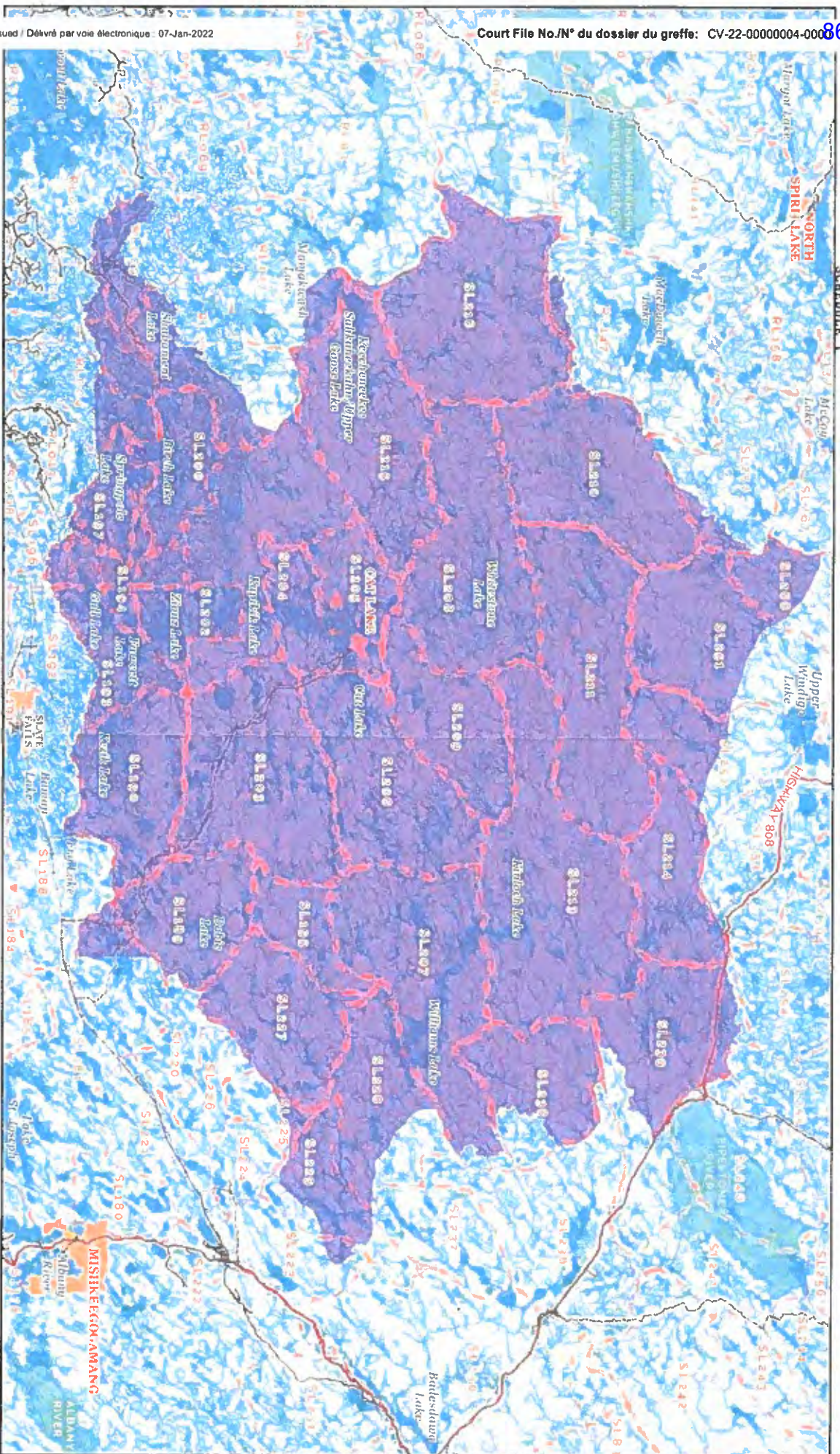
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N



- | Legend       | Map             |
|--------------|-----------------|
| Communities  | Watercourse     |
| Utility Line | Waterbody       |
| Minor Road   | First Nation    |
| Local Road   | Provincial Park |
| Railway      | Tithe Area      |

The following methods and data are provided to ensure that the results are reproducible. Only data that may contain confidential information or errors or omissions are excluded. This product is not to be used as a scientific basis for research. CE Strategics Ltd. may be liable in any way for the use of or reliance upon the map or information on the map provided by CE Strategics. © December 2021 NAD 83/11: 5005, UTM 18Q UTM 18Q



**EF RUSSELL WESLEY, ET AL****PLAINTIFF(S)**

and

**ATTORNEY GENERAL OF CANADA and HER MAJESTY  
THE QUEEN IN RIGHT OF ONTARIO****DEFENDANT(S)***Title of proceeding)***Court File No.:****SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Thunder Bay**STATEMENT OF CLAIM***(Form 14A under the Rules)***DYE & DURHAM COMPUTERIZED FORMS SERVICE***Name, address and telephone number of solicitor or party***PETER HOLLINGER LAW OFFICE  
PROFESSIONAL CORPORATION  
Barrister and Solicitor  
805 E. Miles Street  
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LSUC#: 22440S****PETER T. HOLLINGER,  
Solicitor for Plaintiff(s)**

THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO AFFIRMED  
BEFORE ME REMOTELY ON MONDAY, MARCH 31, 2025 IN  
ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.

Court File No:

CU-16-589335

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CONSTANCE LAKE FIRST NATION

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA and  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

## STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE

-2-

TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

ISSUE DATE:

Issued by "M. Benton"  
Local Registrar

Address of court office:

10<sup>th</sup> Floor  
393 University Avenue  
Toronto, Ontario  
M5G 1E6

**TO:** The Attorney General of Canada  
c/o Director, Ontario Regional Office  
Ontario Regional Office  
Department of Justice Canada  
The Exchange Tower  
130 King St. W., Suite 3400, Box 36  
Toronto, Ontario  
M5X 1K6

**AND TO:** Her Majesty the Queen in Right of Ontario  
Ministry of the Attorney General  
Crown Law Office – Civil  
720 Bay St., 8<sup>th</sup> Floor  
Toronto, Ontario  
M7A 2S9

### CLAIM

#### I. The Plaintiff claims:

- a. A declaration that one or both of the Defendants infringed the treaty rights of Constance Lake First Nation in the historically and culturally significant area known as "Pagwa" by:
  - i. Installing a military airfield, radar domes, power plant, barracks, mess hall, maintenance buildings, vehicle storage, and administrative buildings (the "Military Installation") at Pagwa when they knew or ought to have known that Constance Lake First Nation heavily used Pagwa to exercise its treaty rights, and had a significant use and occupancy connection to the Pagwa area, and despite the Defendants having options to locate the Military Installation elsewhere;
  - ii. Failing to clean up the Military Installation after it was no longer in use, leaving it highly contaminated and a physical hazard, which prevents Constance Lake First Nation members from exercising their treaty rights at Pagwa;
  - iii. Taking up land in such a way that Constance Lake First Nation has no meaningful treaty rights left, or no meaningful ability to exercise treaty rights and the use and occupancy connections to the land attendant to them, at Pagwa being a highly important cultural and historical area within its traditional territory;

- b. A declaration that one or both of the Defendants' infringement on Constance Lake First Nation's treaty rights is unjustified;
- c. A declaration that one or both of the Defendants' decision to leave the Military Installation contaminated and a physical hazard after it was no longer needed for their purposes amounts to private nuisance, public nuisance, and/or trespass;
- d. A declaration that one or both of the Defendants owe Constance Lake First Nation a fiduciary duty regarding Pagwa and the uses of Pagwa because of Constance Lake First Nation's special interest in such lands, including but not limited to the heavy exercise of treaty rights, special historical and cultural attachment to the area, and the Defendants' discretionary control over such lands and uses of it;
- e. A declaration that the installing of the Military Installation by one or both of the Defendants and/or their failure to take sufficient steps to remediate the adverse effects of the Military Installation at Pagwa is a breach of the Defendants' fiduciary duty and/or inconsistent with upholding the Honour of the Crown;
- f. Damages from the Defendants, either jointly or severally, in an amount to be determined at or before the trial for:
  - i. Interference with the exercise of Constance Lake First Nation's profit-à-prendre;

-5-

- ii. Damage and destruction to Constance Lake First Nation's heritage, traditional, and cultural resources; and
- iii. Unreasonable interference with Constance Lake First Nation's use and enjoyment of its traditional territory;
- g. Damages from the Defendants, either jointly or severally, for breach of fiduciary duty in an amount to be determined at or before the trial of this action;
- h. Damages from the Defendants, either jointly or severally, for infringement of Constance Lake First Nation's treaty rights in an amount to be determined at or before the trial of this action;
- i. Damages from the Defendants, either jointly or severally, equivalent to the full cost of investigation and remediation of the lands (at Pagwa) effected by the Military Installation, in an amount to be determined at or before the trial of this action;
- j. Aggravated, exemplary and/or punitive damages in the amount of \$10,000,000.00;
- k. Pre-judgment and post-judgment interest, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C43;
- l. Its costs in this proceeding; and

- m. Such further and other relief as the circumstances of the case may require and this Honourable Court deems just.

#### THE PARTIES AND PAGWA

2. The Plaintiff, Constance Lake First Nation, has the capacity of a "Band" as defined by the *Indian Act*, R.S.C. 1985, c. I-5, as amended ("*Indian Act*"). Constance Lake First Nation occupies Reserve No. 92, located 42 kilometres west of Hearst, Ontario. Constance Lake First Nation is an aboriginal people as recognized in section 35 of *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c. 11 ("*Constitution Act*") and its treaty and aboriginal rights are protected under that section.
3. Constance Lake First Nation is a beneficiary of Treaty No. 9.
4. The Defendant, the Attorney General of Canada ("Canada"), is a party to this action under s. 3(b), s. 21(1), s. 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
5. The Defendant, Her Majesty the Queen in Right of Ontario ("Ontario"), is a party to this action under s. 3 and s. 5(1) of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P-27.
6. Pagwa is an area of land within the traditional territory of Constance Lake First Nation, approximately 80 kilometres northwest of the Constance Lake First Nation Reserve No. 92, which Constance Lake First Nation members and their ancestors have used, occupied and have had strong cultural connection to, since well before

-7-

Constance Lake First Nation became a beneficiary of Treaty 9. Constance Lake First Nation members sought to have a reserve at Pagwa.

7. At all material times, Canada and Ontario or either of them (hereinafter defined as the "Crown") owned, had constructed and operated, and/or authorised the operation of the Military Installation at Pagwa.
8. At all material times, the Crown owed Constance Lake First Nation a fiduciary duty regarding Pagwa because of Constance Lake First Nation's special interest in such lands, including heavy exercise of treaty rights and special historical and cultural attachment to the area.
9. At all material times, the Crown held discretionary control over the location chosen for the Military Installation.

#### **MATERIAL FACTS**

10. Constance Lake First Nation is primarily the successor of the English River Band.
11. At the time that Treaty No. 9 was first being entered into, in 1905, the indigenous families and persons found at English River (the "English River People") were first recorded by the Treaty Commissioners to be part of the Fort Albany Band.
12. The Treaty Commissioners and/or the Crown later decided that the English River People were their own band. A reserve was assigned for the English River People in 1905 at a point on the Kenogami River three miles below the English River Post of the Hudson's Bay Company.

-8-

13. Many English River People (and others) used, occupied, and were connected to lands covering broad areas, for hunting, trapping, fishing, and other harvesting and ceremonial purposes.
14. The reserve system and other factors caused the English River People (and others) to reside more permanently in villages, including on reserves. However, the English River reserve was never occupied by more than a few individuals.
15. Rather, English River People had strong historical and cultural use and occupancy of land well beyond where the English River reserve had been located, especially at Pagwa.
16. Throughout the 1920s and 1930s, many English River People relocated to Pagwa. By 1938, there was a village at Pagwa.
17. Both Canada and Ontario were parties to Treaty No. 9 and both took the position that they had to consent to the location of reserves created pursuant to Treaty No. 9.
18. In 1941, the Diocese of Moosonee passed a resolution requesting that the Federal Department of Indian Affairs establish a reserve at Pagwa for the English River People. The Federal Department of Indian Affairs, however, refused on the basis that the Province of Ontario would not favour the idea.
19. By 1943, the Federal Department of Indian Affairs considered creating a new band composed of all the English River People living at Pagwa (and others living in the

-9-

area), and proposed a new reserve be established at Calstock, Ontario, approximately 80 kilometres southeast of Pagwa.

20. In 1943, the Province of Ontario agreed to convey an area of 7656 acres of land for purposes of a reserve at Calstock.

21. The English River People living at Pagwa (and others living at Pagwa) held a meeting in 1944, and a majority of the eligible voters voted in favour of the reserve at Calstock, although many such persons were opposed and wanted a reserve at Pagwa.

22. On or about March 16, 1945, Constance Lake First Nation was created as a Band and Reserve No. 92 was established at Calstock, comprising English River People (many of whom were living at Pagwa) and others. The English River Band ceased to exist as a separate entity.

23. In 1950, 36 members of Constance Lake First Nation signed a petition to Canada requesting a reserve at Pagwa, but this was refused by Canada.

24. The Military Installation was built at Pagwa between 1952 and 1953 as part of the Pinetree Line, which was part of the different lines of air defence constructed in Canada during the Cold War.

25. The Military Installation is located in Cochrane District in Henderson and Bicknell Townships. It is approximately two kilometres west of the village established by the

-10-

English River People at Pagwa, which was located along the railroad to the east of Pagwachuan River.

26. When construction of the Military Installation was completed, the United States Air Force moved in. The United States Air Force continued to occupy and operate the Military Installation until on or about May 29, 1963 when the Military Installation was handed over to the Royal Canadian Air Force ("RCAF").
27. The RCAF radar squadron was disbanded on or about October 1, 1966 and the last RCAF personnel left the Military Installation on or about December 15, 1966. The Military Installation has been abandoned since then and was at all material times and still is a serious environmental and physical hazard.
28. The environmental hazards at the Military Installation include:
  - a. Asbestos building materials left throughout the site;
  - b. Transformers and other electrical equipment left at the site containing PCBs;
  - c. Hydrocarbon contamination as a result of spills, disposal of waste products, heating fuel consumption, and operation of aircraft;
  - d. Chemical contamination from broadcast spraying of insecticides for mosquito control;
  - e. Unmanaged landfills; and
  - f. Untreated sewage discharge into the Pagwachuan River during/after the site's operation.

-11-

29. The physical hazards at the Military Installation include:

- a. Unstable structures;
- b. Open foundations;
- c. Collapsing bunkers; and
- d. Open manholes and water reservoirs.

30. Constance Lake First Nation members, including the English River People, traditionally used and occupied, and continue to use and occupy, a large area surrounding their reserves at English River and Calstock, including Pagwa, known as their traditional territory. Members of Constance Lake First Nation have lived and relied on the land in their traditional territory for generations. Their traditional territory includes all of the area at and surrounding the Military Installation.

31. The relationship that Constance Lake First Nation has to the land in its traditional territory is profound and interconnected with all things. The land is the source of life, spirituality, teaching, society, economy and culture.

32. The relationship Constance Lake First Nation has with the land in its traditional territory is governed by Anishinaabe law, which recognizes Constance Lake First Nation's right to use, occupy, and live from its land and resources and which gives rise to a sacred duty to protect the land by ensuring that it is able to sustain future generations.

33. Since well before Constance Lake First Nation became a beneficiary of Treaty No. 9 and before its predecessor, the English River Band, became a party to Treaty No. 9,

-12-

their members engaged in a variety of practices within their traditional territory and especially at Pagwa, including:

- a. Hunting;
- b. Fishing;
- c. Trapping;
- d. Gathering plants for food;
- e. Gathering plants for medicine;
- f. Sharing and transmitting traditional knowledge about the land, which supports the above; and
- g. Participating in ceremony and spiritual practices in respect of the land and in aid of the above.

34. The above practices constitute treaty rights, under Treaty No. 9, guaranteed by section 35(1) of the *Constitution*. Such practices, and the use and occupancy connections to the land attendant to them, were particularly prevalent at Pagwa.

## **THE CAUSES OF ACTION**

### **Trespass**

35. Constance Lake First Nation claims that the treaty rights listed in paragraph 33 – including the use and occupancy connections to the land attendant to them – constitute property rights akin to that of a *profit-à-prendre* and are deserving of the same legal protections. Constance Lake First Nation claims that it and its members have a right to the use and enjoyment of their property rights free from unreasonable interference.

36. Constance Lake First Nation further claims that it and its members have rights under the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) and UNDRIP guides the interpretation of their rights under section 35 of the *Constitution*. UNDRIP is part of international law and Canada has ratified it. UNDRIP affirms the property aspects of the exercise of section 35 treaty rights listed in paragraph 33, above.

37. The relevant Articles of UNDRIP in this instance are:

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals...

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive special relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used and acquired.

-14-

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.

#### Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources...

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
  3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.
38. At all material times, the Crown was aware, or ought to have been aware, of Constance Lake First Nation's and its members' rights and interests in the lands at Pagwa.
39. Constance Lake First Nation and its members are now excluded from using Pagwa for the exercise of their treaty rights, including the use and occupancy connections to the land at Pagwa attendant to their treaty rights.
40. Constance Lake First Nation asserts that the Crown caused and/or permitted environmental and physical hazards from the Military Installation to remain upon the lands at Pagwa, which directly and unlawfully interfered with the exercise of its and its members' treaty rights, including the use and occupancy connections to the land at Pagwa attendant to these treaty rights. This constitutes a trespass on Constance Lake First Nation's proprietary interests. Further, each day that Constance Lake First Nation and its members are prevented from exercising their treaty rights constitutes a new trespass for which the Crown is liable.

### Nuisance

41. Constance Lake First Nation asserts that by causing and/or permitting environmental and physical hazards, as described in paragraphs 28 and 29, to remain upon the lands at Pagwa, this constitutes an unreasonable interference with Constance Lake First Nations' proprietary interests, particularly it and its members' exercise of their treaty rights including the use and occupancy connections to the land at Pagwa attendant to these treaty rights, and so creates a nuisance for which the Crown is liable.
42. Constance Lake First Nation further pleads that the Crown knew or ought to have known that the environmental and physical hazards present at the Military Installation were, at all material times, dangerous and likely to cause harm if they were allowed to remain at Pagwa. The Crown is therefore subject to strict liability as set out in *Rylands v Fletcher*.
43. Further, and in the alternative, Constance Lake First Nation claims that the Crown's failure to clean up the Military Installation has unreasonably interfered with the rights of the public to the use and enjoyment of the affected area, constituting a public nuisance for which the Crown is liable.
44. Constance Lake First Nation pleads that it has suffered special damage over and above that suffered by the general public as a result of the adverse effects to the exercise of its treaty rights and the use and occupancy connections to the land attendant to them at Pagwa, and as such is entitled to bring a private action against the Crown for the public nuisance.

**Breach of Treaty Obligations**

45. The dangerous environmental and physical hazards at the Military Installation have had a serious adverse effect on the exercise of Constance Lake First Nation's and its members' treaty rights at Pagwa, causing a complete or almost complete barrier to the exercise of such rights and the use and occupancy connections to the land attendant to them at Pagwa.

46. Constance Lake First Nation pleads that the Crown knew or ought to have known of the particular importance of Pagwa to Constance Lake First Nation and its members for exercise of treaty rights and the use and occupancy connections to the land attendant to them, and knew or ought to have known that the Military Installation, and the hazards from it, would create such a barrier such that no meaningful treaty rights, or no meaningful ability to exercise treaty rights (including the attendant use and occupancy connections to the land) in the area at Pagwa would remain, which amounts to an infringement of Constance Lake First Nation's treaty rights that cannot be justified.

**Breach of Fiduciary Duty**

47. Constance Lake First Nation pleads that the Crown knew, or ought to have known, of the particular importance of Pagwa to Constance Lake First Nation and its members for the exercise of treaty rights and the use and occupancy connections to the land attendant to them, and that Constance Lake First Nation members had such strong interest in Pagwa that they sought to establish a reserve there.

-18-

48. Constance Lake First Nation asserts that the Crown had discretionary control over where the Military Installation would be located in the Province of Ontario and over the land and uses of the land at Pagwa, being "Crown lands."
49. Constance Lake First Nation pleads that the Crown's failure to address the environmental and physical hazards that remain at the Military Installation amounts to a breach of the Crown's fiduciary obligation to diligently and purposively fulfil its duties of loyalty, good faith, full disclosure, and to ensure that it acts in the best interests of Constance Lake First Nation, in respect of Pagwa and its uses, in accordance with the Honour of the Crown.
50. Constance Lake First Nation further pleads that the Crown's conduct merits condemnation and punitive damages sufficient to act as a deterrent against such conduct in the future.
51. Constance Lake First Nation pleads and rely upon *The Constitution Act, 1867*, 30 & 31 Viet, c. 3; *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c. 11; the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P-27; the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50; and the *Rules of Civil Procedure*, R.R.O., 1990, Reg. 194.
52. Notice of this action was given to Ontario by letter dated 3 November 2017, pursuant to s. 7 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27.

-19-

53, Constance Lake First Nation proposes that this action be tried at the City of Toronto,  
in the Province of Ontario.

January 2, 2018

Olthuis, Kleer, Townshend LLP  
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Toronto, Ontario M5H 3E5

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Lawyers for the Plaintiff

CONSTANCE LAKE FIRST NATION  
Plaintiff

and THE ATTORNEY GENERAL OF  
CANADA, et al  
Defendants

Court File No.:

CU-18-589335

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

SERVICE OF A COPY  
ADMITTED THIS 22<sup>nd</sup> DAY OF January 2018  
Crown Law Office (Civil Law)  
MINISTRY OF THE ATTORNEY GENERAL  
FOR ONTARIO  
Per [Signature] Time 12:40 PM  
720 BAY STREET  
TORONTO, ONTARIO M7A 2S9

THIS IS EXHIBIT "D" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.

AMENDED THIS 11-FEB-2025 PURSUANT TO  
 REG. NO. 26.02 ( A )  
☒ RULE/LA RÈGLE 26.02 ( A )  
☐ THE ORDER OF \_\_\_\_\_  
 L'ORDONNANCE DU \_\_\_\_\_  
 DATED / FAIT LE \_\_\_\_\_  
 REGISTRAR "L. LALSON"  
 SUPERIOR COURT OF JUSTICE GREFFIER COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-20-00646347-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

GINOOGAMING FIRST NATION

Plaintiff

- and -

~~HIS HER~~ MAJESTY THE KING QUEEN IN RIGHT OF ONTARIO, AND THE  
 DIRECTOR OF EXPLORATION ~~THE QUATERNARY MINING & EXPLORATION~~  
~~COMPANY LIMITED, HARDROCK EXTENSIONS INC., MICHAEL MALOUF and~~  
 WILLIAM KERR

Defendants

---

**AMENDED AMENDED STATEMENT OF CLAIM**

---

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE

TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO  
PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING  
A LOCAL LEGAL AID OFFICE.

Date November 4<sup>th</sup>, 2020  
August 4, 2023  
January 29, 2025  
ul

Issued by

"MOHAMMUN"

Local registrar

SUPERIOR COURT  
OF JUSTICE  
330 UNIVERSITY AVE.  
8TH FLOOR  
TORONTO, ONTARIO  
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Lawyers for His Her Majesty The King Queen in Right of Ontario and the  
**Director of Exploration**

**AND TO: The Quaternary Mining & Exploration Company Limited**  
**Suite 1401, 40 Richview Road**  
**Etobicoke, ON M9A 5C1**

**AND TO: William Kerr**  
**22 Greenwin Village Road**  
**North York, ON M2R 2S1**

## CLAIM

1. The plaintiff ~~seeks claims~~

- (a) A declaration that Ginoogaming First Nation ("Ginoogaming") has an existing Aboriginal right, and/or Treaty right pursuant to Treaty 9, protected under section 35(1) of the *Constitution Act, 1982*, to use and protect its burial grounds and other sacred areas, values, and sites within the part of its traditional territory outlined in Schedule "A" and including that part of it known as Wiisinin Zaahgi'igan, ("Sacred Areas Right");
- (b) A declaration that Ginoogaming has an existing Aboriginal right, and/or Treaty right pursuant to Treaty 9, protected under s. 35(1) of the *Constitution Act, 1982*, to practice spiritual and ceremonial reverence, traditions, and related practices within Wiisinin Zaahgi'igan ~~Sacred Areas~~ ("Sacred Practices Right");
- (c) A declaration that Ginoogaming has an existing Treaty right pursuant to Treaty 9, protected under s. 35(1) of the *Constitution Act, 1982*, to hunt, fish, trap, gather food and medicines, and engage in other sustenance activities and related/incidental activities within its traditional territory including Wiisinin Zaahgi'igan ("Harvesting Rights");
- ~~(d) A declaration that the Defendants His Majesty the King in Right of Ontario and the Director of Exploration (together, "Ontario") and The Quaternary Mining & Exploration Company Limited ("Quaternary") have infringed the Sacred Areas, Sacred Practices, and Harvesting Rights (together, "Rights") of Ginoogaming by permitting and carrying out mineral~~

~~exploration and development within Wiisnin Zaahgi'igan, including but not limited to by permitting for the "Ferau Project" (through Exploration Permit Number PR-18-000135, dated June 2019, issued under the Mining Act, RSO 1990, c.M-14, to the Defendant Quaternary (the "Ferau Permit"));~~  
~~such that Ginoogaming's Sacred Areas and Sacred Practices have been or would be desecrated and the identity, cultural survival, and psychosocial wellbeing of the people of Ginoogaming and the Nation as a whole would be irreparably harmed;~~

- (d) A declaration that the Mining Act interferences as set out at paragraph 11 have infringed Ginoogaming's Sacred Areas Rights, Sacred Practices Rights, and Harvesting Rights, (together "Rights"), including that Ginoogaming's Sacred Areas and Sacred Practices have been or would be desecrated and the identity, cultural survival, and psychosocial wellbeing of the people of Ginoogaming would be irreparably harmed;
- (e) A declaration that such infringements cannot be justified;
- (f) A declaration that the Defendants, His Majesty and the Director, (together "Ontario") ~~the Defendant Ontario~~ have failed to fulfill the Honour of the Crown by:
  - (i) Failing to discharge its responsibilities towards Ginoogaming in Wiisnin Zaahgi'igan in respect of Section 2 of the ~~under the~~ Mining Act (its purpose) ~~in respect of its purpose (s.2), the issuance of exploration permits including but not limited to the Ferau Permit, and the failure or refusal to revoke or suspend the such Permits;~~

- (ii) Failing to protect the Wiisnin Zaahgi'igan area from third party interference, and thereby failing to protect Ginoogaming Rights by allowing mineral exploration and development within Wiisnin Zaahgi'igan, by allowing mining claims to be registered, renewed, or transferred within Wiisnin Zaahgi'igan, and by refusing to cancel existing mining claims within Wiisnin Zaahgi'igan and to withdraw lands within Wiisnin Zaahgi'igan from further activity under the Mining Act; and including but not limited to at the Ferau Project, when it knew or ought to have known that these lands were priority selections of Ginoogaming in its Treaty Land Entitlement ("TLE") specific claim;
- ~~(iii) Failing to protect the Wiisnin Zaahgi'igan area from third party interference, and thereby failing to protect Ginoogaming Rights by failing to confirm that the Ontario Ministry of Energy, Northern Development and Mines ("ENDM") will deny mineral exploration and development within Wiisnin Zaahgi'igan, including but not limited to by failing to confirm that it will deny the Early Exploration Permit (Permit No. PR-20-000011, the "Caouette Project") sought by William Kerr, when it knew or ought to have known that these lands were priority selections of Ginoogaming in its TLE specific claim;~~
- (iii) Failing to confirm that it will not grant permits for exploration within Wiisnin Zaahgi'igan while the action is pending including permits for Michael Malouf and Quaternary

Exploration when exploration under a prior permit held by same was enjoined in a motion for an injunction brought pursuant to this action.

- (g) A declaration that the Defendant Ontario breached its Duty to Consult and Accommodate Ginoogaming with respect to all extant authorizations for mineral exploration and development within Wiisnin Zaahgi'igan, ~~including but not limited to with respect to the Ferau Permit;~~
- (h) A ~~a~~ declaration that s. 135(1) of the *Mining Act* is unconstitutional in violation of s. 35(1) of the *Constitution Act, 1982* or is inapplicable to the claims in the herein action;
- (i) Interim, interlocutory, and permanent injunctions or declarations or orders:
  - (i) ~~— Restraining the Defendant Quaternary and any representative, servant, agent, officer or invitee of same from proceeding with activity under the Permit or otherwise in Wiisnin Zaahgi'igan;~~
  - (ii) ~~— Restraining the Defendant William Kerr and any representative, servant, agent, officer or invitee of same from proceeding with activity under any Permit in respect of the Caouette Project or otherwise in Wiisnin Zaahgi'igan;~~
  - ~~(iii)~~ (i) Restraining the Defendant Ontario from issuing any permits or permissions to any person for any activity pursuant to the *Mining Act* in Wiisnin Zaahgi'igan without the consent of Ginoogaming or a declaration against Ontario to this effect;

(ii) Requiring Ontario to forthwith cancel, terminate or void any and all mining claims and exploration permits and plans registered or issued in any part of Wiisnin Zaahgi'igan.

- (j) Damages including equitable damages from the Defendants Ontario and Quaternary for unjustified infringements of Ginoogaming's Rights and for Ontario's breach of the Honour of the Crown and for breach of the Duty to Consult and Accommodate in respect of mineral exploration and development authorizations within Wiisnin Zaahgi'igan, including but not limited to the Feraw Permit, currently estimated in the amount of \$80 million;
- (k) Pre- and post-judgment interest, as may be applicable, pursuant to the Ontario *Courts of Justice Act*, RSO 1990, c C 43;
- (l) Costs on a substantial indemnity basis; and
- (m) Such further and other relief as counsel may advise and this Honourable Court may permit.

### **The Parties**

2. Ginoogaming First Nation is an Anishinaabe community and a beneficiary of Treaty 9. Ginoogaming is an "Aboriginal people" within the meaning of s. 35(1) of the *Constitution Act, 1982*, and has the capacity of an "Indian Band" within the meaning of the *Indian Act*, RSC 1985, c I-5. The people of Ginoogaming have lived in and relied upon the lands and waters of Wiisnin Zaahgi'igan from time immemorial.

