Court File No. ____________

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

WABASEEMOONG INDEPENDENT NATIONS, on behalf of all TREATY 3 FIRST NATIONS
and
CHIEF WAYLON SCOTT, on his own behalf and on behalf of all members of the WABASEEMOONG INDEPENDENT NATIONS and all members of TREATY 3 FIRST NATIONS

Plaintiffs

- and -

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

Defendant

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

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.

Date: _____________, 2024 Issued by: ____________________________

(Registry Officer)

Kenora Courthouse
216 Water Street
Kenora, Ontario
P9N 1S4

TO: **ATTORNEY GENERAL OF CANADA**

Address for service:
Office of the Deputy Attorney General of Canada
50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8
agc_pgc_ottawa@justice.gc.ca

Address for courtesy copy (via e-mail):
Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite #400
Toronto, ON M5H 1T1
Email: agc_pgc_toronto.indig-autoch@justice.gc.ca

CLAIM

OVERVIEW

1. This claim is a proposed multi-jurisdictional class action alleging that the Crown failed to diligently implement certain terms of *Treaty No. 3* ("Treaty 3") and honour the spirit and intent of the solemn Treaty relationship, and promises made by the Crown arising therefrom. In particular, this claim relates to four (4) specific Crown failures:

    a. the failure to increase, index, or augment the amount of the annual payment of five dollars ($5) "to each Indian person" (the "Annuity Payment") under Treaty 3;

    b. the failure to fulfill the First Nation signatories' and adherents' entitlement to agricultural implements, tools, livestock, seed and instruction ("Agricultural Benefits") for the cultivation and encouragement of agriculture;

    c. the failure to fulfill the promise to expend annually the sum of fifteen hundred dollars ($1,500) per annum on ammunition and twine (the "Ammunition and Twine Payment"); and

    d. the failure to increase, index, or augment the Ammunition and Twine Payment.

2. The Plaintiffs claim that when properly interpreted, Treaty 3 required the Crown to maintain the comparative value of the Annuity Payment and the Ammunition and Twine Payment to offset the impacts of inflation and to maintain the purchasing power thereof.

3. The Crown has failed to honour this promise. From the time Treaty 3 was entered into in October 1874, the Crown has never increased, augmented, or indexed the Annuity Payment or the Ammunition and Twine Payment. In so doing, the Crown has been unjustly enriched at the expense of the First Nation signatories to Treaty

3, and, in particular, the individual Indian recipients of the Annuity Payments, who have suffered a corresponding deprivation.

4. The Crown also failed to fulfil the entitlement to Agricultural Benefits as required by the terms of Treaty 3. Specifically, the Crown promised that the following would be "supplied to any band of the said Indians who are now actually cultivating the soil or who shall hereafter commence to cultivate the land": two hoes, one spade, one scythe per family, one plough per ten families, five harrows per twenty families, one axe, cross-cut saw, hand-saw, pit-saw, necessary files, grind stone, auger and chest of carpentry tools for each band, plus "enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation" as well as a yoke of oxen, one bull and four cows "to be given once for all for the encouragement of the practice of agriculture among the Indians."

5. In the alternative – and in the event that the Crown was not required to increase, augment or index the Annuity Payment or the Ammunition and Twine Payment because of an implied obligation and/or the duty of diligent implementation – the Crown breached its fiduciary and/or honourable duties when it entered into and implemented Treaty 3 without an augmentation clause in place. In so doing, the Crown entered into and implemented Treaty 3 on terms that were foolish, improvident, or otherwise amounted to exploitation of the Indians located within the boundaries of Treaty 3. As such, the Crown breached its fiduciary duty and/or the Honour of the Crown, and/or Treaty 3 is invalid.

6. Treaty 3, which was signed before the existence of the provinces, covers large parts of what is now northwestern Ontario and a small part of eastern Manitoba. This proposed multi-jurisdictional class action relates to all First Nations that signed Treaty 3 or are otherwise entitled to the benefits of Treaty 3 through formal or *de facto* adhesion to the Treaty (the "First Nations Class"). The Plaintiffs also propose to assert a claim on behalf of all individual status Indians who are alive and members of the First Nations Class (the "Treaty 3 Members Subclass").

