

COURT FILE
NUMBER:

COURT: COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL
CENTRE: EDMONTON

PLAINTIFFS: Virginia Martha Gladue on her own behalf
and on behalf of all other Duncan's First
Nation beneficiaries of Treaty No. 8 and
Duncan's First Nation

DEFENDANT: Her Majesty the Queen in Right of the
Province of Alberta

DOCUMENT: **STATEMENT OF CLAIM**

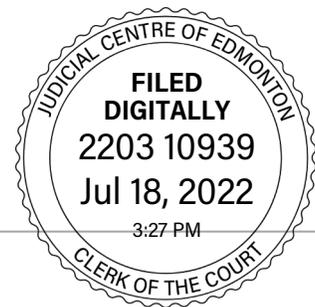
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NOTICE TO DEFENDANT(S)

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)

Overview

1. Since long before the assertion of Crown sovereignty in what is now Alberta, the Plaintiffs (collectively, “**DFN**”) have been using the lands and waters in their traditional territory to hunt, fish, trap, gather, and support other important cultural practices and activities. DFN’s dependence on these lands and waters – which center on the Peace River area – has shaped their unique identity and way of life as an Indigenous People, including their language, economy, culture, and spirituality. Simply put, DFN’s traditional territory is what makes them who they are.
2. In or around 1899, the Crown sought the agreement of DFN’s ancestors to open the region up to non-Indigenous persons for settlement, to which end the Crown promised that DFN would be ensured the right to carry on their way of life free from interference as well as the rights to hunt, fish, trap, and gather natural resources in their traditional territory.
3. On the basis of the solemn promises and assurances made by the Crown, as well as their trust in those promises and assurances, DFN’s ancestors agreed to allow their traditional territory to be opened up for settlement in accordance with Treaty No. 8 (the “**Treaty**”).
4. The Defendant Her Majesty in Queen in Right of the Province of Alberta (“**Alberta**”) has failed to uphold its obligations to DFN and its ancestors under the Treaty, including its honourable and fiduciary obligations.
5. Rather than protecting DFN’s way of life and ensuring the meaningful exercise of their rights, Alberta has engaged in a pattern of conduct that, taken together, has significantly diminished DFN’s right to hunt, fish, trap, and gather as part of their way of life. Among other things, habitats have been fragmented, lands and waters have been degraded, substances have been introduced that cause legitimate fears of contamination and pollution, and lands have been put to uses

that are incompatible with the continued meaningful exercise of DFN's Treaty rights.

6. As a result of Alberta's failure to uphold its Treaty obligations, DFN can no longer reasonably access landscapes and natural resources in their traditional territory to support hunting, fishing, trapping, gathering, and other important cultural activities and practices, as ensured under the Treaty. There are simply not enough appropriate and accessible lands, waters, ecosystems, and natural resources left to support the meaningful exercise of DFN's Treaty rights and way of life.
7. DFN seeks relief against Alberta to address Alberta's unjustifiable and ongoing breaches of its obligations to DFN under the Treaty, including Alberta's honourable and fiduciary obligations.

Statement of Facts Relied on:

The Parties

8. Duncan's First Nation is a band within the meaning of the *Indian Act*, RSC 1985, c I-5, as amended, and is an Aboriginal People within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.
9. Duncan's First Nation takes its name from Duncan "Tastaoosts" Testawich ("**Duncan Testawich**"), who was identified as one of the "Headmen of the Indians of Peace River Landing and the adjacent territory" when the Treaty was signed. Duncan's First Nation became a party to the Treaty on July 1, 1899, under the signature of Duncan Testawich.
10. A substantial portion of Duncan's First Nation's membership resides on or near the Duncan's Indian Reserve No. 151A (the "**Reserve**"), located southwest of the Town of Peace River, Alberta.

11. Virginia Martha Gladue (“**Chief Gladue**”) is the [Chief and a member of Duncan’s First Nation. She resides on the Reserve and is a beneficiary of the Treaty.
12. Chief Gladue brings this claim on her own behalf and as a representative on behalf of all other DFN beneficiaries of the Treaty and Duncan’s First Nation. She is authorized to bring this action on behalf of Duncan’s First Nation and its members.
13. Alberta is the emanation of the Crown in which the lands material to the issues in this proceeding are vested, subject to the interests of DFN. Alberta has the exclusive power to manage and regulate the lands and waters material to the issues in this proceeding, as well as the resources on or under those lands, pursuant to the *Constitution Act, 1867*. Alberta is subject to all of the obligations, duties, and liabilities that the Crown has or owes to DFN.