3. His Majesty the King in Right of Ontario is the representative of the Crown designated by s. 14 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sch 17. Ginoogaming served notice of this claim on Ontario pursuant to s. 18 of the *Act* on August 17, 2020.
4. The Director of Exploration is appointed by the Minister pursuant to section 78 of the *Mining Act* and exercises statutory powers of decision under the *Mining Act* and its regulations.
5. ~~The Quaternary Mining & Exploration Company Limited is the holder of the Permit. Michael Malouf is the "Qualified Supervisor" of the Ferau Project.~~
6. ~~William Kerr is an applicant for an Early Exploration Permit (Permit No. PR-20 000011, the "Caouette Project").~~

#### **Ginoogaming and Wiisinin Zaahgi'igan**

5. 7. Ginoogaming's Indian Reserve is near Long Lac in northwestern Ontario. Its traditional territory centres on Long Lake and the tributaries that feed into it, and Wiisinin Zaahgi'igan is the Sacred Area near the lake set out in Schedule "A"
6. 8. Wiisinin Zaahgi'igan is a place of sustenance, worship, teaching, and healing for Ginoogaming. It is a place of profound spiritual, social, cultural, and material significance to Ginoogaming. It is a sacred place to Ginoogaming. The people of Ginoogaming have lived within, used, and protected the lands and waters of Wiisinin Zaahgi'igan since time immemorial.

- ~~7. 9.~~ The people of Ginoogaming protect and honour the ongoing relationship with their Ancestors and their Ancestors' burial places in Wiisinin Zaahgi'igan. The community's beliefs and associated traditions of honouring their Ancestors in Wiisinin Zaahgi'igan have been practiced since time immemorial and continue to the present day.

### **Ginoogaming's Rights in Wiisinin Zaahgi'igan**

- ~~10. Ginoogaming's Rights are practices, customs, or traditions integral to the distinctive culture of the people of Ginoogaming.~~
- ~~8. 11.~~ Members of Ginoogaming continue to engage in exercise of their Rights in a contemporary form, in Wiisinin Zaahgi'igan, to this day.
- ~~9. 12.~~ ~~Ginoogaming did not surrender its Rights in Treaty 9.~~ Ginoogaming's Harvesting Rights (and rights incidental thereto, such as maintaining hunting cabins and travel routes) are enshrined in the written version of Treaty 9. **Ginoogaming's Sacred Areas Right and Sacred Practices Right were not surrendered in or through Treaty 9. They either remain as Aboriginal or inherent rights being practices, customs or traditions integral to the distinctive culture of Ginoogaming, or they became Treaty rights when Ginoogaming entered into Treaty 9.**
- ~~12. (i) Despite the importance of Wiisinin Zaahgi'igan to the exercise of Ginoogaming's Rights, there are many mining claims recorded within Wiisinin Zaahgi'igan that were recorded without the consent of, or consultation or accommodation being afforded to, Ginoogaming, leading to mineral exploration and development within this area such as the Feran Project described herein.~~

### ~~The Ferau Permit and the Ferau Project~~

5. ~~On or about June 21, 2019, ENDM issued the Ferau Permit to Quaternary Mining & Exploration Company Limited ("Quaternary") under s. 78.3 of the Mining Act. It purports to allow Quaternary to conduct mechanized drilling, mechanized stripping, pitting and trenching, line cutting, and geophysical survey work in the heart of Wiisimin Zaahgi'igan. This exploration is known as the Ferau Project.~~
6. ~~On or about May 29, 2020, the Qualified Supervisor of the Ferau Project, Mr. Malouf, gave notice to ENDM of his intention to begin the Project as early as July 10, 2020.~~
7. ~~ENDM forwarded Mr. Malouf's notice to Ginoogaming on or about June 1, 2020. This was when Ginoogaming first understood the immediate implications of the Ferau Permit. Ginoogaming has communicated to Ontario that no forestry, mineral exploration and development, or any industrial activity is acceptable in Wiisimin Zaahgi'igan for decades.~~

### ~~Ginoogaming's Response to the Ferau Project Notice~~

8. ~~Upon learning about the Ferau Project Permit notice and its implications, Ginoogaming immediately took steps to protect Wiisimin Zaahgi'igan.~~
9. ~~At the First Nation's own expense, Ginoogaming retained three separate independent experts to prepare expert reports on Wiisimin Zaahgi'igan and the cultural, spiritual, archaeological, and material values within the territory. These reports were all provided to Ontario between July 20 July 28, 2020.~~

- ~~10. Ginoogaming also communicated extensively with Ontario through ENDM, the Premier's Office, and other related Ministries, seeking to engage in consultation and accommodation concerning the Ferau Permit.~~
- ~~11. Ontario has taken no action to consider suspension or revocation of the Ferau Permit, to cease the issuance of any other permits or authorizations within Wiisimin Zaahgi'igan, or taken any other action to protect Wiisimin Zaahgi'igan and Ginoogaming's Rights.~~

#### ~~The Caouette Project~~

- ~~12. On or about February 7, 2020, Ginoogaming received an email from ENDM concerning the Caouette Project.~~
- ~~13. The proposed Caouette Project concerns land in the heart of Wiisimin Zaahgi'igan and just South of the Reserve border. Under the Caouette Project Exploration Permit, the applicant Mr. Kerr seeks to engage in mechanized stripping, pitting, and trenching.~~
- ~~14. On March 3, 2020 Ginoogaming Chief Celia Echum responded to ENDM and the project proponent, Mr. Kerr, stating that the Caouette Project could not proceed as the site is within Ginoogaming's Immediate Traditional Territory and holds significant cultural values. Ginoogaming invited ENDM and Mr. Kerr to consult with the First Nation pursuant to the Nation's Consultation and Accommodation Protocol.~~
- ~~15. Following Chief Echum's letter, correspondence was sent to ENDM through Ginoogaming's legal counsel affirming Ginoogaming's position, reiterating Chief~~

~~Eelum's concerns, and requesting that ENDM confirm that it will not issue the Caouette Project Exploration Permit as it the Project site is a sacred area and accommodation measures must be put in place. ENDM has failed to comply with these requests. As of the date of these pleadings, no permit has been issued for the Caouette Project and the application for an exploration permit has been put on temporary hold, but has not been permanently withdrawn. No assurance has been provided that the application will be removed from temporary hold and that no permit will be issued when that occurs.~~

- ~~16. Neither ENDM nor Mr. Kerr utilized the Consultation and Accommodation Protocol nor listened to Ginoogaming's concerns. On August 7, 2020, ENDM unilaterally informed Ginoogaming that the Ministry intends to issue a decision on the Caouette Project Exploration Permit by September 6, 2020.~~

#### Interference with Ginoogaming's Rights

10. Ontario has enacted and implemented legislation and regulations that have governed mining in Ontario, including in Wiisnin Zaahgi'igan, at all material times and particularly since the *Constitution Act, 1982* has been in force.
11. Ontario's mining regime has interfered with Ginoogaming's Rights by:
  - (a) Authorizing the registration, renewals, and transfers of mining claims within Wiisnin Zaahgi'igan without prior notice, consultation, accommodation, or consent of Ginoogaming;
  - (b) Authorizing the registration, renewals, and transfers of mining claims and issuing exploration approvals within Wiisnin Zaahgi'igan without ensuring

the cumulative impacts of multiple mining claims, exploration projects, and other activities do not adversely impact Ginoogaming's Rights;

(c) Authorizing the registration, renewals, and transfers of mining claims and issuing exploration approvals within Wiisnin Zaahgi'igan that have, in fact, adversely impacted Ginoogaming's Rights;

(d) Failing to cancel mining claims or mining leases or exploration approvals that adversely impact Ginoogaming's Rights and failing to put in place mechanisms to do so; and

(e) Failing to withdraw lands within and comprising Wiisnin Zaahgi'igan from any activity under the *Mining Act*.

(collectively, the "Mining Act Interferences").

12. The Mining Act Interferences have adversely interfered with Ginoogaming's Rights in Wiisnin Zaahgi'igan, constituting infringements.

13. Ontario has not taken any or sufficient steps to prevent infringement of the Rights, address the infringement, or accommodate Ginoogaming for the impacts on Ginoogaming's continued meaningful exercise of its Rights. Ontario has acted dishonourably by not living up to its Treaty promises and by contravening the *Mining Act's* purpose outlined in section 2.

14. Ontario has continued, and will continue unless restrained from doing so, to approve mining claims, exploration permits, and mining activity within Wiisnin Zaahgi'igan contrary to its obligations. Court intervention is necessary to ensure

Ontario's Treaty promises and Honour of the Crown are upheld and Ginoogaming's rights in Wiisnin Zaahgi'igan are not further infringed.

**Ontario Breached the Duty to Consult and Accommodate in Issuing the Permit**

15. 25. Ontario has had real or constructive knowledge of the potential for, and existence of, Ginoogaming's Rights at all times material to these facts.
- ~~26. The activities authorized by the Ferau Permit, or that may be authorized under the Caouette Project Exploration Permit or other permits or authorizations for mineral exploration and development work within Wiisnin Zaahgi'igan, could cause irreparable harm to Ginoogaming's Rights in Wiisnin Zaahgi'igan.~~
- ~~27. The activities that may be authorized under the Caouette Project Exploration Permit could also cause irreparable harm to Ginoogaming's Rights in Wiisnin Zaahgi'igan.~~
16. 28. Given the importance of the Sacred Areas **Rights** and Sacred Practices Rights to Ginoogaming, and the fact that mineral exploration and development activities would desecrate and destroy such Areas and Practices, the Duty to Consult and Accommodate in respect of permits or authorizations for any mineral claims or exploration development within Wiisnin Zaahgi'igan, including but not limited to the Ferau Project Permit and the Caouette Project Exploration Permit, are at is at the higher end of the spectrum.
17. 29. The **R**econciliation of First Nations' Aboriginal and Treaty Rights with non-Aboriginal interests through the Honour of the Crown and the Duty to Consult

and Accommodate is legislated as the purpose of the Mining Act (s. 2).

~~18. 30.~~ The Mining Act itself (s. 78.3(2)(b)) and case law prescribe that Ontario must fulfill its Duty to Consult and Accommodate a First Nation prior to and as a condition of the issuance of any exploration permit or other authorization for mineral exploration or development. Regardless, the Duty exists as part of the Constitution and lies upstream of legislation.

~~19. 31.~~ Ontario did not meet its Duty to Consult and Accommodate ~~consult with or accommodate~~ Ginoogaming before issuing any exploration permit or other authorization for an area within Wiisnin Zaagi'igan, the Ferau Permit.

~~32.~~ ~~Ontario has failed to consult with Ginoogaming on the Caouette Project Exploration Permit.~~

### **Ginoogaming's Treaty Land Entitlement Claim**

~~20. 33.~~ Ginoogaming claims that it received less Indian Reserve land than was promised in Treaty 9. It is pursuing a "Treaty Land Entitlement" ("TLE") claim against Ontario and the government of Canada. Ginoogaming is considering land within Wiisnin Zaahgi'igan as land that would fulfill its TLE claim.

~~21. 34.~~ Ontario and Canada agreed to enter negotiations with Ginoogaming regarding land selection. In doing so, Ontario has engaged the Honour of the Crown.

~~22. 35.~~ Damage to Wiisnin Zaahgi'igan caused by mineral exploration and development, such as the Ferau Project and the Caouette Project, could affect its suitability for the TLE claim, and undermine or undo TLE negotiations. ~~In issuing the Ferau~~

~~Permit~~, Ontario breached the Honour of the Crown by authorizing mineral exploration within Wiisnin Zaahgi'igan when it knew or ought to have known Ginoogaming wanted to select lands within the area for the TLE claim.

23. The registration, renewal, and transfer of mining claims within Wiisnin Zaahgi'igan affects its suitability for the TLE claim, including by:

- (a) Encumbering the land such that it cannot, or is more difficult to, be added to Ginoogaming's reserve; and
- (b) Adversely impacting the meaningful exercise of Ginoogaming's Rights on the land, thereby impairing or seriously threatening its spiritual and cultural value.

These impacts could undermine or undo the TLE negotiations.

24. Ontario breached the Honour of the Crown by failing to protect Wiisnin Zaahgi'igan from the registration, renewal, and transfer of mining claims, and by failing and/or refusing to cancel mining claims within Wiisnin Zaahgi'igan after it knew or ought to have known Ginoogaming wanted to select lands within the area for the TLE claim.

~~Ontario Breached the United Nations Declaration on the Rights of Indigenous Peoples~~

36. ~~The United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") was adopted by the UN General Assembly on September 13, 2007. UNDRIP reflects a broad consensus of the international community on the rights of Indigenous peoples. Both the Canadian and Ontario governments have committed to the full implementation of UNDRIP.~~

~~37. Articles 8, 11, 12 and 31 of UNDRIP concern the protection of Ginoogaming's Sacred Areas and Sacred Practices Rights:~~

- ~~(a) the right not to be subjected to the destruction of their culture;~~
- ~~(b) the right to maintain, protect and develop archaeological and historical sites and artefacts;~~
- ~~(c) the right to practice and revitalize cultural traditions and customs;~~
- ~~(d) the right to manifest, practice, and develop religious traditions, customs and ceremonies; and~~
- ~~(e) the right of private access to religious or cultural sites.~~

~~38. Articles 25, 26, 29 and 32 of UNDRIP concern the protection of Ginoogaming's Harvesting Rights:~~

- ~~(a) the Nation's right to its traditional territories, lands, waters, and environment;~~
- ~~(b) the right to self-determination regarding the uses of its territories; and, crucially~~
- ~~(c) the right to maintain and strengthen their distinctive spiritual relationship with their traditional territories.~~

~~39. Ontario has breached these Articles:~~

#### STATUTES AND REGULATIONS RELIED UPON

25. 40. Ginoogaming pleads and relies on:

- (a) James Bay Treaty (Treaty No 9.) Made November 6, 1905, and its adhesions;
- (b) *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 35;
- (c) the *Mining Act* RSO 1990, c. M. 14 and its regulations;
- (d) Indian Act, RSC 1985, c I-5;

(e) ~~Crown Liability and Proceedings Act, 2019, SO 219, c 7, Sched 17;~~

(f) ~~Courts of Justice Act, RSO 1990, c 43; and~~

(g) ~~Such further enactments as counsel may advise.~~

(d) ~~United Nations Declaration on the Rights of Indigenous Peoples: resolution adopted by the General Assembly, 2 October 2007, A/RES/61/295, Articles 8, 11, 12, 25, 26, 29, 31 and 32;~~

November 4, 2020 August 4, 2023

(u)

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HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO et al.  
Defendants

GINOOGAMING FIRST NATION v  
Plaintiff

ONTARIO  
*SUPERIOR COURT OF JUSTICE*

Proceeding commenced in Toronto

AMENDED AMENDED  
STATEMENT OF CLAIM

WOODWARD AND COMPANY  
LAWYERS LLP

200 – 1022 Government Street  
Victoria, BC V8W 1X7  
Tel: 250-940-5404  
Fax: 250-380-6560

Kate Kempton  
LS#: 44588L

[kkempton@woodwardandcompany.com](mailto:kkempton@woodwardandcompany.com)

Lawyer for the Plaintiff

SERVICE OF A COPY  
ADMITTED THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025  
Crown Law Office (Civil Law)  
MINISTRY OF THE ATTORNEY GENERAL  
FOR ONTARIO  
Per...Crystal...Moyse...9:33 AM  
720 BAY STREET  
TORONTO, ONTARIO M7A 2S0

THIS IS EXHIBIT "E" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.

AMENDED THIS 28 FEB. 2017 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT À

☒ RULE/LA RÉGLE 26.02 ( A )

Court File No. CV-16-552834

☐ THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_

DATED / FAIT LE \_\_\_\_\_

**ONTARIO**

SUPERIOR COURT OF JUSTICE

LOCAL REGISTRAR \_\_\_\_\_  
SUPERIOR COURT OF JUSTICE GREFFIER LOCAL  
COUR SUPÉRIEURE DE JUSTICE

**GRAND CHIEF MATTHEW COON COME, Grand Chief and Chairman of the Grand Council of the Crees (Eeyou Istchee) and the Cree Nation Government, suing on his own behalf and on behalf of all members of the Cree Nation of Eeyou Istchee**

- and -

**THE GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE)**

- and -

**THE CREE NATION GOVERNMENT  
(formerly the CREE REGIONAL AUTHORITY)**

- and -

**THE CREES OF THE FIRST NATION OF WASKAGANISH**

- and -

**THE CREE FIRST NATION OF WASWANIP  
known as the Waswanipi Band pursuant to the *Cree-Naskapi (of Quebec) Act***

- and -

**THE CREE NATION OF NEMASKA**

- and -

**THE CREE NATION OF EASTMAIN**

- and -

**THE CREE NATION OF WEMINDJI**

- and -

**THE CREE NATION OF MISTISSINI**

- and -

**THE OUJÉ-BOUGOUMOU CREE NATION**

- and -

**THE CREE NATION OF CHISASIBI**

- and -

**THE WHAPMAGOOSTUI FIRST NATION**

- and -

**PAULINE TRAPPER-HESTER, Chief of the CREE NATION OF WASHAW SIBI, suing  
on her own behalf and on behalf of all members of Washaw Sibi Eeyou**

Plaintiffs

AND

**THE ATTORNEY GENERAL OF CANADA**

- and -

**THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants

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**AMENDED STATEMENT OF CLAIM**

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TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

- 3 -

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 16, 2016  
~~February 28, 2017~~  
16 MAY 2016

Issued by «SILVIA SLAUNWHITE»  
Local registrar

Address of court office 393 University Avenue, 10<sup>th</sup> floor  
Toronto Ontario M5G 1E6

TO: Attorney General of Canada  
c/o Department of Justice Canada  
Ontario Regional Office  
The Exchange Tower  
130 King Street West, Suite 3400, Box 36  
Toronto Ontario M5X 1K6

AND TO: Minister of Indian Affairs and Northern Development  
Indigenous and Northern Affairs Canada  
c/o Department of Justice Canada  
Ontario Regional Office  
The Exchange Tower  
130 King Street West, Suite 3400, Box 36  
Toronto Ontario M5X 1K6

AND TO: Her Majesty the Queen in Right of Ontario  
c/o Ministry of the Attorney General  
McMurtry-Scott Building  
720 Bay Street, 11th Floor  
Toronto Ontario M7A 2S9

## CLAIM

1. The Plaintiffs claim:

a) A declaration that the Plaintiffs have:

- i. Aboriginal title and existing Aboriginal rights over, in and under all those parts of their traditional territory located in what is now the Province of Ontario (hereinafter, “Eeyou Istchee - Ontario”), consisting of: Aboriginal title and Aboriginal rights to all those parts of Ontario between the Quebec-Ontario boundary and the red line on the map attached as Schedule A hereto, or to any portions thereof (hereinafter, the “Eeyou Ontario Title Lands”); and Aboriginal rights exclusive of Aboriginal title to those parts of Ontario between the red line and the green line on the map attached as Schedule A hereto, or to any portions thereof (hereinafter, the “Eeyou Ontario Aboriginal Rights Lands”);
- ii. the right to the exclusive use and occupation of the Eeyou Ontario Title Lands, or any portions thereof, without prejudice to any existing rights other Aboriginal peoples may hold with respect to these lands,~~on a shared basis with other Aboriginal nations;~~ as well as the right to the exclusive use and enjoyment and to at least the beneficial ownership of all the natural resources, including the water resources, over, in and under the Eeyou Ontario Title Lands, without prejudice to any existing rights other Aboriginal peoples may hold with respect to these lands~~or any portions thereof, on a shared basis with other Aboriginal nations;~~
- iii. in the alternative, Aboriginal title and existing Aboriginal rights over the natural resources and water resources over, in and under the Eeyou Ontario Title Lands, or any portions thereof, without prejudice to any existing rights other Aboriginal peoples may hold with respect to these lands~~on a shared basis with other Aboriginal nations;~~
- iv. the Aboriginal right to hunt, fish, trap, harvest and exercise traditional activities in Eeyou Istchee - Ontario, or any portions thereof;

b) A declaration that the Defendants have unjustifiably infringed the Plaintiffs’ Aboriginal title and Aboriginal rights in respect of Eeyou Istchee - Ontario;

c) A declaration that the Defendants have breached their trust and/or fiduciary and/or constitutional and/or other obligations to the Plaintiffs in respect of Eeyou Istchee - Ontario;

d) A declaration that the Defendants have breached the Honour of the Crown and their constitutional obligations to the Plaintiffs in respect of Eeyou Istchee - Ontario, including their obligations to consult and accommodate the Plaintiffs in respect of the Plaintiffs’ Aboriginal title and Aboriginal rights in Eeyou Istchee - Ontario;

e) Damages and/or equitable remedies in the amount of \$495 million (or such other

amount as this Honourable Court might fix);

- f) An accounting and an order that the Defendants pay the Plaintiffs any additional amounts to which they are entitled;
- g) Pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (as amended);
- h) Costs of this action on a substantial indemnity basis, plus any Harmonized Sales Tax as may be applicable; and
- i) Such further, other, equitable or related relief as this Honourable Court deems just.

## **I. Rights Invoked by the Plaintiffs**

2. The Plaintiffs, who constitute and/or represent the Cree Nation of Eeyou Istchee, herein invoke Aboriginal title and Aboriginal rights over, in and under Eeyou Istchee - Ontario, that part of their traditional lands located in what is now the Province of Ontario.

3. Eeyou Istchee - Ontario comprises over 48,000 square kilometres of territory and the natural resources thereof, situated between approximately parallels 48° and 51°30' of latitude north and meridians 82° to 79°30' west. The boundaries of Eeyou Istchee - Ontario are described more particularly in Part IV herein.

4. For the purposes of the present claim, Eeyou Istchee - Ontario consists of two distinct parts, the Eeyou Ontario Title Lands and the Eeyou Ontario Aboriginal Rights Lands, as set out in Part IV herein.

5. Prior to and at the time of the assertion of sovereignty by the Crown, the occupation and use of the Eeyou Ontario Title Lands by the Plaintiffs and their ancestors were exercised on a shared basis with certain other Aboriginal peoples, to the exclusion of all others.

56. The Plaintiffs and their ancestors have continuously used, occupied and regularly practiced traditional activities in the Eeyou Ontario Title Lands, since time immemorial or at least since prior to the assertion of sovereignty by the Crown. Alternatively, The Plaintiffs and their ancestors have exclusively (but on a shared basis with certain other Aboriginal peoples) and continuously used, occupied and regularly practiced traditional activities in the Eeyou Ontario Title Lands, since time immemorial or at least since prior to the assertion of sovereignty by the Crown.

67. The Plaintiffs collectively have Aboriginal title over the Eeyou Ontario Title Lands, and the members of the Cree Nation of Eeyou Istchee represented by the Plaintiffs collectively and individually have existing Aboriginal rights including full authority, jurisdiction and ownership, over the Eeyou Ontario Title Lands, as well as the right, ~~on a shared basis~~, to the exclusive use and occupation thereof, the right to harvest, including the right to hunt, trap and fish thereon and therein, as well as the right, ~~on a shared basis~~, to the exclusive use and enjoyment thereof and the

right to at least the beneficial ownership of all the natural resources of any kind, including the water resources, over, in and under the Eeyou Ontario Title Lands, the whole without prejudice to any existing rights other Aboriginal peoples may hold with respect to these lands. The Plaintiffs also hold existing Aboriginal rights, including in particular hunting, trapping, fishing and gathering rights and associated rights, in the Eeyou Ontario Title Lands.

78. The Plaintiffs and their ancestors have, since prior to European contact, continuously exercised, and continue to exercise, harvesting rights, including hunting, trapping, fishing and gathering rights, as well as activities associated with hunting, trapping, fishing, gathering and other harvesting, in the Eeyou Ontario Aboriginal Rights Lands. The exercise of these rights was and is in accordance with their traditional Aboriginal way of life, and was and is integral to the distinctive culture of the Cree Nation of Eeyou Istchee.

## II. The Parties

89. The Plaintiffs together constitute and/or represent the Cree Nation of Eeyou Istchee and all members of the Cree Nation of Eeyou Istchee.

910. The Plaintiffs, including all those on whose behalf and for whose benefit Grand Chief Matthew Coon Come sues in the present proceedings, have a common and similar interest in the present action.

1011. The Plaintiff Grand Chief Matthew Coon Come pursues the present action as the duly authorized representative on behalf of and for the benefit of the members of the Cree Nation of Eeyou Istchee, being all those who are Cree beneficiaries of the James Bay and Northern Quebec Agreement (“JBNQA”) or who are eligible to be Cree beneficiaries of the JBNQA.

1112. The individuals on whose behalf and for whose benefit Grand Chief Matthew Coon Come sues in the present proceedings are all Aboriginal people of Cree ancestry who are all Indians within the meaning of s. 91(24) of the *Constitution Act, 1867* and members of an Aboriginal group within the meaning of s. 35 the *Constitution Act, 1982*.

1213. The Cree Nation of Eeyou Istchee is an Aboriginal group, a collectivity and a distinct Aboriginal society, as well as an Aboriginal people within the meaning of s. 35 of the *Constitution Act, 1982*.

1314. The Plaintiff the Grand Council of the Crees (Eeyou Istchee) (“GCCEI”), formerly the Grand Council of the Crees (of Quebec), is a not-for-profit corporation created in 1974 pursuant to the *Canada Corporations Act*, R.S.C. 1970, c. C-32. The GCCEI is a party to and signatory of the JBNQA and the Eeyou Marine Region Land Claims Agreement (“EMRLCA”) on behalf of the Cree Nation of Eeyou Istchee. The GCCEI is governed by an elected Council composed of the Grand Chief, the Deputy Grand Chief, the Chiefs of each of the Cree communities, and an elected representative from each of the Cree communities. All Cree beneficiaries of the JBNQA are members of the GCCEI. The GCCEI acts generally as the political representative of the Cree Nation of Eeyou Istchee, including in respect of the Cree rights asserted herein and in respect of Eeyou Istchee.

1415. The Plaintiff the Cree Nation Government (“CNG”), formerly the Cree Regional Authority, was established as a legal person and a non-profit association pursuant to the *Act respecting the Cree Regional Authority*, R.S.Q., c. A-6.1, first adopted in 1978, now entitled the *Act respecting the Cree Nation Government*, R.S.Q. c. G-1.031. Pursuant to the *Act respecting the Cree Nation Government*, the objects of the CNG are, *inter alia*, “to give a valid consent, on behalf of the James Bay Crees, where such consent is required pursuant to the [JBNQA] or pursuant to an Act”, “to assist the James Bay Crees in the exercise of their rights and in the defence of their interests” and “to foster, promote, protect and assist in the preservation of the way of life, the values and the traditions of the James Bay Crees”. The membership of the CNG consists of the Cree beneficiaries of the JBNQA, and the Council of the CNG is made up of the same elected members who constitute the Council of the GCCEI. The CNG is the administrative governing body of the Cree Nation of Eeyou Istchee, and has been recognized as such by the federal government, including in the *Cree-Naskapi (of Quebec) Act*, S.C. 1984, c. 18 (as amended).

1516. Together, the GCCEI and the CNG represent the Cree Nation of Eeyou Istchee, its members and the communities of the Cree Nation of Eeyou Istchee. The Plaintiffs the GCCEI and the CNG act together with regard to the protection and exercise of the constitutional and other collective rights of the Cree Nation of Eeyou Istchee, as well as the application and implementation of the JBNQA, the complementary agreements to the JBNQA, the EMRLCA, and numerous other agreements with the federal Crown and/or the Province of Quebec.

1617. The Cree Nation of Eeyou Istchee is today, and was historically, comprised of several Aboriginal groups or collectivities. The Plaintiffs the Crees of Waskaganish First Nation, the Cree Nation of Waswanipi, the Cree Nation of Nemaska, the Cree Nation of Eastmain, the Cree Nation of Wemindji, the Cree Nation of Mistissini, the Oujé-Bougoumou Cree Nation, the Cree Nation of Chisasibi, the Whapmagoostui First Nation, and the Cree Nation of Washaw Sibi are each traditional Aboriginal groups or collectivities that are part of the Cree Nation of Eeyou Istchee, and are the continuation of and successors to the traditional Aboriginal groups or collectivities that existed in Eeyou Istchee (a territory further described at paragraph 2728) at the time of European contact and at the time of the assertion of sovereignty over Eeyou Istchee. Each of the Plaintiffs the Crees of the First Nation of Waskaganish, the Cree Nation of Waswanipi, the Cree Nation of Nemaska, the Cree Nation of Eastmain, the Cree Nation of Wemindji, the Cree Nation of Mistissini, the Oujé-Bougoumou Cree Nation, the Cree Nation of Chisasibi, the Whapmagoostui First Nation, and the Cree Nation of Washaw Sibi constitute an Aboriginal people within the meaning of s. 35 of the *Constitution Act, 1982*.

1718. The Plaintiffs the Crees of the First Nation of Waskaganish, the Cree Nation of Waswanipi, the Cree Nation of Nemaska, the Cree Nation of Eastmain, the Cree Nation of Wemindji, the Cree Nation of Mistissini, the Oujé-Bougoumou Cree Nation, the Cree Nation of Chisasibi, and the Whapmagoostui First Nation are each constituted as corporations pursuant to section 9 of the JBNQA and the *Cree-Naskapi (of Quebec) Act*, S.C. 1984, c. 18 (as amended), with the capacity, rights, powers and privileges of a natural person. Each of these Plaintiffs participates in this proceeding on its own behalf and on behalf of its members.

1819. The Cree Nation of Washaw Sibi has not yet been recognized within the JBNQA or the *Cree-Naskapi (of Quebec) Act*, S.C. 1984, c. 18 (as amended). The Cree Nation of Washaw Sibi is a traditional Aboriginal group or collectivity that is part of the Cree Nation of Eeyou Istchee, and/or is the continuation of and successor to a traditional Aboriginal group or collectivity that was part of the Cree Nation of Eeyou Istchee and that existed in Eeyou Istchee at the time of European contact and at the time of the assertion of sovereignty over Eeyou Istchee. The Cree Nation of Washaw Sibi also constitutes an Aboriginal people within the meaning of s. 35 of the *Constitution Act, 1982*. The members of the Cree Nation of Washaw Sibi are all beneficiaries of the JBNQA or entitled to be registered as beneficiaries of the JBNQA. The Plaintiff Chief Pauline Trapper-Hester participates in this proceeding on her own behalf and as a duly authorized representative on behalf of and for the benefit of the members of the Cree Nation of Washaw Sibi.