RELIEF SOUGHT

7. The Plaintiffs seeks the following relief:

a. Certification of this action as a multi-jurisdictional class proceeding and related relief under *Class Proceedings Act, 1992*, S.O. 1992, c. 6, subject to the following conditions and/or such other conditions as counsel may advise and this Honourable Court may permit:

i. There shall be a "**First Nations Class**" defined as follows:

> Wabaseemoong Independent Nations, and any other First Nation with members who are entitled to receive an Annuity Payment under Treaty 3;

ii. There shall be a **"Treaty 3 Members Subclass"** defined as follows:

> Chief Waylon Scott, and any other living persons who have received an Annuity Payment under Treaty 3 as a member of Wabaseemoong Independent Nations, the Band #817 General List/Western, or any other First Nation whose members receive Annuity Payments under Treaty 3.

b. With respect to the issue described at paragraph 1(a) above, declaratory relief as follows:

i. A Declaration that the Crown has an ongoing obligation to increase the annual payment of $5 payable to each Treaty Indian "for ever" (the "Annuity Payment") from time to time, as promised by the Crown under the terms of Treaty 3, to allocate a fair share of net Crown revenues to Treaty 3 First Nations or, alternatively, to maintain the real value of the Annuity Payment in order to give effect to the purpose and intention of this Treaty promise;

ii. A Declaration that the Crown breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and failed to uphold the Honour of the Crown when it failed to increase, augment or index the Annuity Payment from time to time since 1874 to maintain the real value and the purchasing power of the Annuity Payment, the value of which has been seriously eroded due to inflation and the time value of money;

iii. A Declaration that the Crown's failure to increase, augment or index the Annuity Payment has unjustly enriched the Crown which has produced a corresponding deprivation borne by the First Nations Class and, in particular, by the individual Indians entitled to receive Annuity Payments under Treaty 3 including the Treaty 3 Members Subclass.

c. With respect to the issue described at paragraph 1(b) above, declaratory relief as follows:

i. A Declaration that the Crown breached its Treaty, fiduciary, legal and/or equitable obligations and failed to uphold the Honour of the Crown when it failed to supply the promised Agricultural Benefits.

d. With respect to the issue described at paragraph 1(c) above, declaratory relief as follows:

i. A Declaration that the Crown breached its Treaty, fiduciary, legal and/or equitable obligations and failed to uphold the Honour of the Crown when it failed to abide by the promise to expend the sum of fifteen hundred ($1,500) per annum for the purchase of ammunition and twine (the "Ammunition and Twine Payment");

e. With respect to the issue described at paragraph 1(d) above, declaratory relief as follows:

i. A Declaration that the Crown has an ongoing obligation to increase the Ammunition and Twine Payment from time to time, as promised by the Crown under the terms of Treaty 3, to maintain the real value of the Ammunition and Twine Payment in order to give effect to the purpose and intention of this Treaty promise;

ii. A Declaration that the Crown breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and failed to uphold the Honour of the Crown when it failed to increase, augment or index the Ammunition and Twine Payment from time to time since 1874 to maintain the real value and the purchasing power of the Ammunition and Twine Payment, the value of which has been seriously eroded due to inflation and the time value of money;

iii. A Declaration that the Crown's failure to increase, augment or index the Ammunition and Twine Payment has unjustly enriched the Crown which has produced a corresponding deprivation borne by the First Nations Class.

f. In the alternative, the following Declaratory relief:

i. A Declaration that the Crown owed a fiduciary duty to Wabaseemoong Independent Nations and all other members of the First Nations Class in the negotiation and implementation of Treaty 3, which included the duty to act prudently, in good faith, with loyalty to the beneficiaries' interest, and to provide disclosure of the effects of inflation on the value of the Annuity Payment and the Ammunition and Twine Payment over time;

ii. A Declaration that the Crown breached said fiduciary duty, failed to act in good faith, failed to uphold the Honour of the Crown and/or committed equitable fraud, when the Governor-in-Council approved and consented to Treaty 3 on terms which were foolish, improvident, and otherwise amounted to exploitation. The Crown further breached its duties and obligations to the Treaty 3 signatories when the Governor-in-Council failed to withhold consent to the Treaty on terms that were foolish, improvident, or amounted to exploitation, as well as by failing to implement the terms of Treaty 3 in a reasonable, honest, uniform and equitable manner as compared to the signatories to the Robinson-Huron and Robinson-Superior Treaties of 1850. The Crown failed to cooperate in good faith to achieve the objectives of Treaty;

iii. A Declaration that the surrender and release in Treaty 3 should be set aside on the grounds that its terms were unconscionable, foolish, improvident, and otherwise amounted to exploitation.

g. An Order that the Crown is liable to pay:

i. Equitable compensation and/or restitution to the First Nations Class due to the Crown's unjust enrichment and the First Nations Class's corresponding deprivation for the Crown's breaches of Treaty 3, the Honour of the Crown, and/or fiduciary or other legal or equitable duties due to the Crown's failure to ever augment, increase or index the Annuity Payment and the Ammunition and Twine Payment to maintain purchasing power and to offset the effects of inflation in the sum of $10 billion or such other amount as this Honourable Court deems just;

ii. Equitable compensation and/or restitution to the Treaty 3 Members Subclass due to the Crown's unjust enrichment and the Treaty 3 Members Subclass's corresponding deprivation for the adjusted value of the Annuity Payment that each member would have been entitled to but for the Crown's breaches of Treaty 3, the Honour of the Crown, and the Crown's fiduciary or other legal or equitable duties owing to the First Nations Class;

iii. In the alternative to (i), equitable compensation and/or damages for the Crown's breaches of good faith, fiduciary duty, the Honour of the Crown and for engaging in equitable fraud by entering into Treaty 3 on terms which were foolish, improvident or amounted to exploitation, as well as by failing to implement the terms of Treaty 3 in a reasonable, honest, uniform and equitable manner as compared to the signatories to the Robinson-Huron and Robinson-Superior Treaties of 1850;

iv. Equitable compensation and/or damages for the Crown's breaches of its treaty, fiduciary and equitable obligations and for failing to uphold the Honour of the Crown in neglecting to:

(a) supply the promised Agricultural Benefits to the First Nation signatories; and

(b) expend the promised sum of fifteen hundred dollars ($1,500) per annum in the purchase of ammunition and twine.

v. Punitive damages in such amount as this Honourable Court deems just;

vi. Pre-and post-judgment interest or equitable compensation as this Honourable Court deems just;

vii. Costs of this action on a substantial or full indemnity basis, including costs of notice and class administration;

h. Such further and other relief as counsel may advise and this Honourable Court deems just.

FACTS

The Parties

8. *Treaty No. 3* ("Treaty 3") was first signed in 1873. Treaty 3 covers 55,000 square miles of what is now northwestern Ontario and a small part of eastern Manitoba ("Treaty 3 Territory").

9. While Treaty Annuities are paid to individuals, the promise to provide Treaty Annuities was a promise made to the "bands" as the rights-bearing collective recognized under Treaty 3. Treaty Annuities are a collective right, and the holder of such rights is the First Nation collective which is the legal successor in interest to the Treaty Band.

10. The PLAINTIFF, WABASEEMOONG INDEPENDENT NATIONS, signed Treaty 3 or are otherwise entitled to the benefits of Treaty 3 through formal or *de facto* adhesion to the Treaty. The Plaintiff is an "Indian Band" within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended (*Indian Act*). The Plaintiff seeks to represent and act on behalf of the First Nations Class in the proposed multi-jurisdictional class proceedings.

11. The PLAINTIFF, CHIEF WAYLON SCOTT, is a member and the Chief of Wabaseemoong Independent Nations. Chief Scott is an "Indian" within the meaning of the *Indian Act*. Chief Scott is an individual who is entitled to receive Annuity Payments under Treaty 3 as a member of Wabaseemoong Independent Nations. This Plaintiff seeks to represent and act on behalf of the Treaty 3 Members Subclass in the proposed class proceeding.

12. There are twenty-seven (27) First Nations with reserve lands located in what are now the provinces of Ontario and Manitoba whose members receive Annuity Payments under Treaty 3. In particular, there are twenty-six (26) recognized First Nations with reserve lands in Ontario and one (1) recognized First Nation with reserve lands in Manitoba.

13. The Treaty 3 Members Subclass includes all living members of the First Nations that constitute the First Nations Class.

14. The DEFENDANT, His Majesty the King in Right of Canada as represented by the ATTORNEY GENERAL OF CANADA (hereinafter referred to as "Canada" or "the Crown"), has legislative authority in Canada, by and with the advice of the Parliament of Canada, with respect to Indians and lands reserved for Indians pursuant to section 91(24) of the *Constitution Act, 1867*. Canada owes enforceable fiduciary, legal and equitable duties to the First Nations Class pursuant to various sources, including but not limited to the *Rupert's Land and North-Western Territory Order* dated June 23, 1870, the *Constitution Act, 1867*, the *Constitution Act, 1982*, Treaty 3, or otherwise by law or in equity. Canada owes, and owed at all material times, fiduciary obligations to the Treaty 3 signatories by virtue of

their Treaty entitlements and otherwise pursuant to the Constitution of Canada, relevant enactments, and at common law and equity. At all material times, officials within the Department of Indian Affairs acted as agents on behalf of Canada.

The Crown sought to enter Treaties throughout the North-West Territories to open up Canada for settlement, immigration, mining, lumbering, trading and other purposes

15. Pursuant to the *Rupert's Land and North-Western Territory Order* dated June 23, 1870, the North-West Territories were admitted into the Dominion of Canada on certain terms and conditions including, *inter alia*, the payment of ₤300,000 by the federal Crown to the Hudson’s Bay Company.

16. The Indian signatories to the numbered Treaties faced an uncertain future in the time immediately prior to the signing of the numbered Treaties. The collapse of the traditional hunting economy based on the bison and the continued encroachment of European settlers had created a sense of urgency on the part of Bands to protect their interests. At the same time, the Crown sought to pave the way for future settlement of the west by acquiring (what it viewed as) legal title to 55,000 square miles of land while reducing the threat of an Indian uprising through the making of Treaties.

