Court File No. CV-24-00000091-00CP

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)

MOTION RECORD OF THE PLAINTIFF
Motion for Certification

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Plaintiffs

-and-

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

Defendant

NOTICE OF MOTION FOR CERTIFICATION

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

TAKE NOTICE that the Plaintiffs will make a motion for an order pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 to be heard as soon as practicable at the Kenora Courthouse located at 216 Water Street in the City of Kenora, in the Province of Ontario.

PROPOSED METHOD OF HEARING: This motion is to be heard orally

THE ORDER IS BEING REQUESTED FOR THE FOLLOWING PURPOSES:

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

(b) an ORDER certifying the Class defined as: "any First Nation who is a successor in interest to the bands that signed or adhered to Treaty 3" (the "**First Nations Class**" or the "**Class**");

(c) The members of the Class include the following First Nations:

a. Animakee Wa Zhing #37

b. Asubpeeschoseewagong First Nation (Grassy Narrows First Nation)

c. Anishnaabeg of Naongashiing (Big Island)

d. Buffalo Point First Nation

e. Couchiching First Nation

f. Gakijiwanong Anishinaabe Nation (Lac La Croix First Nation)

g. Band 826 "General List/Western"

h. Iskatewizaagegan #39 Independent First Nation

i. Lac Des Mille Lacs First Nation

j. Lac Seul First Nation (Obishikokaang)

k. Migisi Sahgaigan First Nation (Eagle Lake)

l. Mishkosimininiziibiing First Nation (Big Grassy River)

m. Mitaanjigamiing First Nation

n. Naicatchewenin First Nation (Northwest Bay)

o. Naotkamegwanning First Nation (Whitefish Bay)

p. Nicickousemenecaning First Nation (Nigigoonsiminikaaning)

q. Niisaachewan Anishinaabe Nation (Dalles)

r. Northwest Angle No. 33 First Nation

s. Obashkaandagaang First Nation (Washagamis Bay)

t. Ojibway Nation of Saugeen

u. Ojibways of Onigaming First Nation (Sabaskong)

v. Rainy River First Nations (Manitou Rapids)

w. Seine River First Nation

x. Shoal Lake No. 40 First Nation

y. Wabaseemoong Independent Nations

z. Waabigonii Zaaga'igan (Wabigoon Lake Ojibway Nation)

aa. Wabauskang First Nation

bb. Wauzhushk Onigum Nation (Rat Portage)

(d) an ORDER appointing Wabaseemoong Independent Nations ("Wabaseemoong") as the Representative Plaintiff for the Class;

(e) an ORDER appointing Maurice Law Barristers & Solicitors ("Maurice Law") as class counsel ("**Class Counsel**");

(f) an ORDER that the proposed proceeding is certified based on the following common issues:

(1) Does Treaty 3 contain an express or implied term requiring the Crown to increase the annual payment of five dollars per head paid to "each Indian person" (the "Annuity Payment") to offset the impacts of inflation, maintain the real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3?

(2) Does Treaty 3 contain an express or implied term requiring the Crown to increase the annual expenditure of fifteen hundred dollars ($1500) on ammunition and twine (the Ammunition and Twine Payment")?

(3) If the answer to (1) and/or (2) is yes, by failing to increase the Annuity Payment and/or Ammunition and Twine Payment since Treaty 3 was entered into in 1873, did the Crown fail to act in accordance with:

(A) The Class Members' rights under Treaty 3;

(B) Its fiduciary obligations owing to the Class Members;

(C) The Honour of the Crown; and/or

(D) Any other equitable duties?

(4) If the answer to (3)(A), (B), (C), or (D) is yes, is the Crown liable to pay damages and/or equitable compensation to the Class and if so, in what amount?

(5) In the alternative, if the answer to (1) and (2) is no, did the Crown breach the Class Members' rights with respect to the negotiation and implementation of Treaty 3 by failing to include an express requirement to increase the Annuity Payment and/or the Ammunition and Twine Payment in the text of Treaty 3, specifically, did the Crown:

(A) Fail to act in good faith;

(B) Breach its fiduciary obligations owing to the Class;

(C) Fail to act in accordance with the Honour of the Crown; and/or

(D) Any other equitable duties?

(6) If the answer to (5) is yes, did the Governor-in-Council approve and consent to Treaty 3 on terms which were unconscionable, foolish, improvident or otherwise amounted to exploitation of the Class?

(7) If the answer to (5) is yes, did the Crown commit further breaches of its equitable, fiduciary, and honourable obligations owing to the Class Members by failing to correct its error at any time since the signing of Treaty 3 in 1873?

(8) If the answer to (5)(A), (B), (C), or (D) and/or (6), and/or (7) is yes, is the Crown liable to pay damages and/or equitable compensation to the Class and if so, in what amount?

(9) By failing to comply with an implied or express obligation to increase the Annuity Payment and/or the Ammunition and Twine Payment, or alternatively, by failing to uphold its equitable, fiduciary, and honourable obligations in the negotiation and implementation of Treaty 3, was the Crown unjustly enriched and did the Class suffer a corresponding deprivation without juristic reason?

(10) If the answer to (9) is yes, is the Crown liable to pay damages and/or restitution to the Class and if so, in what amount?

(11) Did the Crown fail to fulfill the promise to provide agricultural implements, tools, livestock, seed and instruction ("Agricultural Benefits") pursuant to the terms of Treaty 3?

(12) If the answer to (11) is yes, by failing to provide the promised Agricultural Benefits to the Class did the Crown fail to act in accordance with:

(A) The Class Members' rights under Treaty 3;

(B) Its fiduciary obligations owing to the Class Members;

(C) The Honour of the Crown; and/or

(D) Any other equitable duties?

(13) If the answer to (12)(A), (B), (C), or (D) is yes, is the Crown liable to pay damages and/or equitable compensation to the Class and if so, in what amount?

(14) By failing to fulfill the First Nation signatories' and adherents' entitlement to Agricultural Benefits, was the Crown unjustly enriched and did the Class suffer a corresponding deprivation without juristic reason?

(15) Can damages, or some portion thereof, be determined on an aggregate basis?

(16) Does the Crown's conduct give rise to punitive, exemplary, or aggravated damages? If so, in what amount?

(17) Should the Crown pay pre-and post-judgement interest pursuant to the *Courts of Justice Act,* R.S.O. 1990, c. C-43, at s.130? If so, in what amount?