The Way of Life of Duncan’s First Nation

14. DFN’s ancestors have long used and occupied lands and waters in what is now Alberta and British Columbia (collectively, the “**Traditional Territory**”). DFN’s Traditional Territory is centered on the Peace River area in Alberta and includes the lands, forests, hills, muskeg, and rivers between the Clear Hills and the Chinchaga watershed (the “**Clear Hills–Chinchaga Refuge**”).
15. In this claim, DFN does not seek relief in relation to any lands or waters outside of Alberta. For the purposes of this claim, any reference to the Traditional Territory includes only lands and waters located in Alberta.
16. Prior to 1899, when the Treaty was signed, DFN’s ancestors had a well-established way of life, culture, and economy in their Traditional Territory. In carrying out this way of life, DFN supported themselves in a variety of ways, including through hunting, fishing, trapping, and gathering plants, such as berries and medicinal plants. DFN also participated in trade with both other Indigenous groups and Europeans, exchanging furs, provisions, and other material goods.

17. The availability of large game was and remains central to DFN's hunting-based culture and way of life. Although DFN's ancestors had long depended on wood bison for subsistence and cultural purposes, the wood bison population in DFN's Traditional Territory began declining in 1820 and was all but eradicated by the early 1830s. Following the demise of the wood bison in or around 1830, DFN's ancestors were forced to rely more heavily on other species, such as moose, caribou, elk, and, to a lesser extent, bear and deer.
18. Moose was the primary species taken by DFN at the time of the Treaty. It played and continues to play an integral role with respect to DFN's culture, identity, and way of life.
19. At the time of the Treaty, DFN's way of life depended on the availability of and access to preferred lands, waters, and natural resources of sufficient quality and quantity to maintain DFN's traditional seasonal harvesting and subsistence cycles, including seasonal movements between traditional hunting areas.
20. Moreover, in order to engage in effective hunting, fishing, trapping, gathering, and other land-based practices, DFN required deep familiarity with specific lands, waters, and ecosystems. Many of these practices, such as moose hunting and the hunting of other large game, required years of study and observation of specific lands, ecosystems, and wildlife populations.
21. DFN's way of life also depended on the ability to pass knowledge to successive generations, including knowledge about:
 - a) the traditional seasonal harvesting and subsistence cycle;
 - b) traditional hunting, fishing, trapping, and gathering practices; and
 - c) spiritual, ceremonial, and other cultural beliefs and practices.
22. This knowledge was passed to successive generations orally, through cultural and spiritual practices, as well as through participation in traditional hunting, fishing, trapping, and gathering practices – all of which depended on the

continued availability of and access to preferred lands, waters, and natural resources.

The Treaty

23. The Treaty is a treaty within the meaning of section 35 of the *Constitution Act, 1982*.
24. On June 21, 1899, the Treaty was concluded between the Crown and the “Chief and Headmen of the Indians of Lesser Slave Lake and adjacent country.” The Treaty was ratified by Order in Council 363 on February 2, 1900.
25. DFN’s ancestors adhered to the Treaty on July 1, 1899, as one of the groups of “Indians of Peace River Landing and the adjacent territory.”
26. Through the Treaty, the Crown sought and obtained the agreement of the Indigenous signatories to open up the tract of land inhabited by the Indigenous signatories, including lands in what is now Alberta, to non-Indigenous persons for settlement.
27. The Treaty established a set of reciprocal rights and obligations owed by the Crown and the Indigenous signatories, including DFN’s ancestors, through the oral promises of the parties and the written terms of the Treaty.