17. Between 1871 and 1906, the Crown entered into *Treaty No. 1* through *Treaty No. 10* with Indian Bands and Tribes (referred to hereinafter as “Treaty Bands” or “Bands”) throughout the North-West Territories from northwestern Ontario to the Rocky Mountains to open up the west for settlement, immigration, mining, lumbering, trading and other purposes. According to the written terms of the Treaties, the Crown promised to provide specific benefits, including, *inter alia*, the payment of an initial present or gratuity, annuities, agricultural benefits and reserves to be set aside for the exclusive use and benefit of Indian Bands.

18. The Treaty negotiations were fraught with conflict, as the Bands were aware that the Crown had paid the Hudson’s Bay Company (£300,000) for its interests in the vast territory of what was then referred to as Rupert’s Land. The Bands vehemently argued that the lands belonged to them, and that the money should

have been theirs. This confirms that these Bands and the Crown contemplated the payment of monetary compensation in exchange for rights and interests to land.

19. Central to the negotiations for virtually all of the numbered Treaties were the assurances on the part of the Government that the Indian signatories would receive specific and enforceable Treaty benefits in exchange for their agreement to cede their collective rights and interests to a vast area of land. The Crown's promise to provide Treaty benefits to assist and support a sustainable future for the Bands in light of their rapidly changing circumstances was critical to their acceptance of Treaty.

20. The Treaties were relational agreements that incorporated the concept of sharing the benefits of the land.

21. The negotiation of Treaties in Canada stretched over a period of over 200 years. While there are important differences in the Treaties, there is necessarily a unity to the treaty process and the Crown intended to establish a clear set of terms with relative parity to ensure that all Bands were treated equitably and did not receive substantially more or substantially less than Bands in other Treaties.

22. In particular, the 1850 Robinson Treaties informed the terms of the numbered Treaties that followed thereafter, including the promise to provide annual payments.

Unity of the terms of the numbered Treaties

23. *Treaty No. 1* and *Treaty No. 2* were the first Indian Treaties negotiated by the newly created Dominion of Canada at Fort Garry in 1871. Canada appointed the Lieutenant-Governor of Manitoba, Adams G. Archibald, and the Indian Commissioner, Wemyss M. Simpson, to negotiate the terms of the treaties with the Cree and Saulteaux Indians to open up fertile agricultural lands in what is now southern Manitoba to settlement.

24. Since the federal Crown did not have an established practice or policy for making treaties with the Indians, the Treaty Commissioners were given some latitude and were provided a copy of the 1850 Robinson Treaty to guide them in negotiations with the Indians.

25. While negotiating the terms of Treaty 1 in 1871, Lieutenant-Governor Archibald promised the Indians assembled at the Stone Fort that they would be treated in a similar manner to the Indians of the Robinson Treaties:

> Another thing I want you to think over is this: in laying aside these reserves, and in everything else that the Queen shall do for you, you must understand that she can do for you no more than she has done for her red children in the East. *If she were to do more for you that would be unjust for them. She will not do less for you because you are all her children alike, and she must treat you all alike.*

26. The Lieutenant-Governor of the Northwest Territories, Alexander Morris, negotiated many of the Numbered Treaties and described the Robinson Treaties as "the forerunners of the future treaties, and shaped their course…"

The Saulteaux Tribe of Ojibbeway entered Treaty 3 with the Crown in 1873 and through further adhesions in 1874 and 1875

27. Treaty 3 was negotiated in the context of an ongoing dispute about the Canadian government's road and waterway developments through Manitoba and Northern Ontario. Two previous Treaty negotiations attempted to resolve this issue in 1868 and 1872, but both failed.

28. Treaty 3 negotiations were significant because the Treaty was used as a template for all subsequent Numbered Treaty negotiations, and Treaty 1 and 2 were later amended to reflect the developments of Treaty 3. Additionally, unlike many other Treaties, a contemporaneous written record of the First Nation signatories' understanding of the Treaty exists. Referred to collectively as the Paypom Treaty, this series of notes were written for Chief Powassin during the treaty negotiations. The Paypom Treaty reflects a series of promises which were not all included in the final Treaty 3 text as recorded by the Canadian government.

29. Treaty 3 was an agreement entered into on October 3, 1873, by Chief Mikiseesis (Little Eagle) on behalf of the Ojibwe First Nations and Queen Victoria. The treaty involved a vast tract of Ojibwe territory, including large parts of what is now northwestern Ontario and a small part of eastern Manitoba. Treaty 3 also provided for rights for the Waasaakode Anishinaabe ("light skinned Anishinaabe") and other Ojibwe, through a series of agreements signed over the next year.