(g) an ORDER directing the manner in which, and the time within which, a member of the Class may opt out of the class action;

(h) an ORDER approving the form and method of notice to be given to members of the Class and to notify them of the certification of the class proceedings as set out in the proposed notice and litigation plan;

(i) an ORDER requiring the Crown to pay the cost of any notice program, as well as the Plaintiff's costs in this Application plus any applicable taxes;

(j) an ORDER staying any other proceeding before the Ontario Superior Court of Justice based on the facts giving rise to this proposed class proceeding;

(k) an ORDER declaring that no other proceeding based upon the facts giving rise to this proceeding may be commenced before the Ontario Superior Court of Justice without leave of the Court; and

(l) SUCH OTHER RELIEF as counsel may advise, and that this Honourable Court considers appropriate.

THE GROUNDS RELIED ON FOR THIS MOTION ARE THE FOLLOWING:

1. *Treaty No. 3* ("Treaty 3") was entered into on a Nation-to-Nation basis in 1873 and is constitutionally enshrined. The Treaty 3 territory covers approximately 55,000 square miles of what is now northwestern Ontario as well as small part of Eastern Manitoba ("Treaty 3 Territory").

2. In entering into Treaty 3, the Crown and the signatory Aboriginal collectives or bands (hereinafter "First Nations") were committing to a long-term relationship characterized

by mutual respect and the exchange of solemn promises. Both the Crown and the bands contemplated the ongoing provision of meaningful benefits consistent with the reciprocal, respectful and dynamic relationship that the Treaty enshrined, as had been the case in the Crown's preceding treaties with Indigenous peoples. Although, Wabaseemoong was not one of the original bands that signed Treaty 3 in 1873, they became parties to the treaty through *de facto* adhesion. Other members of the Class include the following First Nations located in Ontario and Manitoba:

a. Animakee Wa Zhing #37

b. Asubpeeschoseewagong First Nation (Grassy Narrows First Nation)

c. Anishnaabeg of Naongashiing (Big Island)

d. Buffalo Point First Nation

e. Couchiching First Nation

f. Gakijiwanong Anishinaabe Nation (Lac La Croix First Nation)

g. Band 826 "General List/Western"

h. Iskatewizaagegan #39 Independent First Nation

i. Lac Des Mille Lacs First Nation

j. Lac Seul First Nation (Obishikokaang)

k. Migisi Sahgaigan First Nation (Eagle Lake)

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n. Naicatchewenin First Nation (Northwest Bay)

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y. Wabaseemoong Independent Nations

z. Waabigonii Zaaga'igan (Wabigoon Lake Ojibway Nation)

aa. Wabauskang First Nation

bb. Wauzhushk Onigum Nation (Rat Portage)

3. Among the promises exchanged by the parties to Treaty 3, three are the focus of this action:

   a. The annual payment of five dollars ($5) "to every Indian person" (the "Annuity Payment");

   b. The annual expenditure of fifteen hundred dollars ($1,500) on ammunition and twine (the "Ammunition and Twine Payment"); and

   c. The promise to provide agricultural implements, tools, livestock, seed and instruction ("Agricultural Benefits") for the cultivation and encouragement of agriculture.

4. Since 1873, the Crown has never increased the Annuity Payment or the Ammunition and Twine Payment. Further, the Crown failed to provide the promised Agricultural Benefits to the Class.

5. At the time of the negotiation of Treaty 3, the intention of the Bands was to enter into a sustainable Nation-to-Nation relationship with the Crown by sharing the benefits of the lands in exchange for the Crowns' eternal covenant to provide specific and enforceable benefits immediately, regularly, and perpetually into the future. Treaty 3 represented not

only the exchange of solemn promises but a relationship characterized by certain values that included reciprocity, respect and honour.

6. Accordingly, the Annuity Payment and the Ammunition and Twine Payment were not intended to be one-dimensional or fixed. The common intention of the Crown and the Bands, pursuant to the express or implied terms of the Treaty, was that the payments would periodically increase to offset the impacts of inflation, maintain the real value of the payments and/or to reflect the parties' intention to share the economic benefits that the Crown derived and continues to derive from Treaty 3 Territory.

7. Further, the Agricultural Benefits promised under Treaty 3 were intended to support the Bands in the diversification of their economy to help cope with the changing economic realities caused by the influx of settler populations and the increase in industry and government developments. These changes impacted the caribou, moose, other large game, and fish populations, which had detrimental impacts on the Bands traditional economies. To be deprived of this initial 'seed money' as promised in the Agricultural Benefits provisions under Treaty 3, significantly impacted the growth and development of these livelihoods and caused generationally compounded losses.

8. Because the Treaty is a Nation-to-Nation agreement, the collective that entered into Treaty 3, as represented by its modern Chief and Council, is the rights-bearing entity and the only party with standing to enforce the promises contained in the Treaty. Individual members of First Nations, including Chiefs, cannot enforce treaty rights or bind the collective. This is an understanding that is inherent in the treaty process and is shared by First Nations and the Crown. To reflect the parties' mutual understanding that treaty rights are collective and may only be enforced by the authorized representative of the collective (Chief and Council), this class action is brought by First Nations on behalf of First Nations.

9. This action pertains to past losses arising from the Crown's failure to ever increase the Annuity Payment and the Ammunition and Twine Payment, and to properly fulfil the Agricultural Benefits promises since 1873. These claims result in historic and ongoing losses which continue to accrue as a result of the Crown's breaches and, the future

implementation of the implied and express treaty promise to increase the Annuity Payment and the Ammunition and Twine Payment.. Only the representative of the collective, the Chief and Council of each First Nation, may enforce past, present and future rights of the collective.

10. In the alternative, if there was no express or implied term requiring the Crown to increase the Annuity Payment and/or the Ammunition and Twine Payment, the Plaintiffs, on behalf of the Class, seek damages for the Crown's breaches of its equitable, fiduciary and honorable obligations arising from the failure to include an express augmentation clause in the text of Treaty 3, the approval of Treaty 3 on terms that were foolish, improvident, unconscionable or otherwise constituted exploitation of the Class and the ongoing failure on the part of the Crown to rectify the error. The right to enforce the foregoing breaches belongs to Treaty 3 First Nations as represented by their respective Chiefs and Councils and not to individual members of any given Treaty 3 First Nation.

11. The foregoing, as set out in the Statement of Claim issued December 12, 2024 , discloses a reasonable cause of action pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "*Class Proceedings Act*"). An unfiled Amended Statement of Claim is attached as Appendix "A".

12. There is an identifiable class, namely all First Nations who are the successors in interest to the Bands that signed or adhered to Treaty 3.