The Treaty Rights

28. As observed by the Treaty Commissioners at the time, the Crown’s main difficulty in persuading the Indigenous signatories, including DFN’s ancestors, to adhere to the Treaty was the apprehension that hunting and fishing privileges were to be curtailed.
29. In the end, however, DFN’s ancestors agreed to the Treaty in exchange for solemn promises of the Crown, including:

- a) the promise to provide provisions and benefits to DFN's ancestors, including the creation of reserves and the provision of land to families or individuals who may prefer to reside off-reserve;
 - b) the promise that DFN and their descendants would retain their old way of life and be as free "to pursue their usual vocations of hunting, trapping and fishing" as if they had never entered into the Treaty; and
 - c) the promise that DFN's rights would be protected against the abuses of settlers (collectively, the "**Treaty Rights**").
30. At the time of the Treaty, DFN's ancestors hunted, trapped, fished, and gathered a wide range of species and natural resources for subsistence and for cultural, social, and spiritual needs – all of which were important to DFN's way of life.
31. The Treaty also ensured DFN's rights to carry out practices and activities incidental to the exercise of the Treaty Rights, including:
- a) rights of unrestricted access to preferred lands, waters, and ecosystems of sufficient quality and quantity necessary to support the meaningful exercise of DFN's Treaty Rights;
 - b) rights to travel throughout the Traditional Territory;
 - c) rights to sufficient and culturally appropriate land and resources to support the meaningful exercise of the Treaty Rights;
 - d) rights to participate in the management of natural resources in DFN's Traditional Territory;
 - e) rights to access, gather, and use various natural resources, including plants, berries, and clean water, in the Traditional Territory;

- f) rights to establish, access, and maintain infrastructure necessary to the meaningful exercise of the Treaty Rights, including trails, cabins, camps, and traps;
 - g) right to access and use adequate quantities of clean and fresh water capable of sustaining life in and around the Traditional Territory; and
 - h) the right to maintain and access sites at which to teach DFN's culture and way of life to subsequent generations.
32. Although the Treaty was negotiated by the federal government, it is an agreement between the Indigenous signatories, including DFN's ancestors, and the Crown. Alberta, 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.
33. The Treaty further gave rise to a fiduciary relationship between the Crown, including Alberta, and DFN. At all material times, Alberta was under a fiduciary duty to DFN to ensure the continued meaningful exercise of the Treaty Rights, including the Incidental Rights.
34. Taken as a whole, the purpose of the Treaty Rights and the Treaty promises was to create a binding obligation on the Crown to manage the lands, waters, and natural resources in DFN's Traditional Territory in a way that would allow DFN and their descendants to meaningfully exercise their Treaty Rights, practice their land-based culture, and maintain their way of life.
35. The Treaty established the Treaty Rights as of the date of the Treaty for the lands specified in the Treaty.
36. Later, the *Natural Resources Transfer Agreement, 1930*, being schedule to the *Constitution Act, 1930* (UK), 20-21 George V, c 26 (the "**NRTA**"), transferred the Crown lands in Alberta to the Alberta government. The *NRTA* recognizes DFN's right to a continued supply of game and fish for their support and subsistence, in

accordance with the promises under the Treaty, while also extending the geographic scope of the Treaty to the whole of the Province.

37. While the *NRTA* may have modified the geographic scope in which the Treaty Rights could be exercised, it did not fundamentally alter the Treaty promises made to DFN – particularly, that DFN would be able to maintain their way of life.
38. Alberta – as the emanation of the Crown in which the lands material to the issues in this proceeding are vested, subject to the interests of DFN – owes obligations to DFN under the Treaty, including honourable and fiduciary obligations. The obligations owed to DFN by Alberta under the Treaty include:
 - a) ensuring that DFN are not displaced;
 - b) ensuring that DFN's way of life is not forcibly interfered with;
 - c) ensuring that DFN retain the means of earning a livelihood through the exercise of their Treaty Rights;
 - d) ensuring that DFN's traditional patterns of economic activities are not interfered with;
 - e) exercising any rights under the Treaty to make regulations or to take up land in an honourable manner that does not interfere with DFN's continued meaningful exercise of their Treaty Rights; and
 - f) managing and protecting the Treaty lands and surrounding area, including the waters and ecosystems in those lands, in such a way as to:
 - (i) minimize adverse impacts on DFN's Treaty Rights; and
 - (ii) protect and promote the continued meaningful exercise of the Treaty Rights.
39. Alberta has breached its Treaty obligations, including its honourable and fiduciary obligations, to DFN.