30. Treaty 3 has particular historical significance because of the litigation that ensued between the Crown in Right of Ontario and the Crown in Right of Canada over the significance of the treaty and the respective roles of Canada and the provinces in relation to aboriginal peoples, including *St. Catherines Milling v. The Queen* and *The Dominion of Canada v. The Province of Ontario.*

31. The written text of Treaty 3 states that it was entered into between “Her Majesty the Queen”, and “the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods with Adhesions”. The territory was described as:

> Commencing at a point on the Pigeon River route where the international boundary line between the Territories of Great Britain and the United States intersects the height of land separating the waters running to Lake Superior from those flowing to Lake Winnipeg; thence northerly, westerly and easterly along the height of land aforesaid, following its sinuosities, whatever their course may be, to the point at which the said height of land meets the summit of the watershed from which the streams flow to Lake Nepigon; thence northerly and westerly, or whatever may be its course, along the ridge separating the waters of the Nepigon and the Winnipeg to the height of land dividing the waters of the Albany and the Winnipeg; thence westerly and north-westerly along the height of land dividing the waters flowing to Hudson's Bay by the Albany or other rivers from those running to English River and the Winnipeg to a point on the said height of land bearing north forty-five degrees east from Fort Alexander, at the mouth of the Winnipeg; thence south forty-five degrees west to Fort Alexander, at the mouth of the Winnipeg; thence southerly along the eastern bank of the Winnipeg to the mouth of White Mouth River; thence southerly by the line described as in that part forming the eastern boundary of the tract surrendered by the Chippewa and Swampy Cree tribes of Indians to Her Majesty on the third of August, one thousand eight hundred and seventy-one, namely, by White Mouth River to White Mouth Lake, and thence on a line having the general bearing of White Mouth River to the forty-ninth parallel of north latitude; thence by the forty-ninth parallel

> of north latitude to the Lake of the Woods, and from thence by the international boundary line to the place beginning.

32. The written Treaty text was not translated into Anishinabemowin (Ojibway), Cree nor any other languages of the Indian signatories. The Commissioners did not provide signatories with an English nor a translated copy of the written Treaty text. The Bands did not have any independent legal or financial advice to assist them in making full, prior, and informed consent to the terms offered by the Crown.

33. The Treaty adhesions made it clear that all Treaty benefits and promises set out in Treaty 3, including the provision of Annuity Payments, Agricultural Benefits, and Ammunition and Twine Payments applied to the adhering Bands when they signed the adhesion. The written text of the adhesions explicitly stated that the signatories agreed to "accept the several provisions, payments and reserves of the said treaty" as if they "had been originally contracting parties thereto".

The Crown promised Annual Payments and other benefits to the Treaty 3 Bands

34. According to the written text of the Treaty, the Indians who signed Treaty 3 agreed to "cede, release, surrender, and yield up" to the lands included within the Treaty territory and all other "rights, title, and privileges". The Treaty territory was described as "55,000 Square Miles".

35. In exchange, Treaty 3 signatory Indian Bands were entitled to receive the following benefits promised by and on behalf of the Crown:

    a. Reserve lands not to exceed "one square mile for each family of five, or in that proportion for larger and smaller families" and subject to approval of the location by the Treaty Commissioners;

    b. Reserve lands for farming and for the benefit of the Indians;

    c. Compensation for the land if reserve lands were taken for Public Works, including due compensation for any improvements made to the lands;

d. The right to pursue their usual vocations of hunting, fishing, and trapping on unpatented Crown lands within the area surrendered under the Treaty;

e. Each Indian was to receive a one-time "present" or gratuity of $12.00 in cash;

f. Various agricultural implements, livestock, seed and instruction in cultivating the soil (the "Agricultural Benefits"), in particular:

> "two hoes for every family actually cultivating, also one spade per family as aforesaid, one plough for every ten families as aforesaid, five harrows for every twenty families as aforesaid, one scythe for every family as aforesaid, and also one axe and one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grind-stone, one auger for each band, and also for each Chief for the use of his band one chest of ordinary carpenter's tools; also for each band enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such band; also for each band one yoke of oxen, one bull and four cows";

g. Each Indian was to receive in cash the sum of $5.00 per year "for ever" as per the following (the "Annuities Clause"):

> And further, that Her Majesty's Commissioners shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period in each year to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded, pay to each Indian person the sum of five dollars per head yearly;

h. Each Chief would receive an annual salary of $25.00, and each subordinate officer up to three people would receive an annual salary of $15.00;

i. Each Chief and subordinate officer would receive a set of clothing every three years;

j. Fifteen hundred dollars ($1,500) per annum expended by the Crown in the purchase of ammunition and twine (the "Ammunition and Twine Clause"):

> It is further agreed between Her Majesty and the said Indians that the sum of fifteen hundred dollars per annum shall yearly and every year expended

by Her Majesty in the purchase of ammunition and twine for nets for the use of the said Indians;

k. A flag and medals.

36. The promise to provide various Treaty benefits in support of the future livelihood of the Bands in changing circumstances was central to the conclusion of the Treaty.

The Crown has failed to augment, increase or index the Treaty 3 Annuity Payment and the Ammunition and Twine Payment

37. In the years since the signing of Treaty 3, the relative value of the Annuity Payments and the Ammunition and Twine Payments has decreased due to inflation to the point that the Annuity Payments and the Ammunition and Twine Payments are meaningless.