13. There is some basis in fact for the existence of the proposed common issues. The oral history of Wabaseemoong show that the signatories to Treaty 3 understood that the intention behind the Annuity Payments and Ammunition and Twine Payments was to ensure the survival of the Treaty 3 First Nations amidst declining caribou, moose, large game, and fish populations, sickness, the influx of settlers, and the complete transformation of the local economy. The payments provided cash flow which could be used to purchase necessities, not just at the time the treaty was entered into, but for future generations as well. This necessitated, at a minimum, an increase in the payments to offset the impact of inflation and to maintain their real value. The basis for negotiating Treaty 3

was to share the benefits derived from the land, facilitate peaceful co-existence and foster an ongoing economic partnership between Treaty 3 First Nations and the Crown.

14. The proposed common issues can be answered on a class-wide basis. Treaty 3 First Nations receive the same benefits under the treaty and the Crown's failure to increase the Annuity Payment and the Ammunition and Twine Payment, in addition to the failure to provide Agricultural Benefits, affects all Treaty 4 First Nations alike. Success for Wabaseemoong means success for all Class Members.

15. There exists a plausible or credible methodology showing a plausible claim and the realistic prospect of establishing loss on a class-wide basis. Well-established methodologies exist to calculate damages arising from the Crown's failure to increase the Annuity Payment and the Ammunition and Twine Payment over time, using publicly available data such as the Consumer Price Index, GDP deflator, land values, household disposable income, and GDP per capita. A standard and straightforward methodology exists for bringing forward historical losses into present day dollars using Band Trust Account rates, returns on a diversified portfolio of equities and fixed-income securities, and/or returns on investment in life insurance plans to calculate the lost opportunity cost. Establishing loss on a class-wide basis is straightforward given that the methodology for assessing how the Annuity Payment and the Ammunition and Twine Payment would have increased would be the same for each member of the Class. The methodology for bringing forward historical losses would also be the same for each member of the Class.

16. In light of the access to justice concerns and with regard to achieving judicial economy, a class action proceeding brought pursuant to the *Class Proceedings Act* is the preferable procedure for the full and final resolution of the common issues of the Class. The proposed class proceeding is a fair, efficient and manageable method of advancing the claim.

17. Further, there is no alternative procedure that can realistically or feasibly provide the Class with access to justice. Individual actions brought on behalf of each First Nation would result in a multiplicity of proceedings and a duplication of factual and legal determinations of issues that are at the core of all Class Members' claims. Individual proceedings could also result in divergent interpretations of treaty which would not be in the interests of

justice. If required to commence individual proceedings, some First Nations would be precluded from having their rights redressed at all, given the prohibitive costs of litigation and the substantial access to justice barriers faced by First Nations historically. Access to justice is promoted by the economies of scale that will be achieved through certifying the action under the *Class Proceedings Act, 1992*.

18. Additionally, a representation action pursuant to Rule 12.08 is not available because the Class are not persons who are members of an unincorporated association or trade unions; they are *Indian Act* bands and are therefore juridical persons who have the capacity to sue in their own names. Given the number of First Nations that make up the Class, a class proceeding is the most efficient method for achieving justice.

19. The Specific Claims process is not a preferable alternative to the proposed class action. Pursuant to *The Specific Claims Tribunal Act*, S.C. 2008, c. 22 ("*The Specific Claims Tribunal Act*"), claims that are "based on events that occurred within 15 years immediately preceding the date on which the claim was filed with the Minister" may not be filed with the Tribunal. This class action concerns not only historical losses of the Class but also losses that occurred within the last 15 years as well as present and ongoing losses. Further, *The Specific Claims Tribunal Act* limits the remedies that the Tribunal may award to monetary compensation not exceeding $150 million. The Tribunal may not award any amount for punitive or exemplary damages and may not grant declaratory relief.

20. Wabaseemoong is the appropriate Representative Plaintiff for the Class and would fairly and adequately represent the interests of the Class. There is no conflict of interest between the proposed Representative Plaintiff and the members of the Class.

21. Wabaseemoong is the direct rights-bearing successor in interest to the signatory band of Treaty 3 and is a "band" within the meaning of the *Indian Act* and is therefore a juridical person with standing to bring this action.

22. Class Counsel have sufficient means and experience to adequately advance the class action to a full and final resolution of the issues raised.

23. Ontario is the appropriate venue for the multi-jurisdictional class action.

24. Through Class Counsel, Wabaseemoong has produced a workable litigation plan (the "**Litigation Plan**") for advancing the action on behalf of the Class through to resolution of the common issues and the steps which necessarily follow, including distribution of any award or settlement.

25. The common issues as pled within the Statement of Claim and the unfiled Amended Statement of Claim found at Appendix "A" and steps as set out within the Litigation Plan ensures that due consideration is given to the interests of the parties in all relevant jurisdictions.

26. The Plaintiffs further rely on the following acts, legislation, orders and regulations:

   a. *Class Proceedings Act 1992,* SO 1992, c 6*;*
   b. *Indian Act,* R.S.C 1985, c. 1-5, as amended;
   c. *Royal Proclamation of 1763*;
   d. *Constitution Act,* 1867, originally enacted as the *British North America Act, 1867* (BNA Act);
   e. *Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the union, dated the 23rd day of June 1870,* also known as *Rupert's Land and North-Western Territory Order – Enactment No. 3*;
   f. *Constitution Act, 1982;* Schedule B to the Canada Act 1982 (UK), 1982, c 11;
   g. *Courts of Justice Act,* R.S.O 1990, c. C-43, as amended;
   h. *The Specific Claims Tribunal Act*, S.C. 2008, c. 22
   i. *Rules of Civil Procedure,* RRO 1990, Reg 194, as amended*;* and
   j. Such other grounds as counsel may advise and this Honourable Court may permit.

AFFIDAVIT OR OTHER EVIDENCE TO BE USED IN SUPPORT OF THIS MOTION:

(a) The Affidavit of Chief Waylon Scott, sworn on June 25, 2025;

(b) The Affidavit of David Hutchings, sworn on June 27, 2025;

(c) The Affidavit of Heaven Deschamps, sworn on June 25, 2025;

(d) The Draft Litigation Plan, last updated on June 25, 2025;

(e) The pleadings and proceedings in this action;

(f) such other material as counsel may advise and this Honourable Court may permit.

June 30, 2025

Ryan M. Lake, Solicitor for the Plaintiff

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Lawyers for the Defendant, the Attorney General of Canada

Appendix "A"

Court File No. CV-24-00000091-00CP

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~~

Plaintiff~~s~~

- 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)

<u>AMENDED</u> 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.

Appendix "A"

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
284 Wellington Street
Ottawa, ON K1A 0H8

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

Appendix "A"

AMENDED 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 three (3) 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. Together, the Annuity Payment and Ammunition and Twine Payment are referred to as the "Treaty 3 Annuities".