1920. The group of Cree individuals represented by the Plaintiffs includes the members of MoCreebec Eeyoud, who mainly reside at Moose Factory or Moosonee in Ontario, and who are represented by the MoCreebec Eeyoud Council of the Cree Nation. The members of MoCreebec Eeyoud are members of the Cree Nation of Eeyou Istchee, and beneficiaries of the JBNQA or entitled to be registered as beneficiaries of the JBNQA. The MoCreebec community constitutes the eleventh Cree community of the contemporary Cree Nation of Eeyou Istchee.

2021. The Defendant the Attorney General of Canada (“Canada”), is the chief law officer of the federal Crown and the representative of Her Majesty the Queen in Right of Canada, in whose name proceedings against the Crown in right of Canada may be brought in accordance with s. 23 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (as amended). Her Majesty the Queen in Right of Canada is liable for the actions and omissions of the federal Crown, of the federal Departments and Ministers, and of all servants, agents and employees of the federal Crown. Her Majesty the Queen in Right of Canada also has fiduciary and/or trust obligations to the Plaintiffs with respect to their constitutionalized Aboriginal rights, and furthermore has a special responsibility to ensure the full implementation and the effective exercise thereof and to fulfil the Honour of the Crown, all of which this Defendant has breached.

2122. The Defendant Minister of Indian Affairs and Northern Development, named at s. 2(1) of the *Department of Indian Affairs and Northern Development Act*, R.S.C., 1985, c. I-6 (as amended), has the management and direction of the Department of Indian Affairs and Northern Development. The Defendant Minister is particularly charged with the trust and/or fiduciary obligations of the Defendant Canada to the Plaintiffs described herein and with the responsibility to carry out the duties flowing from the Honour of the Crown.

2223. The Defendant Her Majesty in Right of Ontario (“Ontario”) is designated as the representative of the Ontario Crown, pursuant to s. 9 of the *Proceedings Against the Crown Act*, RSO 1990, c. P.27, and is liable for the actions and omissions of the Ontario Crown, of the Ontario Departments and Ministers, and of all servants, agents and employees of the Ontario Crown. Her Majesty in Right of Ontario also has fiduciary obligations to the Plaintiffs with respect to their constitutionalized Aboriginal rights and furthermore has a special responsibility to ensure the full implementation and the effective exercise thereof and to fulfill the Honour of

the Crown, all of which this Defendant has breached. Notice pursuant to s. 7 of the *Proceedings Against the Crown Act* was given to the Ontario Crown on, *inter alia*, March 15, 2016.

2324. Defendants Canada and/or Ontario are, within their respective spheres of competence under the *Constitution Act, 1867*, also responsible and liable for the actions and omissions of the British Crown and/or any other applicable Imperial government and/or the Hudson's Bay Company that occurred prior to 1870 in respect of the Plaintiffs' rights and interests in the lands of Eeyou Istchee - Ontario.

### **III. Distinctive Aboriginal Society**

2425. The Cree Nation of Eeyou Istchee constitutes a distinctive Aboriginal Cree society, and/or distinctive Aboriginal Cree societies, which has or have existed since time immemorial or in any event since prior to European contact or the assertion of sovereignty by the Crown, including by the British Crown, over Eeyou Istchee.

2526. The Cree Nation of Eeyou Istchee includes all persons of Cree ancestry who are or whose ancestors were affiliated with one of the Cree traditional bands or the historical components thereof, namely the Waskaganish traditional band, the Eastmain traditional band, the Wemindji traditional band, the Chisasibi traditional band, the Waswanipi traditional band, the Washaw Sibi traditional band, the Nemaska traditional band, the Mistissini traditional band, the Whapmagoostui traditional band and the Oujé-Bougoumou traditional band, including the historical components of each of those bands, the subgroups thereof and their descendants, comprising the various Cree family hunting groups of Eeyou Istchee over the centuries.

2627. The Cree Nation of Eeyou Istchee as it exists today is the continuation of, and/or the successor to, the Cree traditional bands or historical components thereof that existed in and occupied Eeyou Istchee at the time of contact with Europeans and the assertion of sovereignty by the Crown.

2728. Eeyou Istchee is the traditional territory and homeland of the Cree Nation of Eeyou Istchee, which they have used and occupied since time immemorial or in any event since prior to European contact or the assertion of sovereignty by the Crown. The Cree Nation's traditional territory of Eeyou Istchee covers approximately 500,000 square kilometres of land and waters located in and to the south and east of James Bay and Hudson Bay, including lands and waters that fall within what is now Quebec, Ontario, Labrador and Nunavut.

2829. The Plaintiffs and their ancestors have continuously lived in, frequented, used and occupied, and regularly practiced traditional activities in Eeyou Istchee as an organized society, since time immemorial or at least prior to European contact and prior to the assertion of Crown sovereignty over Eeyou Istchee.

2930. Since time immemorial or at least prior to European contact and prior to the assertion of Crown sovereignty over Eeyou Istchee, the Plaintiffs and their ancestors have functioned as a distinctive Aboriginal people and society in Eeyou Istchee, with their own social organization,

distinctive culture and particular language, values, institutions, laws, practices, customs and traditions.

#### **IV. Description of Eeyou Istchee - Ontario**

3031. The Eeyou Ontario Title Lands, the part of Ontario in respect to which the Plaintiffs assert Aboriginal title and Aboriginal rights, constitute the area between the Quebec-Ontario boundary and the red line on the map attached as Schedule A hereto. The Eeyou Ontario Aboriginal Rights Lands, the part of Ontario in respect to which the Plaintiffs assert Aboriginal rights exclusive of Aboriginal title, constitute the area between the green line and the red line on the map attached as Schedule A hereto. The Eeyou Ontario Title Lands and the Eeyou Ontario Aboriginal Rights Lands are together referred to herein as “Eeyou Istchee - Ontario”.

3132. The Eeyou Ontario Title Lands include all lands and waters on the Ontario side of the Quebec-Ontario boundary within:

- a. the portion of the Hannah Bay watershed that is located in Ontario, consisting of all lands in Ontario drained by waters that flow into Hannah Bay, together with all waters and islands encompassed within such lands;
- b. the portion of the Ministikawatin Peninsula that is located in Ontario; and
- c. a portion of Lake Abitibi and its northern catchment area.

3233. The area described in paragraph 3132 can be more particularly described as bounded by the following line: starting from the intersection of the Quebec-Ontario boundary with the shore of James Bay; then southwest along the shore of the Ministikawatin Peninsula; then west along the shore of Hannah Bay to Netitishi Point; then southward along the watershed divide between Netitishi Creek and Washahawagau Creek drainages and west of the drainage of Washiskogau Creek, to the watershed divide between the Little Partridge River and Kesagami River drainages; then southward along the watershed divide that bounds the Kesagami River watershed (as well as the tributaries of the Kesagami River, including the Lawagamau River and its tributaries); continuing southward along the watershed divide on the west side of Kesagami Lake and Opimiskau Bay; continuing southward along the watershed divide on the west side of the Little Kesagami watershed to the southernmost point on the watershed divide draining into the Kesagami River watershed; then continuing further south along the watershed divide between the Burntbush River and the Little Abitibi River; then continuing southward along the watershed divide between the Kabika River watershed and the Circle River watershed, to a point south of Wheat Lake; then continuing southward to the shore of Lake Abitibi along the watershed divide between Mace Creek and Forks Creek; then continuing south-southwestward across Lake Abitibi to Sulphur Island; then continuing south-southeastward across Lake Abitibi to The Narrows; then through The Narrows and continuing east across Lake Abitibi to the midpoint between Iroquois Point and Lightning Point; then continuing east across Lake Abitibi to the Quebec-Ontario boundary; then north along the Quebec-Ontario boundary to the starting point.

3334. The Eeyou Ontario Aboriginal Rights Lands can be described as the geographic area within Ontario generally lying east and north of the height of land that bounds the Abitibi River and the Lake Abitibi drainage on its western and southern edges, to the watershed divide between the Hannah Bay watershed and the Abitibi River watershed, and more fully described as follows:

- a. The land, islands and waters in the area encompassed by the following line: starting from the intersection of the western boundary of the Eeyou Ontario Title Lands (as described in paragraph 3233) with the shore of James Bay; then west along the shore of James Bay to the mouth of the Moose River; then following the western bank of the Moose River inland to its confluence with the Abitibi River; then southwestward along the watershed divide between the Moose River and the Abitibi River; then, south of the confluence where the Missinaibi River and Mattagami River join to form the Moose River, continuing southwestward and then southeastward along the watershed divide between the Mattagami River and the Abitibi River; continuing south-southeastward along the height of land between the Mattagami River and the Abitibi River; continuing southeastward along the height of land between the Mattagami River and the Abitibi River, to the east of Jocko Creek and to the west of Frederick House Lake; continuing generally southward along the height of land that bounds the Abitibi River and Lake Abitibi drainage, to the west of Nighthawk Lake and to the east of McArthur Lake; continuing southwestward, southeastward and then northeastward along the height of land that bounds the Abitibi River and Lake Abitibi drainage, passing to the east of Scott Lakes, to the west of Dead Dog Lake, to the west of Ferrier Lake, to the west and then to the south of Little Redstone Lake, to the south of Semple Lake and Redstone River, to the south and then to the east of Redstone Lake, and to the east of English Lake and Steve Lake; continuing generally eastward along the height of land that bounds the Abitibi River and Lake Abitibi drainage, passing to the south of Kitchiming Lake, to the south of Wabiasin Lake, to the south of Mount Sinclair Lake, to the north of Clarke Lake and Zurbrigg Lake, to the east of Argyle Lake and to the west of Ashley Lake, to the south of Nokomis Lake and to the north of Matachewan Lake, to the south of Leziert Lake, to the south of Watabeag Lake and to the north of Sunny Lake, to the north of Sesekinika Lake, to the south of Bernhardt Lake, to the north of Verna Lake and to the south of Mary Lake, to the north of Little Misema Lake and to the south of Tracy Lake, to the east of Merritt Lake and to the west of Pontiac Lake, to the west and south of Mulven Lake, to the south of Glover Lake and Rodensere Lake and to the north of Shaver Lake, to the intersection with the Quebec-Ontario border at a point southeast of Gardner Lake; then north along the Quebec-Ontario border to the point within the waters of Lake Abitibi where the southern boundary of the Eeyou Ontario Title Lands (as described in paragraph 3233) intersects with the Quebec-Ontario border; then westward and northward along the western boundary of the Eeyou Ontario Title Lands (as described in paragraph 3233) to the starting point; together with all lands, islands and waters encompassed within this area;
- b. A narrow corridor of land on the shore of James Bay to the west of the mouth of the Moose River, extending westward to the southeast bank of the Kinosheo River, and including within this coastal corridor's northwesterly limit the mouths of the Amewin

River and the Nettichi River; and

- c. A narrow corridor of land on the west bank of the Moose River from a point directly across from its confluence with the Abitibi River to the shore of James Bay.

## V. The Plaintiffs' Aboriginal Title over the Eeyou Ontario Title Lands

3435. The Plaintiffs and their ancestors, or subgroups thereof, and particularly the members and ancestors of the traditional bands or collectivities of Waskaganish, Waswanipi and Washaw Sibi or subgroups thereof, have exclusively (but on a shared basis with certain other Aboriginal peoples) and continuously occupied the Eeyou Ontario Title Lands, since time immemorial or at least since prior to the assertion of sovereignty by the Crown. At the time of the assertion of sovereignty by the Crown, the Plaintiffs had the intention and capacity to retain exclusive control (on a shared basis with certain other Aboriginal peoples) over the Eeyou Ontario Title Lands. The Plaintiffs' use, occupation and regular practice of traditional activities in the Eeyou Ontario Title Lands was sufficient to communicate to third parties that the Plaintiffs held the land for their own purposes (but on a shared basis with certain other Aboriginal peoples). The Plaintiffs' present occupation and use of the Eeyou Ontario Title Lands is a continuation of the original occupation and use by the Plaintiffs' ancestors, and that occupation has at all relevant times been exclusive (but on a shared basis with certain other Aboriginal peoples).

36. Without limiting the generality of the foregoing, prior to and at the time of the assertion of sovereignty by the Crown, the Plaintiffs and their ancestors, along with certain other Aboriginal peoples, mutually recognized and accommodated each other's entitlements to the Eeyou Ontario Title Lands, and/or used the lands communally with each other, in accordance with indigenous customs and traditions. The Plaintiffs and their ancestors, along with certain other Aboriginal peoples, exercised the intention and capacity to maintain exclusive control over the Eeyou Ontario Title lands.

3537. The Eeyou Ontario Title Lands particularly include the entire western portion of the Hannah Bay watershed, which has now been bisected by the Quebec-Ontario boundary. The Hannah Bay watershed as a whole, including the Eeyou Ontario Title Lands, is and has been a region of contiguous occupation and regular use by the Plaintiffs and their ancestors, or subgroups thereof, since well before the assertion of sovereignty by the Crown over this area.

3638. Since well before the assertion of sovereignty by the Crown, and continuously since then, the Plaintiffs and their ancestors, or subgroups thereof, have, *inter alia*:

- a. obtained their livelihood, subsisted and developed as a society and a people in and from the Eeyou Ontario Title Lands;
- b. regularly used and enjoyed the natural resources of the Eeyou Ontario Title Lands and made use of its fruits and produce;
- c. regularly hunted, trapped, fished, and otherwise harvested or foraged throughout the Eeyou Ontario Title Lands;

- d. carried on, evolved and developed their particular way of life in the Eeyou Ontario Title Lands according to their own values and priorities;
- e. economically benefited from the Eeyou Ontario Title Lands, and maintained their traditional economies therein, including trade;
- f. enjoyed an adequate land and resource base in the Eeyou Ontario Title Lands;
- g. used the waterbodies and islands in the Eeyou Ontario Title Lands for their traditional activities, including transportation and sustenance;
- h. carried on, developed and transmitted their spiritual and cultural practices in and by way of the Eeyou Ontario Title Lands;
- i. enjoyed and exercised their unique concept of the land and their special relationship with the land, within and by way of the Eeyou Ontario Title Lands;
- j. identified and named all significant geographical places and features in the Eeyou Ontario Title Lands;
- k. managed and functioned in the Cree hunting territory system, and applied and implemented this system within and by way of the Eeyou Ontario Title Lands;
- l. functioned, developed and evolved as a distinctive nation and society with their own language, social organization, culture, values, customs, practices, traditions, institutions and laws, which were applied and implemented within and by way of the Eeyou Ontario Title Lands;
- m. survived as a people on, and to a significant degree because of, the land, waters, ice, islands, seabed and resources of the Eeyou Ontario Title Lands; and
- n. acted as protectors, stewards, and conservation managers of the land, the environment and the animals of the Eeyou Ontario Title Lands.

3739. The Plaintiffs and their ancestors' occupation and use of the Eeyou Ontario Title Lands have always been regulated and organized by Cree customary law, including by the Plaintiffs' traditional system of land tenure.

3840. The Cree hunting territory system, one of the distinctive institutions of Eeyou Istchee Cree society, continues to regulate the Plaintiffs' use and occupation of the Eeyou Ontario Title Lands. The Cree hunting territory system is integral to the distinctive culture, way of life, and livelihood of the Plaintiffs and their ancestors, as it has been since prior to European contact. The system is based upon the continuous occupation and regular use and management of territory over long periods of time. Knowledge of the territory and the animals is passed down through the generations.

3941. The Plaintiffs and their ancestors allocated and allocate among themselves parcels of land as family hunting territories under the responsibility of acknowledged leaders, *Ndoho Ouchimauch*. Significant parts of the Eeyou Ontario Title Lands are subject to the supervision and authority of *Ndoho Ouchimauch*. *Ndoho Eeyouch* (Cree land users) wishing to occupy these parts of the Eeyou Ontario Title Lands for an extended period of time or wishing to engage in traditional activities on these lands sought and seek permission from the *Ndoho Ouchimauch*.

4042. The *Ndoho Ouchimauch* have full authority over their hunting territories, as recognized and acknowledged by the community. Cree customary law regulated and regulates the transmission of hunting territories across the generations. The *Ndoho Ouchimauch* have historically been and are presently acknowledged by the members of the Plaintiffs' communities as being responsible for the protection and management of their hunting territories and the natural resources, wildlife and habitats thereof, and for the supervision of the harvesting activities of *Ndoho Eeyouch*, including the authority to grant or deny access to these lands and to provide guidance regarding the use of the lands and their resources. The *Ndoho Ouchimauch* and their families depended and depend on their hunting territories for their livelihood and economic subsistence, for their culture and their spiritual life, and for the continuation of the Cree way of life.

4143. The Cree hunting territory system forms part of the constitutionalized Aboriginal rights of the Plaintiffs.

4244. The Plaintiffs' culture is coextensive with their traditional lands, including the Eeyou Ontario Title Lands. The Plaintiffs' oral traditions and spiritual beliefs and practices reflect the antiquity of their unique relationship with this part of their territory. The Plaintiffs' traditional knowledge of the territory expresses itself, in part, through the use of Cree names for sites in the Eeyou Ontario Title Lands. Moreover, the Eeyou Ontario Title Lands include significant areas where the transmission of Cree traditions and values to future generations has taken place and takes place, as well as numerous sites where connections to past generations were and are maintained and commemorated, including burial sites.

4345. The spiritual practices of the Plaintiffs and their ancestors in the Eeyou Ontario Title Lands traditionally included and include distinctive beliefs, philosophies, ceremonies and rituals. This involves a conception of the spirituality of the individual, of the spiritual relationships among humans and between human beings and the animals, and also a belief in a supreme creator, *Chisheymendo*.

4446. For centuries and at least since prior to the assertion of Crown sovereignty, the Plaintiffs and their ancestors have continuously occupied and used the Eeyou Ontario Title Lands in a cyclical annual round which has orientated the Plaintiffs' traditional way of life.

4547. Historically, the Plaintiffs' ancestors spent the great majority of the year on their family hunting territories, where significant harvesting activities were undertaken over the winter months. Following spring break-up, family hunting groups travelled downriver to places of summer band aggregation, where fish were abundant. In spring and fall, during the period of migration of the geese, the Plaintiffs and their ancestors participated in an intensive goose hunt.

The Hannah Bay coast was and is the traditional waterfowling territory for the Plaintiffs and their ancestors on the Harricana River drainage. In addition, the Plaintiffs and their ancestors have used and use the coastal corridor along James Bay to the northwest of the Moose River for waterfowl harvesting.

4648. For centuries and at least since prior to the assertion of Crown sovereignty, and continuing to the present day, the Plaintiffs and their ancestors have hunted virtually all species of wildlife present in the Eeyou Ontario Title Lands, including large mammals (including black bears, caribou, and moose), marine species (including seals), beavers, small game (including hares, porcupine, grouse and ptarmigan), and waterfowl (including Canada geese, brant geese, snow geese, mergansers, ducks and loons). Historically, the Plaintiffs' ancestors also harvested beluga whales.

4749. For centuries and at least since prior to the assertion of Crown sovereignty, and continuing to the present day, the Plaintiffs and their ancestors have carried on a traditional fishery in the Eeyou Ontario Title Lands, which includes fresh water, marine and anadromous species (including trout, pike and whitefish).

4850. For centuries and at least since prior to the assertion of Crown sovereignty, and continuing to the present day, the Plaintiffs and their ancestors have trapped the furbearing species of the Eeyou Ontario Title Lands including red foxes, arctic foxes, beavers, lynx, muskrats and owls, as well as certain other species, for both food and fur.

4951. For centuries and at least since prior to the assertion of Crown sovereignty, and continuing to the present day, the Plaintiffs and their ancestors have consumed and used the meat, fat, organs, bones, sinew, skins, feathers, down and other products from the animals of the Eeyou Ontario Title Lands, for food, clothing, shelter, medicines, rope, lashing, webbing, implements and utensils, and to maintain their distinctive way of life and economy.

5052. For centuries and at least since prior to the assertion of Crown sovereignty, and continuing to the present day, the Plaintiffs and their ancestors have harvested numerous species of trees and plants in the Eeyou Ontario Title Lands, for shelter, firewood, camp construction, making of utensils and implements including canoes, sleds, toboggans and snowshoes, assistance in travel and trade, and to maintain their distinctive way of life and economy.

5153. For centuries and at least since prior to the assertion of Crown sovereignty, and continuing to the present day, the Plaintiffs and their ancestors have harvested the berries, bark, roots, herbs and other plants or plant products of the Eeyou Ontario Title Lands, for subsistence, medicinal, cultural and spiritual purposes.

5254. For centuries and at least since prior to the assertion of Crown sovereignty, and continuing to the present day, the Plaintiffs and their ancestors established and maintained numerous camps across the Eeyou Ontario Title Lands. The Plaintiffs and their ancestors also established, over time, a network of travel routes across Eeyou Istchee - Ontario, which linked their communities or traditional family hunting groups with their camps, their traplines and their

harvesting sites. Experienced *Ndoho Eeyouch* are familiar with the traditional routes of Eeyou Istchee - Ontario.

5355. The numerous camps and the travel routes provided and continue to provide a base for the Plaintiffs and their ancestors to access the sites of their traditional harvesting practices and activities, and to efficiently transport that harvest to their families or community members, as the case may be.

5456. Prior to contact with Europeans, the practices, customs and traditions of the Plaintiffs' ancestors respecting the Eeyou Ontario Title Lands involved living and exercising a unique and distinctive way of life, in harmony with the natural environment and the movement and the availability of fish, fauna, fowl and flora. The Plaintiffs' ancestors hunted, trapped, fished, gathered and otherwise harvested, and traded, the products of these activities, to meet their sustenance requirements and to fulfill economic, social, spiritual and political needs and structures.

5557. After contact with Europeans, the Plaintiffs and their ancestors continued to engage in the practices, customs and traditions that are integral to the distinctive culture of the Cree Nation of Eeyou Istchee, including hunting, trapping, fishing, gathering and other harvesting activities in the Eeyou Ontario Title Lands, carrying out all other practices, customs or traditions described herein, and carrying out commercial trade with Europeans, notably with the representatives of the Hudson's Bay Company, as well as the Northwest Company and earlier French and Montreal-based companies.

5658. The Plaintiffs' claim in respect of the Eeyou Ontario Title Lands also includes all of the Aboriginal rights that are subsidiary to, and conferred by, the Plaintiffs' Aboriginal title.

5759. In the alternative, in the event that the Plaintiffs do not have Aboriginal title in respect of any portions of the Eeyou Ontario Title Lands, the Plaintiffs claim existing Aboriginal rights in respect of these portions of the Eeyou Ontario Title Lands. The Plaintiffs and their ancestors, or subgroups thereof, have, at least since prior to European contact, continuously exercised and continue to exercise harvesting rights, including hunting, trapping, fishing and gathering rights, and associated activities, including trade of the fruits of these activities, in the Eeyou Ontario Title Lands. For centuries and at least since prior to European contact, and continuously since then, the Plaintiffs and their ancestors have practiced the activities described at paragraphs 3638 through 5456 throughout the Eeyou Ontario Title Lands. These activities were and are integral to the Plaintiffs' traditional Aboriginal way of life and to the distinctive culture of the Cree Nation of Eeyou Istchee.

5860. The Plaintiffs' Aboriginal title and other Aboriginal rights in respect of the Eeyou Ontario Title Lands have never been surrendered, extinguished or diminished in any manner.

## **VI. The Plaintiffs' Aboriginal Rights in the Eeyou Ontario Aboriginal Rights Lands**

5961. The Plaintiffs and their ancestors, or subgroups thereof, and particularly the members and ancestors of the traditional bands or collectivities of Waskaganish, Waswanipi and Washaw Sibi,

or subgroups thereof, have, since prior to European contact, continuously exercised and continue to exercise harvesting rights, including hunting, trapping, fishing and gathering rights, and associated activities, including trade of the fruits of these activities, in the Eeyou Ontario Aboriginal Rights Lands. These activities were and are integral to the Plaintiffs' traditional Aboriginal way of life and to the distinctive culture of the Cree Nation of Eeyou Istchee, and were and are a defining feature of such way of life and culture.

~~60~~62. For centuries and at least since prior to European contact, and continuously since then, the Plaintiffs and their ancestors have practiced the activities described at paragraphs ~~36~~38 through ~~38~~40, and ~~42~~44 through ~~54~~56 throughout the Eeyou Ontario Aboriginal Rights Lands.

~~64~~63. The Plaintiffs' Aboriginal rights in respect of the Eeyou Ontario Rights Lands have never been surrendered, extinguished or diminished in any manner.

## **VII. Breaches of Trust and/or Fiduciary Obligations and/or Unjust Enrichment**

~~62~~64. Defendants Canada and Ontario have trust and/or fiduciary obligations to the Plaintiffs as well as special constitutional, statutory and contractual obligations and responsibilities to protect, preserve and enforce the Aboriginal title and Aboriginal rights of the Plaintiffs in Eeyou Istchee - Ontario and to prevent interference with or prejudice to such title and rights.

~~63~~65. A *sui generis* fiduciary relationship binds the federal and provincial Crowns and Aboriginal peoples, and colours all government actions relating to Aboriginal matters, including the actions and omissions of the Defendants Canada and Ontario in respect of the Plaintiffs' Aboriginal title and Aboriginal rights in Eeyou Istchee - Ontario. The federal and provincial Crowns are fiduciaries of and/or have trust or trust-like obligations to the Plaintiffs in virtue of the common law and s. 35 of the *Constitution Act, 1982*. The Defendants' fiduciary and/or trust or trust-like obligations to the Plaintiffs also arise pursuant to and/or are confirmed by the Imperial Order-in-Council dated June 23, 1870, the Royal Proclamation of 1763 and other undertakings.

~~64~~66. The Defendants Canada and Ontario have assumed and exercised discretionary power or control affecting the Plaintiffs' Aboriginal rights and interests in respect of Eeyou Istchee - Ontario. The Plaintiffs and their ancestors are and were vulnerable to the exercise of this discretionary power by the Defendants. A trust and/or fiduciary relationship exists with Defendants Canada and Ontario as trustees and/or fiduciaries and the Plaintiffs as beneficiaries of Crown trust and/or fiduciary obligations with respect to:

- a. the Aboriginal title and the other Aboriginal rights of the Plaintiffs in respect of Eeyou Istchee - Ontario;
- b. the Plaintiffs' resulting interests in relation to the natural resources of Eeyou Istchee - Ontario; and
- c. all benefits from the exploitation of the natural resources of Eeyou Istchee - Ontario, and notably any royalties, payments and revenues therefrom.

6567. The trust and/or fiduciary relationship between the Defendants and the Plaintiffs in respect of the Plaintiffs' Aboriginal title and Aboriginal rights in Eeyou Istchee - Ontario requires that the Plaintiffs' Aboriginal interests be placed first. The trust and/or fiduciary relationship also requires that the Defendants act, with respect to the interests of the Plaintiffs in Eeyou Istchee - Ontario, with loyalty, good faith, full disclosure, and due diligence in advancing the best interests of the Plaintiffs.

6668. The trust and/or fiduciary and/or constitutional obligations of the Defendants Canada and Ontario vis-à-vis the Plaintiffs' traditional lands in Ontario extend to the protection of, preservation of and taking of positive measures to recognize, affirm and enforce the Aboriginal title and other Aboriginal rights of the Plaintiffs in respect of the lands, waters and natural resources of Eeyou Istchee - Ontario, as well as the obligation to refrain from measures that interfere with or undermine the Plaintiffs' Aboriginal title and other Aboriginal rights in respect of Eeyou Istchee - Ontario.

6769. The trust and/or fiduciary and/or constitutional obligations of the Defendants Canada and Ontario in respect of the Plaintiffs include the protection, preservation and enhancement of the Plaintiffs' well-being, and their culture, values, traditions and practices as an Aboriginal people with a collective interest in and relationship to Eeyou Istchee - Ontario. In particular, the trust and/or fiduciary and/or constitutional obligations of the Defendants Canada and Ontario include the obligation to refrain from measures that interfere with, undermine or destroy the collective and individual relationships and connections of the Plaintiffs and their members with their traditional territory located in what is now the Province of Ontario.

6870. The trust and/or fiduciary and/or constitutional obligations of the Defendants Canada and/or Ontario with respect to the Plaintiffs and the Plaintiffs' rights in Eeyou Istchee - Ontario also include, without limitation, the following aspects and components:

- a. the respect, protection, preservation, implementation and enforcement of the constitutional rights of the Plaintiffs in respect of Eeyou Istchee - Ontario;
- b. the respect, protection, preservation, implementation and enforcement of the Aboriginal title and Aboriginal rights of the Plaintiffs and their ancestors in respect of Eeyou Istchee - Ontario;
- c. the respect, preservation and protection of the rights of the Plaintiffs and their ancestors to hunt, trap, fish, gather and otherwise exercise their harvesting rights in Eeyou Istchee - Ontario;
- d. the obligation to carry out the terms and conditions of the Imperial Order-in-Council dated June 23, 1870 and notably the duty to make adequate provision for the protection of the rights of the Plaintiffs, and to enter into treaty with the Plaintiffs prior to any disposition or use of the lands of Eeyou Istchee - Ontario without the consent of the Plaintiffs.

~~69~~71. The Defendant the Minister of Indian Affairs and Northern Development is more particularly charged with the protection of the rights and interests of the Plaintiffs described herein and the trust, fiduciary, constitutional and other obligations referred to herein.

~~70~~72. With respect to Eeyou Istchee - Ontario, the Defendants Canada and Ontario have abdicated, neglected and breached their obligations and their responsibilities as trustees and/or fiduciaries of the Plaintiffs in respect of their Aboriginal rights and interests and Aboriginal title as described herein.

