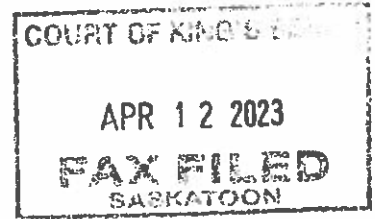


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HLADUN & COMPANY
Barristers and Solicitors
 #300, 10711 - 102 Street, Edmonton, Alberta, T5H 2T8
TELEPHONE: (780) 423-1888
FAX: (780) 424-0934
 Our File:

21936

DATE: April 12, 2023
TO: Saskatoon Court of Kings Bench
Via Fax: 1-306-933-5703
RE: Filing Notice to Defendant
FROM: HLADUN & COMPANY

No. of pages: 8

Good afternoon,

Please see the following attached documents:

- 1. Notice to Defendant to File.

Please Call 780.423.1888 and ask for Alba for the payment of filing service.

Thank you,

HLADUN & COMPANY

Michael Marchen
 Barrister and Solicitor

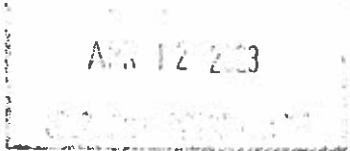
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Form 3-9 (Rule 3-9)

COURT FILE NUMBER: KBG-403-2023



COURT OF KING'S BENCH FOR SASKATCHEWAN

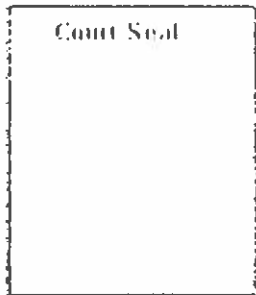
JUDICIAL CENTRE: SASKATOON

PLAINTIFF: ONION LAKE CREE NATION, as represented by its duly elected Okimaw and Onikaniwak

DEFENDANT: HIS MAJESTY THE KING IN RIGHT OF SASKATCHEWAN designated THE GOVERNMENT OF SASKATCHEWAN

NOTICE TO DEFENDANT

- 1 The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to The King's Bench Rules unless, in accordance with paragraph 2, you:
 - (a) serve a Statement of Defence on the plaintiff; and
 - (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.
- 2 The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):
 - (a) 20 days if you were served in Saskatchewan;
 - (b) 30 days if you were served elsewhere in Canada or in the United States of America;
 - (c) 40 days if you were served outside Canada and the United States of America.
- 3 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.
- 4 This Statement of Claim is to be served within 6 months from the date on which it is issued.
- 5 This Statement of Claim is issued at the above named judicial centre on the ~~13th~~ ^{12th} day of April, 2023.



[Signature]
Local Registrar

STATEMENT OF CLAIM

The Parties

1. The Peoples of Onion Lake Cree Nation are the successors to their Ancestors who made Treaty 6 with the Crown in 1876 at Waskahikanis (Fort Pitt). They are "Aboriginal peoples of Canada" within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the "*Constitution Act, 1982*"), and "Indians" under the rubric of section 91(24) of the *Constitution Act, 1867 (UK), 30 & 31 Vict, c 3*, reprinted in RSC 1985, Appendix II, No 5 (the "*Constitution Act, 1867*").
2. The Plaintiff, Onion Lake Cree Nation (the "Plaintiff"), was formed in 1914 from the Makaoo and Seekaskootch Bands; and is thus a "band" within the meaning of section 2 of the *Indian Act, RSC 1985, c I-5*. The Plaintiff is representative of, and litigates for and on behalf of, its membership.
3. The lands reserved to the Plaintiff and its membership coincide with parts of the Province of Saskatchewan as well as the Province of Saskatchewan.
4. His Majesty the King in Right of Saskatchewan exercises executive power in Saskatchewan through the agency of His Majesty's Lieutenant Governor in Council. His Majesty is styled 'The Government of Saskatchewan' pursuant to Section 12 of the *Proceedings Against the Crown Act, 2019, S.S. 2019, c P-27.01*.