3. Treaty benefits, including the Treaty 3 Annuities and the Agricultural Benefits, are promised to the collective being the First Nations who are the successors in interest to the Bands that signed or adhered to Treaty 3.

4. The Plaintiffs claim that when properly interpreted, ~~Treaty 3~~ the promise to provide the Treaty 3 Annuities required the Crown to increase, index, or augment the corresponding dollar amounts to offset the impacts of inflation, maintain the

real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3. ~~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.~~

5. The Crown has failed to honour this promise. From the time Treaty 3 was entered into in October 1873 ~~1874~~, the Crown has never increased, augmented, or indexed the Treaty 3 Annutiies ~~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.

6. 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."

7. In the alternative – and in the event that the Crown was not required to increase, augment or index the Treaty 3 Annuities ~~Annuity Payment or the Ammunition and Twine Payment~~ because of an implied or express 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.

8. 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

9. 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~~ Any First Nation ~~with members who are entitled to receive an Annuity Payment under~~ who is a successor in interest to the bands that signed or adhered to 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 index, augment, or otherwise increase the Treaty 3 Annuities ~~annual payment of \$5 payable to each Treaty Indian "for ever" (the "Annuity Payment")~~ from time to time to offset the impacts of inflation, maintain the real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3~~, 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~~ Treaty 3 Annuities from time to time since 1873 ~~1874~~ to offset the impacts of inflation, maintain the real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3 ~~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; and

iii. A Declaration that the Crown's failure to increase, augment or index the Treaty 3 Annuities ~~Annuity Payment~~ has unjustly enriched the Crown which has produced a corresponding deprivation borne by the First Nations Class and their respective members~~, 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~~ Treaty 3 Annuities 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~~ Treaty 3 Annuities to offset the impacts of inflation, maintain the real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3 ~~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

10. *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").

11. While ~~Treaty Annuities~~ treaty annuities are paid to individuals, the promise to provide ~~Treaty Annuities~~ Annuity Payments was a promise made to the "bands" as the rights-bearing collective recognized under Treaty 3. The Ammunition and Twine Payment is a promise made to the "bands" as the rights-bearing collectives recognized under Treaty 3. ~~Treaty Annuities~~ Annuity Payments and the Ammunition and Twine Payment (the "Treaty 3 Annuities") are ~~a~~ collective rights, and the holder of such rights is the First Nation collective which is the legal successor in interest to the Treaty Band.

12. 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.

13. Only this Class of collective rights holders have standing to enforce the interpretation of the collectively held rights under Treaty 3 from which all collective and individual entitlements flow.

Appendix "A"

14. ~~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.~~

15. There are <u>at least</u> 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.

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

17. 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.

Appendix "A"

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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

26. *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.

27. 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.

28. 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.*

29. 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

30. 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.

31. 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.

32. 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.

33. 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.*

34. 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.

35. 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.

36. 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

37. 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".

38. 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.

39. The promise to provide various Treaty benefits <u>which honoured the benefits the Crown and its citizens would derive from sharing of rights and interests in the Treaty 3 Territory and were</u> in support of the future livelihood of the Bands in changing circumstances was central to the conclusion of the Treaty.

Appendix "A"

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

40. In the years since the signing of Treaty 3, the relative value of the ~~Annuity Payments and the Ammunition and Twine Payments~~ Treaty 3 Annuities has decreased due to inflation to the point that the value of the Treaty 3 Annuities has been rendered nugatory. ~~Annuity Payments and the Ammunition and Twine Payments are meaningless.~~

41. The amount of the ~~Annuity Payment and the Ammunition and Twine Payment~~ Treaty 3 Annuities has never been augmented, increased or indexed for the purposes of reflecting the current value and accumulation of wealth derived from the shared rights and interests in the lands or offsetting the impacts of inflation and maintaining the purchasing power thereof.

42. The Crown has benefitted from the decrease in relative value of the Treaty 3 Annuities ~~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

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

Appendix "A"

LIABILITY

49. 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 Treaty 3 Annuities ~~Annuity Payment and the Ammunition and Twine Payment~~, as promised by the Crown under the terms of Treaty 3, in order to offset the impacts of inflation, maintain the real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3 ~~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.

50. In the alternative to ~~46~~49(a), (if the Crown did not have an ongoing obligation to increase, augment or index the Treaty 3 Annuities ~~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 <u>as compared to the signatories to the Robinson Huron and Robinson Superior Treaties of 1850</u>.

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

51. 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*.

52. 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.

53. 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.

54. 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 <u>to reflect the current value and accumulation of wealth derived from the shared rights and interests in the lands and/or, in the alternative,</u> 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.

55. The intention of the Ammunition and Twine Clause in Treaty 3 was to reflect the current value and accumulation of wealth derived from the shared rights and interests in the lands and/or, in the alternative 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.

56. 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 Treaty 3 Annuities ~~Annuity Payment and Ammunition and Twine Payment~~ from time to time.

57. 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 reflect the current value and accumulation of wealth derived from the shared rights and interests in the lands and/or, in the alternative, to maintain their real value over time.

58. 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~~ Treaty 3 Annuities by failing to increase, augment or index the annual payments to reflect the current value and accumulation of wealth derived from the shared rights and interests in the lands and/or, in the alternative, retain their purchasing power. In the years since the signing of Treaty 3, the relative value of the Treaty 3 Annuities ~~Annuity Payments and Ammunition and Twine Payments~~

has decreased due to inflation to the point of rendering the Treaty 3 Annuities ~~Annuity Payments and Ammunition and Twine Payments~~ virtually useless in terms of purchasing power. The failure to index the Treaty 3 Annuities ~~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

59. 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.

60. 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.

61. 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.

62. 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

63. 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.

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

65. 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.

66. Further, the Crown owed an *ad hoc* fiduciary duty to the First Nations Class to act in their best interests in negotiation and implementing Treaty 3. Through its agents' express representations and promises, as pleaded, the Crown recognized the extreme vulnerability of the Plaintiffs, expressly acknowledged that the First

Nations Class' livelihood was imperilled, and undertook to act in the best interest of the First Nations Class with respect to the Treaty 3 Annuities.

67. The First Nations Class were and remain a defined group of First Nations vulnerable to the Crown's control over their most important interests, land, resources and livelihood. They were vulnerable and at the mercy of the Crown with respect to the Treaty 3 Annuities. Their most important practical and legal interests – livelihood, land, and survival – stood to be affected by the negotiation and implementation of Treaty 3. The Plaintiffs' vulnerability flowed directly from the Crown's interest in expanding the west for settlement, immigration, lumbering, trading and other purposes, its exercise of discretionary power and control over the First Nations Class, and the imbalance of power and leverage in the negotiations relating to Treaty 3.