~~71~~73. The breaches by the Defendants Canada and Ontario of their trust and/or fiduciary and/or constitutional obligations to the Plaintiffs include, without limitation, the following:

- a. failing to recognize, preserve, protect or give effect to the Aboriginal title and other Aboriginal rights of the Plaintiffs in Eeyou Istchee - Ontario, and promoting the interference with and/or disregard of the Aboriginal title and other Aboriginal rights of the Plaintiffs in Eeyou Istchee - Ontario;
- b. adopting legislation applicable to and/or having effects on Eeyou Istchee - Ontario that adversely affected and/or unjustifiably infringed the Aboriginal title and other Aboriginal rights of the Plaintiffs;
- c. failing to adopt legislative measures to preserve, protect and give effect to and implement the Aboriginal title and other Aboriginal rights of the Plaintiffs in Eeyou Istchee - Ontario;
- d. conveying interests to and/or in respect of the lands and resources in Eeyou Istchee - Ontario to private parties without regard for the Aboriginal title and other Aboriginal rights of the Plaintiffs;
- e. undertaking, authorizing and/or permitting resource extraction and land use activities in Eeyou Istchee - Ontario that adversely affected and/or unjustifiably infringed the Aboriginal title and other Aboriginal rights of the Plaintiffs in Eeyou Istchee - Ontario;
- f. adopting measures that interfered with and/or undermined the collective interest, connection and relationship of the Plaintiffs and their ancestors to Eeyou Istchee - Ontario, and failing to take reasonable and necessary measures to ensure the continuation, evolution and development of the way of life, culture, values and traditions of the Plaintiffs and their ancestors in Eeyou Istchee - Ontario;
- g. interfering with the continued use and occupation by the Plaintiffs and their ancestors of their traditional lands and the resources thereof in Eeyou Istchee - Ontario, in accordance with their traditional way of life, and failing to take the reasonable and necessary measures to ensure the continued use and occupation by the Plaintiffs and their ancestors of their traditional lands and the resources thereof in Eeyou Istchee - Ontario;

- h. failing to take the reasonable and necessary measures to permit the Plaintiffs to evolve as a distinct nation and society within and in relation to Eeyou Istchee - Ontario, with their own culture, values, customs, practices, traditions and institutions, including inherent self-government;
- i. failing to ensure the priority use by the Plaintiffs and their ancestors of their traditional lands and the resources thereof in Eeyou Istchee - Ontario;
- j. failing to obtain the consent or participation of the Plaintiffs and their ancestors in respect of development and resource extraction activities in Eeyou Istchee - Ontario;
- k. subject to the rights of the Plaintiffs respecting the use and occupation of the lands and their rights to the resources thereof, failing to ensure that Plaintiffs received benefits and/or revenues from development and resource extraction activities in Eeyou Istchee - Ontario; and
- l. failing to take the reasonable and necessary measures to ensure that the Plaintiffs have the means to participate meaningfully in the management of Eeyou Istchee - Ontario and to benefit from economic activity on these lands.

7274. In the alternative, the Defendants Canada and Ontario have been unjustly enriched as a result of their breaches of the Plaintiffs' Aboriginal title and other Aboriginal rights in respect of Eeyou Istchee - Ontario. The Defendants have been enriched, the plaintiffs have suffered a corresponding deprivation, and there is an absence of juristic reason for this enrichment.

7375. In the further alternative, in the event that the Plaintiffs' Aboriginal title and/or other Aboriginal rights have been extinguished, expropriated or discontinued, which is expressly denied, such extinguishment, expropriation or discontinuance constitutes a breach of the fiduciary duties owed by Canada and Ontario to the Plaintiffs, and requires Canada and Ontario to compensate the Plaintiffs for such acts.

### **VIII. Unjustifiable Infringement of Plaintiffs' Aboriginal Title and Aboriginal Rights**

7476. The actions and omissions of the Defendants Canada and Ontario described in Part VII have infringed the Plaintiffs' constitutionally-protected Aboriginal title and other Aboriginal rights in respect of Eeyou Istchee - Ontario. The interference with and/or diminution of the Plaintiffs' Aboriginal title and other Aboriginal rights in respect of Eeyou Istchee - Ontario resulting from the Defendants' actions and omissions constitute unreasonable limitations, have imposed undue hardships on the Plaintiffs, and have denied the Plaintiffs their preferred means of exercising their rights.

7577. These infringements of the Plaintiffs' existing Aboriginal title and other Aboriginal rights have not been and cannot be justified by the Defendants Canada and Ontario, as required pursuant to their obligations under s. 35(1) of the *Constitution Act, 1982*. Among other things, the Defendants' actions and omissions in this regard have not been based on compelling and

substantive legislative or governmental objectives; the Defendants have not discharged their duty to consult and accommodate the Plaintiffs; and the Defendants' actions and omissions have not been consistent with the Crown's fiduciary obligations to the Plaintiffs, including by failing to comply with the requirements of proportionality of impact and minimal impairment.

## **IX. Breaches of the Duty to Consult and Accommodate**

7678. The Defendants Canada and Ontario each have a constitutional duty, grounded in the Honour of the Crown, to meaningfully consult and accommodate the Plaintiffs prior to undertaking any contemplated Crown action that may have real or potential adverse effects on the Plaintiffs' Aboriginal title or Aboriginal rights within Eeyou Istchee - Ontario.

7779. The Crown's duty to consult and accommodate is triggered when the Crown has real or constructive knowledge of the potential existence of Aboriginal rights or Aboriginal title and contemplates conduct that might adversely affect such rights or title, whether the rights or title have been proven or not. The Defendants Canada and/or Ontario, and the predecessor Crown, have had such real or constructive knowledge of the Plaintiffs' Aboriginal title and Aboriginal rights in Eeyou Istchee - Ontario since at least prior to the assertion of sovereignty.

7880. In the alternative, the Defendants Canada and/or Ontario have had such real or constructive knowledge of the Plaintiffs' Aboriginal rights and Aboriginal title in Eeyou Istchee - Ontario since at least 1905.

7981. In the further alternative, the Defendants Canada and/or Ontario have had real or constructive knowledge of the Plaintiffs' Aboriginal rights and Aboriginal title in Eeyou Istchee - Ontario since 1989, when proceedings were commenced in the Federal Court of Canada in *Coon Come et al v. Canada*, Federal Court File No. T-962-89.

8082. Since the assertion of sovereignty, the Defendants Canada and Ontario have adopted courses of conduct that had the potential to adversely affect, and that did adversely affect, the Plaintiffs' Aboriginal title and Aboriginal rights in Eeyou Istchee - Ontario, including, but not limited to, the following:

- a) adopting legislation applicable to or having effects on Eeyou Istchee - Ontario that adversely affected and/or unjustifiably infringed the Aboriginal title and other Aboriginal rights of the Plaintiffs;
- b) conveying interests to and/or in respect of the lands and resources in Eeyou Istchee - Ontario to private parties without regard for the Aboriginal title and other Aboriginal rights of the Plaintiffs;
- c) undertaking, authorizing and/or permitting resource extraction and land use activities in Eeyou Istchee - Ontario that adversely affected and/or unjustifiably infringed the Aboriginal title and other Aboriginal rights of the Plaintiffs in Eeyou Istchee - Ontario; and

- d) interfering with the Plaintiffs' continued use and occupation of their traditional lands and the resources thereof in Eeyou Istchee - Ontario, in accordance with their traditional way of life.

~~81~~83. The Defendants Canada and/or Ontario have continuously failed to fulfill their duties to consult and accommodate the Plaintiffs in respect of the courses of conduct described at paragraph ~~80~~82 thereby breaching the Honour of the Crown.

~~82~~84. The refusal of the Defendants Canada and Ontario to recognize and to respect the Aboriginal title and other Aboriginal rights of the Plaintiffs in respect of Eeyou Istchee - Ontario and the failure of the Defendants Canada and Ontario to protect the peaceful exercise of these rights by the Plaintiffs constitute in the circumstances breaches of the Honour of the Crown.

## **X. Additional Breaches of the Honour of the Crown and of Other Constitutional Obligations**

~~83~~85. Through the actions and omissions described in Parts VII, VIII and IX herein, the Defendants Canada and Ontario have failed to comply with the Honour of the Crown and the Crown's duty of diligent, purposive fulfillment of constitutional obligations to Aboriginal peoples. In this respect, the Plaintiffs rely upon the Crown's constitutional obligations arising from s. 35 of the *Constitution Act, 1982*, the June 23, 1870 Imperial Order-in-Council by virtue of which Rupert's Land and the North-Western Territory were admitted as part of the Dominion of Canada, and/or the Royal Proclamation of 1763.

~~84~~86. Subject to the rights of the Plaintiffs as pled herein, the Defendants also have a duty to ensure the reconciliation of the rights and interests of the Plaintiffs in respect to the occupation and use of lands and resources in Eeyou Istchee - Ontario and the carrying out of their traditional activities on the one hand, and on the other hand, any adverse use of the lands or resources (including wildlife resources) thereof. The Defendants have failed to take any measures to effect this reconciliation.

## **XI. Breaches by the Defendant Minister of Indian Affairs and Northern Development**

~~85~~87. The Defendant Minister of Indian Affairs and Northern Development and her predecessors have neglected and/or omitted to carry out their duties and responsibilities as Minister of Indian Affairs and Northern Development in respect to the Aboriginal title and Aboriginal rights of the Plaintiffs in Eeyou Istchee - Ontario.

~~86~~88. The Minister of Indian Affairs and Northern Development is particularly and historically charged on behalf of the Defendant Canada with carrying out the trust and/or fiduciary obligations and the Honour of the Crown in respect to the Aboriginal title and Aboriginal rights of the Plaintiffs. Reference is also made in this regard to the *Department of Indian Affairs and Northern Development Act*, R.S.C. 1985, c. I-6 (as amended). Consequently, the breaches reproached of the Defendant Canada herein are also breaches of the duties and responsibilities of the Minister at the times and in the circumstances described herein.

8789. In the *James Bay and Northern Quebec Native Claims Settlement Act*, S.C. 1976-1977, c. 32 (“*JBNQNCSA Act*”), the Preamble thereto mentions that the Government of Canada has assumed certain obligations under the JBNQA in favour of the Crees and that the Government of Canada recognizes and affirms a special responsibility for the Crees. Pursuant to the *Department of Indian Affairs and Northern Development Act*, the Minister is charged with the powers, duties and functions relating to all matters over which Parliament has jurisdiction not by law assigned to any other department, board or agency of the Government of Canada, and relating to Indian affairs, which includes the trust and/or fiduciary obligations of the Crown in respect of Aboriginal peoples and matters relating to Aboriginal and treaty rights.

## **XII. Monetary Damages and/or Equitable Remedies**

8890. Defendants Ontario and Canada are jointly and severally liable for, and are obliged to compensate the Plaintiffs in respect of, the breaches of trust and/or fiduciary obligations and/or unjust enrichment, the breaches of the Honour of the Crown and the duty to consult and accommodate, and in respect of the unjustifiable infringement of the Plaintiffs’ Aboriginal title and other Aboriginal rights, as set out in Parts VII, VIII, IX, X and XI herein.

8991. These breaches and wrongs by the Defendants Canada and Ontario directly and immediately caused the Plaintiffs damages, for which the Defendants Canada and Ontario are jointly and severally liable to the Plaintiffs.

9092. The Defendants are under a continuing obligation to compensate the Plaintiffs for the loss of economic and non-economic benefits taken from the Plaintiffs as a result of the Defendants’ breaches and wrongs.

9493. The Plaintiffs further claim restitutionary remedies in the disgorgement measure, on the basis of breaches of the Defendants’ fiduciary and/or trust-like duties and/or unjust enrichment. The Plaintiffs submit that the Defendants should not be entitled to benefit from their breaches and the Plaintiffs are entitled to compel the Defendants to answer for their defaults according to their accompanying gains by disgorging their resultant profits and/or savings, or to demand a constructive trust over such profits and/or savings.

9294. The Plaintiffs further claim equitable compensation, to put the Plaintiffs in the position they would have been in, but for the Defendants’ breaches.

## **XIII. JBNQA and Eeyou Marine Land Claims Agreement Inapplicable**

9395. Pursuant to the 1870 instruments relating to the transfer of Rupert’s Land and the North-Western Territory as well as the 1898 and 1912 *Quebec Boundaries Extension* legislation, the James Bay Crees entered into treaty arrangements with Canada, Quebec and others in respect of that portion of their traditional lands that had been included in the 1898 and 1912 extensions to the boundaries of the Province of Quebec. A Final Agreement outlining these treaty arrangements was executed between, *inter alia*, the GCCEI, the Government of Canada and the Government of Quebec on November 11, 1975 and is now known as the JBNQA.

9496. Among the rights and the benefits set forth and confirmed in the JBNQA were the establishment of Cree Category I and Category II lands, the creation of a Cree local and regional government on Cree Category I lands and Category II lands, a specific hunting, fishing and trapping regime and a specific environmental and social protection regime.

9597. The JBNQA was approved, given effect to and declared valid by the *JBNQNCs Act* and by *An Act approving the Agreement concerning James Bay and Northern Quebec*, 1976 S.Q., c. 46. The JBNQA is a treaty within the meaning of s. 35(3) of the *Constitution Act, 1982*.

9698. The JBNQA and related legislation apply only to mainland Northern Quebec and are inapplicable to, and do not affect in any manner, the Plaintiffs' Aboriginal title and Aboriginal rights outside of Quebec, and in particular in Eeyou Istchee - Ontario.

9799. In respect of the portion of their traditional lands located in the area offshore of Quebec, consisting of lands that now form part of Nunavut and waters in the area comprising Hudson Bay and James Bay, the Plaintiffs entered into treaty arrangements with Canada on July 7, 2010. The treaty setting out these arrangements is known as the Eeyou Marine Region Land Claims Agreement ("EMRLCA").

98100. The EMRLCA was given effect to on November 29, 2011, by way of the *Eeyou Marine Region Land Claims Agreement Act*, S.C. 2011, c. 20. The EMRLCA is a treaty within the meaning of s. 35(3) of the *Constitution Act, 1982*.

99101. The EMRLCA and related legislation apply only to the lands and waters of Nunavut and the area comprising Hudson Bay and James Bay, and do not affect in any manner the Plaintiffs' Aboriginal title and Aboriginal rights outside of Nunavut, Hudson Bay and James Bay, and in particular do not affect the Plaintiffs' Aboriginal title and Aboriginal rights in Eeyou Istchee - Ontario.

#### **XIV. Hierarchy of Rights**

400102. The Plaintiffs' title and rights in Eeyou Istchee - Ontario, as described herein, are existing Aboriginal rights protected under s. 35 of the *Constitution Act, 1982*.

401103. The Plaintiffs' title and rights in Eeyou Istchee - Ontario are constitutional conditions in the June 23, 1870 Imperial Order-in-Council admitting Rupert's Land and the North-Western Territory into the Dominion of Canada. The Plaintiffs' rights in Eeyou Istchee - Ontario were also recognized and confirmed by the Royal Proclamation of 1763.

402104. The Plaintiffs' title and rights in Eeyou Istchee - Ontario take precedence over any other inconsistent rights or interests in these lands, and are without prejudice to any existing rights other Aboriginal people may hold with respect to these lands.

403105. The Plaintiffs plead and rely on the provisions of the Royal Proclamation of 1763 (R.S.C. 1970, App. II, No. 1); the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.) (as amended); the June 23, 1870 Imperial Order-in-Council admitting Rupert's Land and the North-

- 25 -

Western Territory into the Union (R.S.C. 1970, App. II, No. 9); the *Constitution Act, 1982*, R.S.C. 1985, App II, No. 44 (as amended); the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (as amended); the *Proceedings Against the Crown Act*, R.S.O. 1990, c P.27 (as amended); and such further and other authorities as the Plaintiffs shall advise.

~~404~~106. The Plaintiffs propose that this action be tried in Toronto.

DATED, at Toronto, Ontario, this ~~16<sup>th</sup> day of May, 2016~~ 28<sup>th</sup> day of February, 2017.



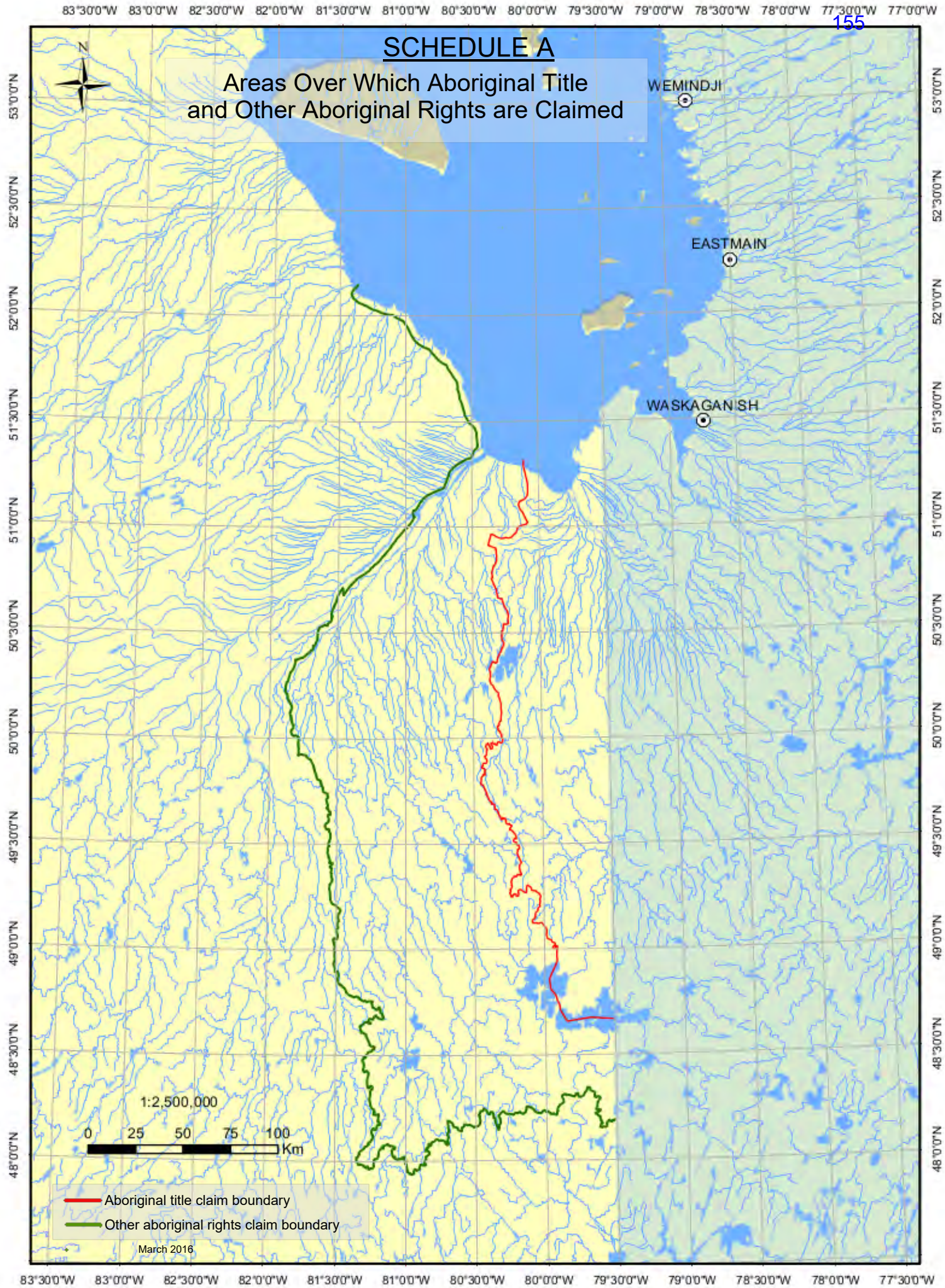
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**GRAND CHIEF  
MATTHEW COON COME et al.**  
Plaintiffs

- and -

**ATTORNEY GENERAL OF  
CANADA et al.**  
Defendants

Court File No: CV-16-552834

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AMENDED STATEMENT OF CLAIM**

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THIS IS EXHIBIT "F" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.

Court File No. CV-16-552834

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

GRAND CHIEF MATTHEW COON COME,  
 Grand Chief and Chairman of the Grand Council of the Crees, (Eeyou Istchee) and the Cree Nation Government, suing on his own behalf and on behalf of all members of the Cree Nation of Eeyou Istchee; THE GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE); THE CREE NATION GOVERNMENT (formerly the CREE REGIONAL AUTHORITY); THE CREES OF THE FIRST NATION OF WASKAGANISH; THE CREE FIRST NATION OF WASWANIPi known as the Waswanipi Band pursuant to the *Cree-Naskapi (of Quebec) Act*; THE CREE NATION OF NEMASKA; THE CREE NATION OF EASTMAIN; THE CREE NATION OF WEMINDJI; THE CREE NATION OF MISTISSINI; THE OUJÉ-BOUGOUMOU CREE NATION; THE CREE NATION OF CHISASIBI; THE WHAPMAGOOSTUI FIRST NATION; and PAULINE TRAPPER-HESTER, Chief of the CREE NATION OF WASHAW SIBI, suing on her own behalf and on behalf of all members of Washaw Sibi Eeyou

Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA; THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT; HIS MAJESTY THE KING IN RIGHT OF ONTARIO; APITIPI ANICINAPEK NATION; and MOOSE CREE FIRST NATION

Defendants

-and-

NISHNAWBE ASKI NATION

Intervenor

**STATEMENT OF DEFENCE AND CROSSCLAIM**  
**OF THE DEFENDANT, HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

## ***I. Response to Specific Paragraphs of the Claim***

1. The area described in paragraphs 3-4, 31-34, and elsewhere in the Second Amended Statement of Claim (“Claim”) as comprising “Eeyou Istchee – Ontario,” to which the Plaintiffs make claims (together, the “Claim Area”), was within the territory surrendered, ceded, granted, and conveyed by the James Bay Treaty No. 9 (“Treaty 9”).

2. Ontario admits the allegations contained in paragraphs 21, 22, and 23 (except Ontario denies it owed or breached any fiduciary duty to the Plaintiffs or failed to uphold the Honour of the Crown in any dealings with the Plaintiffs).

3. Ontario denies the relief sought in paragraph 1 and denies the allegations contained in paragraphs 2-8 and 24-105. More generally, Ontario denies all allegations contained in the Claim unless such allegations are otherwise addressed in this Statement of Defence.

4. Ontario has no knowledge of the allegations contained in paragraphs 9-20, except Ontario denies that the Plaintiffs’ predecessors existed in the Claim Area at the time of European contact and at the time of the assertion of Crown sovereignty.

## ***II. The Parties***

5. Ontario has no knowledge as to whether the Plaintiffs the Grand Council of the Crees (Eeyou Istchee) (“GCC”), Cree Nation Government (“CNG”) (formerly the Cree Regional Authority), Grand Chief Matthew Coon Come (“Grand Chief”), and Chief Pauline Trapper-Hester are authorized to bring this action as representatives of any potential rights-holder collectives (who plead that they refer to themselves as the “Cree Nation of

Eeyou Istchee”).

6. The Plaintiffs the Crees of Waskaganish First Nation, Cree Nation of Waswanipi, Cree Nation of Nemaska, Cree Nation of Eastmain, Cree Nation of Wemindji, Cree Nation of Mistissini, Oujé-Bougoumou Cree Nation, Cree Nation of Chisasibi, and Whapmagoostui First Nation are each First Nation signatories to the James Bay and Northern Quebec Agreement (“*JBNQA*”), and any Aboriginal and Treaty rights they hold are located entirely within the province of Quebec.

7. As set out in greater detail below, the community which the Claim describes as “MoCreebec Eeyoud” is a Cree community whose members relocated to Moose Factory and Moosonee for various reasons in the 1950s.

8. Ontario has no knowledge of the governance or corporate status of the Cree Nation of Eeyou Istchee or of Washaw Sibi.

### Canada

9. The Defendant, the Attorney General of Canada (“Canada”) is the representative of His Majesty the King in right of Canada.

10. Constitutional and legal authority, and responsibility, in relation to the making of treaties is, and has been since Confederation, within the exclusive authority and responsibility of the Defendant Canada.

### Ontario

11. With respect to paragraph 23 of the Claim, the Defendant His Majesty the King in right of Ontario (“Ontario”) is the Crown in right of the Province of Ontario. Further, Ontario

admits that on July 1, 1867, it was assigned certain competencies and authorities under the *Constitution Act*, 1867, including those set out in sections 92 and 109 of that Act, within the boundaries of Ontario as they were at 1867.

12. With respect to paragraph 24 of the Claim, Ontario is not liable, jointly or severally, for any acts or omissions of the Imperial Crown, federal Crown, or those of the Imperial or federal Crown's officers, employees, agents, or servants.

### ***III. Geography and History of the Claim Area***

13. The Claim Area is within what was historically known as Rupert's Land. The British Crown granted Rupert's Land to the Hudson's Bay Company ("HBC") in 1670. The HBC then formally transferred it to the Dominion of Canada on June 23, 1870.

14. The area historically known as Rupert's Land straddles two geographic zones relevant to the Claim Area. The first is the Hudson's Bay Lowlands. This extends, in the Claim Area, southwards from the coast of James Bay to the Lake Kesagami area and eastwards to the mouth of the Nottaway River in Quebec. The second is the Canadian Shield, covered by boreal forest and comprising many bodies of water.

15. Populations of hunter-gatherers in the Canadian Shield area were the first to occupy and use the Claim Area in prehistoric times, and did so from approximately 9,500 Before Present (BP) to 1500 in the Common Era (CE). In the Hudson's Bay Lowlands, permanent human presence dates back at least to 700 CE.

16. At around 1500 CE, populations in the Hudson's Bay Lowlands belonged to the broad Algonkian linguistic and cultural family. They contained groups which came to be

described as Cree, Algonquin, and Ojibway. At that time, each of these groups was connected to a specific tract of land: the Cree to the Moose River, the Algonquin to Lake Abitibi, and the Ojibway to the area south of the “height of land”. The “height of land” is the divide between the watersheds that flow south into the Great Lakes and those that flow north into James Bay.

17. Europeans made contact with the Cree of the Hudson’s Bay Lowlands in the 1500s CE. These Cree were among the first Indigenous Peoples in North America to have contact with Europeans. The Cree of the Hudson’s Bay Lowlands, as these Cree existed at that time, have been described by anthropologists as the “Western Cree”. The key distinction between the Western Cree and the “Eastern Cree” is their respective dialects: the Western Cree has ‘*n*’ and ‘*l*’ dialects whereas the Eastern Cree has ‘*r*’ and ‘*y*’ dialects.

18. The traditional territory of the Western Cree went from, in its southeast, approximately the mid-point between the Harricana River and the Nottaway River, in James Bay, to a point west of the Nelson River in northeastern Manitoba, and inland a relatively uniform distance.

19. The traditional territory of the Eastern Cree went from, in its southwest, the mid-point between the Harricana and Nottaway Rivers to approximately Richmond Gulf on the eastern shore of Hudson Bay, and inland a relatively uniform distance.

20. The Nottaway River marked the approximate boundary between the Western Cree and the Eastern Cree.

21. The eastern edge of the Claim Area – starting from a point to the west of the

Nottaway River – was occupied and used by the Western Cree in the 17<sup>th</sup> and 18<sup>th</sup> centuries. The Eastern Cree occupied the land to the northeast of that point and of the Nottaway River; in general terms, the land on the east side of James Bay and the south part of the east side of Hudson's Bay.

22. Abitibi River and Lake Abitibi were inhabited by the Algonquin. The Ojibway remained the immediate southern neighbors of the Western Cree and the Algonquin, and did not encroach on the Claim Area.

23. The Indigenous Peoples in what is now northern Ontario consisted of multi-family groups or "bands". Each band was identified with a main river or body of water whose drainage basin was their hunting territory, which they exploited from fall to spring. The names of local bands as recorded by Europeans after contact often reflected that link to certain waters. Two bands were present in the Claim Area between the 16<sup>th</sup> century and the 18<sup>th</sup> century. These were the Monsoni, who lived in the drainage basin of the Moose River and were part of the Western Cree, and the Abitibi or Abitibiwinnik, whose hunting grounds were around Lake Abitibi and were Algonquin.

24. By the mid-1800s the HBC had trading posts throughout land which is now in northern Ontario and Quebec. Each HBC trading post was associated with a regional band which regularly traded at that post. Such a regional band is described as a "fur trade post band" or "trading post band". Each of these "trading post bands" consisted of extended family groups who held hunting and trapping grounds in the vicinity. These traditional harvesting territories were thereby associated with an HBC post. In the Claim Area, there were two main areas of traditional harvesting territory associated with trading

at an HBC post: Moose Factory and Abitibi.

*Moose Factory Trading Post Band Traditional Territory*

25. The traditional harvesting territory of the band associated with the Moose Factory post extended as far west as Halfway Point along the coast of James Bay towards Fort Albany, and as far south as Lake Kesagami. Its eastern boundary roughly followed the Missisicabi River, which exits into James Bay via Hannah Bay, between the Harricana River and Nottaway River. Within the territory of the Moose Factory band, in the Moose River region, family hunting grounds were held by three local bands: at Moose Factory itself, at Kesagami Lake, and at Hannah Bay at the mouth of the Harricana River.

26. Over a period of time across the late 19<sup>th</sup> century and early 20<sup>th</sup> century, the Kesagami Lake Cree and Hannah Bay Cree merged with and were integrated into the Moose Factory band. All three groups spoke an *I*-dialect. Around this time, the harvest activity by Cree in the Hudson's Bay and James Bay Lowlands in Ontario overlapped the Ontario-Quebec provincial border. Some families in the Moose Factory band harvested territories that crossed over onto the Quebec side.

27. In 1905, as set out in greater detail below, Treaty 9 Commissioners received a mandate to obtain a cession of the rights of the Indigenous Peoples living in northeastern Ontario. In August 1905, these Commissioners reached Moose Factory and explained to the Indigenous representatives the terms of the Treaty. Those Indigenous representatives expressed their agreement with the Treaty terms and conditions as explained to them by the Treaty Commissioners.

Lake Abitibi Trading Post Band Traditional Territory

28. As stated above, a group of Algonquin were associated with the HBC trading post at Lake Abitibi. These people called themselves Abitibiwinnik and considered themselves, as they still do, to be part of the Anishinabek Nation. In 1905 and 1906, some of the traditional territory of the Abitibi band was located in what is now Ontario and some was located in what is now Quebec.

29. In 1905 and 1906, Treaty 9 Commissioners came to the Abitibi HBC trading post, to sign Treaty 9 with those representatives of the Abitibi band whose hunting grounds lay in Ontario. The HBC trading post at which Treaty 9 negotiations were held was within Quebec, a few miles from the interprovincial border.

MoCreebec

30. The group referred to in paragraph 20 of the Claim “MoCreebec Eeyoud” is a Cree community presently residing in Moosonee and Moose Factory. Its original members were individuals belonging to different Eastern Cree communities in Quebec.

31. Beginning in the 1950s, individuals coming mainly from Rupert House (Waskaganish), Eastmain, Wemindji, and possibly other Eastern James Bay Cree communities, began to relocate to Moose Factory and Moosonee. In 1980, these relocated Cree created a political organization, known commonly as MoCreebec. The purpose of this organization was to represent the interests of the MoCreebec in relation to the *JBNQA*, and specifically the interests of the Eastern Quebec Cree communities from which they had originated.