38. The amount of the Annuity Payment and the Ammunition and Twine Payment has never been augmented, increased or indexed for the purposes of offsetting the impacts of inflation and maintaining the purchasing power thereof.

39. The Crown has benefitted from the decrease in relative value of the Annuity Payment and the Ammunition and Twine Payment, not to mention from lands and resources taken up following the signing of Treaty 3 more generally. Ontario and Manitoba have been greatly enriched and have developed into prosperous jurisdictions following the signing of Treaty 3. In contrast, the Treaty 3 signatory Indian Bands and in particular, the individual Indians entitled to receive Annuity Payments, have suffered a corresponding loss, and there is no juristic reason for the enrichment.

The Crown failed to fulfill its promise to supply Agricultural Benefits and expend a yearly sum on Ammunition and Twine

40. After the signing of Treaty 3, the Crown's Treaty Commissioners impressed upon Crown officials that the signatories were eager to commence cultivation of reserve

land and emphasized the importance of providing the bands with the livestock and agricultural implements promised under treaty without delay.

41. The Treaty 3 Bands' transition to an agricultural economy was frustrated by the Crown's failure to provide the livestock, implements, seed and instruction required under the terms of Treaty 3. If anything was in fact provided, it was of inferior quality and was not provided in a timely manner. A lack of sufficient and consistent farming instruction further hampered the transition to an agricultural economy.

42. Further, the Crown failed to uphold its promise to expend an annual sum of fifteen hundred dollars ($1,500) in the purchase of ammunition and twine.

43. Beginning in 1883, the Department of Indian Affairs drastically reduced funding which negatively affected the progress achieved by a number of bands in farming. This gave rise to the following deficiencies amounting to an unfulfilled promise:

    a. Insufficient number of cattle provided;

    b. Poor quality of the livestock that was received; and

    c. A lack of agricultural implements and where provided, a failure to supply implements that were interdependent with the furnished implements rendering the latter useless for its purposes.

44. Following the signing of Treaty 3, the Crown also designed and unilaterally implemented a number of policies to undermine the Treaty 3 Bands' transition to an agricultural economy as contemplated by the terms of Treaty. Beginning in the 1870's these policies persisted for decades and included the Home Farm Program, the Permit System, the Pass System, the Cattle on Loan /Birtle System, subdivision of reserve land policy (referred to as the Severalty Policy) and the Peasant Farm policy.

45. The Treaty 3 Bands did not receive the full complement of agricultural assistance promised under Treaty 3. What little assistance, if any, that was provided was

rendered ineffective or useless due to the poor quality of implements, tools and livestock, lack of complementary or necessarily linked tools and implements, delays in provision of implements, and the Crown's implementation of its Indian agricultural policies.

LIABILITY

46. The Plaintiffs claim that the Crown breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and the Honour of the Crown when it:

   a. Failed to ever increase, augment or index the Annuity Payment and the Ammunition and Twine Payment, as promised by the Crown under the terms of Treaty 3, in order to maintain the real value of said payments and to implement the purpose and intention of the Treaty promise.

   b. Failed to fulfil the First Nation signatories' and adherents' entitlement to agricultural implements, tools, livestock, seed and instruction ("Agricultural Benefits") for the cultivation and encouragement of agriculture.

   c. Failed to fulfill the promise to expend an annual sum of fifteen hundred dollars ($1,500) in the purchase of ammunition and twine.

47. In the alternative to 46(a), (if the Crown did not have an ongoing obligation to increase, augment or index the Annuity Payment or Ammunition and Twine Payment), the Plaintiffs claim that the Crown breached its fiduciary duty, failed to uphold the Honour of the Crown and/or committed equitable fraud when:

   a. The Crown fell below the standard of a fiduciary and acted in bad faith during the negotiations and the subsequent implementation of Treaty 3;

   b. The Governor-in-Council approved and consented to Treaty 3 on terms which were unconscionable, foolish, improvident, and otherwise amounted to exploitation;

c. The Crown proceeded to implement Treaty 3 on terms that were unconscionable, foolish, improvident, and otherwise amounted to exploitation; and

d. The Crown failed to implement the terms of Treaty 3 in a uniform and equitable manner.

The federal Crown breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and failed to uphold the Honour of the Crown when it failed to ever increase, augment or index the Annuity Payment or the Ammunition and Twine Payment

48. Treaty 3 is a source of enforceable rights which are recognized and constitutionally affirmed at Canadian law under section 35 of the *Constitution Act, 1982*.

49. It is well-established at law that the Honour of the Crown governs the interpretation of historic treaties in a way that fulfils the intended purposes of Treaty and statutory grants and assumes that the Crown always intends to fulfill its promises.