68. 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.

69. 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.

70. 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

71. 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.

Appendix "A"

72. 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~~ Treaty 3 Annuities to offset the impacts of inflation, maintain the real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3 ~~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.

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

Dated December __, 2024

____

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

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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

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Lawyers for the Plaintiffs

Court File No. CV-24-00000091-00CP

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

Plaintiff

\- 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)

AFFIDAVIT OF HEAVEN DESCHAMPS

SWORN ON: June 25, 2025

I, **Heaven Deschamps**, of the City of Calgary, in the Province of Alberta, do solemnly SWEAR THAT:

1. I am a Legal Assistant at Maurice Law, counsel to the Plaintiff, and have reviewed the Plaintiff's records relevant to this file. As such, I have personal knowledge of the facts and matters referred to herein, except where indicated to be based on information and belief and where so stated I verily believe them to be true.

2. I am informed by the counsel to the Plaintiff that, on January 10, 2025, a true copy of the Certified Statement of Claim issued on December 12, 2024, in the herein action was submitted for registration with the National Class Action Database of the Canadian Bar Association. Attached hereto and marked as **Exhibit "A"** is a true copy of the Certified Statement of Claim submitted for registration and available online at https://cbaapps.org/ClassAction/Search.

3. On January 10, 2025 the herein action was registered as a class action on the National Class Action Database of the Canadian Bar Association, and was updated on January 23, 2025. Attached hereto and marked as **Exhibit "B"** is a true copy of the National Class Action Database registration website at https://cbaapps.org/ClassAction/Search as of June 24, 2025.

4. I make this affidavit in support of the Plaintiff's Motion for Certification of Class Proceedings and for no improper purpose.

AFFIRMED BEFORE ME at the City of Calgary in the Province of Alberta on 25 day of June, 2025.

Kelley V. Humber
Kelley V. Humber
A Commissioner of Oaths in the Province of Alberta (LSA: #26777) and Ontario (LSO #89406W)

Heaven Deschamps
Heaven Deschamps

Kelley V. Humber
Commissioner for Oaths in and for the Province of
Ontario

This is Exhibit "A" referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 25 day of June, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

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**

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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

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Lawyers for the Plaintiffs

Court File No./N° du dossier du greffe : CV-24-00000091-00CP

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

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This is Exhibit “B” referred to in the Affidavit of

HEAVEN DESCHAMPS

Affirmed before me on this 25 day of June, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

THE CANADIAN BAR ASSOCIATION
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Main Search (Search.aspx) | Search Month/Year (CAMonthYear.aspx)

National Class Action Database

Keywords Wabaseemoong

Title

File Number

Jurisdiction All Jurisdictions

Subject All Subjects

Start Date All Years

End Date All Years

Search

1 record(s) returned.

Date received	Date posted	Date registered	Subjects	Title	PDF

January 10 2025	January 15 2025	Crown Liability Other	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	Document (PDF.aspx?id=25207) Related document(s)

Status: Not Certified

Province/Territory: ON

Class Group

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 agriculturalimplements, tools, livestock, seed and instruction ("Agricultural Benefits") for the cultivation andencouragement 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.

The proposed class and sub-class are defined as follows:

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

"Treaty 3 Members Subclass": "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"

1

Court File No. CV-24-00000091-00CP

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

AFFIDAVIT OF CHIEF WAYLON SCOTT

Sworn on June 25, 2025
(in support of the Application for Certification brought pursuant to *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

I, **Waylon Scott**, Chief of Wabaseemoong Independent Nations in the Province of Ontario MAKE OATH AND SAY:

1. I am a member of and the Chief of the proposed Representative Plaintiff in this action: Wabaseemoong Independent Nations (hereinafter "**Wabaseemoong**" or the "**Nation**"). I am an "Indian" and my Nation is a "band" within the meaning of the *Indian Act,* R.S.C, 1985, c. I-5, as amended (*"**Indian Act**"*).

2. Wabaseemoong is an Ojibwe First Nation comprised of three communities: One Man Lake, Swan Lake, and White Dog. These bands all resided on both sides of the White Dog River near the Winnipeg River. The Department of Indian Affairs grouped our communities together into one band as a consequence of flooding caused by hydroelectric development, known as the Islington Band in and around the 1960's. Today we are called Wabaseemoong Independent Nations in recognition of our three constituent communities. Wabaseemoong means "Whitedog" in Anishinaabemowin.

3. Crown and Indigenous parties entered into *Treaty No. 3, 1873,* also known as the *North-West Angle Treaty* ("**Treaty 3**") in 1873. My community was represented by Chief David Lend at the time of Treaty, and while he did not sign Treaty, we adhered to Treaty through a defacto adhesion. I am told and verily believe that the Chiefs and representatives at Treaty 3 negotiations were duly authorized in the Ojibwe custom to represent our bands in this foundational Nation-to-Nation relationship with the Crown.

4. After agreeing to the promises made at Treaty, One Man Lake, Swan Lake, and White Dog each had their reserve lands surveyed and set aside. Today, our reserve lands include lands set aside for One Man Lake which is 65km northwest of Kenora, lands set aside for Swan Lake which is 36km northwest of Kenora, lands set aside for White Dog which is 48 km northwest of Kenora and near the border with Manitoba, and lands at the Lake of the Woods.

5. The leadership of Wabaseemoong is elected by our membership. Our modern-day membership and citizens are recognized as such through our custom and statute pursuant to section 11 of the *Indian Act.*

6. I have served as Chief of Wabaseemoong for 6 years, which has included three 2-year terms as Chief. I was first elected as Chief in 2019. Before becoming Chief of Wabaseemoong, I served as a Band Councillor from 1999-2001 and from 2005-2007. From 2008-2019 I spent time

completing a Bachelor's degree and Masters of Business Administration degree at the University of Manitoba. I was admitted to medical school at the Northern Ontario School of Medicine in Thunder Bay, but declined because I was elected Chief in 2019. Among my reasons for pursuing medical school was the intergenerational health afflictions caused by mercury poisoning, which my community—including myself personally—have experienced because of the commercial dumping of mercury into the Wabigoon River by Dryden Pulp and Paper. So much of what I do is out of a desire to serve and strengthen my community.

7. In my role as Chief, I am also member of the Grand Council Treaty 3 ("**GCT3**") where I serve as one of the Board of Director Chiefs for the administrative arm of GCT3. The GCT3 is an important representative organization where the 28 First Nations of Treaty 3 collaborate and advocate together on important common issues affecting our communities and ranging from economic development, environmental stewardship, and health, social, legal and justice services. Also, in my role as Chief, I am involved in the Bimose Tribal Council, which is a representative body for 10 First Nations in Treaty 3 area, and we work together on issues related to education, water safety quality, economic and infrastructure development, as well as other related services. The Bimose Tribal Council is another organization where I am able to work with other Treaty 3 First Nations and represent the common interests of my community with other communities.