32. The gradual relocation of some Eastern Cree to Moose Factory and Moosonee that began in the 1950s was motivated by different factors and reasons operating at individual and family levels. Eastern Cree relocatees married into some of the Treaty 9 First Nations or transferred their band memberships to Treaty 9 First Nations.

33. MoCreebec did not exist in any form at the time of European contact or the assertion of Crown sovereignty. Its members and their ancestors were not associated with each other as a historic community at that time and did not reside in the Claim Area until decades after the signing of the Treaty 9.

#### **IV. History and Making of Treaty 9**

##### Post-Confederation Treaty Making

34. Section 91(24) of the *Constitution Act*, 1867 confers on the Crown in right of Canada legislative authority over “Indians, and Lands reserved for the Indians”. Pursuant to that authority, Canada enacted the *Indian Act*, the primary legislation by which the federal government would administer and manage Indian status, band governance, and reserve land. It also established a federal department dedicated to Indian Affairs and adopted policies and developed programs with respect to “Indians”, “bands”, and “lands reserved for Indians”. Pursuant to this legislative authority, Canada also has the exclusive authority to establish a Treaty-making process for Treaties with Indigenous people, and to negotiate and enter into Treaties with Indigenous Peoples.

35. As part of its Treaty-making authority, between 1871 and 1921 Canada controlled the negotiation and execution of eleven “numbered Treaties”. One of these is Treaty 9 of 1905 and 1906.

36. Each numbered Treaty before and after Treaty 9 has a similar format. In exchange for a surrender of lands, Indigenous signatories and subsequent Indigenous adherents received: monetary compensation of a one-time gratuity followed by perpetual annuities; reserve lands; and the continued ability to exercise their “usual vocations” such as hunting and fishing, subject to internal Treaty limitations including the Crown’s ability to regulate and take up lands for public purposes.

*Crown Development of the Main Treaty Terms*

37. By the early 1900s, the development of the Canadian Pacific Railway had brought miners, trappers, and surveyors to the north of the “height of land” in Ontario. The development of this railway changed the physical and human landscape of the region.

38. As a result, the Crown and the region’s Indigenous inhabitants had an interest in addressing the ongoing use of these lands through a treaty. The lands south of the height of the land were already covered by the 1850 Robinson-Huron and Robinson-Superior Treaties (“Robinson Treaties”). Pursuant to an 1894 agreement between Ontario and Canada, Ontario’s participation and concurrence in such a treaty was required. This agreement stemmed from the history surrounding the establishment of reserves under Treaty 3, many of which were situated in Ontario. Subsequently, under the 1894 agreement, Ontario was involved in all aspects of the Treaty 9 process including finalizing its terms, participating in negotiations, and establishing reserves.

39. On April 9, 1900, E.B. Borron (“Borron”), a provincial magistrate who had responsibilities for the northern parts of Ontario, wrote to the Attorney General of Ontario, J.M. Gibson. Borron suggested that a treaty be negotiated with the Indigenous

inhabitants of the area north of the height of land, noting that these Indigenous inhabitants had expressed dissatisfaction with the lack of a treaty in the region as development and encroachment by non-Indigenous people increased.

40. On June 3, 1901, J.A. Macrae, a federal Department of Indian Affairs (“DIA”) Inspector of Indian Agencies and Reserves, prepared a memorandum for the Superintendent General of Indian Affairs describing the need for a treaty with the Indigenous people occupying and using land north of the height of the land. He noted that the Indigenous inhabitants were concerned about encroachment on their lands by railroads, miners, prospectors, and surveyors.

41. On December 12, 1901, Jabez Williams, the clerk at Osnaburgh HBC post, wrote a petition on behalf of representatives of Indigenous inhabitants around Lake St. Joseph and Osnaburgh to the government of Canada. The petition asked for a treaty. It stated that the petitioners were “desirous of releasing our rights in the lands situated in this section of His Majesty’s Dominions, and of having the benefits of the annuity Grant extended to us – on behalf of ourselves and heirs...”. It further said that the petitioners “request that you will bring the matter to the notice of His Majesty’s Government at as early a date as convenient.”

42. In 1902, the DIA instructed the Indian Agents for the Robinson Treaties territories to gather information on potential treaty adherents situated in the region north of the height of the land.

43. In August 1903, Frank Pedley (“Pedley”), the Deputy Superintendent General of

Indian Affairs, recommended to Clifford Sifton ("Sifton"), the Superintendent General of Indian Affairs, that a new treaty be negotiated with the Indigenous inhabitants to the north of the height of the land rather than an adhesion to the Robinson Treaties.

44. On April 30, 1904, Canada began its discussions with Ontario about the proposed Treaty 9, by way of a letter from Pedley to E.J. Davis, the Ontario Commissioner of Crown Lands. The letter outlined the "main stipulations" upon which a treaty would be negotiated by Canada with the Indigenous inhabitants north of the height of the land.

45. On May 8, 1905, Pedley wrote to J.J. Foy, the new Commissioner of Crown Lands for Ontario, enclosing a draft Order-in-Council ("OIC") regarding the treaty.

46. On June 1, 1905, A.J. Matheson ("Matheson"), the Provincial Treasurer of Ontario, wrote to Pedley requesting two revisions, which were accepted by Canada: that Ontario have a say in the selection of reserves and that one of the treaty commissioners be appointed by Ontario.

47. On June 9, 1905, the federal government enacted OIC PC 1065, which authorized the negotiation of Treaty 9.

48. On June 23, 1905, Matheson wrote to Pedley to indicate his agreement with the proposed terms of Treaty 9 but also to suggest that Ontario and Canada enter a formal agreement regarding the Treaty, a draft of which agreement Matheson included. The draft agreement contained a provision whereby no site suitable for the development of water-power greater than 500 horsepower would be included within a reserve.

49. By OIC dated June 29, 1905, Canada appointed DIA employees Duncan Campbell

Scott ("Scott") and Samuel Stewart ("Stewart") as its Treaty 9 Commissioners.

50. On July 3, 1905, Ontario and Canada entered a formal agreement, confirmed by provincial OIC and federal OIC on that same date, on the negotiations and terms of Treaty 9, as well as the roles and responsibilities of the federal and provincial governments.

51. The Ontario OIC of July 3, 1905, also nominated Daniel George MacMartin ("MacMartin") for appointment to the Treaty 9 commission as the provincial representative. On July 6, 1905, Canada issued OIC PC 1275, which acknowledged the appointment of MacMartin as the Treaty Commissioner selected by the Government of Ontario.

52. OIC PC 1275 also provided specific directions to permit the federal Commissioners to establish reserves, and to allow the adhesion of Indigenous groups with hunting grounds, in the Northwest Territories lying between the Albany River, the District of Keewatin and Hudson Bay, beyond what was then the northern boundary of the Province of Ontario.

*Identifying Treaty 9 First Nations and First Nations in Quebec*

53. The Crown's broad goal in making Treaty 9 was to bring under treaty those non-treaty Indigenous populations who resided in or used and occupied the area north of the "height of land", including the Claim Area.

54. The Crown had been collecting information about First Nations in northern Ontario for some time prior to making Treaty 9.

55. Ontario commissioned Magistrate Borron to report on certain matters including the

Indigenous inhabitants in what is now the Claim Area. His 1879 interim report observed that Indigenous populations within Treaty 9 territory were divided based on HBC trading posts rather than bands with chiefs. He reported that, in summer, families congregated at trading posts but dispersed as winter approached. In his final report in 1890, Borron identified Aboriginal populations in three locations within the Claim Area: Moose Factory, New Post and Abitibi.

56. In 1902, Indian Agents began to collect information about Indigenous populations who traded at HBC trading posts in Northern Ontario and Quebec. They collected information about the potential numbers and locations of non-treaty “Indians” from a variety of sources including HBC traders, Indigenous leaders, and religious officials. The agents then provided estimated figures and locations of non-treaty Indigenous Peoples associated with different posts and railway settlements in the territory. The agents described the populations as “residing” and “dwelling” in the “neighbourhood” of various points or “living in their vicinity and trading at them”.

57. HBC posts served as convenient and well-known meeting places between government representatives and First Nations. As a result, the DIA relied primarily on HBC post employees for information about and communication with northern Ontario Indians. The HBC provided the federal government with an estimate of the total Indigenous population to be included as beneficiaries to Treaty 9, broken down by population at each HBC post.

58. In a 1902 letter to the Secretary of DIA, the Indian Agent at Port Arthur (now Thunder Bay) J.J. Hodder provided a list of the HBC posts and the approximate number

of Indigenous persons living in the vicinity of those posts and trading at them.

59. On August 17, 1903, Pedley submitted a “Report on Treaty in Northern Ontario and Quebec” to Superintendent General Sifton. Pedley advised that no treaty should be made with “the Indians of Quebec” or with “any Quebec Indians living temporarily in Ontario”. Pedley proposed that an agreement be reached with Quebec to set apart suitable reserves for them. In June 1904, Pedley informed Sifton that Canada had reached an agreement with the Province of Quebec for setting aside reserves for First Nations within Quebec. Thereafter, Canada pursued a treaty only within Ontario.

60. Based on the above information, in 1905 and 1906 the Treaty 9 Commissioners held separate Councils with Indigenous Peoples assembled at various major HBC posts throughout the region that was to be covered by Treaty 9. The Commissioners took the approach of conducting successive meetings with representatives of the different bands attached to posts located throughout the Treaty region, including the Claim Area. This was done in order to ensure as complete participation as possible by Indigenous Peoples within interests in the Treaty 9 area.

61. Treaty 9 was negotiated and agreed with various First Nations over two years in order to ensure meetings could be held with Indigenous communities at more remote places.

62. From July to September 1905, Treaty 9 Commissioners travelled to seven HBC posts where they treated with Ojibway and Cree First Nations: Osnaburgh, Fort Hope, Marten Falls, English River, Port Albany, Moose Factory, and New Post. From May to

August 1906, Treaty 9 Commissioners travelled to another seven HBC posts where they treated with Algonquin, Ojibway and Cree First Nations at Abitibi, Matachewan, Mattagami, Flying Post, Chapleau, New Brunswick House, and Long Lake.

63. When Treaty 9 was negotiated in 1905 and 1906, the only consideration of “Quebec Indians” was at and in respect of the HBC post at Abitibi. As noted above, Abitibi post was situated a few miles within Quebec. At that post, during the Treaty 9 negotiations, the Crown Treaty Commissioners admitted into Treaty 9 those families whose hunting grounds were in Ontario. The descendants of these families are now known as Apitipi Anicinapek Nation. They became the beneficial owners of the Abitibi Indian Reserve that was created in Ontario as a result of Treaty 9.

64. The Treaty 9 Commissioners’ report in 1906 emphasized the efforts to explain clearly that they were authorized only to deal with “those whose hunting grounds are in the province of Ontario.” The location of family hunting territories formed the criterion for assigning band members as either Ontario or Quebec Indians. Where family hunting territories overlapped the interprovincial border, band members were assigned as Ontario or Quebec “Indians” depending on whether the majority of the surface area of their family hunting territories were located within Ontario or Quebec.

65. In 1908, the representatives of the Abitibi band with hunting grounds in Quebec adhered to Treaty 9 and were given a share in that Abitibi Indian Reserve in Ontario. Subsequently, for administrative purposes, the “Abitibi-Ontario” band, consisting of Lake Abitibi Algonquin families who hunted in Ontario was distinguished from the “Abitibi-Dominion” band, composed of families who hunted in Quebec. Today, the descendants

of the Abitibi-Dominion band are based primarily on the Pikogan reserve, created in 1958 near the town of Amos in Quebec.

66. There was no reference, during Treaty 9 negotiations, to other Quebec-based First Nations having an interest within Ontario in the area covered by Treaty 9. The issue did not arise at the 1905 treaty negotiations at the two posts also relatively proximate to the Quebec border: Moose Factory and New Post (Taykwa Tagamou Nation).

*The Content of the Treaty*

67. A central objective of the Crown in making Treaty 9 was to ensure that the Crown would thereafter have the right to take up lands for development without interfering with any legal rights or interests of the Indigenous parties. As described in the Articles of Treaty 9, the Crown's aim in making Treaty 9 was to:

....open for settlement, immigration, trade, travel, mining, lumbering and such other purposes as to His Majesty may seem meet, a tract of country, bounded and described as hereinafter mentioned, and to obtain the consent thereto of His Indian subjects inhabiting the said tract, and to make a treaty and arrange with them, so that there may be peace and good-will between them and His Majesty's other subjects, and that His Indian people may know and be assured of what allowances they are to count upon and receive from His Majesty's bounty and benevolence.

68. The treaty territory was defined in the Treaty as follows ("Treaty Territory"):

That portion or tract of land lying and being in the Province Of Ontario, bounded on the South by the height of land and the northern boundaries of the territories ceded by the Robinson Superior Treaty of 1850 and the Robinson Huron Treaty of 1850 and bounded on the east and north by the boundaries of the said province of Ontario as defined by law and on the west by a part of the eastern boundary of the territory ceded by the Northwest Angle Treaty No. 3.

69. Treaty 9 effected a surrender of all rights, titles, privileges whatsoever, to all lands wherever situated in the Treaty 9 territory which were held by the Indigenous Peoples

who adhered to Treaty 9, to the “government of the Dominion of Canada, for His Majesty the King and His successors forever”.

70. At the time of signing, the northern boundary of Ontario was the Albany River. In April 1912, the boundaries of Ontario, Quebec, and Manitoba were extended to their present dimensions. Indigenous Peoples who were living in that area then adhered to Treaty 9 in 1929 and 1930, thereby bringing this land under Treaty 9.

71. In exchange for surrender of the land, Treaty 9 provided to the Indigenous parties, among other things: the payment of a gratuity of \$8.00 and an annuity of \$4.00; the establishment and management of reserves; and the provision by the government of Canada of schools, “educational equipment”, and teachers.

72. Further, Treaty 9 provided Treaty rights to hunt, trap and fish that were subject to governmental regulation and to the taking up of land for development:

And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the government of the country, acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken-up from time to time for settlement, mining, lumbering, trading or other purposes.

*Ratification of the Treaty*

73. The Government of Canada ratified Treaty 9 on January 12, 1907, by OIC PC 2499. Ontario ratified Treaty 9 on February 13, 1907.

**V. *Aboriginal Title Claim***

74. Contrary to paragraphs 26 and 27 of the Plaintiffs' Response to Demand for Particulars dated June 29, 2018, the Crown asserted sovereignty over the entire Claim Area no later than 1713, with the signing of the Treaty of Utrecht.

75. Ontario denies that the Plaintiffs or their predecessors occupied the Claim Area either exclusively or on "a shared basis", at that time or any time, as alleged in paragraphs 5, 6, 35, and elsewhere in the Claim.

76. At the time of Treaty 9, the Plaintiffs' predecessors all resided, held any Aboriginal title, and exercised any and all Aboriginal rights only within the province of Quebec.

77. In addition, the Plaintiffs do not plead material facts that could establish, and in any event, the evidence does not demonstrate sufficient, exclusive, and continuous occupation demonstrating Aboriginal title by the Plaintiffs' predecessors in the Claim Area, dating back to the assertion of Crown sovereignty over the Claim Area.

78. As described above in paragraphs 53-62, the Crown purpose in negotiating Treaty 9 was to extinguish all potential Indigenous claims to land within the Treaty 9 area. In order to effect this purpose, the Crown negotiated with all Indigenous Peoples who had or might have any such claims to land within the Treaty 9 area.

79. Further, the legal effect of Treaty 9 was to extinguish any Indigenous claims to land within that area. As such, Treaty 9 manifested the "clear and plain" intention of the Crown to extinguish any and all Aboriginal title or Aboriginal rights then existing in respect of the Claim Area.

80. Accordingly, if the Plaintiffs or their predecessors had Aboriginal title or other Aboriginal rights in 1905 and 1906, then their Aboriginal title or other Aboriginal rights were surrendered or were otherwise extinguished by the formal ratification and confirmation of Treaty 9 by the Crown.

81. In the alternative, if the Plaintiffs or their predecessors had Aboriginal title in the Claim Area, or any portion thereof, insofar as their title amounted to a right of exclusive use and occupation to land it has been abandoned, lost, released, terminated or has otherwise expired before or after the making of Treaty 9 by reason of the failure to maintain a substantial or any connection thereto, or has otherwise become unenforceable against Ontario.

82. In the further alternative, if the Plaintiffs prove Aboriginal title to or over any part of the Claim Area, and any such title was not ceded under Treaty 9, then Ontario denies that it has infringed that title. If any such title was infringed then such infringement was and is justified.

## ***VI. Aboriginal Rights Claim***

83. The Plaintiffs do not have the Aboriginal rights claimed. Ontario states that when Europeans arrived in the Claim Area in the sixteenth century the Plaintiffs' predecessors did not hunt, fish, trap, gather, or collect animals and plants, or perform ceremonies in the Claim Area. If some of the Plaintiffs' predecessors engaged in any of these activities in the Claim Area (which is denied), they did not do so until long after the relevant contact with Europeans and long after the Crown assertion of sovereignty.

84. None of the activities listed in paragraph 38 of the Claim were at the time of contact with Europeans elements of a practice, custom or tradition integral to the distinctive culture of the Plaintiffs' predecessor Indigenous groups in relation to the Claim Area.

85. As stated above, the Plaintiffs' predecessors did not occupy the Claim Area before the assertion of Crown sovereignty or any time and exercised their Aboriginal rights solely within Quebec.

86. One of the purposes for negotiating Treaty 9 was to address the concerns by Indigenous Peoples about non-Indigenous use of the land which disrupted their hunting and other traditional activities. Accordingly, the Treaty Commissioners were authorized to make Treaty 9 with those Indigenous Peoples who had been habitually using the land to hunt, to fish, and to trap. Further, a large part of the negotiations of Treaty 9 consisted of Crown assurances to Indigenous signatories that they could continue their traditional patterns of existing economic activity within the Treaty 9 territory and that they would have the same traditional means of earning a livelihood after the Treaty as before.

87. In the alternative, if the Plaintiffs or their predecessors had Aboriginal rights in the Claim Area, or any portion thereof, they have been abandoned, lost, released, terminated, or has otherwise expired before or after the making of Treaty 9, including by reason of the failure to maintain a substantial or any connection.

88. In the further alternative, if the Plaintiffs prove Aboriginal rights over any part of the Claim Area, and any such rights were not ceded under or extinguished by Treaty 9, then Ontario denies that it has infringed that those Aboriginal rights. If any such rights were

infringed, then such infringement was and is justified.

**VII. Plaintiff Allegations of Crown Breaches of Trust and Fiduciary Duty**

89. Ontario denies that it owed or breached any fiduciary duty to the Plaintiffs. Further, at no time has Ontario held the Claim Area or any part of it in trust or as fiduciary for the Plaintiffs, or their predecessors.

90. If specific fiduciary or other equitable duties or other obligations were owed to the Plaintiffs in respect of the Claim Area or in respect of any rights held in relation to the Claim Area (which is not admitted but expressly denied), they were owed only by Canada, not Ontario.

91. Any general fiduciary obligation of the Crown to Indigenous Peoples in Canada and any other Crown responsibilities to provide for the welfare and protection of Indigenous Peoples specifically are, as a matter of constitutional law, those of the Crown in right of Canada, not the Crown in right of a province. Ontario pleads and further relies upon ss. 91(24) and 130 of the *Constitution Act, 1867*.

92. To the extent that Ontario is found to have owed any fiduciary duties to the Plaintiffs, Ontario met its obligations and responsibilities and has not breached any such duties.

93. Ontario owed no fiduciary duty in respect of the Claim Area. Further, Ontario owed no other duty justiciable or enforceable in the courts, in respect of the Claim Area, beyond a duty that may have arisen under or in accordance with Treaty 9 such as a duty to consult or accommodate in respect of Treaty rights. Moreover, all parts of the Claim Area that

were the subject of a disposition, transaction, or use were the subject of a valid statutory provision authorizing that disposition, transaction, or use. The Plaintiffs' claims of breach of fiduciary duty as alleged at paragraphs 1(c), 73, 75, 77, 90, and 93 in the Claim and at paragraphs 28-43, 47-58, 60-64, 66-73, 76-80, 85-87, 89-90, 93-94, and 104 (save and except those allegations made against Canada) or elsewhere in the Response to Demand for Particulars are without foundation in fact or law and must be dismissed.

94. If the Plaintiffs or their predecessors have or had Aboriginal rights including Aboriginal title that were not extinguished under Treaty 9, which is denied, those rights were believed by Ontario to be extinguished by the formal ratification and confirmation of Treaty 9 by the Crown. Ontario could not have owed or breached a fiduciary duty in respect of such rights.

95. To the extent that the Royal Proclamation of 1763 provided guidance to Crown officials making Treaties, it was guidance only and imposed no mandatory requirements that had to be followed. Further and in the alternative, to the extent that such principles had to be followed (which is denied), and were not followed (which is denied), any such failures were carried out by, and were the responsibility of, Canada and its agents and servants, not Ontario.

#### ***VIII. Duty to Consult and Accommodate***

96. Ontario denies that it owed or breached a duty to consult and/or a duty to accommodate the Plaintiffs as pleaded. As noted above, Ontario denies that the Plaintiffs have Aboriginal title or rights in the Claim Area and the Plaintiffs do not plead any facts which would give rise to a cause of action for failure to meet any duty to consult or a duty

to accommodate or damages for breach of any such duty.

**IX. Honour of the Crown**

97. Ontario denies that it otherwise failed to uphold the Honour of the Crown in any dealings with the Plaintiffs.

98. At all relevant times, Canada had constitutional and legislative responsibility to establish a treaty-making process for treaties, and to negotiate and enter into treaties with Indigenous parties, including the Plaintiffs' predecessors. To the extent that the Plaintiffs allege a breach of the Honour of the Crown in respect of the Claim Area, the impugned act or omission was that of Canada and its servants.

**X. Unjust Enrichment**

99. Ontario denies that it was unjustly enriched by the use or exploitation of the Claim Area as alleged at paragraph 74 or elsewhere in the Claim. Ontario further denies that the Plaintiffs and their predecessors have suffered any corresponding deprivation. If there has been or is any such enrichment, it has arisen from the Crown in right of Ontario's title to the Claim Area pursuant to s. 109 of the *Constitution Act*, 1867, Treaty 9, and the absence of any Aboriginal title or other Aboriginal rights belonging to the Plaintiffs or their predecessors. Accordingly, Ontario pleads that there is juristic reason for any such enrichment.

100. Alternatively, if the Plaintiffs have suffered any loss or damage arising from unjust enrichment for which Ontario is liable (which is denied), the amounts claimed by the Plaintiffs are excessive, too remote to be recoverable, unknown to law, and do not give

rise to a cause of action.

***XI. General Defence to Claims of Unlawful Interference with Aboriginal Title or Aboriginal Rights***

101. Ontario denies that by enacting any statute or passing any regulation, directive, guideline, policy, authorization, instruction, or other measure which created any legal restriction on activities within the Claim Area, or directed or otherwise permitted activities within the Claim Area, it has infringed, infringed without justification, breached a fiduciary duty or other duty arising from the Honour of the Crown, or otherwise occasioned a legal or equitable wrong upon the Plaintiffs in respect of any Aboriginal title or Aboriginal rights.

102. Ontario has at all times acted with good faith to advance the interests of Ontario and Ontarians in respect of the Claim Area, and has done so in furtherance of a valid legislative or policy objective, appropriately balancing and reconciling all relevant interests.

103. In particular, any actions by Ontario concerning: (i) resource extraction and development, such as forestry, hydro-electric development, mining, and pipelines; (ii) transportation infrastructure, such as railways, roads, and airports; and (iii) otherwise concerning lands and waters such as the grant of interests in lands, the passage and implementation of the *Land Titles Act* R.S.O. 1990, c. L.5 and its predecessors, and the adoption and implementation of land use planning processes, did not interfere with the claimed Aboriginal title or Aboriginal rights in a manner not permitted by the law at the time of alleged interference or subsequently.

104. This proceeding is at an early stage and involves complex constitutional issues. Accordingly, Ontario notes its right to amend its Statement of Defence at later stages of this proceeding as more information about particular alleged breaches becomes available to Ontario, more specifically in relation to particular actions and inactions which are alleged to have interfered with the claimed Aboriginal title and Aboriginal rights.

***XII. Relief Concerning Lands Owned by Third Parties***

105. To the extent that the Plaintiffs seek an interest in real property owned by third parties in this action, those third parties may be *bona fide* purchasers of said property for value without notice, and the Plaintiffs would not be entitled to such relief.

***XIII. The Plaintiffs' Delay in Commencing This Proceeding***

106. The delay of the Plaintiffs in bringing the action gives rise to circumstances that make prosecution of the action unreasonable.

107. At all material times, the Plaintiffs and their predecessors had full knowledge of the causes of action and of the allegations contained in the Claim. In the alternative, if the Plaintiffs and their predecessors did not have such knowledge, they would have obtained such knowledge by the exercise of reasonable diligence, at all times since 1905 and 1906.

108. The Plaintiffs have known or should have known since Treaty 9 was made in 1905 and 1906 that it effected and at the very least was intended to effect a surrender of any Aboriginal title and Aboriginal rights in the Treaty 9 area.

109. The Plaintiffs have known or should have known since the negotiation and completion of the JBNQA in 1975 that the geographical extent of any Aboriginal title or

other Aboriginal rights they held, such as in Ontario, was an issue requiring determination either in litigation or by agreement with Canada and the relevant province.

110. The delay has been of such a length and extent that a reasonable expectation has arisen that Ontario will not be able to account for the obligations that the Plaintiffs allege existed and were breached. Furthermore, because of the delay, witnesses to some of the facts are no longer alive, much evidence is lost completely, and all evidence that would explain the surviving evidence so that the court can properly understand it and make findings of fact is lost, with the result that the claim is now necessarily based on stale and inadequate evidence. Moreover, the Plaintiffs have, instead of bringing this action in a timely fashion, failed to do so with the result that the public interest requires that the action be barred.

111. The Plaintiffs are therefore not entitled to any of the equitable remedies or any of the declaratory and consequential relief claimed in paragraph 1 of the Claim. Ontario pleads and relies upon the equitable doctrines of laches, acquiescence, election and waiver and the doctrine of estoppel.

112. The cause of action arose more than six years before the commencement of the proceeding. The proceeding is therefore barred by statute, and Ontario pleads and relies upon the *Limitations Act*, R.S.O. 1990, c. L.15, ss. 45(1)(g), 46, and its predecessors; the *Real Property Limitations Act*, R.S.O. 1990, c. L.15 and the *Limitations Act*, 2002, S.O. 2002, c. 24, sch. B, ss.2(1)(e)(f), (2).

113. The delay in bringing the action gives rise to a reasonable inference of

acquiescence by the Plaintiffs and their predecessors. The action is therefore barred by the equitable doctrine of laches.

114. The Plaintiffs and their predecessors made a representation, by their silence or inaction or both, which precludes the Plaintiffs from now asserting title to the Claim Area. The Plaintiffs are estopped from now asserting any claim to title in the lands.

#### ***XIV. Crown Immunity***

115. The claims asserted in this proceeding by the Plaintiffs arose prior to the coming into force in September 1963 of the Ontario *Proceedings Against the Crown Act* (now R.S.O. 1990, c. P. 27). Although a Royal Fiat was issued in this action, such issuance does not represent a waiver of substantive immunity by Ontario.

116. Claims based on alleged breaches of duty of care by the Crown, including what are now referred to as claims for breach of fiduciary duty, are claims for which the Crown is historically immune, and continues to be immune unless waived by legislation. Ontario has not waived its immunity and remains immune from all such claims asserted by the Plaintiffs in this proceeding.

117. To the extent that the Plaintiffs impugn the Crown's actions as an occupier of property in the Claim Area, their claim is barred by section 18(4) of the *Crown Liability and Proceedings Act, 2019*, as the impugned actions occurred more than 10 days before the delivery of the notice of claim.

118. To the extent that the Plaintiffs impugn regulatory decisions, including but not limited to decisions made in the regulation of the mining and forestry industries, the Claim

is barred by section 11 of the *Crown Liability and Proceedings Act, 2019*.

***XV. No Damages or other Equitable Remedies***

119. Ontario denies that the Plaintiffs suffered any loss, injury, damage, or harm in respect of the Claim Area as alleged at paragraphs 90-94 or elsewhere in the Claim. In the alternative, if the Plaintiffs have suffered any loss, injury, damage, or harm in respect of the Claim Area, then such loss, injury, damage or harm was not caused by any act or omission on the part of Ontario.

120. If the Plaintiffs have suffered any loss, injury, damage, or harm caused by any act or omission on the part of Ontario, the loss, injury, damage, or harm is excessive and remote.

121. In the alternative, if the Plaintiffs could make out that they had an interest in the Claim Area or a claim that they had surviving Aboriginal title or other Aboriginal rights as alleged in the Claim Area, Ontario submits that there is no basis in fact or in law for the damages or other equitable remedies claimed.

***XVI. Order Sought by Ontario***

122. Ontario asks that the action be dismissed, or in the alternative, dismissed as against Ontario, with costs.

**CROSSCLAIM**

123. The Defendant Ontario claims against the Defendant Canada for:

1. an order that any and all relief and costs to which this Court may find the Plaintiffs entitled in the action is relief and costs against Canada only or, in

the alternative;

2. an order directing Canada to indemnify Ontario in the amount of any damages, compensation, punitive or exemplary damages, interest, or costs for which this Court finds Ontario liable to the Plaintiffs and in the amount of the value of any lands belonging to or administered by Ontario in respect of which this Court makes a declaration that the Plaintiffs are the beneficial owners or any declaration of like effect;
3. the costs of these proceedings;
4. pre- and post-judgment interest; and,
5. such further and other relief as this Honourable Court deems just.

124. Ontario repeats and relies upon, in this Crossclaim, the contents of the Statement of Defence of Ontario, the allegations in the Claim (save and except those allegations made against Ontario, which are denied), and specifically pleads:

- a. At all relevant times Canada had the constitutional and legislative responsibility to establish a Treaty-making process for Treaties with Indigenous Peoples, and to negotiate and enter into Treaties with Indigenous parties, including the Plaintiffs and their predecessors, insofar as they had, might have had, or have Aboriginal title or other Aboriginal rights within Ontario;
- b. It was Canada's role and responsibility within the constitutional framework generally, and within the Treaty 9 making process specifically, to ensure that the Plaintiffs' predecessors were treated fairly; and

- c. Therefore, if fiduciary or other equitable obligations were owed to the Plaintiffs' predecessors in the context of the making of Treaty 9 (which is not admitted but expressly denied), they were owed only by Canada.

