

Form 10
[Rule 3.25]

COURT FILE NUMBER 2103 09146

COURT COURT OF QUEEN'S BENCH
 OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF Métis Settlements General
 Council

DEFENDANT Her Majesty the Queen in right of
 Alberta as represented by the
 Minister of Indigenous Relations

DOCUMENT **STATEMENT OF CLAIM**



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ADDRESS FOR SERVICE **JFK LAW CORPORATION**
AND Barristers & Solicitors
CONTACT INFORMATION 340-1122 Mainland Street
OF Vancouver BC V6B 5L1
PARTY FILING THIS
DOCUMENT Tel: 604-687-0549
 Fax: 604-687-2696

 Robert Janes, QC
 Christina Gray

 Tel: 604-687-0549
 Fax: 604-687-2696

rjanes@jfklaw.ca; cgray@jfklaw.ca

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:

Overview

1. The Plaintiff, Métis Settlements General Council (the “**General Council**”), is the central governing authority of the eight Métis Settlements in Alberta. The eight Métis Settlements comprise 5,000 members (the “**Settlement Métis**”). Together the Métis Settlements hold fee simple title to roughly 1.25 million acres of land.
2. The Settlement Métis are a distinct group of Aboriginal peoples within the meaning of section 35 of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (“**Constitution Act, 1982**”). The Settlement Métis hold rights to self-government and institutions provided for in the Alberta-Métis Settlements Accord (the “**Accord**”).
3. The Parties formally executed the Accord on July 1, 1989. The Accord marked a significant step toward redressing the historic wrongs inflicted on Métis of Alberta. These included the Provincial and Federal governments and private citizens denying them a meaningful land base, the right to establish and maintain their own communities, and the right to govern themselves in accordance with their own Métis perspectives, including culture, values, and way of life.
4. The Accord establishes the governance structure for the Métis Settlements. Each Métis Settlement has an elected Settlement Council. One representative of each Settlement Council sits on the Board of Directors of the General Council, which represents the Métis Settlements’ common interests.
5. The General Council makes policies that are binding on the General Council. This includes policies that are developed in consultation with Alberta’s Minister of Indigenous Relations. These laws are published in the Alberta Gazette.
6. Her Majesty the Queen in Right of Alberta (“Alberta”) began discussions with the General Council in 2020 regarding legislation that could substantially change the Métis Settlements’ governance structure and financial ordering. While these

discussions were ongoing, the Alberta government passed the *Métis Settlements Amendment Act, 2021*, SA 2021, c 12 ("**Amendment Act**"). In passing the *Amendment Act* the Alberta government unilaterally altered the *Métis Settlements Act*, RSA 2000, c M-14 and amended the solemn mutual promises set out in the Accord. As a result, the Government of Alberta breaches the Honour of the Crown and commits an unjustifiable breach of the s. 35 rights of the Settlement Métis as parties to the Accord.

Historic Wrongs Committed Against the Métis in Alberta

7. Following Canada's acquisition of the Northwest Territories and Rupert's Land in 1870, the Government of Canada implemented a number of policies and practices designed to deny or extinguish Métis title and rights in what had become the Northwest Territories. As a result of settler policies and practices, by the early 20th century the Métis living in northern Alberta were largely denied a land base where they could maintain their communities and govern themselves in accordance with their own Métis perspective, including culture, values, and way of life.
8. In the period between 1870 and 1930, both the Federal and Provincial government attempted to address Métis land rights in the Northwest Territories. The Federal government first attempted to address Métis land rights in the Northwest Territories (in what is now Alberta and Saskatchewan) through the scrip system. This system provided for the issuance of scrip to eligible Métis, which could then be redeemed for cash or land depending upon the type of scrip a Métis individual accepted.
9. There were deficiencies in the scrip system. For example, many Métis peoples, families, and extended kinship networks wishing to establish land bases fell victim to the predatory practices of non-Aboriginal persons and speculators and lost their scrip without obtaining land. Métis peoples were forced to sell their land in order to survive, as most Métis peoples were living in impoverished conditions.

10. By the late 19th century the Métis of northern Alberta were largely dispossessed of their land base and left destitute in their homelands. The Federal government by this point largely refused to acknowledge any further responsibility toward the Métis and left the Government of Alberta to address the Métis people's state of affairs.