Treaty 6

5. On, or about, September 9, 1876, at Waskahikanis, the Ancestors of the Makaoo and the Seekaskootch Peoples, including Chiefs and Headmen, negotiated and entered into Treaty 6 (the "Treaty") as invited and subscribed by the Honourable Alexander Morris, commissioned to act as representative of Her Late Majesty Queen Victoria.
6. The Treaty was viewed by the Crown as being essential to establishing peaceful and legal nation-to-nation relations with the Crown's subjects who lived on lands within the metes and bounds of Treaty 6 territory; and, *inter alia*, to give proper effect to the *Royal Proclamation of 1763*, George R, Proclamation, 7 October 1763 (3 Geo III), reprinted in RSC 1985, App II, No 1.
7. The Treaty is understood by the Peoples of the Makaoo and the Seekaskootch as a Treaty that has been passed down to the present, from generation to generation, through the Cree Oral Tradition.
8. The Treaty created a formal alliance whereby the Crown was to provide, at all material times, protection and assistance to the Plaintiff's Peoples, as Treaty Peoples, including, *inter alia*, guarantees of material and other benefits that would assist the Elders and

Peoples of the Makao and the Seekaskootch in their daily lives, which allowed them to remain free within the Treaty area and, in the course of that, continue in their traditional way of life.

9. The Treaty is a “treaty” within the meaning of section 35 of the *Constitution Act, 1982*.
10. The Plaintiff has sovereign control over its area of reserved lands by exercising its own system of customs and laws governing the Plaintiff’s Peoples, consistent with their Treaty.
11. The Defendant Crown owes Treaty Peoples a fiduciary duty to honour and follow the written, oral, and implied terms of the Treaty – both the letter and the spirit of the Treaty.
12. In the Treaty, the Crown guaranteed that the Plaintiff’s Peoples’ rights of passage and rights of avocation would be maintained and not unreasonably infringed, to wit:

“... [the Plaintiff’s People] shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered ... subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes ...”

13. The Treaty also included the promise by the Ancestral Peoples of the Plaintiff not to unjustifiably:

“... molest the person or property of any inhabitant ... or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tracts, or any part thereof ...”

14. The Plaintiff states that in the decades since the making of the Treaty, the Crown and certain of its servants have approached its Treaty obligations in a manner that was directed at extinguishing the jurisdiction and rights of the Plaintiff in respect of land and natural resources situate in Saskatchewan, particulars of which are known to the Defendant, contrary to the spirit and intent of the Treaty and without any particular regard to the reciprocal rights and obligations between the Crown and the Plaintiff.

Enactment of the *Saskatchewan First Act*

15. On November 1st, 2022, the Honourable Bronwyn Eyre introduced *Bill 88: An Act to Assert Saskatchewan’s Exclusive Legislative Jurisdiction and to Confirm the Autonomy of Saskatchewan*, 3rd Sess, 29th Leg, Saskatchewan, 2022 (“Bill 88”). Bill 88 passed Second Reading on November 28th, 2022, and Third Reading on March 16th, 2023.
16. In the course of debate upon Bill 88 before the Committee on Intergovernmental Affairs and Justice, Committee members noted, *inter alia*, that:

- a. no consultation had apparently been done with any First Nations in respect of Bill 88;
 - b. Bill 88 relied upon the *Natural Resource Transfer Agreement, 1930*, as conferring “autonomy over its Crown lands and natural resources in Saskatchewan”
 - c. Bill 88 asserted a “exclusive legislative jurisdiction in relation to natural resources”.
17. The Plaintiff states that the Saskatchewan first Act purports to “assert and confirm Saskatchewan’s jurisdiction” without any acknowledgement whatsoever that, under Treaty, The Crown agreed to share the land and resources with our Nation and other Indigenous peoples who first made treaty with the Crown.
 18. The Plaintiff states further that the *Natural Resources Transfer Agreement* referenced in the preamble to the Saskatchewan First Act, unilaterally and without consultation abrogated the Plaintiff’s (and many others’) Treaty rights and fundamentally reconfigured jurisdiction over the vast resources of, *inter alia*, Treaty 6 territory.
 19. On April 6th, 2023, Bill 88 received Royal Assent and was thus enacted the *Saskatchewan First Act*.