50. The Treaty-making process and the promises arising therefrom, which resulted in the Crown's taking of lands held pursuant to Aboriginal Title in exchange for certain promises, necessarily requires an interpretation of the Treaty that maintains fidelity to the spirit and intent of the Treaty. The Annuities Clause and the Ammunition and Twine Clause must be interpreted in a way that is consistent with, *inter alia*, the Nation-to-Nation relationship between the parties, the Honour of the Crown and the duty of diligent implementation, and the Crown's fiduciary duties.

51. The intention of the Annuities Clause in Treaty 3 was clear: in exchange for the taking of vast traditional territories and natural resource wealth, the Crown was, in part, to provide Annuity Payments to assist the Indians in offsetting the costs of the basic necessities they required to subsist. When Treaty 3 was signed, the value of the Annuity Payment equated with a certain amount of goods. This value, or purchasing power, was extended to the members of the signatory Bands to assist them with their livelihood.

52. The intention of the Ammunition and Twine Clause in Treaty 3 was to ensure that the signatory Bands had the ability to continue to pursue their traditional livelihood which included hunting and fishing while also facilitating participation in the commercial economy. The real value of the Ammunition and Twine Payment has been eroded by inflation such that its purchasing power is not commensurate with the benefit that was promised.

53. The Plaintiffs claim that, when properly interpreted according to the relevant interpretation principles, including the officious bystander test and the Honour of the Crown, Treaty 3 includes an implied promise to augment, or increase or index the amount of the Annuity Payment and Ammunition and Twine Payment from time to time.

54. The Plaintiffs claim that the Crown has an ongoing Treaty, fiduciary, and/or honourable obligation to increase, augment or index the Annuity Payments and Ammunition and Twine Payments, as promised by the Crown under the terms of Treaty 3, to maintain their real value over time.

55. The Plaintiffs claim that the Crown failed to fulfill its obligations to provide and to properly administer the Annuity Payments and Ammunition and Twine Payments by failing to increase, augment or index the annual payments to retain their purchasing power. In the years since the signing of Treaty 3, the relative value of the Annuity Payments and Ammunition and Twine Payments has decreased due to inflation to the point of rendering the Annuity Payments and Ammunition and Twine Payments virtually useless in terms of purchasing power. The failure to index the Annuity Payments and Ammunition and Twine Payments to account for inflation has resulted in the erosion of the value of these Payments to the point of being worthless.

The federal Crown breached its fiduciary duty, and/or failed to uphold the Honour of the Crown when it breached the Agricultural Benefits and Ammunition and Twine promises

56. The Agricultural Benefits claim is brought on the grounds that the Crown breached its treaty, legal, trust, fiduciary and/or equitable obligations to the Plaintiff First Nations Class in its failure to fulfil the written promises of Treaty 3 for the provision of agricultural benefits and instruction including:

    a. the failure to fulfil the Treaty Bands' entitlement to agricultural implements, tools, livestock, and seed for cultivation and encouragement of agriculture; and

    b. the failure to fulfil the Treaty Bands' entitlement to agricultural instruction.

57. Notwithstanding that the Crown failed to provide the benefits promised under a strict literal reading of Treaty 3, it is also clear that the written terms of Treaty 3 do not represent the full extent of the Crown's treaty promise respecting agricultural benefits and instruction. In particular, the Crown's fundamental treaty obligation was to support the Treaty Bands and provide the means to transition to an agricultural economy. In this context, the Crown has not only breached the written terms of Treaty 3, but also its fiduciary and other legal duties by failing to uphold the purpose and intent of the agricultural benefits and instruction clauses.

58. Additionally, the Crown failed to expend the promised fifteen hundred dollars ($1,500) per annum on ammunition and twin. The Crown's fundamental treaty obligation was to support the Treaty Bands ability to continue to pursue a traditional livelihood which included of hunting and fishing while also facilitating participation in the commercial economy. The Crown breached the written terms of Treaty 3 and its fiduciary and other legal duties by failing to uphold the purpose and intent of the Ammunition and Twine Clause.

59. The Crown also breached its treaty, trust, and fiduciary and/or honourable obligations to the Treaty Bands by implementing a suite of laws and unilateral policies specifically designed to undermine the Treaty 3 Bands' ability to

transition to an agricultural economy and providing implements and livestock which were of an inferior quality and with respect to implements, rendered useless by virtue of their interdependence with implements that were not provided.

In the alternative, the federal Crown breached its fiduciary duty, failed to uphold the Honour of the Crown and/or committed equitable fraud at the time of Treaty-making and by proceeding to implement the Treaty on unconscionable terms

60. The Crown has recognized that it has an "obligation of honourable dealing" with Indigenous peoples as early as the *Royal Proclamation* of 1763. This obligation, which is an element of the Honour of the Crown, "derives from the Crown's assertion of sovereignty in the face of prior Aboriginal occupation". It is well established that the Honour of the Crown is always at stake in the Crown's dealings with Indigenous peoples. The Honour of the Crown is "a constitutional principle" and is a source of enforceable affirmative obligations on the Crown.