The Métis Population Betterment Act and the Denial of Self-Government

11. In 1934, the Alberta Legislature established the Royal Commission Appointed to Investigate the Conditions of the Half-Breed [*Métis*] Population of Alberta (the "**Ewing Commission**"). The mandate of the Ewing Commission was to inquire into problems related to Métis person's health, education, relief, and general welfare. The Ewing Commission delivered its report in 1936 and made a number of recommendations directed at improving the livelihoods of Métis peoples in Alberta.
12. In response to the Ewing Commission's report, the Alberta Legislature passed the *Métis Population Betterment Act*, SA 1938, 2nd Sess., c 6 ("***Métis Population Betterment Act***"), and began the process of identifying land in order to establish 12 Métis Settlements. The settlements were intended to give the Métis a land base in which to establish and maintain their livelihoods.
13. The Government of Alberta did not go so far as to recognize and protect the full measure of self-government that the Métis required to govern themselves and maintain a high degree of social, cultural, and political autonomy. Instead, the Government of Alberta exercised direct control over Métis affairs and over the settlement operations.

The Métis Resist Alberta's Intrusions into the Métis Settlements

14. The Government of Alberta subsequently encroached upon the land base that was set aside for the Métis. By the 1960s, Alberta had gone so far as to unilaterally dismantle four of the 12 settlements that were established under the

Metis Population Betterment Act. As a result, by the 1970s, the Settlement Métis demanded greater self-governance and autonomy and commenced litigation against Alberta alleging breach of trust.

15. When s. 35 of the *Constitution Act, 1982* came into effect, it became increasingly pressing for all of the parties to resolve this dispute. In an effort to find a way to resolve matters through negotiation rather than litigation, the Settlement Métis and the Government of Alberta established a Joint Métis-Government Committee (the “**MacEwan Commission**”) to review the *Métis Population Betterment Act* and associated regulations. The MacEwan Commission Report was delivered on July 12, 1984.
16. The MacEwan Commission Report critiqued the existing regime as paternalistic and provided detailed guidance on a new approach to relations between the Métis and the Government of Alberta, including legislative proposals. The MacEwan Commission identified two central issues to be addressed. First, the land set aside for the Métis Settlements should be protected from incursion and be made inalienable. Second, Métis self-government on Métis Settlement land was essential.
17. On July 3, 1985, the Alberta Legislature by Resolution 18 endorsed the recommendations of the MacEwan Commission. On this basis, Alberta and the Settlement Métis entered into an extended period of negotiations to develop a new relationship.

The Métis and Alberta Agree upon a New Relationship and enter into the Accord

18. After several years of intensive negotiations, the Settlement Métis and the Government of Alberta reached an agreement. They addressed both of the central issues the MacEwan Commission identified, including terms to entrench the inalienability of the lands set aside as Métis Settlements and the implementation of Métis self-government in their lands. This agreement was

embodied in the Accord, which the Settlement Métis approved through referendum.

19. On July 1, 1989, both the Settlement Métis, as represented by the Alberta Federation of Métis Settlement Associations, and Alberta formally signed the Accord. The Accord was signed under solemn circumstances and was intended to bind the Government of Alberta and to establish a new relationship with the Settlement Métis.
20. The Accord contained extensive detail concerning the nature of the measures to be implemented, including a draft of what became the *Métis Settlements Act*. The Accord created a two-level system of governance for the Métis Settlements. Each Settlement would have its own Métis Settlement Council, which would be responsible for the affairs of that Settlement. Elected members of the Settlement Councils would then sit together as an overarching governing body, known as the General Council that would represent the common interests of the Métis Settlements, particularly in their dealings with the Government of Alberta.

Alberta and the Settlement Métis Cooperatively Implement the Accord

21. The Accord contemplated Alberta passing legislation to implement its terms. This included passing the *Métis Settlements Act* and *Métis Settlements Accord Implementation Act*, SA 1990, c M-14.5 ("**Accord Implementation Act**"). This legislation would implement the agreed-upon mechanisms for self-government. As a consequence of the Accord, the *Métis Settlements Act* and *Accord Implementation Act* were both introduced in and passed by the Alberta Legislature and came into effect on the date Assented, July 5, 1990.
22. The *Accord Implementation Act* implemented elements of the Accord relating to financial assistance for the Métis Settlements, the Settlements Transition Commission, and transitional arrangements for the establishment and development of structures and systems for local government of settlement areas.

