

COURT FILE NUMBER: 0803 06718

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

PLAINTIFFS: Alphonse Lameman on his own behalf and on behalf of all other Beaver Lake Cree Nation beneficiaries of Treaty No. 6 and Beaver Lake Cree Nation

DEFENDANTS: Her Majesty the Queen in Right of the Province of Alberta and the Attorney General of Canada

DOCUMENT: ~~AMENDED, FURTHER, AMENDED~~ ^{FURTHER} STATEMENT OF CLAIM

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AMENDED THIS 13 DAY OF July A.D. 20 12
PURSUANT TO RULE 362 UNDER ORDER-CONSENT DATE DATE
28 DAY OF July A.D. 20 12

NOTICE TO DEFENDANT(S)

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of Facts Relied on:

1. The Beaver Lake Cree Nation ("Beaver Lake") is a band within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended, is an aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 (the "*Constitution Act, 1982*"), and is the successor to an aboriginal group adherent to Treaty No. 6 (the "Treaty").

2. Alphonse Lameman is the elected Chief of Beaver Lake and a member of Beaver Lake. He resides on the Beaver Lake Cree Nation Indian Reserve No. 131 and he is a beneficiary of the Treaty.
3. Alphonse Lameman brings this claim on his own behalf and as a representative on behalf of all other Beaver Lake Cree Nation beneficiaries of the Treaty (the "Beneficiaries") and Beaver Lake.
4. The Defendant the Attorney General of Canada is the representative of Her Majesty the Queen in right of Canada and is named in these proceedings pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended ("Canada"). Canada is subject to all of the obligations, duties, and liabilities which the Crown has or owes to the Beneficiaries and to Beaver Lake.
5. The Defendant, Her Majesty the Queen in Right of the Province of Alberta, is that aspect of the Monarch in which the lands material to the issues in this proceeding are vested, subject to the interests of the Plaintiffs ("Alberta").
6. That portion of Alberta in which the Plaintiffs have traditionally hunted, trapped and fished and continue to do so today includes the area outlined in red on the map attached as Schedule 1 and which is herein referred to as the "Core Traditional Territory". For the purposes of this Claim, any reference to the Core Traditional Territory does not include lands outside of Alberta

Treaty Rights

7. Ancestors of the Beneficiaries adhered to the Treaty on or about September 9, 1876.
8. The Treaty is a treaty within the meaning of s. 35 of the *Constitution Act, 1982*. Under the Treaty, ancestors of the Beneficiaries ceded lands in what is now the province of Alberta and in exchange for this surrender, the ancestors of the Beneficiaries were promised reserves and some other benefits including the right to hunt and fish throughout the tract surrendered "saving and excepting such tracts as may from time to

time be required or taken up for settlement, mining, lumbering or other purposes...". The right to hunt for the purpose of the Treaty includes the right to trap.

9. As part of their usual practices carried out before and at the time of adhering to the Treaty the ancestors of the Beneficiaries hunted, trapped and fished certain animal, bird and fish species for subsistence, and for cultural, social and spiritual needs. The Treaty confirmed these rights and the Natural Resource Transfer Agreements, 1930 *Constitution Act, 1930 (U.K.)* 20-21 George V, c. 26 (the "NRTA") secured to the Beneficiaries the right of subsistence and support (collectively the "Treaty Rights").
10. The Treaty also embodied a promise by the Crown that the Crown would act honourably in taking up lands for settlement, mining, lumbering, trading, or other purposes.
11. The Treaty Rights include the right to hunt and trap certain animal species, including, but not limited to:
 - (i) caribou;
 - (ii) buffalo;
 - (iii) elk;
 - (iv) mule deer;
 - (v) white-tailed deer;
 - (vi) moose;
 - (vii) marten;
 - (viii) fisher;
 - (ix) wolverine;
 - (x) river otter;
 - (xi) mink;
 - (xii) weasel;

- (xiii) lynx;
- (xiv) mountain lion;
- (xv) snowshoe hare;
- (xvi) red squirrel;
- (xvii) northern flying squirrel;
- (xviii) ground squirrel;
- (xix) beaver;
- (xix.1) porcupine;
- (xx) skunk;
- (xxi) muskrat;
- (xxii) black bear;
- (xxiii) grizzly bear;
- (xxiv) wolf;
- (xxv) fox;
- (xxvi) coyote; and
- (xxvii) badger.