125. Any general fiduciary duty of the Crown to Indigenous Peoples in Canada and any responsibility of the Crown to provide for the welfare and protection of Indigenous Peoples are as a matter of constitutional law a duty and responsibility of His Majesty the King in right of Canada, not His Majesty the King in right of a province. Ontario has not owed and does not now owe any fiduciary or quasi-fiduciary duty to the Plaintiffs or their predecessors. Ontario pleads and relies upon the duty and responsibility of Canada and upon s. 91(24) of the *Constitution Act, 1867*.

126. In addition, to the extent that the Plaintiffs or their predecessors have or had Aboriginal title or other Aboriginal rights that were not extinguished under Treaty 9, which is denied, then any such title or rights were acquired as a result of Canada's erroneous representation to Ontario that the Plaintiffs' predecessors did not have Aboriginal title or other Aboriginal rights in the Claim Area in 1905 and 1906. This representation was made through, among other things, estimates of Indigenous people associated with different posts and railway settlements in the Treaty Territory collected and maintained by the DIA or other federal Crown servants.

127. Any liability to the Plaintiffs in this proceeding, which is not admitted and is denied, is therefore a liability of the Defendant Canada and not a liability of the Defendant Ontario or any other Defendant.

128. Canada is therefore liable to Ontario for all or any part of the Plaintiffs' claim for which the court may find Ontario liable. Ontario pleads and relies upon Rule 28.01 of the *Rules of Civil Procedure*, the *Crown Liability and Proceedings Act*, R.S.C. 1985. c. C-50, s. 27, as am. S.C. 1990, c. 8, s. 31, the *Proceedings Against the Crown Act*, R.S.O. 1990. c. P.27. s. 6, the *Crown Liability and Proceedings Act*, 2019, SO 2019 c C7 Sch 17, and the *Negligence Act*, RSO 1990 c N1.

### **DEFENCE TO MOOSE CREE FIRST NATION CROSSCLAIM**

129. Ontario denies that the Defendant Moose Cree First Nation ("Moose Cree") is entitled to contribution and indemnity as alleged at paragraph 119 of its Crossclaim and denies the allegations against it at paragraphs 120, 121, 123-125. If contribution and indemnity is owed to Moose Cree, Canada is the correct party to provide such contribution and indemnity.

130. With respect to paragraph 122, Ontario owes no duty, including any fiduciary duty, in respect of the Claim Area to Moose Cree, other than any duty that may have arisen under or in accordance with Treaty 9 (such as a duty to consult or accommodate in respect of Treaty rights). Further, at all material times, Ontario acted with honour and fulfilled any duties it may have owed to Moose Cree under Treaty 9.

131. Ontario repeats and relies on the allegations contained above in its Statement of Defence and its Crossclaim.

132. Moose Cree does not plead material facts which would give rise to any finding that their Treaty 9 rights were breached. In any event, Ontario denies that it breached Moose

Cree's Treaty 9 rights in any way.

133. Claims based on alleged breaches of duty of care by the Crown, including what are now referred to as claims for breach of fiduciary duty, are claims for which the Crown is historically immune, and continues to be immune unless waived by legislation. Ontario has not waived its immunity and remains immune from all such claims asserted by the Moose Cree in its Crossclaim.

134. Insofar as this proceeding represents an action “upon the case” or “in like case”, it is subject to a six-year limitation period. Further, the action is in part an action of account which is subject to a six-year limitation period. The cause of action arose more than six years before the commencement of this proceeding. The proceeding is therefore barred by statute. Ontario pleads and relies upon *An Act for Limitations of Actions, and for avoiding Suits in Law*, 21 Jas. I (1623), c. 16; *An Act ... to introduce the English law as to the rule of decision in all matters of controversy, relative to property and civil rights*, S.U.C., c. 32 Geo. III (1792), c. 1, s. 3; the *Constitution Act*, 1867, s. 129; the *Administration of Justice Act*, R.S.O. 1897, c. 324; the *Limitations Act*, R.S.O. 1990, c. L.15, ss. 45(1)(g), 46, and its predecessors; and the *Limitations Act*, 2002, S.O. 2002, c. 24, sch. B, ss. 2(1)(e)(f), (2).

April 30, 2024

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**GRAND CHIEF MATTHEW COON COME ET AL.**    and  
Plaintiffs

Court File No. CV-16-00552834-0000  
**THE ATTORNEY GENERAL OF CANADA**  
**ET AL.**  
Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE AND**  
**CROSSCLAIM OF THE DEFENDANT**

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*Lawyers for the defendant,*  
*His Majesty the King in right of Ontario*

THIS IS EXHIBIT "G" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.



Court File No:

**ONTARIO**  
**SUPERIOR COURT**

**BETWEEN**

**ATTAWAPISKAT FIRST NATION, APITIP ANICINAPEK NATION, AROLAND  
FIRST NATION, CONSTANCE LAKE FIRST NATION, EABAMETOONG FIRST  
NATION, FORT ALBANY FIRST NATION, GINOOGAMING FIRST NATION,  
KASHECHEWAN FIRST NATION, KITCHENUHMAYKOOSIB INNINUWUG, and  
NESKANTAGA FIRST NATION**

**Plaintiffs**

**-and-**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO, and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendants**

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date ..... Issued by.....

Local registrar

Address of court office:  
Superior Court of Justice  
330 University Ave, Toronto,  
ON M5G 1R8

TO: **The ATTORNEY GENERAL OF CANADA**  
284 Wellington St, Ottawa ON K1A 0H8

AND TO: **THE ATTORNEY GENERAL OF ONTARIO AND  
HIS MAJESTY THE KING IN RIGHT OF ONTARIO**  
Crown Law Office – Civil  
Ministry of the Attorney General  
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Toronto, ON M7A 2S9

## CLAIM

### PART I: RELIEF CLAIMED

The Plaintiffs seek the following relief:

1. Declarations that:
  - a) the Plaintiffs, as Treaty No. 9 (“Treaty 9”) First Nations, hold Treaty Rights of decision-making governance authority over land (“Jurisdiction”), including land under water and natural resources on, in, and from the land (“Land”) within the territory covered by Treaty 9 as depicted at Schedule A (“Treaty 9 Territory”), which authority is necessitated by and emanates from their Way of Life (defined below) derived from their responsibilities to and relationship with the Land, that Treaty 9 confirmed would continue;
  - b) Treaty 9 confirms that the Plaintiffs’ Way of Life, including Jurisdiction, is to continue without interference;
  - c) In the alternative to paragraph (b) above, the written text containing the clause that the Treaty 9 Nations (defined below) cede, release, surrender and yield up does not apply to and is of no force and effect in respect of Jurisdiction;
  - d) Treaty 9 did not include the ceding, releasing, surrendering or yielding up of Treaty 9 Nations’ Jurisdiction;
  - e) Treaty 9 Nations agreed in Treaty 9 to share their Lands with and maintain peace with settlers and agreed that the Crown was to maintain governance over settlers so as to

- maintain settler peace and ensure that the Treaty 9 Nations' Way of Life would be unmolested by settlers;
- f) The Crown agreed in Treaty 9 to protect the Treaty 9 Nations' Way of Life which includes Jurisdiction and provide assistance to the Treaty 9 Nations including in respect of necessities of life that had already been diminished by settler encroachment;
  - g) Treaty 9 did not result in a Jurisdiction for the Treaty 9 Nations that is subordinate to His Majesty the King in right of Canada ("Canada") or His Majesty the King in right of the Province of Ontario ("Ontario");
  - h) Treaty 9 resulted in there being de jure dual, shared or co-jurisdiction as between the Treaty 9 Nations and the Crown over or in respect of the Lands and uses of the Lands, which de facto has not been effected and which today is to be established in a regime, the nature, structure and process of which is to be negotiated as between the Parties in accordance with Canada's and Ontario's duties to negotiate in good faith;
  - i) Canada and Ontario have breached Treaty 9 by granting rights and authorizing activities in and to, and regulating uses of Land (collectively, "Regulating the Land" or "Regulating") without the Plaintiffs' consent, especially where such Regulating threatens their Way of Life;
  - j) Canada and Ontario have unjustifiably infringed and would continue to unjustifiably infringe the Plaintiffs' Treaty Rights by Regulating the Land without the Plaintiffs' consent, especially where such Regulating threatens their Way of Life;
  - k) Canada and Ontario have constitutional, fiduciary and other duties (the "Duties") to protect the Plaintiffs' meaningful exercise of Treaty Rights by refraining from

Regulating the Land without the Plaintiffs' consent, especially where such Regulating threatens their Way of Life;

- l) Canada and Ontario have breached their Duties to the Plaintiffs and failed to act honourably, and would continue to do so, in failing to diligently implement the Treaty Rights by Regulating the Land without the Plaintiffs' consent, especially where such Regulating threatens their Way of Life;
- m) permits, approvals or other authorizations granted by Canada and Ontario on or after the date on which this Statement of Claim is issued and served that Regulates the Land without the Plaintiffs' consent, especially where such Regulating threatens their Way of Life, including pursuant to the following Acts or their regulations, unjustifiably infringes on the Plaintiffs' Treaty Rights to Jurisdiction and are of no force or effect pursuant to the *Constitution Act, 1982*, ss 35(1) and 52:
  - i. *Mining Act*, RSO 1990, c M.14;
  - ii. *Crown Forest Sustainability Act, 1994*, SO 1994, c 25;
  - iii. *Fish and Wildlife Conservation Act, 1997*, SO 1997, c 41;
  - iv. *Public Lands*, RSO 1990, c P.43;
  - v. *Ontario Water Resources Act*, RSO 1990, c O.40;
  - vi. *Lakes and Rivers Improvement Act*, RSO 1990, c L.3;
  - vii. *Aggregate Resources Act*, RSO 1990, c A.8; and
  - viii. *Planning Act*, RSO 1990, c P.13;
  - ix. *Environmental Assessment Act*, RSO 1990, c E.18;

- x. *Impact Assessment Act*, SC 2019, c 28, s 1;
  - xi. *Canadian Navigable Waters Act*, RSC 1985, c N-22; and
  - xii. *Fisheries Act*, RSC 1985, c F-14.
- n) the Acts listed in paragraph (m) above are unconstitutional or inapplicable and of no force and effect in respect of Treaty 9 Territory;
- o) the declarations in paragraphs (m) and (n) above, are suspended for a reasonable period of time not exceeding five years, in order for the Parties to negotiate a co-Jurisdiction regime in respect of the Land;
2. An order that no claims initiated or continued by any Treaty 9 Nation for relief in respect of Treaty 9, such as claims for new reserve land owing as a treaty land entitlement, defences against charges brought by the Crown related to the harvesting of resources, or claims for fulfilment of treaty promises and commitments shall be adversely affected by the herein Claim;
3. An interim, interlocutory and permanent injunction or declaration in lieu restraining Canada and Ontario and those persons acting thereunder, from, without the Plaintiffs' consent, Regulating the Land or acting pursuant to such Regulating, where such Regulating threatens their Way of Life;
4. A permanent injunction or declaration in lieu restraining Canada and Ontario and those persons acting thereunder from, without the Plaintiffs' consent, Regulating the Land or acting pursuant to such Regulating, where such Regulating threatens their Way of Life after this Statement of Claim is issued and served;

5. Judgement in the form of equitable compensation and/or damages for Treaty 9 Nations in the amount of \$95,000,000,000 from Canada and Ontario for breach of Treaty and breach of the Duties, to be allocated based on a formula determined by the Court;
6. Pre and post-judgement interest;
7. Costs in the action; and
8. Such further, other, equitable and related relief as this Court may deem appropriate and just.

## **Part II: OVERVIEW**

1. The Plaintiffs are among the Anishinaabe (Ojibway), Oji-Cree, Algonquin and Cree Nations that signed Treaty 9 (the “Treaty 9 Nations” or “Indigenous Signatories”) which are the first peoples of the area known today as being in Treaty 9 Territory.
2. Since time immemorial and at the establishment of Treaty 9 relations with Canada and Ontario, the Treaty 9 Nations exercised Jurisdiction they understood to have been granted by the Creator. That is, they used and made decisions about and governed the use of the Land. This Jurisdiction was not granted by the Treaty or Crown. Rather, it was *recognized* and *protected* by the Treaty.
3. Any Crown assertion of sovereignty that the Crown made or attempted prior to the signing of Treaty 9, pertaining to Treaty 9 Territory, did not affect the Jurisdiction of the Treaty 9 Nations prior to Treaty 9: either in a de jure or a de facto sense. There was no basis in applicable law between nations or governments for the taking of such Crown sovereignty.

4. Treaty 9 did not amount to a granting of exclusive Jurisdiction to the Crown. The Plaintiffs never agreed to cede, release, surrender or yield up their Jurisdiction in Treaty 9 Territory. Similarly, the Plaintiffs never agreed that the Crown could take up lands in Treaty 9 Territory without their consent. Crown officials prepared the written text of Treaty 9 including the cede, release and surrender clause and the taking up clause before the meetings with Treaty 9 Nations (“Treaty Councils”) were even scheduled, and without the Indigenous Signatories’ knowledge or consent. At the Treaty Councils, the Treaty Commissioners never explained these clauses to the Indigenous Signatories and rarely even mentioned the words. The Indigenous Signatories cannot be held to have agreed to them or their purported effect on their Jurisdiction.
5. Even if the taking up clause does form part of Treaty 9, which the Plaintiffs deny, any right or ability of the Crown to take up land in Treaty 9 Territory is not absolute and does not confer exclusive Jurisdiction on the Crown. It is subject to and burdened by the Crown’s obligations to protect, honour and respect and not interfere with the Treaty 9 Nations’ Way of Life, which, as explained below, includes their Jurisdiction.
6. The Indigenous Signatories’ Way of Life at the time of treaty ‘negotiations’ included and relied on hunting, fishing, trapping and gathering of plants and all ancillary and related activities (“Harvesting”) which had economic, social, spiritual and cultural characteristics and purposes. The Indigenous Signatories’ Harvesting was facilitated, sustained, managed and governed by the Indigenous Signatories’ Jurisdiction. Harvesting and Jurisdiction, collectively, comprise the Indigenous Signatories’ “Way of Life.”

7. Jurisdiction is an essential aspect of the Plaintiffs' Way of Life. It is inseparable from Harvesting when viewed from the Indigenous perspective. From the Plaintiffs' perspective, they had and have a sacred responsibility bestowed upon them by the Creator to protect the Land so as to ensure that it remained and remains in a viable and healthy state to support future generations of humans and other-than-humans. This reflects a relationship and responsibility-based set of Indigenous laws and a relational, collective and holistic perspective. The Plaintiffs' Way of Life requires that they manage and govern the Land and its uses, including Harvesting, in accordance with this responsibility and relational perspective.
8. Canada has acknowledged the need to respect and protect First Nations' Jurisdiction. Specifically, Canada has agreed that First Nations require jurisdiction over any matter that is necessary to ensure an Indigenous community's survival and flourishing as a distinctive Indigenous community and that jurisdiction includes management of relations with the Crown. Management of the Land and resources is necessary for this survival and to facilitate a Way of Life.
9. Indigenous Signatories entered into Treaty 9 to protect their Way of Life, which was under threat from the rapid influx of settlers and the decline of the fur trade. They did not enter Treaty 9 with the intention of signing away their Way of Life including all decision-making authority over and responsibility to the Lands. In fact, the Indigenous Signatories' perspective of their sacred responsibility to and relationships with the Land would not have allowed them to do so.

10. The Plaintiffs did not agree to cede, release, surrender or yield up their Jurisdiction to the Crown so that the Crown had exclusive Jurisdiction in respect of the Land. Rather, Treaty 9 resulted in there being de jure co-, dual or shared Jurisdiction whereby the Crown could not interfere with the Plaintiffs' Way of Life (which includes their Jurisdiction) without their consent, especially when such interference (including through Regulating the Land) threatened their Way of Life.
11. The Indigenous Signatories contemplated that the Crown would undertake some governance, which would guard against incursions into the Treaty 9 Nations' Way of Life. The Indigenous Signatories agreed to the Treaty on the basis that, among other promises made by Canada and Ontario, "their present manner of making their livelihood [Harvesting and Jurisdiction] would in no way be interfered with."
12. Today, the Plaintiffs contemplate that such dual or co-Jurisdiction would be structured into a regime whereby, through negotiations, it is agreed and established who gives consent in certain circumstances, which processes are used to obtain this consent, and how disputes are resolved when impasses arise. To resolve impasses, the Plaintiffs contemplate an independent dispute resolution mechanism, rather than ad hoc process, similar to other situations governed by bilateral or multilateral treaties with multiple governments or decision-makers.
13. The written text of the Treaty was prepared "at headquarters" (Ottawa and Toronto) as between Canada and Ontario without any Indigenous Signatories' input. The Treaty Commissioners representing Canada and Ontario took the prepared written text and met with the Treaty 9 Nations in their territories. The Treaty Commissioners did not speak to

the Treaty 9 Nations about the language, concepts or implications of the written text, including the cede, release and surrender or taking up clauses. The Treaty Commissioners did not alter the language of the written text of the Treaty based on anything that was said by any Treaty 9 Nations. The Treaty Commissioners did not have the intent of negotiating the written terms of the Treaty at all. Rather, when meeting with the Treaty 9 Nations, the Treaty Commissioners made promises and commitments that are very different than the written text of the Treaty, which the Treaty 9 Nations agreed to and constitute the actual Treaty 9. The Crown has since held up the written text to be Treaty 9; it was not and is not. The oral agreement was and is Treaty 9.

14. The oral agreement that constitutes Treaty 9 is that the Treaty 9 Nations were to maintain their Way of Life, which includes Harvesting and Jurisdiction; that the Crown was granted some decision-making governance authority burdened by this commitment to protect the Treaty 9 Nations' Way of Life, including their Jurisdiction; and as such, what resulted was de jure dual, co-, or shared Jurisdiction whereby the Crown could not interfere with or threaten the Plaintiffs' Way of Life (which includes Jurisdiction) without their consent.
15. However, Canada and Ontario have repeatedly acted as if the Treaty 9 Nations did cede and surrender all their Jurisdiction to the Crown. The Crown governments took exclusive Jurisdiction when they knew or ought to have known that they did not have it and that the Treaty 9 Nations did not grant it away to them. They did so by duplicitous, dishonourable and often forceful means.
16. By extending various legislative schemes to Treaty 9 Territory, Canada and Ontario (but largely Ontario) have given themselves the ultimate sole authority to grant and restrict

ownership, sale of, use of, access to, exploitation of, development on and harm to the Land.

They have given themselves the authority to reap benefits from the Land and leave the Land in a depleted and sickened state.

17. This is an unjustified infringement of the Plaintiffs' Treaty Rights pertaining to Jurisdiction. It is a breach of the Crown's Duties and inconsistent with the honour of the Crown. This has been perpetrated for over 100 years, and cumulatively has had profound devastating effects on the Plaintiffs' capacity and power to effect self-determination. This has also had severe adverse cumulative effects on Harvesting and other Treaty Rights.
18. The Plaintiffs have never consented to the Crown taking exclusive Jurisdiction over the Land. The Crown's taking and forced imposition of exclusive Jurisdiction disabled any ability of the Plaintiffs to give or withhold free, prior and informed consent.
19. Jurisdiction centres around the power to make decisions, the power to choose, or in other words, the power to consent or withhold consent. The Plaintiffs are asking this Court to find that their Treaty Rights include the right to a Way of Life, which is tied to the Land and includes economic, social, cultural and spiritual characteristics, and which necessarily includes decision-making governance authority in respect of the Land they rely on for this Way of Life. This is their Right of Jurisdiction. The Crown must acquire the Plaintiffs' consent for any Regulating of the Land especially where it threatens the Plaintiffs' Way of Life.
20. The Plaintiffs plead that the harm of colonialism lies not so much that other people came and settled, or that the other people took some land and resources, but that they purported to *take over*, to bestow upon themselves some supreme right to rule it all.

21. The Plaintiffs plead that the Crown cannot justify its infringements to the Plaintiffs' Treaty Rights that pertain to Jurisdiction, which have taken place over the last 100+ years. The Crown has maintained that Treaty 9 Nations do not have Jurisdiction. Thus, the Crown has failed to take any steps to attempt to meet the requirements to justify infringements that it has never admitted have occurred. Furthermore, the Crown cannot justify its infringements given the severe effects of such infringements.
22. The Plaintiffs plead that the infringements and breaches of Treaty Rights pertaining to Jurisdiction must stop and seek declaratory and injunctive relief to that effect. For infringements and breaches already committed, the Plaintiffs seek compensatory relief.
23. The Plaintiffs bring this Claim against Canada and Ontario in the spirit of reconciliation, which is to enable distinct powers, positions and perspectives to co-exist where one does not subjugate, run roughshod over and render impotent the other. The Plaintiffs seek the direction of the Court to compel Canada and Ontario to the negotiating table with the Plaintiffs to establish the nature, structure, processes and dispute resolution mechanisms for a co-Jurisdiction regime. The Plaintiffs ask this Court to consider the words of Nelson Mandela and the context of moving away from apartheid: "It always seems impossible until it's done."

## **Part II: THE PARTIES**

### ***The Plaintiffs***

24. Attawapiskat First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 ("*Indian Act*") and an Aboriginal people within the meaning of s

35 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (“*Constitution Act, 1982*”).

25. Aroland First Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
26. Apitipi Anicinapek Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
27. Kitchenuhmaykoosib Inninuwug has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
28. Constance Lake First Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
29. Eabametoong First Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
30. Ginoogaming First Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
31. Kashechewan First Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
32. Fort Albany First Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.

33. Neskantaga First Nation has the capacity of a band within the meaning of the *Indian Act* and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.
34. The Plaintiffs are among the Anishinaabe (Ojibway), Oji-Cree, Algonquin and Cree peoples that signed Treaty 9. Treaty 9 Nations continue to occupy, use and govern the territories and resources in Ontario north of the height of land that marks the boundary of the Robinson Huron and Superior Treaties, in what is now the Land in Treaty 9 Territory.
35. The Plaintiffs signed Treaty 9 in 1905-1906 and 1929-1930.
36. The Treaty 9 Nations were subjected to the Crown imposition of the *Indian Act* such that they were continued by a number of ‘bands’ within the meaning of the *Indian Act*. The Plaintiffs represent 10 of those bands that are party to Treaty 9.

### ***The Defendants***

37. The Defendant His Majesty the King in Right of Ontario (or “Ontario”) is named in this proceeding pursuant to section 14 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17.
38. Ontario exercises jurisdiction over the Land material to the issues in this proceeding pursuant to sections 109, 92(5) and 92A of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3 (“*Constitution Act, 1867*”), subject to the Plaintiff First Nations’ Treaty and Aboriginal Rights.
39. Notice of this action was given to His Majesty the King in Right of Ontario by letter dated April 26, 2023 pursuant to section 18 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17.

40. The Defendant the Attorney General of Canada is the representative of His Majesty the King in right of Canada (or “Canada”) and is named in this proceeding pursuant to subsections 21(1) and 23(1) of the *Crown Proceedings and Liability Act*, RSC 1985, c C-50.
41. Canada exercises jurisdiction over “Indians, and Lands Reserved for the Indians” pursuant to subsection 91(24) of the *Constitution Act, 1867*, subject to the Plaintiff First Nations’ Treaty and Aboriginal Rights. Canada also exercises jurisdiction over navigable waters and sea coast and inland fisheries pursuant to subsections 91(10) and 91(12), respectively. Finally, Canada is responsible for the negotiation and implementation of international agreements such as the United Nations Convention on Biological Diversity, and for the conservation and protection of species at risk on federal lands.
42. The Crown Defendants are, either alone or together, successors to all the obligations, duties and liabilities of the Imperial Crown and Upper Canada, and in particular, the obligations, duties and liabilities owed to the Plaintiffs under Treaty 9. Reference in this statement of claim to “the Crown” includes either or both Defendants to the extent of their respective obligations, duties and liabilities.
43. The Defendants are jointly and severally responsible for upholding the promises made to the Plaintiffs in Treaty 9, the Crown’s fiduciary duties to the Plaintiffs and the Crown’s Honour, each to the extent of their respective jurisdictional competence.

## **PART IV: TREATY 9**

44. Treaty 9 is a treaty within the meaning of section 35 of the *Constitution Act, 1982*. It was ratified by Parliament by Order in Council 1906-2499.

### ***Treaty 9 Territory***

45. Today, Treaty 9 Territory covers approximately two-thirds of Ontario's dry land mass, as seen in Schedule A.
46. The Crown and Indigenous Signatories first signed Treaty 9 in 1905 and 1906, and later, in 1929 and 1930.
47. When Treaty 9 was signed in 1905 and 1906, the northern boundary of Ontario only reached the Albany River. North of the Albany River was the North-West Territories.
48. Despite this northern boundary, the 1905-1906 Treaty included lands in an unspecified area north of the Albany River within what was formerly the North-West Territories. The Crown included this area within the 1905-1906 Treaty because certain Indigenous Signatories' traditional territory and hunting grounds extended north of the Albany River.
49. In 1912, pursuant to the *Ontario Boundaries Extension Act*, 2 Geo V, c 40 (1912) the boundaries of Ontario changed to what they are today. As a result, the unspecified area north of the Albany River that was included in the 1905-1906 Treaty now falls within the province of Ontario.

50. In 1929 and 1930 adhesions to the Treaty were signed to incorporate additional lands north of the Albany River. The specific locations of the Treaty Councils and the details of the Treaty negotiations are discussed in more detail below.

***Context of the Parties' relationship***

51. Before the Treaty was signed, early political relations between Euro-Canadians and Indigenous nations in Treaty 9 Territory involved traders from the major fur trading companies.
52. In 1670, British King Charles II signed a Royal Charter establishing the Hudson's Bay Company ("HBC"). The King granted it rights to colonize and trade in all the lands draining into the Hudson's Bay and Straight, which the King named Rupert's Land.
53. When the British began colonizing North America, they encountered Indigenous nations that were well established and had their own laws, customs, practices and traditions. Rather than risking open conflict with these Indigenous nations, officials formed alliances with them and signed treaties of peace, neutrality and friendship over identifiable areas of land.
54. As such, the Royal Charter created no political or legal rights over, or subjugated, the Indigenous peoples of the region. To secure rights to use the lands, HBC officials signed compacts or 'treaties' with so called 'trading captains' to secure "liberty of trade and commerce and a league of friendship and peaceful cohabitation."

55. Ceremonies with defined protocols, feasts and gift-giving formed an important part of these alliances. The Anishinaabe, Cree, Oji-Cree and Algonquin received annual gifts from HBC officials in return for the privilege of sharing the land.
56. When war broke out between the English and the French, Indigenous nations participated as allies on one side or the other.
57. After the Pontiac War, King George III issued a Royal Proclamation in 1763. The Proclamation entrenched the principle that “Indians” in the British American colonies were not to be “molested or disturbed in the Possession of such Parts of Our Dominion and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.”
58. Such lands, according to the Proclamation, could not be patented or taken until ceded and surrendered to the Crown. This policy is, in part, a recognition of the existence of a set of land rights possessed by the “Indians” over their own lands, including the lands that became Treaty 9 Territory. Consent of the Indigenous nations and the Crown was and remains a requirement to displace or “extinguish” those rights.
59. The Royal Proclamation was followed and elaborated upon in 1794 when Governor General Lord Dorchester issued a more detailed list of protocols to rectify omissions in the official land cession records. These protocols included a blend of Indigenous and British customs which further entrenched acceptable treaty making procedures, including the principle that the terms of the treaty should be properly translated and explained, and the text of the treaty should be signed by the parties at a public ceremony consistent with Indigenous customary practices of allyship.

60. In the late 1800s, a growing interest in mining, logging, trapping and fishing in the region that later became Treaty 9 Territory began to attract resource exploitation and settlement in ever larger numbers.
61. The Canadian Pacific Railway (“CPR”) built rail lines in the north of Ontario that allowed access to unsurrendered lands. The CPR brought miners, surveyors and prospectors who occupied the lands, spread disease, started bush fires, depleted and disrupted game in the region and took resources without Indigenous consent.
62. Leaders in some Indigenous communities began to voice their frustration about the influx of settlers, trappers, prospectors, miners, fishers and the fact that no compensation had been received in exchange for their use and occupation of the lands. They petitioned the Crown to enter into treaty with the Indigenous nations north of the height of land that marked the boundary of the Robinson Huron and Superior Treaty territories.
63. Initially, the Crown ignored these requests for treaty, but before long Indigenous assertions of jurisdiction over the lands and resources against the encroachment of resource exploitation and settlement would press the issue. With the discovery of new mineral deposits in the region and a desire to develop infrastructure for timber extraction and hydro-electric power, the Crown recognized that a treaty was necessary to avoid violence in the lands that became Treaty 9 Territory.

### ***Negotiation of Treaty 9***

64. The Treaty was drafted by Canada in consultation with Ontario from approximately 1901 to 1905 without the involvement of the Treaty 9 Nations and before meeting with the

Treaty 9 Nations. The Treaty incorporates by reference the terms of a separate agreement entered into between Canada and Ontario (the “Written Treaty”).

65. Ontario and Canada each appointed Treaty Commissioners. Duncan Campbell Scott and Samuel Stewart, employees of the Department of Indian Affairs, were appointed on behalf of Canada and Daniel McMartin, from Perth, Ontario, was appointed on behalf of Ontario (together the “Commissioners”).
66. To try to get the Treaty agreed to, the Commissioners travelled by canoe on two separate expeditions to HBC posts across the land that became Treaty 9 Territory. Indigenous leaders gathered at the posts and eleven Treaty Councils were held between July 1905 and August 1906.
67. The first expedition began in July 1905 with a Treaty Council at Osnaburgh Post, modern day Mishkeegogamang First Nation. From there the Commissioners travelled down the Albany River and held Treaty Councils at:
  - a. Fort Hope Post (now Eabametoong First Nation);
  - b. Marten Falls Post (now Marten Falls First Nation);
  - c. Fort Albany Post (now Fort Albany First Nation and Kashechewan First Nation);
  - d. Moose Factory Post (now Moose Cree First Nation); and
  - e. New Post (now Taykwa Tagamou Nation).
68. The expedition also stopped at English River but did not hold a Treaty Council there.
69. The second expedition in 1906 went to:

- a. Abitibi Post (Wahgoshig First Nation, now Apitipi Anicinapek Nation);
  - b. Matachewan Post (now Matachewan First Nation);
  - c. Mattagami Post (now Mattagami First Nation);
  - d. Flying Post (now Flying Post First Nation);
  - e. New Brunswick House Post (now Brunswick House First Nation); and
  - f. Long Lake Post (Long Lake No. 77, now Ginoogaming First Nation).
70. The expedition also stopped at Chapleau and Missanabie (Chapleau Cree, Chapleau Ojibway, and Missanabie Cree) but did not hold Treaty Councils there.
71. At each Treaty Council a similar process was followed to formally execute the Treaty, with some minor variations. The Commissioners:
- a. selected translators to assist with negotiations;
  - b. requested that the community select representatives;
  - c. provided a brief overview of select terms of the Treaty orally in English, with translators interpreting for the Indigenous leaders;
  - d. answered questions posed by Indigenous leaders; and
  - e. presented the Written Treaty to the leaders as a completed document for signature with no opportunity to review the text.
72. The Written Treaty itself was not translated into Anishinaabemowin, Cree or Oji-Cree.
73. In most locations the Commissioners also discussed and agreed upon the location of reserves with the Indigenous leaders.