8. My responsibilities as Chief are to my people whose ancestors entrusted their historic leadership to enter into Treaty 3 with the Crown on their own behalf and on behalf of their descendants. Our modern-day members and citizens have entrusted myself as Chief and my Council to continue to represent the eternal collective of Wabaseemoong's Treaty 3 people by virtue of custom and statute. As a leader in my community, I carry with me the teachings and values I have learned from past generations, and I work to ensure the welfare and prosperity of future generations. For example, my Council and I have established our own Wabaseemoong Customary Care Code (also referred to as "Wabashki" meaning white snapping turtle) as part of a larger goal of addressing the intergenerational harm inflicted on our community through Indian Residential Schools, Indian Day Schools, the 60's Scoop, and predatory child welfare services. In the 1990s, my predecessor Chief and Council passed a Band Council Resolution forbidding the Children's Aid Society from entering our lands and our community physically blocked the reserve line. Raising our children in community is vital because it is through our nurturing relationships with each other and the land that we instill in them Anishinaabe values and an understanding of

Anishinaabe law. Attached hereto and marked as **Exhibit "A"** is a true copy of the Wabaseemoong Independent Nations Customary Care Code, and the explanatory press release dated December 21, 2019.

9. As Chief, I uphold my responsibilities to Wabaseemoong's collective of Treaty 3 Indians by engaging with our neighboring First Nations, the Crown, and Industry to address issues of concern to Wabaseemoong throughout our traditional lands. In fulfilling this responsibility, my role is to always keep our Elders' oral history of Wabaseemoong, Treaty 3, and our solemn relationship with the Crown at the forefront of my mind, to ensure that our inherent, Aboriginal, and Treaty rights are not prejudiced. My knowledge of my Nation, of Treaty 3, and of our culture, customs, traditions, and values as an Ojibwe people was gifted to me by these Elders. I speak Ojibwe and was taught the language and the oral history of my community and my territory from my parents and grandparents. My understanding of our oral history, customs, and values as Ojibwe people are enriched by my understanding of the language. As Chief, I must at all times ensure that my thoughts, words, and actions give them the respect they are duly owed.

10. During my tenure as Chief and before I became Chief, Wabaseemoong has advanced claims against the Crown for breaching its duties and responsibilities under Treaty 3.

11. My First Nation is no stranger to the harms that protracted disputes with the Crown can cause to communities. My community has suffered for generations because of the impacts of flooding and other harms caused by hydroelectric projects, mercury poisoning caused by unspeakable negligence and contamination of our water supplies, and the intergenerational trauma caused by the theft of our children through the Indian Residential Schools system and predatory child welfare systems. For example, our community was flooded without warning or any consultation between 1955-1957 which caused the complete destruction of our homes, traditional lands, and graveyards and caused the forced relocation of the entire One Man community. This injustice was the subject of a legal battle which spanned multiple decades and was settled in 1983. Another example, was the lengthy legal battles over mercury poisoning which affected wildlife and people as a result of the Dryden Pulp and Paper company dumping large volumes of contaminants, enough to make the river system one of the most polluted in the world. This issue has yet to be fully and properly settled, and some litigation continues before the courts.

12. My own life has been touched by all these injustices, for example I suffer from neurological impacts of mercury positioning, and I witnessed the deep wounds my father, aunties, and uncles carried after attending Indian Residential School where they witnessed and experienced extreme cruelty, violence and trauma. All of these protracted disputes have had deep ripple effects on my community, and have led to various forms of litigation, mediation, and negotiations with the Crown, which as I have seen can cause years of painful heartache and enormous expense.

13. Further, I understand from my involvement in regional and Treaty territorial organizations, and what I have heard about Wabaseemoong and other Treaty 3 First Nations' involvement in past litigation and negotiations, and my role as Chief representing my community, that collective action can be challenging but can also contribute to important restoration of First Nations' relationship with the Crown. I sincerely believe that collective action, such as through this proposed class action, is the most effective way at this time for Treaty 3 First Nations to expediate our longstanding grievances with the Treaty 3 Promises.

14. Given the foregoing, I have personal knowledge of the facts and matters in this Affidavit, except where so stated to be based on information and belief, in which case I do verily believe the same to be true.

15. I have been duly authorized by Wabaseemoong to make this Affidavit in support of the Plaintiff's application to certify the claim as set out in the Statement of Claim filed on December 12, 2024 (the "**Treaty 3 Class Action**" or the "**Claim**"). The Statement of Claim is attached and marked as **Exhibit "B".**

BACKGROUND TO CLAIM

Wabaseemoong's Band and Treaty 3 Negotiations

16. I am aware that the negotiations for Treaty 3 were finalized on October 3, 1873, and that this was years after the Crown had hoped to be able to secure a Treaty in our territory. I understand from our Elders that Treaty 3 took some time to negotiate because of the of disagreement between the Crown and our Treaty 3 Chiefs regarding the value of the lands and divergent legal understandings of property ownership of lands. As well, negotiations took longer because there are important Anishnaabe protocols for political decision-making which require community and Elder consultation in ceremony and gathering instructions. I understand there was some

disagreement between northern communities and those in the south because of their different bargaining positions and priorities.

17. I am told and verily believe that the Crown came to the North-West Angle of the Lake of the Woods seeking the permission of the Treaty 3 First Nations to open up and share their territory for the settlement of its citizens, being approximately 55,000 square miles of what is now most of northwestern Ontario and a small portion of eastern Manitoba (hereinafter, the "**Treaty 3 Territory**"). Treaty 3 Territory is located along what was an important trade route and held great mineral and natural resource wealth. It was important for the Crown's plans for future economic development and immigration expansion, and this was known to the Chiefs and leadership who gathered together to enter into Treaty 3.

18. Foundational to the sacred promises made at Treaty 3 was the understanding that this agreement was the foundation of an everlasting relationship between the First Nations and the Crown, and with the Creator. The Treaty was meant to be the joining of peoples into an enduring, dynamic, and respectful relationship that would last forever. The Crown and the Anishinaabe Nation, as represented by the various band communities, brought with them different legal systems and therefore different understandings about how to make Treaty. Entering into Treaty requires us to have a balanced understanding of these different legal systems and their different legal principles. I have been taught by Elders, and it has been engrained in me that I am part of the land and that my community is part of the land because Ojibwe people have been planted on the land by the Creator. In this way we are the land. Two conceptual foundations of Anishinaabe law are the concept of "life" and includes all of creation without separation, and the concept of "kind Creator" and reflects the divine source of all of creation. Anishinaabe law teaches that we are interconnected and one with the land, so there is no concept of selling the land forever, as there is no concept of selling oneself forever. It is with this worldview that our ancestors lived by and entered into Treaty with the Crown.