12. The Treaty Rights include the right to hunt and trap, and collect the eggs of, certain species of bird, including, but not limited to:

- (i) wren;
- (ii) wild turkey;
- (iii) cranes;
- (iv) ducks;
- (v) geese;

- (v.1) grouse;
 - (v.2) rails;
 - (vi) bald eagle (regalia);
 - (vii) golden eagle (regalia);
 - (viii) hawks (regalia); and
 - (ix) owls (regalia).
13. The Treaty Rights include the right to fish certain species of fish, including, but not limited to:
- (i) whitefish;
 - (ii) northern pike;
 - (iii) tullibee;
 - (iv) walleye;
 - (v) yellow perch;
 - (vi) suckers;
 - (vii) maria (ling);
 - (viii) trout;
 - (ix) bass;
 - (x) grayling;
 - (xi) goldeye; and
 - (xii) sturgeon.
14. The Treaty Rights include activities incidental to the exercise of the Treaty Rights.

15. The Treaty Rights include or impose an obligation on the Crown to discharge the following duties in a manner consistent with, and to the extent required to respect, the Crown's promise that it would not interfere with or deprive Beaver Lake of the meaningful exercise of the Treaty Rights in perpetuity (collectively, the "Management Duties"):
- (i) to manage animal, bird and fish (collectively the "Wildlife") habitats;
 - (ii) to manage water resources to ensure the continuation of water quality and quantity;
 - (iii) to manage Wildlife and water resources to ensure a harvestable surplus of each Wildlife species;
 - (iv) to manage Wildlife, Wildlife habitats and water resources to ensure that the abundance and diversity of Wildlife species remains available to provide the Beneficiaries with sufficient resources to sustain the meaningful exercise of their Treaty Rights in perpetuity;
 - (v) to identify, manage and protect the populations and critical habitats of endangered, threatened and special concern or vulnerable Wildlife;
 - (vi) to manage the pace, scale, location, number and nature of developments and activities in and adjacent to the Core Traditional Territory; and,
 - (vii) to set aside protected areas and maintain other undeveloped lands in and adjacent to the Core Traditional Territory.

Obligation of the Crown to Respect Treaty Rights – Honour of the Crown

16. Alberta has granted leases and has entered an agreement with Canada in relation to lands comprising that portion of, the Cold Lake Air Weapons Range located in Alberta (the "Alberta Cold Lake Lease"), in the Core Traditional Territory (collectively, the "Leases"). Under the Alberta Cold Lake Lease, Canada agreed to assume responsibility for paying compensation to persons having certain rights in the area covered by the

Alberta Cold Lake Lease, including rights in respect of timber, trapping, fishing or land settlement.

17. The Defendants, or either of them, have authorized oil and gas related activities, forestry activities, mining activities and other activities in the Core Traditional Territory and/or in lands adjacent to the Core Traditional Territory (the “Projects” – for the purposes of this Claim, “authorizations” include any decisions associated with environmental assessments). The Leases, the Projects, and the activities carried out pursuant to the Leases and the Projects are herein collectively referred to as the “Developments”.
18. The Defendants, and each of them, have an obligation to respect the Treaty Rights and the process through which the Defendants, or either of them, have authorized the Developments is in breach of that obligation and of the honour of the Crown.
19. The Defendants, or either of them, have failed to respect the Treaty Rights and have breached the honour of the Crown, including by:
 - (i) failing to fully inform themselves respecting the Treaty Rights and respecting the conditions necessary for sustaining the meaningful exercise of the Treaty Rights in perpetuity;
 - (ii) failing to fully inform themselves respecting the cumulative effects, or potential cumulative effects, of the Developments on the Treaty Rights, when such effects are considered in combination with the effects of past, existing and reasonably foreseeable future developments and activities in and adjacent to the Core Traditional Territory (collectively, the “Cumulative Effects of the Developments”);
 - (ii.1) failing to monitor the Cumulative Effects of the Developments and to otherwise ensure they do not and will not interfere with the continuing meaningful exercise of the Treaty Rights;
 - (ii.2) failing to establish maximum thresholds for impacts on Wildlife and Wildlife habitat that interfere or may interfere with the continuing meaningful exercise

- of the Treaty Rights, and/or failing to ensure that the Cumulative Effects of the Developments do not or will not exceed those thresholds;
- (ii.3) failing to adequately carry out the Management Duties;
 - (iii) failing to provide the Plaintiffs with adequate information relevant to the Cumulative Effects of the Developments;
 - (iv) failing to provide the Plaintiffs with an adequate opportunity to respond to and comment on the Cumulative Effects of the Developments;
 - (v) failing to provide the Plaintiffs with sufficient resources to adequately respond to and comment on the Cumulative Effects of the Developments;
 - (vi) failing to meaningfully address the Plaintiffs' concerns with respect to the Cumulative Effects of the Developments;
 - (vii) failing to consult in good faith with the Plaintiffs with respect to the Cumulative Effects of the Developments;
 - (viii) failing to seek accommodation of, or to accommodate, the Treaty Rights; and/or;
 - (ix) failing to ensure that the Treaty Rights were minimally impaired by the Cumulative Effects of the Developments.