40. Alberta has not sought or obtained the consent of DFN to breach the Treaty or infringe DFN's Treaty Rights.

Alberta Has Authorized Extensive Development in DFN's Traditional Territory

41. Alberta has discretionary control over the management of DFN's Traditional Territory.
42. Since the Treaty was signed, Alberta has authorized and continues to authorize extensive non-Indigenous uses of the lands, waters, and natural resources in DFN's Traditional Territory and the surrounding area. The extensive non-Indigenous uses authorized by Alberta include activities, developments, and projects related to:
 - a) agriculture;
 - b) energy, including conventional oil and gas and power line transmission;
 - c) forestry;
 - d) mining;
 - e) transportation;
 - f) settlement; and
 - g) other new forms of development, such as peat bog harvesting (collectively, the "**Impugned Authorizations**").
43. To date, the Impugned Authorizations have caused significant changes to the lands, waters, and natural resources in DFN's Traditional Territory, including access to those lands, waters, and natural resources.
44. Alberta has authorized the Impugned Authorizations without regard to the potential cumulative effects and consequent adverse cumulative impacts of the

Impugned Authorizations on DFN's continued meaningful exercise of their Treaty Rights. Among other things, Alberta has failed to:

- a) make meaningful efforts to ensure that sufficient lands, waters, and natural resources in DFN's Traditional Territory remain available for the meaningful exercise of DFN's Treaty Rights;
- b) obtain sufficient information concerning:
 - (i) the nature and extent of DFN's Treaty rights, including the conditions necessary for the meaningful and sustainable exercise of those rights;
 - (ii) the potential cumulative impacts of the Impugned Authorizations in DFN's Traditional Territory and the surrounding area; and
 - (iii) the potential cumulative impacts of the Impugned Authorizations in the Traditional Territory and the surrounding area on the continued meaningful exercise of DFN's Treaty rights;
- c) assess, monitor, or manage the cumulative impacts of the Impugned Authorizations in DFN's Traditional Territory and the surrounding area;
- d) manage the pace, scale, location, nature, and number of activities, projects, and developments in the Traditional Territory and the surrounding area;
- e) establish thresholds for permissible impacts to lands, waters, wildlife, fish, plants, and ecosystems in DFN's Traditional Territory and the surrounding area, such that the impacts would not interfere with or significantly diminish the continued meaningful exercise of DFN's Treaty Rights, as part of DFN's way of life, and ensure that the cumulative impacts of the Impugned Authorizations do not or will not exceed those thresholds;

- f) make meaningful efforts to minimize the impacts, including the cumulative impacts, of the Impugned Authorizations on DFN's Treaty Rights; and
- g) fulfill its obligation to manage and protect DFN's Traditional Territory and surrounding areas, including waters and ecosystems, in such a way as to:
 - (i) minimize impacts on DFN's Treaty Rights; and
 - (ii) protect and promote the continued meaningful exercise of the Treaty Rights.

The Cumulative Effects of Development Have Significantly Diminished the Meaningful Exercise of the Plaintiffs' Treaty Rights

45. The Impugned Authorizations have, individually and collectively, resulted in the following adverse effects in DFN's Traditional Territory:
- a) causing substantial areas of the Traditional Territory to be taken up for uses that are incompatible with DFN's use of lands, waters, and natural resources, thereby significantly and meaningfully diminishing DFN's ability to exercise the Treaty Rights;
 - b) causing fragmentation of the remaining available lands and waters, impairing DFN's ability to access, know, and effectively navigate the Traditional Territory by land and water;
 - c) causing the destruction and loss of access to key hunting, fishing, trapping, and gathering areas, as well as other traditional and spiritual areas and sites, especially areas and sites located within reasonable travel distance of the Reserve;
 - d) causing qualitative and quantitative impacts to ecosystems as well as to animal, fish, and plant habitats, including through the alteration, fragmentation, and pollution of lands, waters, and landscapes;

- e) causing diminution in the abundance, health, and diversity of wildlife, including moose, caribou, squirrel, lynx, and marten, as well as fish and plants;
 - f) causing other adverse qualitative impacts to the remaining available lands and waters, including with respect to industrial traffic, dust, noise, light, smell, and human presence;
 - g) causing the creation of extensive linear corridors throughout the Traditional Territory, facilitating further non-Indigenous uses of and access to the remaining available lands and waters; and
 - h) causing or exacerbating, or both, further environmental harms, including increased wildfires and the resultant damage to water systems and ecosystems (the “**Adverse Effects**”).
46. Alberta has further exercised its powers of regulation in a manner that exacerbates the detrimental impacts of the Adverse Effects on DFN and their Treaty Rights. Among other things:
- a) Alberta has passed regulations, such as the *Provincial Parks (General) Regulation*, Alta Reg 102/1985, that further constrain the timing, location, and manner in which DFN can exercise their right to hunt and other Treaty Rights; and
 - b) Alberta has authorized or condoned, or both, hunting by non-Indigenous persons in DFN’s Traditional Territory and the surrounding area, resulting in further diminution in the abundance, health, and diversity of wildlife relied on by DFN.
47. The Adverse Effects have caused serious harms to DFN, including:
- a) the loss of DFN’s use and enjoyment of lands and waters in their Traditional Territory;