74. A common point of discussion was protection of the Indigenous Signatories' Way of Life. They often requested or demanded that their Way of Life not be interfered with or narrowed, that their fishing and hunting grounds not be encroached upon by the granting of rights to others, and the Commissioners repeatedly assured them it would not be, nor would they be restricted as to territory.
75. The Commissioners did not provide the Indigenous Signatories with an English nor translated copy of the Treaty, that is, neither the pre-developed Written Treaty nor the contents of the Oral Treaty reduced to writing were provided.
76. In 1929 and 1930 the Crown held another set of Treaty Councils to formally sign the Treaty at HBC posts. This time the Commissioners toured the region by airplane with signing ceremonies at Big Trout Lake in 1929, and Wendigo River at Nikip Lake, Trout Lake, Fort Severn, and Winisk in 1930. Paragraphs 71 through 75 apply to these Councils as well.
77. The Crown's goals in concluding Treaty 9 included:
- a. to encourage and facilitate the exploitation of mineral resources and settlement in the region in a peaceful and orderly way;
  - b. to secure a large-scale surrender of lands so that settlement and resource exploitation could proceed in the region in compliance with the Royal Proclamation of 1763 and the *Indian Act*, without the need to continuously sign *ad hoc* surrenders like those that were signed in Upper Canada;

- c. to respond to petitions from Indigenous nations, who were seeking to control increased settlement and resource exploitation by Euro-Canadians in the lands that became Treaty 9 Territory; and
  - d. to avoid the kind of violence they knew could arise when squatters, miners, surveyors and prospectors poured onto unsurrendered lands.
78. The Crown's intention was also to achieve its objectives as cheaply as possible.
79. Unlike with other numbered treaties of the era, there was no consideration given to the provision of agricultural implements, owing in part to the largely non-arable landscape of Treaty 9 Territory, unsuitable for agriculture. As the Commissioners noted, the Indigenous Signatories "could not hope to depend on agriculture as a means of subsistence; that hunting and fishing, in which occupations they were not to be interfered with, should for very many years prove lucrative sources of revenue."
80. The objectives for Indigenous Signatories to the Treaty included:
- a. to preserve *bimaadiziwin* in Ojibwe or *pimaatisiium* in Cree — happiness, prosperity, and protection of their traditional way of life;
  - b. to exercise a measure of control over the influx of Euro-Canadians into their territories; and
  - c. to secure monetary payments through annuities that would assist communities suffering from the decline of the fur trade, the impacts of the railway and the disease, disruption and displacement occasioned by the arrival of Euro-Canadians into the southern end of Treaty 9 Territory.

81. Indigenous Signatories intended to retain all their existing Jurisdiction, flowing from their Way of Life and responsibilities to the Land, and to share in the Land and resources.
82. By sitting down and negotiating with the Treaty 9 Nations, the Crown acknowledged the Treaty 9 Nations' Jurisdiction.

***The Written Treaty Terms***

83. Treaty 9 was drafted in English according to Euro-Canadian legal norms and worldviews.
84. According to the Written Treaty first circulated between Canada and Ontario in 1905, the Indigenous Signatories would:
  - a. agree to “cede, release, surrender and yield up... all their rights titles and privileges whatsoever” to territory amounting to 90,000 square miles, more or less;
  - b. grant the Crown a right to take up any tracts of land within the surrendered territory for the purpose of settlement; and
  - c. agree to obey the law, maintain peace among settlers and themselves, and to be “good and loyal subjects of the King.”
85. In exchange, the Treaty 9 Nations were supposed to receive:
  - a. \$8 gratuity per person, \$4 less than Treaties 3 and 5 with no scale for Chiefs and headmen;
  - b. \$4 annuity per person, \$1 less per year than Treaties 3 and 5 with no scale for Chiefs and headmen;

- c. reserves included in the Schedule to the Treaty for each band, which would not exceed one square mile for each family of five, to be surveyed and defined at a later date;
  - d. a right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered, subject to regulations when lands are “taken up” by the Crown;
  - e. such school buildings and educational equipment “as may seem advisable” to His Majesty's government of Canada; and
  - f. a flag and a copy of the Treaty.
86. According to the terms of the Written Treaty, Treaty 9 was also subject to an agreement between the Dominion of Canada and Province of Ontario, which was “attached” to the Treaty. This agreement was concluded after the Commissioners had set out on the Treaty expedition, only nine days before the Treaty was first signed by any Indigenous Signatory at Osnaburgh Post.
87. This Crown document contained, among other things, a clause stipulating that no hydro-electric resources capable of generating 500 horsepower could be included in reserves set aside under Treaty 9.

***Indigenous perspective of Treaty 9 (the “Oral Treaty”)***

88. The Written Treaty was not translated into Anishinaabemowin, Cree or Oji-Cree. Indigenous leaders did not have an opportunity to create their own written record of the

agreement, and a copy of the Written Treaty was not provided to the Treaty 9 Nations upon signing.

89. Instead, the Commissioners briefly described select terms of the Treaty, and that oral explanation was translated by translators selected by the Crown (the “Oral Treaty”). The translators were not shown nor asked to translate the text of the Written Treaty. The Commissioners had no authority to alter the terms of the Written Treaty.
90. The description of select terms provided to the Treaty 9 Nations bore little relationship to the full Written Treaty.
91. At each Treaty Council in 1905 and 1906 the Commissioners explained that:
  - a. the Treaty 9 Nations would be given a “present” of \$8;
  - b. they would receive an annuity of \$4 per annum in perpetuity;
  - c. the Treaty 9 Nations could continue to hunt, trap and fish in the Treaty 9 Territory as they and their forefathers had always done and their manner of doing so would “in no way” be interfered with; and
  - d. a reserve would be set aside for each Treaty 9 Nation.
92. At several Treaty Councils the Commissioners explained that the Treaty 9 Nations:
  - a. would not be required to reside on the reserves; and
  - b. the reserve was not to exceed one square mile of land for each family of five.
93. Funding for schooling was mentioned at some Treaty Councils.

94. The Commissioners were clear that the Treaty 9 Nations would be able to retain their relationship to the Land and live as they and their forefathers had done on their lands. This was a primary issue for discussion and the Commissioners had to repeatedly satisfy the Treaty 9 Nations that this was the case.
95. In exchange, Treaty 9 Nations agreed to share the Land with settlers.
96. The treaty was not explained to the Indigenous Signatories as giving up their management, development of or responsibilities to the Land; as preventing them from hunting, fishing and trapping on any particular areas occupied by settlers; nor as subjecting their hunting, fishing and trapping to regulation by the Crown as it saw fit.
97. The laws, beliefs, languages and customs of the Anishinaabe, Cree, Oji-Cree and Algonquin reflected the inherent, historic and inextricable connection between the very identities and lives of their peoples and their Lands. Land use and stewardship laws were oriented toward protection of the environment for future generations.
98. From the perspective of the Indigenous Signatories, it was not possible to “alienate” the Land and sever their profound connection with the Land by signing Treaty 9.
99. Indigenous Signatories could not have intended to simultaneously retain their Way of Life and deep, multifaceted and embedded relationship to the Land, including their sacred responsibilities to and use and occupation of the Land, while forfeiting authority to make decisions about that Land that was central to that Way of Life.
100. The Treaty 9 Nations were skeptical and questioned the Commissioners about why they were being asked to give up so little for what they were to receive in return. The

Commissioners assured them that “there was not something behind the terms of the agreement” that were being presented orally at the Treaty Councils and that “nothing but good was intended.”

101. Treaty 9 Nations understood that settlers would be coming, and in their dealings with the settlers they understood they were expected to “obey the law” and refrain from interfering with them. They understood that they were expected to maintain peace between each other.
102. Treaty 9 Nations did not believe that to “obey the law” meant surrendering authority to make decisions about their Lands, continued access to which they had been promised. Nor from the Treaty 9 Nations’ perspective would this be possible.
103. The Commissioners were aware the Treaty 9 Nations did not view their relationship with the Land through the lens of “Indian Tenure.” Despite their belief that the Treaty 9 Nations had no understanding of the law of “Indian tenure”, the Commissioners did not explain the concept during the Treaty Councils. The Commissioners also did not suggest or explain:
  - a. the “taking up” clause;
  - b. that Treaty 9 Nations were surrendering their ability to make decisions about the Land; and
  - c. that their right to harvest and their right to a reserve would be subject to regulation and extinguishment at the discretion of the Crown.

104. In summary, the Treaty Commissioners did not speak to the Treaty 9 Nations about the language, concepts or implications of the written text, including the cede, release and surrender or taking up clauses. They did not alter the language of the written text of the Treaty based on anything that was said by any Treaty 9 Nations. They did not negotiate the written terms of the Treaty at all. Rather, when meeting with the Treaty 9 Nations, the Treaty Commissioners made promises and commitments *orally*, which the Treaty 9 Nations agreed to. The oral promises are very different than the written text of Treaty 9 and constitute the actual Treaty 9. The Crown has since held up the written text to be Treaty 9; it was not and is not. The oral agreement was and is Treaty 9.

## **PART V: THE TREATY RIGHTS**

### ***The Crown's solemn promises***

105. As described above, the Crown required and sought the consent of the Plaintiffs' ancestors to open the tract of land they inhabited for settlement and other activities.

106. The Plaintiffs' ancestors consented to sharing the Land with settlers in exchange for the solemn promises made by the Crown. The Crown promised that:

- a. entering into Treaty 9 would not lead to interference with the Plaintiffs' Way of Life;
- b. the Land would be left in the Plaintiffs' care and control;
- c. the Plaintiffs' "occupations" of "hunting and fishing... [would] not be interfered with";

- d. the Plaintiffs would be free to hunt, trap, fish and gather resources throughout Treaty 9 Territory as they had before entering into Treaty 9; and
- e. the Plaintiffs' ancestors' "present manner of making their livelihood would in no way be interfered with" and would continue for their descendants after the Treaty as they existed before the Treaty and the Crown expected that the Plaintiffs would continue to make use of these means.

***The Plaintiffs' Right to a Way of Life***

- 107. Prior to and at the time of the Treaty Councils, Indigenous Signatories made their livelihood by Harvesting pursuant to their Jurisdiction which included management of the Land both as among themselves and as against settlers and explorers.
- 108. At the time of treaty-making, the Plaintiffs' ancestors were organized in societies, exercised their Jurisdiction, and used and occupied the Land that became known as Treaty 9 Territory, which they had done from time immemorial.
- 109. Treaty 9 Nations, including but not limited to the Plaintiffs, practiced a form of governance that was premised on ensuring the continued ability of their Way of Life including, especially, Harvesting. They practiced a socio-political and economic system of alliance and reciprocity to ensure the continued peaceful occupation and use of their Lands, which became Treaty 9 Territory.
- 110. The Treaty 9 Nations' perspective is that they are the guardians of the Land and continue to be. At the root of their law, culture and Way of Life is the belief that their Land is given by the Creator and can be neither bought nor sold.

111. There were regional and local variations in the practice of Land management within what became known as Treaty 9 Territory, but common among the Anishinaabe, Algonquin, Oji-Cree and Cree traditions were systems of decision-making that connected particular communities (variously referred to as bands, tribes, clans, council fires, etc.) with identifiable territories.
112. These communities governed their territories with their own rules and laws that determined who could use the Land, and how the Land could be used sustainably.
113. Matters that concerned multiple communities were addressed collaboratively at general councils convened for the purposes of making decisions that were important to the maintenance of Treaty 9 Nations' Way of Life and the Land that became Treaty 9 Territory, including treaty-making.
114. Accordingly, the Treaty 9 Nations' Treaty Right to a "Way of Life" included and continues to include their Harvesting practices and their Jurisdiction.

***Treaty Rights protecting the Plaintiffs' Way of Life***

115. The solemn promises made by the Crown ensured that maintenance and protection of the Plaintiffs' Way of Life included:
  - a. establishing the infrastructure necessary for Harvesting, including building cabins, camps and trails;
  - b. accessing traplines and trapline infrastructure, including trails and cabins;
  - c. accessing and protecting adequate quantities of clean and fresh water, capable of sustaining life;

- d. protecting and using terrestrial, riparian and water habitats to prevent interference with continuity of Harvesting;
- e. engaging in cultural transition – how the way of life can be passed on to subsequent generations;
- f. engaging in social and familial systems and practices;
- g. accessing preferred Lands for Harvesting;
- h. undertaking traditional and spiritual activities on and for the Land;
- i. managing use and protection of Lands within Treaty 9 Territory;
- j. managing permissions granted or denied to others to enter into and use the Lands of Treaty 9 Territory;
- k. travelling for the above purposes; and
- l. governing all of the above.

116. Collectively, the activities set out in paragraph 115 constitute Way of Life. Treaty Rights include protection of the Plaintiffs' Way of Life, that is, their Harvesting and Jurisdiction.

117. The Crown cannot lawfully infringe the Plaintiffs' Treaty Rights without justification and no other person may unreasonably interfere with the Plaintiffs' meaningful exercise of their Treaty Rights.

118. The Indigenous Signatories' willingness to enter into treaty with the Crown depended upon the Crown's guarantee that their Treaty Rights, including their Way of Life, would be protected. This was especially important given that much of Treaty 9 Territory was

and is not suitable for agriculture. The Indigenous Signatories could not and were not expected to make their livelihood through means other than Harvesting, such as farming.

***Crown obligations under Treaty 9***

119. The Defendants' entitlement under Treaty 9 to take up lands is subject to and burdened by its obligations to the Plaintiffs under Treaty 9, the *Constitution* and the legal doctrine of the honour of the Crown.

120. Pursuant to Treaty 9, the Defendants' obligations include:

- a. to not force or permit interference with the Plaintiffs' Way of Life;
- b. to not force or permit interference with the Plaintiffs' traditional patterns of economic activities;
- c. to not interfere with the Plaintiffs' meaningful exercise of their Treaty Rights;
- d. to not authorize or permit any person to do any of the things identified in subparagraphs (a) through (c);
- e. to prevent others from interfering with the Plaintiffs' meaningful exercise of their Treaty Rights;
- f. to exercise any Crown rights under the Treaty, including entitlements to take up land, in a manner that upholds the honour of the Crown and that does not infringe on the Plaintiffs' continued meaningful exercise of the Treaty Rights;
- g. to maintain adequate terrestrial and riparian habitat to support the activities of Harvesting, including for each species in respect of which these activities may be exercised; and

h. to use or allow settlers' use of the Lands in such a way as to ensure the continued meaningful exercise of the Treaty Rights by the Plaintiffs within Treaty 9 Territory.

121. Treaty 9, either on its own or by operation of subsection 35(1) of the *Constitution Act, 1982*, is imbued with the honour of the Crown and created a fiduciary or special legal relationship between the Plaintiffs and the Crown. Since entering into the Treaty, the Crown has been required to uphold the honour of the Crown in all its dealings in respect of the Plaintiffs' Treaty Rights and is under a fiduciary duty to the Plaintiffs to ensure the continued meaningful exercise of the Treaty Rights.
122. The clauses contained in the Written Treaty that refer to concepts such as cession, surrender, release and yielding up of rights, titles and privileges to the Land (the "Cession Clauses") are, to the extent they interfere with Treaty 9 Nations' Jurisdiction, contrary to the Crown obligations listed above. Further, these concepts were not referred to nor explained at most of the negotiations with the Indigenous Signatories.
123. Accordingly, to the extent they require interference with the Treaty 9 Nations' Jurisdiction, all of the Cession Clauses are inconsistent with the Oral Treaty and inconsistent with the Plaintiffs' Treaty Rights.

## **PART VI: THE CROWN'S PURPORTED EXCLUSIVE JURISDICTION OVER RESOURCE EXPLOITATION WITHIN TREATY 9 TERRITORY**

124. The Defendants have exercised legislative authority and discretionary control over the management of Treaty 9 Territory without the consent of the Plaintiffs (“Exclusive Jurisdiction”), including but not limited to:

- a. granting and restricting ownership or use of the Land;
- b. granting and restricting access to the Land;
- c. granting and restricting the sale of the Land;
- d. setting processes for obtaining the above, and compelling compliance while economically benefitting through collection of financial penalties for non-compliance;
- e. waiving compliance;
- f. economically benefitting from the granting of rights to the Land;
- g. setting standards for conservation of the Land;
- h. selecting which Indigenous communities are entitled to input about the use of the Land while restricting the amount, manner and consequences of such input;  
and
- i. compelling disclosure of information and controlling access to information about the use of the Land.

125. By Regulating the Land in this manner, the Defendants have authorized resource exploitation within Treaty 9 Territory, including through:

- a. mining;
- b. forestry;
- c. commercial hunting, trapping and fishing;
- d. land alienation and encumbrance;
- e. hydroelectric infrastructure;
- f. roads and other infrastructure;
- g. agricultural land clearing; and
- h. other industrial development.

(collectively, the “Resource Exploitation”)

126. The Defendants Regulate Land within Treaty 9 Territory without the Plaintiffs’ consent.

This has resulted in severe adverse cumulative effects on the Plaintiffs’ meaningful exercise of their Treaty Rights.

127. The Defendants’ Regulation of Land within Treaty 9 Territory has left the Plaintiffs

without any meaningful ability to exercise their Treaty Rights that pertain to Jurisdiction.

Jurisdiction is vital to the Plaintiffs’ ability to meaningfully exercise their Harvesting, and preservation of their Jurisdiction is essential for that purpose.

***Lack of Treaty Authority for Exclusive Jurisdiction to authorize Resource Extraction***

128. On behalf of the Crown, beginning in 1905, the Treaty Commissioners promised the

Indigenous Signatories that the Crown would protect their Way of Life and relationship

to the Land so long as they remained at peace with settlers. The Indigenous Signatories did remain at peace with settlers.

129. The Treaty Rights continued to apply throughout Treaty 9 Territory at all material times, including at the time the Crown asserted Exclusive Jurisdiction over Regulation of Land within Treaty 9 Territory.

130. As of the signing of Treaty 9 in 1905, Ontario had been historically asserting Exclusive Jurisdiction by Regulating the Land in Treaty 9 Territory pursuant to several statutory regimes. These included, but are not limited to:

- a. *The General Mining Act of 1869*, SO 1868, c 34, which remained in force until 1906 when it was replaced by *The Mines Act, 1906*, RSO 1897, c 36, and in 1908 with *The Mining Act of Ontario*, 6 Edw VII c 11 and subsequent amendments all of which set out a statutory regime whereby Ontario could grant permission to and manage the ability of parties to conduct mining activities within Treaty 9 Territory;
- b. *An Act respecting the Sale and Management of Timber on Public Lands*, RSO 1897, c 32 consolidating a statutory regime whereby Ontario could grant permission to and manage the ability of parties to cut timber within and remove timber from Treaty 9 Territory for commercial gain; and
- c. *The Ontario Fisheries Act*, RSO 1897, c 288 and the *Ontario Game Protection Act*, RSO 1897, c 287, consolidating statutory regimes whereby Ontario could grant permission to and manage the ability of parties to kill and remove animals and fish from Treaty 9 Territory for commercial gain.

131. Ontario also historically exercised Exclusive Jurisdiction to Regulate Land in Treaty 9 Territory when, in 1911, Ontario incorporated the town of Timmins within the south-eastern portion of Treaty 9 Territory, at the present townsite of Timmins, Ontario.
132. The Crown, under *An Act to provide for the Incorporation of Towns in Territorial Districts*, SO 1902, c 30, established the Town of Timmins on the Land without Treaty authority.
133. At all material times the Treaty 9 Nations' Jurisdiction was neither surrendered, unused or unnecessary to the Plaintiffs' continued Harvesting, and accordingly, could not be interfered with.
134. As of the signing of Treaty 9 in 1905 and shortly thereafter, Canada had been historically asserting Exclusive Jurisdiction through its continued application of several statutory regimes that Regulate Land in Treaty 9 Territory. These included, but are not limited to:
- a. the *Dominion Lands Act*, RSC 1886, c 54 that set out a statutory regime whereby Canada could grant permission to and manage the ability of parties to cut timber within and remove timber for commercial gain within Treaty 9 Territory;
  - b. the *Dominion Lands Act*, RSC 1906, c 54, that set out a statutory regime whereby Canada could grant permission to and manage the ability of parties to conduct mining activities within Treaty 9 Territory; and
  - c. the *Fisheries Act*, RSC 1886, c 95 consolidating a statutory regime whereby Canada could grant permission to and manage the ability of parties to kill and remove fish from within Treaty 9 Territory for commercial gain.

135. The Acts and instrument referred to in paragraphs 130 to 134 above collectively constitute the “Historic Legislation.”

136. Currently, Ontario and Canada continue to use statutory authorities to Regulate Land in Treaty 9 Territory, including, but not limited to:

- a. *Mining Act*, RSO 1990, c M.14;
- b. *Crown Forest Sustainability Act, 1994*, SO 1994, c 25;
- c. *Fish and Wildlife Conservation Act, 1997*, SO 1997, c 41;
- d. *Public Lands*, RSO 1990, c P.43;
- e. *Ontario Water Resources Act*, RSO 1990, c O.40;
- f. *Lakes and Rivers Improvement Act*, RSO 1990, c L.3;
- g. *Aggregate Resources Act*, RSO 1990, c A.8;
- h. *Planning Act*, RSO 1990, c P.13;
- i. *Environmental Assessment Act*, RSO 1990, c E.18;
- j. *Impact Assessment Act*, SC 2019, c 28, s 1;
- k. *Canadian Navigable Waters Act*, RSC 1985, c N-22; and
- l. *Fisheries Act*, RSC 1985, c F-14.

(collectively, the “Current Legislation”)

137. Together, the Historic Legislation and the Current Legislation constitute the “Exclusionary Legislation” and form part of the Defendants’ exercise of Exclusive Jurisdiction.
138. The application of the Exclusionary Legislation to Treaty 9 Territory was done without the Treaty 9 Nations’ consent.
139. The Crown’s Exclusive Jurisdiction had no basis in law prior to Treaty 9 and was not made lawful by Treaty 9. The Crown’s Treaty 9 promises and commitments to which the Treaty 9 Nations agreed reflect commitments to protect the Treaty 9 Nations’ Way of Life, which includes Jurisdiction and Harvesting. It is impossible for the Crown to protect the Treaty 9 Nations’ Way of Life while also purporting to exercise Exclusive Jurisdiction and apply Exclusionary Legislation.
140. In the alternative, if any Historic Legislation or exercise of Exclusive Jurisdiction was valid under law prior to Treaty 9, which is denied, it was overridden and rendered nullified or inapplicable by the Crown’s promises and commitments to uphold and protect Treaty 9 Nations’ Way of Life, which encompasses Harvesting and Jurisdiction. The former is in direct conflict with the latter.
141. The Exclusionary Legislation and exercise of Exclusive Jurisdiction in relation to Treaty 9 Territory adversely interfered and interferes with the Plaintiffs’ Treaty Rights and is therefore an infringement and breach of Treaty 9.

***Impacts of the Exclusive Jurisdiction on the exercise of Treaty Rights***

142. The cumulative impacts of the Crown's Exclusive Jurisdiction have resulted in deterioration of the Plaintiffs' ability to:

- a. exercise Jurisdiction over Harvesting and Land required for Harvesting;
- b. exercise Jurisdiction to preserve and protect Land from being taking up, fragmentation, industrial and commercial development by non-Indigenous persons that has caused contamination, pollution, loss of Land, climate change and threats to species;
- c. exercise Jurisdiction to protect the cultural and spiritual aspects of Harvesting, including through teaching and passing on language and laws as part of their Way of Life; and
- d. exercise Jurisdiction over health management including through access to traditional foods and medicines.

143. As a result of the above, the Plaintiffs' ability to exercise Harvesting has severely deteriorated.

144. The cumulative effects of the Crown's Exclusive Jurisdiction have resulted in and will continue to result in: significant adverse impacts on the meaningful exercise of the Plaintiffs' Treaty Rights; breach of the Treaty; and unjustified infringement of the Plaintiffs' Treaty Rights.

145. The Plaintiffs have made their concerns regarding the cumulative impacts of the Crown's Exclusive Jurisdiction and Regulation of Land (described in the paragraph directly above)

known to the Defendants. However, the Defendants have failed or refused to adequately address the impacts to and infringement of the Plaintiffs' Treaty Rights.

146. The Defendants have not taken any, or sufficient, steps to prevent the breach of the Treaty, address the infringement of the Treaty Rights or ameliorate the impacts of the Exclusive Jurisdiction on the continued exercise of the Plaintiffs' Treaty Rights.

147. The Defendants have continued, and will continue unless restrained from doing so, to exercise Exclusive Jurisdiction within Treaty 9 Territory contrary to the Defendants' obligations under the Treaty.

#### **PART VII: THE DEFENDANTS' CONDUCT IS UNLAWFUL**

148. The Plaintiffs have rights under the Treaty that protect against the curtailment of their Way of Life by the Crown.

149. The existing treaty rights of the Aboriginal peoples of Canada are recognized and affirmed by the *Constitution Act, 1982*.

150. The Defendants are bound by the Treaty, as both levels of government are responsible for fulfilling the promises in the Treaty, in accordance with the division of powers under the *Constitution Act, 1867*.

151. The exercise of the Defendants' rights under the Treaty, including any rights to make regulations or to take up lands, are subject to and burdened by the Defendants' obligations to the Plaintiffs under the Treaty, and the Crown's Duties. The Defendants must act in a way that seeks to preserve and accomplish the intended purposes of the Treaty Rights,

seeks to minimize impacts on the Treaty Rights and to ensure the continuing meaningful exercise of the Treaty Rights by the Plaintiffs.

152. Through the Exclusionary Legislation, the Defendants have undertaken Exclusive Jurisdiction to Regulate the Land within Treaty 9 Territory. As a result, the Defendants have undertaken, caused and/or authorized Resource Exploitation within and adjacent to Treaty 9 Territory, which has resulted in:

- a. forcible interference with the Plaintiffs' Way of Life;
- b. interference with the continuity of the Plaintiffs' traditional patterns of economic activity and restraint of the Plaintiffs' means of earning a livelihood;  
and
- c. significant interference with and curtailment of the Plaintiffs' ability to exercise their Treaty Rights, such that the Plaintiffs have been left with no meaningful ability to exercise some or all of their Jurisdiction within Treaty 9 Territory.

153. As such, the Defendants have breached and infringed, and continue to breach and infringe, the Treaty and the Plaintiffs' Treaty Rights, contrary to their Duties.

154. Further, or in the alternative, the Defendants have unlawfully caused adverse effects upon the Plaintiffs' Treaty Rights without having fulfilled the obligations required of the Defendants pursuant to the Treaty, the *Constitution* and the legal doctrine of the honour of the Crown.

155. Further, or in the alternative, any rights of the Defendants under the Treaty to make regulations or to take up land are subject to the legal doctrine of the honour of the Crown

and the fiduciary duties of the Crown to the Plaintiffs, including the duty to act in the interests of the Plaintiffs and to seek to ensure the continuing meaningful exercise of the Treaty Rights.

156. The Exclusionary Legislation and the Defendants' exercise of Exclusive Jurisdiction to Regulate Land has adversely impacted the Plaintiffs' ability to meaningfully exercise their Treaty Rights within Treaty 9 Territory, contrary to the Plaintiffs' interests. As such, the Exclusionary Legislation and the Defendants' exercise of Exclusive Jurisdiction to Regulate Land constitutes breaches of fiduciary duty and, or in the alternative, the legal doctrine of the honour of the Crown.
157. Further, or in the alternative, by Regulating Land as herein described, the Defendants have taken benefit from their discretionary control over Treaty 9 Territory and have put their own strategic and financial interests in the development of Treaty 9 Territory before the Plaintiffs' interests. This conduct breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.
158. Further, or in the alternative, the Defendants have failed to act with reasonable care, skill and diligence required of them by law, as the Defendants have failed to inform themselves or the Plaintiffs of the potential cumulative impacts of the Exclusionary Legislation and the Regulation of Lands on the exercise of the Plaintiffs' Treaty Rights or to consider the cumulative impacts upon the Plaintiffs in Regulating the Land, and thus failed to seek to ensure the Plaintiffs' continuing meaningful exercise of their Treaty Rights. This conduct

breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.

**PART VIII: THE CESSION CLAUSES ARE NOT PART OF THE TREATY OR ARE UNCONSTITUTIONAL**

159. The Cession Clauses in so far as they apply to the Jurisdiction of Treaty 9 Nations do not form part of Treaty 9. They were largely not disclosed to the Indigenous Signatories and the Indigenous Signatories did not enter Treaty 9 with the intention to be bound by them in respect of their Jurisdiction.
160. In the alternative, if the Cession Clauses are part of Treaty 9, which is denied, the Cession Clauses in so far as they pertain to the Jurisdiction of the Treaty 9 Nations are contrary to the Treaty Rights and the Crown's obligations of non-interference in the Plaintiffs' Way of Life which includes Harvesting and Jurisdiction.
161. The Crown's failure to disclose the Cession Clauses' application to the Treaty 9 Nations' Jurisdiction is inconsistent with a clear and plain intention to extinguish any rights of the Plaintiffs, including the Treaty Rights.
162. As a result, all the Plaintiffs' Treaty Rights, including protection of their Way of Life, which includes Jurisdiction, are recognized and affirmed by s 35 of *the Constitution Act, 1982*.