Infringement

20. The Developments infringe the Treaty Rights. Without limiting the generality of the foregoing, the Developments infringe the Treaty Rights by:
- (i) failing to ensure minimal impairment of the Treaty Rights;
 - (ii) leaving the Plaintiffs with no meaningful way to exercise the Treaty Rights;
 - (iii) reducing the abundance and diversity of Wildlife species available to the Plaintiffs;
 - (iv) compromising the ecological, cultural and/or spiritual integrity of the Core Traditional Territory; and

- (v) reducing the available Wildlife habitat of the Core Traditional Territory.
21. In particular, the Cumulative Effects of the Developments have adversely affected, will adversely affect, or are likely to adversely affect the ability of the Plaintiffs to meaningfully exercise the Treaty Rights.
 22. The Cumulative Effects of the Developments have rendered or will render the Treaty Rights meaningless within the Core Traditional Territory.
 23. The Cumulative Effects of the Developments infringe the Treaty Rights, and interfere or will interfere with the meaningful exercise of the Treaty Rights, including in some or all of the following ways:
 - (i) diminution in the abundance and/or diversity of Wildlife;
 - (ii) fragmentation of Wildlife habitat and/or disruption of migration patterns in the Core Traditional Territory;
 - (iii) loss of Wildlife habitat;
 - (iv) loss of water abundance;
 - (v) loss of water purity;
 - (vi) loss of the Beneficiaries' ability to exercise the Treaty Rights in the manner of their choosing;
 - (vii) loss of access to the lands subject to the Alberta Cold Lake Lease;
 - (viii) loss of access to key hunting, trapping and/or fishing areas;
 - (ix) loss of access to traditional cultural and/or spiritual locations; and/or
 - (x) loss of available land in its natural condition.(paras. 20-23 of this Claim set out, collectively, the "Infringements")
 24. The Infringements are an unreasonable limitation on the Treaty Rights.
 25. The Infringements impose undue hardship on the Plaintiffs by denying them their preferred means of exercising the Treaty Rights.

26. The Defendants, or either of them, have infringed the Treaty Rights, including by:
- (i) failing to fully inform themselves respecting the Treaty Rights and respecting the conditions necessary for sustain the meaningful exercise of the Treaty Rights in perpetuity;
 - (ii) failing to fully inform themselves respecting the Cumulative Effects of the Developments on the Treaty Rights;
 - (ii.1) failing to monitor the Cumulative Effects of the Developments and to otherwise ensure they do not and will not interfere with the continuing meaningful exercise of the Treaty Rights;
 - (ii.2) failing to establish maximum thresholds for impacts on Wildlife and Wildlife habitat that interfere or may interfere with the continuing meaningful exercise of the Treaty Rights, and/or failing to ensure that the Cumulative Effects of the Developments do not or will not exceed those thresholds;
 - (ii.3) failing to adequately carry out the Management Duties;
 - (iii) failing to provide the Plaintiffs with adequate information relevant to the Cumulative Effects of the Developments;
 - (iv) failing to provide the Plaintiffs with an adequate opportunity to respond to and comment on the Cumulative Effects of the Developments;
 - (v) failing to provide the Plaintiffs with sufficient resources to adequately respond to and comment on the Cumulative Effects of the Developments;
 - (vi) failing to meaningfully address the Plaintiffs' concerns with respect to the Cumulative Effects of the Developments; and
 - (vii) failing to ensure that the Treaty Rights were minimally impaired by the Cumulative Effects of the Developments.

Breach of Fiduciary Duty

27. The Treaty created a fiduciary relationship between the Defendants and the Plaintiffs and created fiduciary duties of the Defendants to ensure that the Plaintiffs can continue to meaningfully exercise their Treaty Rights.
28. At all material times, the Defendants were under a fiduciary duty to the Plaintiffs to secure the continuing meaningful exercise of the Treaty Rights.
29. The Defendants, or either of them, in breach of their fiduciary duty, have wrongfully received revenues from third parties while infringing the Treaty Rights. The Defendants, or either of them, have been enriched by their appropriation of these revenues.
30. The Defendants, or either of them, in breach of their fiduciary duty, have failed to carry out their Management Duties with reasonable diligence and prudence, leading to loss and degradation of Wildlife, Wildlife habitat, water quality and quantity and aquatic resources, and have otherwise failed to ensure that the Plaintiffs can continue to meaningfully exercise their Treaty Rights.
31. The Defendants, or either of them, have breached their fiduciary duty to the Plaintiffs, including by:
 - (i) failing to fully inform themselves respecting the Treaty Rights and respecting the conditions necessary for sustaining the meaningful exercise of the Treaty Rights in perpetuity;
 - (ii) failing to fully inform themselves respecting the Cumulative Effects of the Developments on the Treaty Rights;
 - (ii.1) failing to monitor the Cumulative Effects of the Developments and to otherwise ensure they do not and will not interfere with the continuing meaningful exercise of the Treaty Rights;
 - (ii.2) failing to establish maximum thresholds for impacts on Wildlife and Wildlife habitat that interfere or may interfere with the continuing meaningful exercise