19. I am aware that during Treaty our communities selected certain delegate Chiefs and Headmen to represent our peoples in the Treaty negotiations with the Crown, and that these representatives were duly authorized according to our traditional Ojibwe custom to represent our interests. These representatives followed Anishinaabe protocols of consulting in ceremony with other Elders and the community to gain an understanding of what the people desired from Treaty

with the Crown. This process of collaboration and discussion in ceremony is part of how our governance works.

20. These representatives took on the important task of negotiating an agreement and building a Treaty partnership with the Crown that would honour and benefit generations past, present, and future. I am told and verily believe that their goal was to ensure the benefits of Treaty were sustainable and would meet the evolving needs of our communities over time. The relationship was meant to last forever, and the annual renewal of Treaty through the annuity payments reflected that eternal commitment. From my view, and as it has been taught to me by my Elders, our relationship with the Crown is ongoing and the Crown has a responsibility to faithfully and respectfully fulfill their Treaty relationship obligations. It was said at Treaty and I have been taught that the Treaty relationship was meant to last as long as the sun shines, the grass grows, and the river flows. This is to say that the Treaty relationship is meant to last forever.

21. I am told and verily believe that the issue of the value of the Annuity Payments was among the significant turning points for the Indigenous representatives during the Treaty 3 negotiations. The Chiefs and other chosen representatives strongly believed that the value of the Treaty Annuity payment needed to be higher than what the Crown was initially offering because of the high value and utility Treaty 3 territory had to the Crown, with its rich mineral and natural resources and its strategic importance along key trading routes. The Chiefs and chosen representatives were intent on securing benefits from Treaty which would ensure our Nations could participate in and benefit from the growing and changing economy.

22. This is also why agricultural supports such as livestock, seeds, agricultural implements, instruction, hunting and fishing supports, and larger reserve lands were specific terms of Treaty 3. I verily believe that our Chiefs and representatives understood the changing circumstances taking place in the economy around them and were intent on securing agricultural benefits to help diversify their economy as part of what was meant to be a mutually beneficial partnership between our Nations and the Crown. Treaty 3 territory sits on the Canadian Shield, which is made up of a thin layer of soil on a large expanse of bedrock. Agricultural farming here can be difficult, and so balancing our economy between hunting, fishing, and farming was essential.

23. I am told and verily believe that at the time of Treaty negotiations, the territory of Wabaseemoong was large, and as recognized by our Traditional Land Use Area agreement, our

traditional lands span around 6.,720 square kilometers along what is considered today to be the Ontario-Manitoba border north of Kenora, Ontario. Before and after the signing of Treaty 3, Wabaseemoong followed its traditional migratory route. In fact, the seasonal patterns of travelling throughout our territory were understood by the Crown because series of negotiations over the years leading up to Treaty were organized around this seasonal schedule. We relied exclusively on the lands through hunting, fishing, gathering, and harvesting of medicines. Along the migratory path, our peoples would also meet at traditional and sacred gathering sites where we would socialize, trade, fish, participate in ceremony, and bury our ancestors. I am told and do verily believe that in signing Treaty 3, the Chiefs and representatives signing on behalf of our band's rights and interests in our traditional territory.

24. I am told and verily believe that the bands were in a place of unequal bargaining power at the time of Treaty 3 negotiations, despite having some knowledge of the value of their lands and the purchasing power of the Annuity Payment at that time. There were serious threats to the traditional economies and the survival of the bands that would become Treaty 3 First Nations. Our livelihoods were in jeopardy as a result of declining populations of caribou. moose, other large game, and fish which our peoples traditionally relied upon for sustenance and trading, as well as the increase of disease amongst our populations and the relentless influx of settlers into our territory. Our communities also faced impacts from the early development of hydroelectric power, in particular adhering bands such as my community. I have been told and verily believe that this created a sense of urgency on the part of the bands to enter into Treaty 3 to protect their interests and their people, not least because Treaty 1 and Treaty 2 had been entered into recently westward beyond their territory.

25. I am told and verily believe that our Chiefs and representatives understood the concept of payment in money for land rights. It is my firm belief, based on our oral history and the teachings I received from our Elders, that Treaty 3 was negotiated on a Nation-to-Nation basis, recognizing shared rights to the land, with the purpose of facilitating peaceful co-existence and economic partnerships between the Treaty 3 First Nations and the Crown. In exchange for sharing the land, the Crown promised to provide each band specific and enforceable benefits immediately, regularly, and perpetually into the future.

26. I am told and verily believe that the First Nation Bands understood that the meetings between the Crown and the Bands in 1873 were the foundation of a relationship which would last forever. Treaty 3 is not a static list of promises but rather is a living document that should continually reflect the dynamic and respectful relationship entered into between the Crown, the First Nation Bands, and before the Creator. Treaty 3 is an ongoing commitment to respect one another, and to this day Treaty 3 communities and their members annually participate in remembering and honouring Treaty during Treaty Day.

Crown's Promises Subject to the Claim

27. The focus of the Treaty 3 Annuity Class Action pertains to the Crown's breach of the following promises:

a. Yearly cash payments in the amount of $5 dollars to every man, woman, and child, (the "**Annuity Payment**");

b. Entitlements to agricultural implements, tools, livestock, seed, and instruction for the cultivation and encouragement of agriculture, (the "**Agricultural Benefits**); and

c. Yearly expenditure of $1,500 on ammunition and twine (powder, shot, ball and twine) to be distributed to the bands within the limits of the Treaty 3 Territory (the "**Ammunition and Twine Payment**").

28. Together, the Annuity Payments, Agricultural Benefits, and Ammunition and Twine Payment are collectively referred to as the "**Treaty 3 Promises**". The Annuity Payment and Ammunition and Twine Payment are collectively referred to as the "**Treaty 3 Annuities**."

29. From my knowledge and understanding of the context of the treaty negotiations, I believe that the Treaty 3 Promises were critical for the survival of our bands into the future through the purchase of necessities, economic diversification with an agricultural economy in addition to hunting and fishing, which was necessary in the face of declining caribou, moose, other large game, an fish in our territory. I am told and verily believe that the Chiefs present had significant experience in trading in cash and had witnessed the adjustment of prices and understood the value of five dollars ($5) and what it could and could not buy at that time. Based on this alone, it is my belief that the Chiefs would have expected that any dollar figures would be adjusted to maintain their relative value and purchasing power considering changes in the economy and land use.