- b) injury to the remaining lands and waters;
 - c) displacement of DFN from areas used for or affected by, or both, the Impugned Authorizations;
 - d) curtailment of the continuity of DFN's traditional patterns of economic activity; and
 - e) loss of DFN's preferred means of exercising their Treaty rights.
48. The Adverse Effects have significantly and meaningfully diminished the exercise of DFN's Treaty Rights, including by:
- a) forcibly interfering with DFN's way of life;
 - b) restraining DFN's means of earning a livelihood; and
 - c) significantly and meaningfully diminishing DFN's ability to exercise their Treaty rights to hunt, fish, trap, and gather, as well as incidental rights.
49. The Adverse Effects have also heightened DFN's reliance on the few remaining areas of relatively intact lands in their Traditional Territory – in particular, the Clear Hills–Chinchaga Refuge, which plays an increasingly vital role in the support of DFN's sustenance, cultural, and spiritual needs.
50. DFN have made attempts to inform Alberta of their concerns regarding the Adverse Effects and the resulting diminishment and infringement of their Treaty Rights and their way of life. Among other things, DFN have raised concerns during and as part of:
- a) regulatory proceedings and provincial consultations regarding proposed development projects within DFN's Traditional Territory and the surrounding area; and
 - b) provincial land use planning initiatives.

51. Despite the attempts made by DFN to inform Alberta of their concerns, Alberta has failed or refused, or both, to adequately address the impacts to and the infringement of DFN's Treaty rights.
52. Alberta has not taken sufficient steps to:
 - a) prevent the breach of the Treaty;
 - b) address the infringement of DFN's Treaty rights; or
 - c) ameliorate the impacts of the Impugned Authorizations on the continued meaningful exercise of the Treaty Rights.
53. Alberta continues to undertake, approve, and otherwise permit activities, projects, and developments in DFN's Traditional Territory contrary to Alberta's obligations under the Treaty.

Remedy Sought:

- a) a declaration that, in causing or permitting, or both, the cumulative impacts of the Impugned Authorizations on DFN's Treaty Rights, Alberta has breached its obligation to the Plaintiffs under the Treaty, including its honourable and fiduciary obligations;
- b) a declaration that Alberta's mechanisms for assessing and taking into account cumulative effects are lacking and have contributed to the breach of its obligations under the Treaty;
- c) a declaration that Alberta has taken up lands to such an extent that there are not sufficient, appropriate, and reasonably accessible lands in DFN's Traditional Territory to allow for DFN's meaningful exercise of their Treaty Rights;
- d) a declaration that Alberta has unjustifiably infringed DFN's Treaty Rights in permitting the cumulative impacts of the Impugned Authorizations to

meaningfully diminish DFN's exercise of its Treaty Rights in their Traditional Territory;

- e) a declaration that Alberta shall not continue to authorize activities that breach the promises included in the Treaty, including Alberta's honourable and fiduciary obligations associated with the Treaty, or that unjustifiably infringe DFN's exercise of their Treaty Rights;
- f) a declaration that the parties must act with diligence to consult and negotiate for the purpose of establishing timely enforceable mechanisms in order to:
 - (i) assess and manage the cumulative impacts of agricultural and industrial development on DFN's Treaty Rights; and
 - (ii) ensure that these constitutional rights are respected;
- g) an interim injunction restraining Alberta from undertaking, causing, or permitting activities that:
 - (i) breach Alberta's obligations to DFN under the Treaty;
 - (ii) infringe DFN's Treaty Rights; or
 - (iii) breach Alberta's fiduciary obligations to DFN;
- h) a permanent injunction restraining Alberta from undertaking, causing, or permitting activities that:
 - (i) breach Alberta's obligations to DFN under the Treaty;
 - (ii) infringe DFN's Treaty Rights; or
 - (iii) breach Alberta's fiduciary obligations to DFN;
- i) costs; and

- j) such further and other relief as this Honourable Court may deem appropriate.

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.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself again 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.