- of the Treaty Rights, and/or failing to ensure that the Cumulative Effects of the Developments do not or will not exceed those thresholds;
- (ii.3) failing to adequately carry out the Management Duties;
 - (iii) failing to provide the Plaintiffs with adequate information relevant to the Cumulative Effects of the Developments;
 - (iv) failing to provide the Plaintiffs with an adequate opportunity to respond to and comment on the Cumulative Effects of the Developments;
 - (v) failing to provide the Plaintiffs with sufficient resources to adequately respond to and comment on the Cumulative Effects of the Developments;
 - (vi) failing to meaningfully address the Plaintiffs' concerns with respect to the Cumulative Effects of the Developments;
 - (vii) failing to consult in good faith, or at all, with the Plaintiffs, with respect to the Cumulative Effects of the Developments;
 - (viii) failing to seek accommodation of, or to accommodate, the Treaty Rights; and/or;
 - (ix) failing to ensure that the Treaty Rights were minimally impaired by the Cumulative Effects of the Developments.
32. The Plaintiffs propose that the trial of this action will take more than 25 days and that it be held at the Law Courts, in the City of Edmonton, in the Province of Alberta.

Remedy Sought:

- a) a declaration that the Plaintiffs have a constitutional right within the meaning of s. 35 of the *Constitution Act, 1982*, pursuant to the Treaty and the NRTA, to hunt, trap and fish certain Wildlife species for subsistence, and for cultural, social and spiritual needs;
- b) a declaration that the Cumulative Effects of the Developments unjustifiably infringe the Treaty Rights;

- b.1) a declaration that the Defendants, or either of them, have a duty to consult with and, if indicated, accommodate Beaver Lake with respect to the Cumulative Effects of the Developments on the Treaty Rights (Cumulative Effects Consultation”), under the supervision of the Court;
- b.2) a declaration that the Defendants, or either of them, have a duty to address any or all of the following issues in a Cumulative Effects Consultation with Beaver Lake, with the goal of restoring and/or securing the meaningful exercise of the Treaty Rights in perpetuity:
 - (i) the appropriate exercise of the Management Duties;
 - (ii) the appropriate process for addressing the Infringements;
 - (iii) the appropriate way to address some or all of the failures listed at paras. 19, 26, 30 and/or 31 of this Claim;
 - ~~(iv) revocation of authorizations for the Developments, or limitations and management of the effects of the Developments, which unjustifiably infringe the Treaty Rights;~~
 - (v) restoration of the Core Traditional Territory;
 - (vi) appropriate funding for Beaver Lake to participate in Cumulative Effects Consultation and related processes; and
 - (vii) any other issues identified by the Court.
- ~~c) a declaration that the Defendants, or either of them, have a duty to revoke the authorizations for, or to otherwise limit and manage the effects of, the Developments which unjustifiably infringe the Treaty Rights;~~
- d) an interim, interlocutory and/or permanent injunction against the Defendants, or either of them, restraining them from acting unconstitutionally in respect of the Developments, and/or restraining them from acting unconstitutionally by authorizing any further developments or activities in the Core Traditional Territory, until the Defendants, or either of them, have completed the Cumulative Effects Consultation and/or the process set out in paragraph c) of this prayer for relief;
- e) damages and/or equitable compensation from the Defendants for any failure of the Defendants, or either of them, to respect the Treaty Rights and to uphold the honour of the Crown;
- f) damages and/or equitable compensation from the Defendants, or either of them, for any unjustifiable infringement of the Treaty Rights;

- g) an accounting and/or damages and/or equitable compensation from the Defendants in respect of any breach of fiduciary duty by the Defendants, or either of them;
- h) pre- and post- judgment compound interest in respect of any damages or compensation;
- i) costs; and
- j) such further and other or partial relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiffs' address for service

Warning

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiffs against you.

Schedule 1 – Core Traditional Territory