163. Subsection 52(1) of the *Constitution Act, 1982* renders laws inconsistent with the provisions of the *Constitution*, including s 35, of no force or effect to the extent of the inconsistency.
164. In so far as they breach the Plaintiffs' Treaty Rights that pertain to their Jurisdiction, the legal effects of the Cession Clauses, if any, are inconsistent with the *Constitution*, and are of no force or effect.
165. Further, or in the alternative, the Defendants failed to uphold the Honour of the Crown when negotiating the terms of Treaty 9 with the Indigenous Signatories, and as a result, any legal effects on the Plaintiffs' Jurisdiction of the Cession Clauses the Defendants purport to have obtained agreement to, which is denied, were obtained contrary to the Honour of the Crown and are of no force or effect.

#### **PART IX: EQUITABLE COMPENSATION AND/OR DAMAGES**

166. The Plaintiffs are entitled to equitable compensation and/or damages for breach of the Treaty, the Defendants' Duties and the honour of the Crown and for infringement of the Plaintiffs' Treaty Rights.
167. As a result of the Exclusionary Legislation and the Defendants' Regulation of Land within Treaty 9 Territory, the Plaintiffs have lost access to and management of lands and resources and the ability to continue their traditional patterns of livelihood.
168. This loss has diminished the Plaintiffs' cultural and spiritual traditions. It has also had a detrimental impact on the health and well-being of the members and descendants of the Plaintiff First Nations.

169. Further, the Defendants have materially benefited from their Regulation of Lands within Treaty 9 Territory in breach of the Treaty, their Duties and the honour of the Crown.
170. The Defendants have and continue to use the Exclusionary Legislation to extract resources, earn revenues, and gain other financial compensation from parties engaged in Resource Exploitation.
171. By reason of the facts set out herein, the Plaintiffs claim equitable compensation and/or damages.
172. The Plaintiffs claim equitable compensation and/or damages for Treaty 9 Nations in the amount of \$95,000,000,000, to be allocated based on a formula determined by the Court.

#### **PART X: MISCELLANEOUS**

173. The Plaintiffs plead and rely upon Treaty 9 and its adhesions and:
- a. *Aggregate Resources Act*, RSO 1990, c A.8;
  - b. *An Act respecting the Sale and Management of Timber on Public Lands*, RSO 1897, c 32;
  - c. *An Act to provide for the Incorporation of Towns in Territorial Districts*, SO 1902, c 30;
  - d. *Canadian Navigable Waters Act*, RSC 1985, c N-22;
  - e. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3;
  - f. *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;

- g. *Crown Forest Sustainability Act, 1994*, SO 1994, c 25;
- h. *Dominion Lands Act*, RSC 1886, c 54;
- i. *Dominion Lands Act*, RSC 1906, c 54;
- j. *Environmental Assessment Act*, RSO 1990, c E.18;
- k. *Fish and Wildlife Conservation Act, 1997*, SO 1997, c 41;
- l. *Fisheries Act*, RSC 1886, c 95;
- m. *Fisheries Act*, RSC 1985, c F-14;
- n. *Impact Assessment Act*, SC 2019, c 28, s 1;
- o. *Lakes and Rivers Improvement Act*, RSO 1990, c L.3;
- p. *Mining Act*, RSO 1990, c M.14;
- q. *Ontario Boundaries Extension Act*, 2 Geo V, c 40 (1912);
- r. *Ontario Game Protection Act*, RSO 1897, c 287;
- s. *Ontario Water Resources Act*, RSO 1990, c O.40;
- t. *Planning Act*, RSO 1990, c P.13;
- u. *Public Lands*, RSO 1990, c P.43;
- v. *Royal Proclamation, 1763*, RSC, 1985, App II, No 1;
- w. *The General Mining Act of 1869*, SO 1868, c 34;
- x. *The Mines Act, 1906*, RSO 1897, c 36, s 1;
- y. *The Mining Act of Ontario*, 6 Edw VII c 11;

- z. *The Ontario Fisheries Act*, RSO 1897, c 288;
- aa. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007); and
- bb. further and other statutory instruments as counsel may advise and this Honourable Court may permit.

174. The Plaintiffs further rely on the following enactments for the relief sought:

- a. *Constitution Act, 1982*, s 52;
- b. *Courts of Justice Act*, RSO 1990, c C.43;
- c. *Crown Liability and Proceedings Act*, SO 2019, c 7, Sched 17;
- d. *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14; and
- e. such further enactment(s) as counsel may advise.

175. The Plaintiffs propose that this action be tried in Toronto, Ontario.

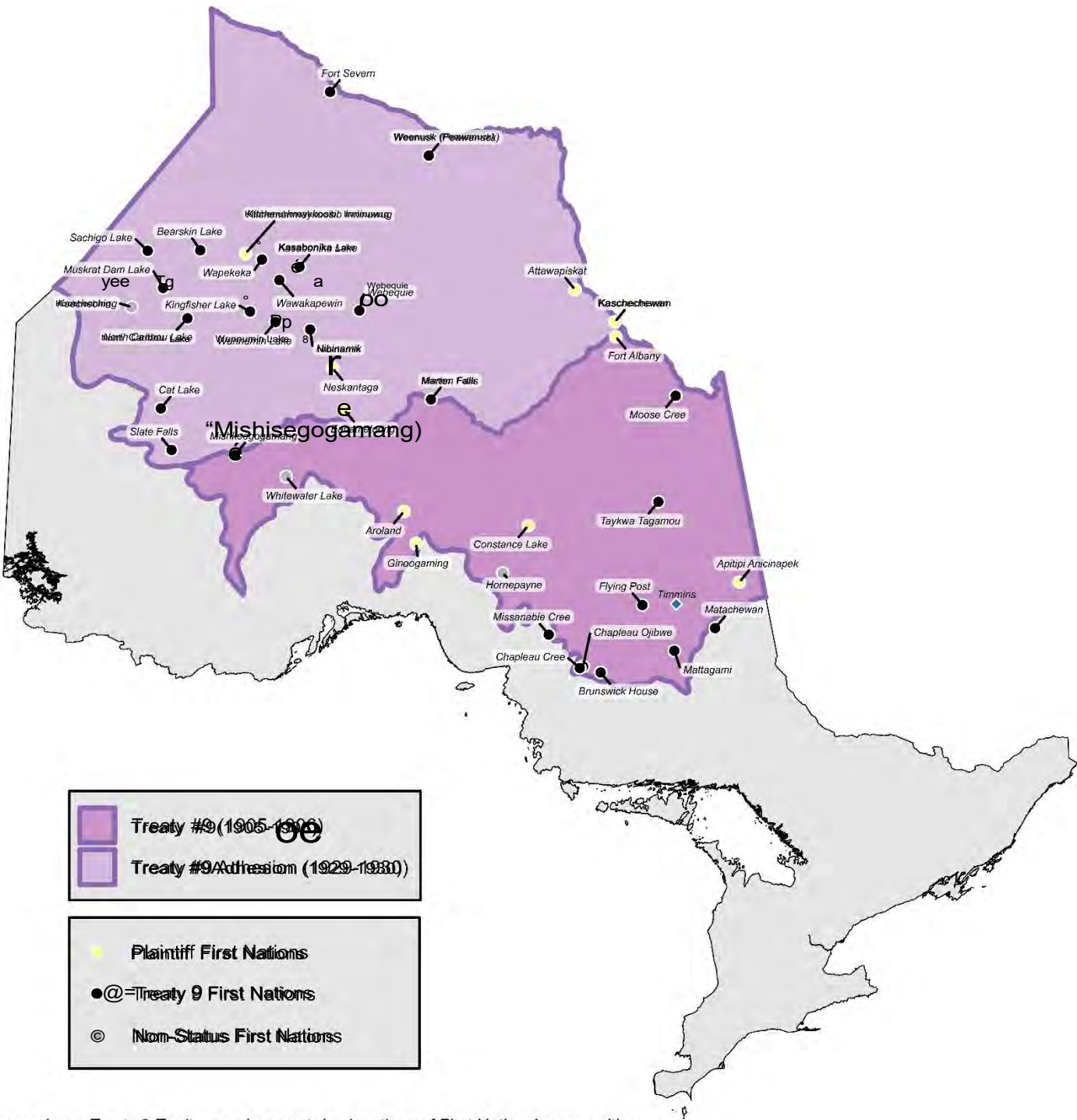
**DATE: June 26, 2023**

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SCHEDULE “A”



This map shows Treaty 9 Territory and presently located locations of First Nations' communities, which may not correspond to those Nations' Traditional Territories

Attawapiskat Et. Al. v. Attorney General of Canada and  
Attorney General of Ontario  
Plaintiffs Defendants

Court File no.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT Toronto

Statement of Claim

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THIS IS EXHIBIT "H" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

---

Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.

Court File No. CV-22-00688037-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

CHAPLEAU CREE FIRST NATION,  
 MISSANABIE CREE FIRST NATION,  
 and BRUNSWICK HOUSE FIRST NATION

**PLAINTIFFS**

– and –

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

**DEFENDANT***(Court seal)***AMENDED STATEMENT OF CLAIM****TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL**

**FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date .....

Issued by

.....

Local Registrar  
330 University Ave.  
Toronto ON M5G 1R8

**TO:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

Ministry of the Attorney General  
Crown Law Office – Civil  
McMurtry-Scott Building  
8th Floor, 720 Bay Street  
Toronto, Ontario, M7A 2S9

Tel: 416.326.2220  
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Email: [cloc.reception@ontario.ca](mailto:cloc.reception@ontario.ca)

## CLAIM

### OVERVIEW

1. Chapleau Cree First Nation, Missanabie Cree First Nation, and Brunswick House First Nation (collectively, the “**Nations**”) bring this action to protect their lands, resources, and way of life from the cumulative impacts of forestry and other industrial activities in Treaty 9.
2. The Nations entered into Treaty 9 based on assurances from the Crown that they would be able to continue to hunt, trap, and fish as they had prior to Treaty, and that their way of life would be protected from forced interference.
3. The Defendant, the Crown in right of Ontario (“**Ontario**”), has a duty to act diligently in fulfilling the Crown’s Treaty promises, including by establishing processes which take into account and protect the Nations’ Treaty rights in relation to the authorization of forestry activities in Treaty 9.
4. Instead of upholding these promises, Ontario has undertaken and authorized forestry and related activities (the “**Activities**”) in Treaty 9 which have significantly diminished the Nations’ ability to exercise their Treaty rights and maintain their way of life.
5. Ontario’s actions and inactions in respect of the Activities constitute a persistent pattern of error and indifference which substantially frustrates the purpose of the Crown’s

solemn promise under Treaty 9. As a result, Ontario has breached its duty to implement the Treaty.

## **RELIEF SOUGHT**

6. The Plaintiffs seek:
  - a. a declaration that Ontario is obligated, as part of the duty of honourable and diligent Treaty implementation, to monitor, assess and manage the cumulative impacts of the Activities so as to ensure the Nations are able to continue to meaningfully exercise their Treaty rights and maintain their way of life;
  - b. a declaration that Ontario breached the Crown's obligations under Treaty 9, including the Crown's honourable and fiduciary obligations, by authorizing and/or undertaking the Activities without due regard to the cumulative impacts of those Activities on the Nations' ability to meaningfully exercise their Treaty rights and maintain their way of life;
  - c. a declaration that Ontario's mechanisms for assessing and taking into account cumulative impacts are inadequate and have contributed to the breach of its obligations under Treaty 9;

- d. a declaration that Ontario shall not continue to authorize and/ or undertake further activities that breach the Crown's obligations under Treaty 9;
- e. a declaration that Ontario, in cooperation with the Nations, must undertake studies or other processes as necessary to:
  - i. assess the cumulative impacts of the Activities on the Nations' ability to meaningfully exercise their Treaty rights and maintain their way of life; and
  - ii. establish limits or thresholds for further cumulative disturbance of the ecosystems in the Nations' Territories and/ or on the Nations' Treaty rights and way of life;
- f. a declaration that Ontario must act with diligence to consult and negotiate with the Nations for the purpose of establishing timely enforceable mechanisms to monitor, assess and manage the cumulative impacts of forestry and other activities on the Nations' ability to meaningfully exercise their Treaty rights and maintain their way of life;
- g. costs of this proceeding; and,
- h. such further and other relief as this Honourable Court may deem appropriate.

## THE PARTIES

### The Plaintiffs

7. The Plaintiffs, Chapleau Cree First Nation, Missanabie Cree First Nation and Brunswick House First Nation, are “aboriginal peoples” within the meaning of section 35 of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c.11 (the “*Constitution Act, 1982*”) and are each a “band” within the meaning of the *Indian Act*, RSC 1985.
8. The Nations hold and exercise rights, including established Treaty rights, which are protected under section 35(1) of the *Constitution Act, 1982*, in respect of lands and waters in what is now known as the James Bay region in northern Ontario (the “**Territories**”).

### The Defendant

9. The Defendant, Ontario, is vested with the administration, control and beneficial interest in provincial lands within the Territories pursuant to the *Constitution Act, 1867*, 1867, 30 & 31 Vict, c 3 (the “*Constitution Act, 1867*”), subject to the rights and interests of the Nations.

10. Ontario, as an emanation of the Crown, has exclusive authority under the *Constitution Act, 1867*, to take up provincial lands for forestry, mining, settlement and other exclusively provincial matters.
11. Ontario holds legal and fiduciary obligations to the Nations, including the obligation to uphold the honour of the Crown and to diligently fulfil the Crown's Treaty promises, and to attempt to justify any infringement of the Nations' established Treaty rights.

## **FACTS**

### **The Nations' Territories & Way of Life**

12. The Nations are the continuation of and successors to the Nishnawbe and Cree peoples who have always used and occupied the Territories, including the area which is subject to Treaty 9.
13. The Nations have always lived on and cared for their Territories in accordance with Nishnawbe and Cree principles and values of stewardship, connection, respect and reciprocity.
14. Prior to entering into Treaty 9, the Nations practiced their culture, traditions and way of life in accordance with these principles and values.

15. The Nations' way of life centred around hunting, trapping and fishing throughout the Territories for economic, social and cultural purposes.
16. The Nations' principles, values and practices were and continue to be integral to the Nations' identity, culture and way of life.
17. The Nations' ability to maintain their identity, culture and way of life depends on the continued existence of and access to a healthy, unfragmented boreal ecosystem within the Territories, including sufficient quality and quantity of lands, waters, wildlife and other natural resources to enable the Nations to hunt, trap and fish in accordance with their principles and values.

#### **Treaty 9**

18. Between 1905 and 1906, a number of First Nations, including the ancestors of the Plaintiffs, entered into Treaty 9 with the Crown.
19. Treaty 9 established a set of reciprocal rights and obligations owed by the parties through both the written terms of the Treaty and oral undertakings and assurances made at the time the Treaty was negotiated.
20. At the time of the Treaty negotiations, representatives for the Crown assured the Nations that:

- a. the Nations would be able to continue their way of life, including hunting, trapping and fishing, throughout their Territories;
  - b. the Nations would be able to use the lands and resources in the Territories in the same manner as prior to entering into Treaty; and
  - c. the Crown would protect the Nations' rights and way of life from interference.
- 21. The written English text of Treaty 9 further provides that the Nations "have the right to pursue their usual vocations of hunting, trapping, and fishing," throughout their Territories in Treaty 9, other than those lands which "may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes."
- 22. The Nations' understanding of Treaty 9 is informed by their oral histories and teachings regarding the cultural and historical context of the treaty negotiations, including the intentions and objectives of the treaty parties.
- 23. The Nations understand that, *inter alia*:
  - a. the treaty parties entered into Treaty 9 to establish a relationship of peace, sharing and co-existence; and

- b. the Nations did not agree to surrender their title, rights and decision-making authority in respect of their territories.
- 24. Taken as a whole, Treaty 9 established a binding obligation on the Crown to manage the lands, waters and resources within the Territories in a way that would allow the Nations to continue to meaningfully exercise their Treaty rights and maintain their way of life.
- 25. Treaty 9 is a treaty within the meaning of section 35(1) of the *Constitution Act, 1982*.

#### **Post-Treaty Events**

- 26. Since entering into Treaty 9, Ontario has undertaken and/ or authorized the Activities within the Nations' Territories.
- 27. The Activities, individually and collectively, have caused or contributed to significant changes to the lands, waters, and natural ecosystems within the Nations' Territories, including by, *inter alia*:
  - a. causing substantial areas of the Territories to be taken up for uses that are incompatible with hunting, trapping and fishing, thereby significantly and meaningfully diminishing the Nations' ability to exercise their Treaty rights;

- b. causing destruction and damage to lands and waters which the Nations rely on for the exercise of their Treaty rights, as well as for spiritual and cultural practices; and
  - c. limiting the Nations' ability to access remaining lands and waters within the Territories which are necessary for the exercise of their Treaty rights, as well as for spiritual and cultural practices.
- 28. The Activities have, individually and collectively, meaningfully diminished the Nations' ability to exercise their Treaty rights to hunt, trap and fish throughout their Territories in accordance with their principles, values and way of life.

### **Ontario's Regulatory Regime**

- 29. Provincial management of forests in Ontario falls under the responsibility of the Ministry of Natural Resources and Forestry (the "**Ministry**").
- 30. The Ministry manages forestry activities under the *Crown Forest Sustainability Act, 1994*, SO 1994, c 25 (the "***Crown Forest Sustainability Act***"), regulations and related instruments and policy documents, including the Forest Management Planning Manual (collectively, the "**Regulatory Regime**").

31. Ontario's Regulatory Regime fails to provide effective, enforceable provincial tools to protect the Nations' Treaty rights and way of life in relation to the authorization of forestry activities.
32. In particular, the Regulatory Regime fails to:
  - a. provide processes to adequately monitor, assess or manage cumulative impacts of forestry and related activities on the ecosystems in the Nations' Territories and/ or on the Nations' Treaty rights;
  - b. establish limits or thresholds for the cumulative disturbance of the ecosystems in the Nations' Territories and/ or on the Nations' Treaty rights; or
  - c. provide adequate guidance to ensure decisions in respect of forestry and related activities in Treaty 9 are consistent with the Crown's Treaty promises, including the promise that the Nations would be able to continue to exercise their Treaty rights and maintain their way of life.
33. Ontario has further exercised its regulatory authority in a manner which exacerbates the detrimental impacts of the Activities on the Nations' Treaty rights, including by:
  - a. permitting aerial spraying of herbicides, including glyphosate, in connection with forestry activities pursuant to the Ontario *Pesticides Act* (RSO 1990, c P11)

General, O Reg 63/09;

- b. reducing regulatory oversight and exempting forest management entirely from provincial environmental assessment processes pursuant to the *Environmental Assessment Act*, RSO 1990, c E.18 and *General*, RRO 1990, Reg 334; and
  - c. exempting forestry companies from prohibitions preventing the killing of species at risk and the destruction of habitat pursuant to the *Endangered Species Act*, 2007, S.O. 2007, c. 6 and the *Crown Forest Sustainability Act*.
- 34. The Nations have informed Ontario of their concerns regarding the cumulative impacts of the Activities and the resulting impacts on their Treaty rights and way of life, including during and as part of regulatory proceedings and provincial consultations regarding forestry and other activities within the Territories.

## SUMMARY OF LEGAL GROUNDS

- 35. Ontario, on behalf of the Crown, owes honourable and fiduciary obligations to the Nations under the Treaty, including the obligation to:
  - a. act honourably and in a way that accomplishes the intended purposes of the Treaty; and

- b. diligently pursue the fulfilment of the Crown's solemn Treaty promises, including and especially the promise that the Nations would continue to have the right to hunt, trap and fish in a meaningful way, and that there will be no forced interference with their way of life.
- 36. The duty of diligent and honourable Treaty implementation further requires Ontario to develop and implement mechanisms to monitor, assess and manage the cumulative impacts of the Activities so as to ensure the continued exercise of the Nations' Treaty rights.
- 37. Ontario has had reasonable, credible notice that its actions and inactions in respect of the Activities have put it in breach of its Treaty obligations.
- 38. Despite this notice, Ontario has continued to undertake and/ or authorize the Activities in the Territories without regard to the potential cumulative impacts of the Activities on the Nations' ability to exercise their Treaty rights and maintain their way of life.
- 39. Through its actions and omissions, Ontario has breached its duty of diligent and honourable Treaty implementation, including by:
  - a. failing to establish and implement mechanisms to monitor, assess and manage the cumulative impacts of the Activities so as to ensure the Nations are able to continue to meaningfully exercise their Treaty rights and maintain their way of

life;

- b. failing to establish limits or thresholds for the cumulative disturbance of the ecosystems in the Nations' Territories and/ or on the Nations' Treaty rights, and to ensure that the cumulative impacts of the Activities do not and will not exceed those thresholds; and
  - c. relying on a regulatory regime which fails to provide adequate guidance so as to ensure decisions in respect of forestry and related activities in Treaty 9 are consistent with the Crown's Treaty promises.
- 40. Ontario has authorized the Activities without regard to the potential cumulative effects and consequent adverse cumulative impacts of the Activities on the Nations' Treaty rights.
- 41. Ontario has further failed to act with diligence, or at all, to address the Nations' concerns, or protect the Nations' Treaty rights or uphold the Crown's Treaty promises.
- 42. As a result, Ontario has engaged in a persistent pattern of error and indifference which substantially frustrates the Crown's Treaty promises.
- 43. The Plaintiffs are entitled to relief against the Defendant to address breaches of the Crown's obligations under Treaty 9.

44. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

## ENACTMENTS

45. The Plaintiffs plead and rely on:
- a. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3;
  - b. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;
  - c. *Crown Forest Sustainability Act, 1994*, SO 1994, c 25;
  - d. *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17;
  - e. *Endangered Species Act, 2007*, SO 2007, c 6;
  - f. *Environmental Assessment Act*, RSO 1990, c E18;
  - g. *Pesticides Act* (RSO 1990, c P11) General, O Reg 63/09
  - h. *The James Bay Treaty – Treaty No. 9*, Made in 1905 and 1906, and Adhesions Made in 1929 and 1930; and
  - i. such further and other statutory instruments as counsel may advise and this Honourable Court may permit.

**DATED:        SEPTEMBER 30, 2022**

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*Lawyers for the Plaintiffs*

**CHAPLEAU CREE FIRST NATION, et al v ONTARIO**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO, ONTARIO

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**AMENDED STATEMENT OF CLAIM**

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*Lawyers for the Plaintiffs*

THIS IS EXHIBIT "I" REFERRED TO IN  
THE AFFIDAVIT OF GABRIELA VERDICCHIO  
AFFIRMED BEFORE ME REMOTELY ON MONDAY, MARCH 31,  
2025 IN ACCORDANCE WITH O.REG. 431/20

*Carleigh Hobson*

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Commissioner for taking affidavits, etc

Carleigh Sarah Hobson, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.

Expires October 21, 2027.

Court File No. DC-23-00002195-00JR

**ONTARIO**  
**DIVISIONAL COURT**

BETWEEN:

**TAYKWA TAGAMOU NATION**

Applicant

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented  
by the DIRECTOR OF EXPLORATION, MINISTRY OF  
NORTHERN DEVELOPMENT, MINES, NATURAL RESOURCES  
AND FORESTRY**

Respondent

- and -

**GOLDCORP CANADA LTD.**

Respondent



**NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard:

In person at Divisional Court, Superior Court of Justice 155 Elm St., Sudbury, ON P3C 1T9.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional

- 2 -

Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court

July 31st, 2023

Issued by: \_\_\_\_\_

Registrar  
Divisional Court, Superior Court of Justice  
155 Elm St.  
Sudbury, ON P3C 1T

**TO: DIRECTOR OF EXPLORATION**  
Ministry of Northern Development, Mines, Natural Resources and Forestry  
Ontario Government Complex - E Wing (South Porcupine)  
P.O. Box 3060, 5520 Highway 101 East  
South Porcupine, Ontario P0N 1H0  
jean.guindon@ontario.ca

**AND TO: ATTORNEY GENERAL OF ONTARIO**  
Crown Law Office – Civil  
720 Bay Street – 8th Floor  
Toronto, Ontario M7A 2S9  
cloc.reception@ontario.ca

**AND TO: GOLDCORP CANADA LTD.**  
Porcupine Gold Mines  
4315 Goldmine Road  
P.O. Box 70  
South Porcupine, Ontario P0N 1H0  
debbie.woito@newmont.com

## APPLICATION

### Overview

1. This is an application for judicial review of three mining exploration permits issued to Goldcorp Canada Ltd. (“Goldcorp”) by the Director of Exploration (“Ontario”) under subsection 78.3(2) of the *Mining Act, R.S.O. 1990, Chapter M.14*.
2. Ontario failed to adequately discharge its duty to consult, or obtain the free, prior, and informed consent of Taykwa Tagamou Nation (“TTN”) before issuing the permits. In doing so, Ontario breached its constitutional duties under s. 35 of the *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1928 c 11.
3. TTN seeks to have the permits quashed until deep and meaningful consultation has taken place with TTN.

### Relief Sought

4. The Applicant requests an Order:
  - (a) Staying any activities authorized under mining exploration permits PR-23-000108 (dated June 5, 2023), PR-23-000150 (dated June 23, 2023), and PR-23-000166 (dated July 14, 2023) to Goldcorp (the “Exploration Permits”) until this Application is heard and determined on its merits, pursuant to s. 4 of the *Judicial Review Procedure Act, R.S.O. 1990, c J.1*;
  - (b) Quashing the Exploration Permits and remitting the matter to Director of Exploration for re-determination, following deep and meaningful consultation with the Applicant, in accordance with Cree and Anishinaabe Law, and the requirement and responsibilities of Treaty No. 9;
  - (c) Directing Ontario to undertake all reasonable efforts to obtain TTN’s free, prior, and informed consent;
  - (d) Declaring that Ontario breached its constitutional duty to consult TTN regarding the Exploration Permits and that the duty to consult remains unfulfilled;
  - (e) Directing Ontario to conduct deep and meaningful consultation with TTN about the

Exploration Permits with respect to:

- (i) Cumulative impacts on TTN’s right to hunt, fish, trap, and otherwise benefit from their traditional territory, and discharge their sacred responsibility to care for the land and all its inhabitants;
  - (ii) Ontario’s Treaty responsibility to equitably share the benefits of mineral development with TTN;
  - (iii) The limits and requirements on Ontario’s asserted Treaty right to “take up” land;
  - (iv) TTN’s Treaty right to benefit from its traditional territory; and
  - (v) Ontario’s Treaty responsibility to understand, consider and obtain authorization in accordance with Cree and Anishinaabe Law before issuing the Exploration Permits.
- (f) The Applicant’s costs of this application; and
  - (g) Such other relief as counsel may advise and this Court may deem just.

### **Grounds for the Application**

5. TTN is a First Nation within the meaning of section 35 of the *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1928 c 11. TTN is located near Timmins, Ontario, and are an indigenous peoples within the meaning of the *United Nations Declaration of the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/61/49 (2007).
6. The Director of Exploration is an Ontario public servant. The Director of Exploration exercised a statutory power of decision under the *Mining Act* to issue the Exploration Permits.
7. Goldcorp is the mining company who received the Exploration Permits.
8. TTN is a signatory to Treaty No. 9 and has reserve lands near the areas covered by the Exploration Permits. TTN’s traditional territory includes the lands covered by the Exploration Permits. TTN has lived within these lands since time immemorial.
9. Treaty No. 9 reflects indigenous and non-indigenous legal traditions. By entering into

Treaty, TTN agreed to share the lands gifted to it by Creator, with the Crown, subject to Creator's laws.

10. Ontario was aware of TTN's rights and asserted rights before issuing the Exploration Permits.
11. Ontario and Goldcorp contacted TTN about the Exploration Permits. However, Ontario issued the Exploration Permits to Goldcorp:
  - (a) Ignoring TTN's request for a meeting and further information;
  - (b) Failing to consider its Treaty responsibilities;
  - (c) Failing to consider Anishinaabe and Cree law;
  - (d) Failing to consider the *United Nations Declaration on the Rights of Indigenous People*;
  - (e) Ignoring TTN's request for an extension of time, due to emergency circumstances;
  - (f) Ignoring TTN's request to have an exploration agreement in place prior to any of the exploration activities between undertaken;
  - (g) Incorrectly assessing the depth of consultation required; and
  - (h) Failing to consider the cumulative impacts to TTN's traditional territory.
12. The Exploration Permits authorize Goldcorp to undertake mechanized drilling, for the purposes of early exploration, in TTN's traditional territory, including:
  - (a) establishing drill rigs;
  - (b) storing fuel or other hazardous materials;
  - (c) clearing trails; and
  - (d) mobilizing bulldozers.
13. Ontario delegated certain aspects of the duty to consult to Goldcorp. The ultimate responsibility to discharge the duty to consult lies with the Crown.

#### **Statutory Provisions and Rules**

14. The Applicant relies on the following statutory provisions and rules:

- (a) *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11;
- (b) *Mining Act, R.S.O. 1990, Chapter M.14 and Regulation 308/12 on Exploration Plans and Exploration Permits*;
- (c) *61/295 United Nations Declaration on the Rights of Indigenous Peoples*;
- (d) *Judicial Review Procedure Act*, R.S.O. 1990, c J.1;
- (e) *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (f) *United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14*; and
- (g) Such other and further authorities as counsel may advise and this Honourable Court may permit.

## SUPPORTING MATERIALS

15. This application will be supported by the following material:

- (a) Affidavits from members of TTN;
- (b) Affidavits from TTN's technical advisors;
- (c) Affidavits from Elders or other knowledge-keepers; and
- (d) Such further and other material as counsel for the Applicants may advise and this Honourable Court may permit.

July 23, 2023

*Luke Hildebrand*

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**Counsel for the Applicant**

Court File No:

DC-23-00002194-00JR

**TAYKWA TAGAMOU NATION**

- and -

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO ET AL.**

Applicant

Respondents

*ONTARIO*  
DIVISIONAL COURT  
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Sudbury

**NOTICE OF APPLICATION****MAJOR SOBISKI MOFFATT LLP**

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LSO# 72246D

Counsel for the Applicant

Court File No. CV-23-00029205-00CP

**MISSANABIE CREE FIRST NATION ET AL**  
Plaintiffs (Moving Parties)

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO ET AL**  
Defendants (Responding Parties)

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Proceeding under the *Class*  
*Proceedings Act*, 1992, S.O. 1992, c.6)

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**RESPONDING MOTION RECORD OF THE DEFENDANT,**  
**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

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**MINISTRY OF THE ATTORNEY GENERAL**

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of Ontario