23. Over subsequent years, again as contemplated in the Accord, the Alberta Legislature introduced and passed a range of legislative and constitutional measures designed to implement the Accord's promises. This included providing the legislative framework for the right to exercise self-government, statutory protection for the land base assured to the Métis, entrenching protection for the *Métis Settlements Land Protection Act*, RSA 2000, c M-16 in the *Constitution of Alberta Amendment Act*, 1990 RSA 2000, c C-24 1990, c C-22.2 ("**Constitution of Alberta Amendment Act**"), as well as providing fiscal support to the Métis Settlements.
24. The *Constitution of Alberta Amendment Act* provides constitutional protection for the Métis in Alberta. The preamble establishes that nothing under the *Constitution of Alberta Amendment Act*, *Métis Settlements Land Protection Act* and *Accord Implementation Act* or the *Métis Settlements Act* was not to be construed as to abrogate or derogate from any s. 35 Aboriginal rights.
25. In the years following, the Métis Settlements, the General Council and the Government of Alberta had ongoing discussions and negotiations concerning the operation of the Métis Settlements. This included discussion respecting fiscal support for the Métis Settlements and the modification or modernization of the self-government arrangements reflected in the Accord.
26. Throughout this transitional period, the Government of Alberta did not act unilaterally, but engaged with the Settlement Métis as mutual parties to the Accord. Before effecting changes to the self-government arrangements in place for the Métis Settlements Alberta's practice had been to consult extensively with Métis Settlements and obtain their consent through the Settlement Councils and the General Council.
27. The consultative process that the Alberta government was engaged in with the General Council is exemplified in the Joint Accountability Review Committee ("**JARC**"). The JARC was established pursuant to amendments to the *Metis Settlement Act* in 2013, which required the Parties to jointly appoint a committee

to review governance matters related to the Métis Settlements and General Council.

The Joint Accountability Review Committee recommendations lead to further discussions

28. On June 30, 2014, the JARC delivered a report (the “**JARC Report**”) to Alberta and to the General Council. The JARC Report discussed a range of matters related to change and enhance accountability. The JARC, however, did not specifically address the self-government arrangements or financial sustainability. These matters were the subject of other discussions between the Parties.
29. After receiving the JARC Report, the Parties resumed discussions to address outstanding matters of concern to both the Settlement Métis and Alberta. These discussions continued from 2014 to 2020 and were contentious.
30. Some of the changes part of the discussions would be significant and far reaching, particularly those that could affect the Settlement and General Councils’ fiscal obligations and self-government arrangements under the Accord. As a result, the General Council informed the Government of Alberta on many occasions, including in 2019 and 2020, that any changes would require extensive community consultation within the Settlement Métis.
31. Throughout these discussions, the Government of Alberta and the General Council worked on the basis that any changes in the existing self-government arrangements described in the *Métis Settlements Act* would be determined by agreement and not imposed by the Government of Alberta.
32. In early March 2020 the COVID-19 global pandemic led to a significant slowdown in the ongoing process of discussions. The General Council and the Métis Settlements had to dedicate resources to responding to an unprecedented public health emergency. In-person meetings to prepare for and attend discussion

sessions and, particularly, to conduct essential community consultation became impossible.

Alberta Expresses its Intention to Act Unilaterally

33. In late 2020 the Parties continued discussions regarding the potential changes to the *Métis Settlements Act*, although the process remained slow, as the COVID-19 pandemic surged unpredictably in Alberta and elsewhere. Despite this, the Government of Alberta informed the General Council that Alberta would move forward with unilateral changes to the legislation. As a result of this proposal, a number of significant changes would occur to the legislation without the General Council's consent.
34. The General Council emphasized to Alberta that the Parties had not yet reached an agreement on key outstanding matters regarding the Settlement Métis self-government structure and fiscal financing. Further, the General Council advised that broad community consultation would be required on any proposed agreement. These consultations had not occurred due to limits on public gatherings required during the COVID-19 pandemic.

Alberta Introduces and Passes Bill 57

35. Members of the Legislative Assembly of Alberta unilaterally prepared legislation ("**Bill 57**") to provide changes that Alberta wanted to see in the Métis Settlements self-government arrangements and fiscal arrangements.
36. Bill 57 was introduced in the Alberta Legislature and received First Reading on March 11, 2021. Bill 57 proposed a number of significant changes to the self-government arrangements for the Métis Settlements including:
 - a. Altering the size and composition of the General Council;
 - b. Altering the mode of election of the General Council;
 - c. Altering the mode of election of the Settlement Councils;

- d. Imposing service and associated fiscal obligations on the Settlement Councils;
 - e. Altering how the Settlement Councils can organize their finances, including significantly limiting their ability to incur responsible deficits; and
 - f. Expanding the Minister of Indigenous Relations' power to alter the size of the General Council without a request from or consent of the General Council.
37. The General Council continued to object to the Government of Alberta's effort to unilaterally alter the self-government arrangements put in place pursuant to the Accord.
38. Despite the Settlement Métis' objections, the Alberta Legislature continued to debate Bill 57 and it went to Third Reading on June 3, 2021. Bill 57 passed Third Reading on June 3, 2021, and received Royal Assent on June 17, 2021, as the *Amendment Act*.