The Saskatchewan First Act Infringes Upon Treaty Rights and Derogates the Treaty Relationship

20. The Plaintiff states that the *Saskatchewan First Act*, as a whole, infringes upon the rights of the Plaintiff as guaranteed by the Treaty, the particulars of which include, but are not limited to, the following:
 - a. the *Saskatchewan First Act* infringes upon the rights of the Plaintiff’s Peoples to pursue their traditional ceremonies, associations, and avocations (such as hunting, fishing, trapping, etc.), through the effective arrogation of the Plaintiff’s sovereignty and jurisdiction to the Lieutenant Governor in Council of Saskatchewan;
 - b. the *Saskatchewan First Act* derogates from the reciprocal promises made in the Treaty, as aforesaid, by effectively substituting those reciprocal promises with the fiat of the Lieutenant Governor in Council of Saskatchewan;
 - c. the *Saskatchewan First Act* negates the guarantees of livelihood and freedom that the Treaty was made to protect, by arrogating control of all Treaty Rights and the Treaty relationship from the Crown in Right of Canada to the Lieutenant Governor in Council of Saskatchewan; and
 - d. the *Saskatchewan First Act* was enacted wholly without input, consultation, or consideration of the Plaintiff’s concerns, contrary to the spirit of the Treaty and in derogation of the Honour of the Crown;

21. The Plaintiff states that the *Saskatchewan First Act*, as a whole, has both the purpose and effect of negating the guarantees in the Treaty of freedom and agency appertaining to the Plaintiff's lands, as well as the freedom and agency appertaining to the Plaintiff's Treaty Rights throughout Saskatchewan.
22. The *Saskatchewan First Act* is utterly repugnant to the letter and spirit of the Treaty.

The *Saskatchewan First Act* is *Ultra Vires* His Majesty in Right of Saskatchewan

23. Section 91 of the *Constitution Act, 1867* lists specific powers to be solely within the lawmaking power or competence of (the Federal) Parliament, including subsection 24: "Indians, and Land reserved for the Indians".
24. The Plaintiff states that the *Saskatchewan First Act* is *ultra vires* the Crown in Right of Saskatchewan. The *Saskatchewan First Act* directly concerns lands reserved to Indians, as the metes and bounds of the Province of Saskatchewan overlap with the lands reserved to the Plaintiff and its Peoples.

The *Saskatchewan First Act* was Enacted Without Consultation

25. Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2017) states that:

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."
26. Further, the letter and spirit of the Treaty, as recognized and affirmed by section 35 of the *Constitution Act, 1982*, requires the consent of the Plaintiff "first had and obtained" in Crown conduct that affects, or potentially affects, the Plaintiff's Treaty and Aboriginal Rights - in particular, the Plaintiff's rights pertaining to land.
27. The *Saskatchewan First Act* was both introduced by the Premier, the Honourable Scott Moe, and assented to by the Lieutenant Governor of Saskatchewan without any consultation with the Plaintiff's leadership or Peoples. There is no evidence in the debates, or elsewhere, of meaningful consultation with any other Aboriginal Peoples in respect of Saskatchewan's purported "exclusive" jurisdiction over land and natural resources.
28. The Plaintiff states that this complete lack of consultation with Treaty Peoples with respect to the *Saskatchewan First Act* constitutes a breach of its Treaty and Constitutional Rights, independent of the aforementioned breaches and infringements.

Remedy sought

29. The Plaintiff seeks the following relief:

- a. a Declaration that the *Saskatchewan First Act* unjustifiably infringes upon and derogates the Treaty, as recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- b. a Declaration that the *Saskatchewan First Act*, or parts thereof, is *ultra vires* the Crown in Right of Saskatchewan;
- c. a Declaration that the *Saskatchewan First Act*, or parts thereof, is of no force and effect;
- d. temporary and permanent injunctions declaring the *Saskatchewan First Act*, or parts thereof, inoperative as against the Plaintiff and its Peoples;
- e. such further and other relief as may obtain under sections 35 and 52 of the *Constitution Act, 1982*;
- f. indemnity costs and interest; and
- g. such further and other consequential relief as this Honourable Court deems just.

DATED at SASKATOON, Saskatchewan, this 13th day of April, 2023.



R.W. HLADUN, K.C. / M. J. MARCHEN
Counsel for the Plaintiff, Onion Lake Cree Nation

(continued on following page)

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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