61. It is well-established at law that the Crown must conduct itself honourably in the making and diligent implementation of Treaties.

62. Further, where the Crown assumes discretionary control over a specific or "cognizable" Aboriginal interest (such as Aboriginal Title), this gives rise to fiduciary duties on the part of the Crown. As a fiduciary, the Crown must act with utmost loyalty and cannot consent to any improvident bargain.

63. The Plaintiffs claim that the Crown's actions in failing to secure an explicit augmentation clause fell below the standard of a fiduciary, failed to uphold the Honour of the Crown, and/or amounted to bad faith during the negotiations of Treaty 3.

64. The Plaintiffs claim that the Crown breached its fiduciary duty to the Bands when it approved and consented to Treaty 3 on terms which were foolish, improvident, and otherwise amounted to exploitation.

65. The Plaintiffs claim that the Crown further breached its duties by continuing to implement the improvident bargain with unconscionable terms.

In all cases, Crown breaches give rise to liability for the payment of equitable compensation, restitution and/or damages to the Plaintiffs

66. In all cases, the Crown is liable to provide equitable compensation to the Plaintiffs for the losses they have suffered related to the Crown's breaches of its Treaty, legal, fiduciary, and/or honourable obligations. The Crown has been unjustly enriched and the Plaintiffs have suffered a corresponding deprivation, without juristic reason for the enrichment.

67. The Plaintiffs seek the following relief:

i. Equitable compensation and/or restitution to the First Nations Class due to the Crown's unjust enrichment and the First Nations Class's corresponding deprivation for the Crown's breaches of Treaty 3, the Honour of the Crown, and/or fiduciary or other legal or equitable duties due to the Crown's failure to ever augment, increase or index the Annuity Payment and Ammunition and Twine Payment to maintain purchasing power thereof and to offset the effects of inflation in the sum of $10 billion or such other amount as this Honourable Court deems just;

ii. Equitable compensation and/or restitution to the Treaty 3 Members Subclass due to the Crown's unjust enrichment and the Treaty 3 Members Subclass's corresponding deprivation for the adjusted value of the Annuity Payments that each member would have been entitled to but for the Crown's breaches of Treaty 3, the Honour of the Crown, and the Crown's fiduciary or other legal or equitable duties owing to the First Nations Class;

iii. In the alternative to (i), equitable compensation and/or damages for the Crown's breaches of good faith, fiduciary duty, the Honour of the Crown and for engaging in equitable fraud by entering into Treaty 3 on terms which were foolish, improvident or amounted to exploitation, as well as by failing to implement the terms of Treaty 3 in a reasonable, honest, uniform and equitable manner as compared to the signatories to the Robinson-Huron and Robinson-Superior Treaties of 1850;

iv. Equitable compensation and/or damages for the Crown's breaches of its treaty, fiduciary and equitable obligations and for failing to uphold the Honour of the Crown in neglecting its promise to supply the Agricultural Benefits and to abide by its promise set out in the Ammunition and Twine Clause *vis a vis* the First Nation signatories;

v. Punitive damages in such amount as this Honourable Court deems just;

vi. Pre-and post-judgment interest or equitable compensation as this Honourable Court deems just;

vii. Costs of this action on a substantial or full indemnity basis, including costs of notice and class administration;

viii. Such further and other relief as counsel may advise and this Honourable Court deems just.

68. The Plaintiffs propose that this action be tried in Kenora.

Dated December 12, 2024

Ron S. Maurice
Ryan M. Lake
Anjalika Rogers
Geneviève Boulay
Kelley V. Humber

Maurice Law
602 12th Avenue SW, Suite 100
Calgary, AB T2R 1J3
Tel: 403-266-1201
Fax: 403-266-2701
Email: rmaurice@mauricelaw.com
rlake@mauricelaw.com
arogers@mauricelaw.com

gboulay@mauricelaw.com
khumber@mauricelaw.com

Lawyers for the Plaintiffs

Court File No. _______________

WABASEEMONG INDEPENDENT NATIONS et al
Plaintiffs

v.

THE ATTORNEY GENERAL OF CANADA
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
Kenora Courthouse, 216 Water, Street, Kenora, Ontario
P9N 1S4

STATEMENT OF CLAIM

Ron S. Maurice – LSO 36428D
403-266-1201 ext. 719 | rmaurice@mauricelaw.com

Ryan M. Lake – LSO 60165W
403-266-1201 ext. 236 | rlake@mauricelaw.com

Anjalika Rogers – LSBC 508438
778-847-4911 / arogers@mauricelaw.com

Geneviève Boulay – LSO 74227K
514-264-3576 | gboulay@mauricelaw.com

Kelley V. Humber – LSO 89406W
403-266-1201 ext. 222 | khumber@mauricelaw.com

MAURICE LAW
602 12th Avenue SW, Suite 100
Calgary, AB T2R 1J3
Tel: 403-266-1201
Fax: 403-266-2701
Lawyers for the Plaintiffs