Legal basis:

39. In passing the *Amendment Act* without the General Council's agreement, Alberta failed to uphold the Honour of the Crown. In particular, the *Amendment Act* was passed without the free, prior and informed consent of the Settlement Métis acting through their own representative institutions and thus is in breach of the duty to diligently and effectively implement the Accord.
40. Given the constitutional nature of the Accord, the *Amendment Act* breaches s. 35 of the *Constitution Act, 1982*.

The Accord Engages section 35 of the *Constitution Act, 1982*

41. The Accord engages s. 35 of the *Constitution Act, 1982* in two ways. First, in these circumstances, the duty to diligently and effectively implement the Accord

is a constitutional duty and obligation arising from the Honour of the Crown that is protected by s. 35 of the *Constitution Act, 1982*.

42. Second, the Accord itself constitutes a self-government agreement that is binding on the Government of Alberta. The self-government rights provided for in the Accord are treaty rights within the meaning of s. 35 of the *Constitution Act, 1982* or another type of Métis right within the meaning of s. 35 of the *Constitution Act, 1982*.
43. The Accord recognizes and gives effect to the right of the Settlement Métis to govern themselves and their lands in respect of the Métis Settlements through the self-government arrangements described in the Accord and later implemented through the *Métis Settlements Act*.
44. Neither Canada nor Alberta can unilaterally alter rights or agreements protected by s. 35 of the *Constitution Act, 1982*. The *Amendment Act* unilaterally amends the self-government rights of the Métis in respect of the Métis Settlements under the Accord. As a result, the *Amendment Act* is contrary to the constitutional protection given to the Accord and the self-government arrangements implemented pursuant to the Accord.

The Accord Engages the Honour of the Crown and a Duty of Diligent and Effective Implementation

45. As a solemn commitment by the Government of Alberta to the Settlement Métis, the Accord engages the Honour of the Crown. The Crown is obliged under the Accord to take various actions to achieve the Accord's purpose. The Honour of the Crown imposes a duty on Alberta to act diligently to take whatever steps necessary to meaningfully implement the Accord.
46. Furthermore, the Accord was intended to provide for an enduring commitment between the Government of Alberta and the Settlement Métis in respect of the

Métis Settlements. This commitment itself imposes a duty and obligation on the Government of Alberta to diligently and effectively implement the Accord.

47. The Government of Alberta breached the self-government rights set out in the Accord by failing to seek and obtain the consent of the Settlement Métis prior to materially amending or altering the previously negotiated arrangements for in the Accord. Consent must be obtained through their representative organizations, namely the Settlement Councils and the General Council, acting in accordance with the Settlement Métis perspectives, including their customs, traditions, and norms.
48. In the context of a significant change to the self-government arrangements established pursuant to the Accord, Métis customs require the Settlement Councils and General Council to broadly consult within the membership of the Métis Settlements. These internal consultations are necessary in order to ensure that decisions of the Settlement Councils and General Council reflect the free, prior, and informed consent of the membership.

The Amendment Act is an Unjustifiable Infringement of the Accord and the Settlement Métis Right of Self-Government

49. By unilaterally amending the self-government provisions provided for in the Accord and implemented pursuant to the *Métis Settlements Act*, the *Amendment Act* infringes the Settlement Métis' right of self-government recognized in the Accord.
50. Further, the particular changes imposed pursuant to the *Amendment Act* themselves impose a significant burden on the Métis Settlements and significantly interfere with their ability to exercise their self-government right in accordance with arrangements set out in the Accord.
51. Alberta can justify none of these infringements as:

- a. they have not been done for a substantial or compelling public purpose but instead they were made to implement their preferred policy choices for how the Settlement Métis should govern their own affairs;
- b. they were made without adequate consultation; and
- c. they were implemented in a manner that is contrary to the Honour of the Crown and the Crown's fiduciary duty towards the Settlement Métis.

Remedy sought:

52. The General Council seeks the following remedies:

- a. a declaration that the *Amendment Act* is an unlawful attempt contrary to s. 35 of the *Constitution Act, 1982* to unilaterally amend the Accord and the self-government arrangements implemented pursuant to the Accord;
- b. a declaration that the *Amendment Act* is an unjustifiable infringement of s. 35 of the *Constitution Act, 1982*;
- c. a declaration that the *Amendment Act* is, contrary to s. 35 of the *Constitution Act, 1982*, a breach of the Honour of the Crown and the duty to diligently and effectively implement the self-government arrangements provided for in the Accord;
- d. a declaration that the *Amendment Act* is of no force and effect pursuant to s. 52 of the *Constitution Act, 1982*;
- e. a stay of the *Amendment Act* pending the disposition of this action;
- f. such further and other relief as counsel may advise and this Honourable Court deem just; and
- g. its costs of this action.

53. The Plaintiff proposes that the trial of this action 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 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 plaintiff's 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 plaintiff against you.