However, I have been told and do believe that this was not the only intention of the Treaty 3 Annuities.

30. I have been advised and believe that, in entering into Treaty 3, the bands understood that the Crown's provision of Annuity Payments to the bands were intended to be provided on a regular and ongoing basis for the use of the lands and resources by the Crown or its people, and to support the sustained way of life through hunting and fishing; as the value of the shared lands grew, the Annuity Payments would grow to reflect and maintain their relative value to that of the lands and to preserve the necessary lands for hunting and fishing. The fact the Annuity Payment was given annually and that the parties would meet every year reflected the commitment to have a respectful and enduring relationship into the future.

31. Further, I have been told and do believe that the Agricultural Benefits promised at Treaty 3 was an important factor for the bands and their Chiefs and other representatives.. The Treaty 3 bands were promised a certain amount of tools, seed, and livestock of a high quality, as well as agricultural instructions which was particularly important given the difficult terrain of the Canadian Shield. After Treaty, many bands received insufficient quantities and quality of the Agricultural Benefits which had the effect of stunting their agricultural development. Meanwhile their land was already being shared with an influx of settlers. Receiving seed of poor quality, sick or wild livestock, broken or only partial tools, or none at all, significantly hindered our ancestors ability to gain the benefit from Treaty that our Chief's and representatives had negotiated for at Treaty 3.

32. The Treaty was intended to be a living document, reflecting the ongoing Nation-to-Nation relationship, nurtured through assemblies with the Crown and adhering bands. I firmly believe that the primary purpose of these assemblies was to discuss the sharing of the lands and resources, as well as the value of the Treaty 3 Annuities as time went on. This would include recognizing that as the value of the lands grew due to improvements and developments, so too would the value of the payments. I am certain that, at the very least, the Crown had a responsibility to increase the Treaty 3 Promises to compensate for depreciation caused by inflation.

The Crown Rendered the Treaty 3 Annuities Without Value

33. The value of the Treaty 3 Annuities has not increased since the signing of the Treaty in 1873. I am aware that the real value of the Annuity Payments has and continues to decrease due to

inflation and other factors. In today's dollars, the Annuity Payments are not enough to buy a simple meal, much less provide for the bullets or fishing rods our communities use for hunting and fishing today and the enormous cost of maintaining ecologically healthy lands free of pollution so that game, fish, and other living things can be harvested. In fact, for many community members, it costs more money in gas or bus fees to collect their individual Annuity Payment than the payment is worth. However, many community members do travel far distances every year because it has been engrained in us the respect and honour that we owe to the Treaty relationship, and it is second nature to gather and honour that relationship, even when the Crown does not.

34. It is my belief that the Crown has breached its promise to the Treaty 3 First Nations by freezing the value of the Treaty 3 Annuities payment, contrary to the oral history of Wabaseemoong's Elders who have informed me that the common intention of these payments was to be dynamic as the relationship went on into the future. It is disrespectful to the very nature of our Treaty relationship that the Crown would freeze the value of the Annuities Payments for over 150 years. We have shared our lands for over 150 years with the result that our hunting and fishing grounds have been shrunken, pillaged, and contaminated, and we have received little to no benefit from the vast wealth generated from the natural resources of our lands. Yet, the Annuity Payment has remained stagnant at $5.00 annually, or a mere 0.42 cents a month. The value of the Ammunition and Twine Payment is no longer sufficient to protect and sustain hunting and fishing practices or a diversified economy.

35. I strongly believe that the Treaty obliges the Crown to augment, increase and/or index the specific dollar amount of the Treaty 3 Annuities to account for the accumulation of resource wealth derived from the lands within the Treaty 3 Territory and from improvements to the land, to offset the impacts of inflation, and to preserve the real value of these payments. To interpret the Crown's obligation differently is quite frankly dumbfounding. I am certain that neither the Crown nor the Treaty 3 Indian bands intended the Treaty 3 Annuities to be a shallow pledge. Had that been the Crown's intention, the Chiefs would not have entered into treaty with the Crown.

THE PROPOSED CLASS

36. A claim against the Crown for the breach of its obligations regarding the Treaty 3 Promises must be brought by First Nation governments, as the legitimate and authorized

representatives of the successors to the Treaty 3 Indian bands. It is my firm belief that it is the First Nation governments who have the right to address breaches of treaty on behalf of their members, past and present, and to ensure the Crown honours its promises in the future, as Treaty 3 Promises are a collective right, the substance and meaning of which is determined by the parties to Treaty 3.

37. The First Nations Class consists of Treaty 3 First Nations, their government representatives as determined by themselves, through inherent, custom, statutory and constitutional powers, inclusive of the Representative Plaintiff, Wabaseemoong Independent Nations. A list of the First Nations Class Members is attached and marked as **Exhibit "C"**.

38. I am aware that individuals receive Annuity Payments directly from the Crown. If certified, the Treaty 3 Annuities portion of the Class Action will include a protocol that permits distribution of settlement proceeds or any award following a trial to go directly to individuals who are alive as of the date of settlement or award and who are entitled to receive an Annuity Payment on account of being recognized as a member of a First Nation that is part of the Class.

COMMON ISSUES

39. The common issues are set out in the Notice of Application for Certification. Briefly, the Claim seeks to redress the Crown's failure to index, augment and/or otherwise increase the Treaty 3 Annuities, and the Crown's failure to adequately provide Treaty 3 Bands with Agricultural Benefits, in breach of its ongoing obligations to the Treaty 3 First Nations, its duty to act honourably, and its duty to fulfill its fiduciary obligations owing to the Class.

INTENTION IN BRINGING CLAIM

40. In my years of representing Wabaseemoong as Chief, I have developed strong relationships with my neighboring Treaty 3 First Nations in advocating for the just and timely resolution of our common grievances.

41. For over a year, we have worked within the respective protocols and practice for consultation with the leaders of Treaty 3 First Nations. The information that we gathered is reflected in the common issues as set out within the Notice of Application for Certification.

42. It is my firm belief that it is inefficient, redundant and prohibitively expensive for each member of the Class to pursue their own claim against the Crown given the commonality of the issues for all Treaty 3 First Nations.

43. I am told and verily believe that there can be high costs associated with pursuing claims related to broken treaty promises against the Crown. In addition to the typical costs of litigation (obtaining legal counsel, preparing and filing a claim, and proceeding to trial), treaty claims require Elders to give oral testimony, historical evidence to be gathered by expert historians, and compensation experts to research and provide a dollar amount for the losses we know we have suffered. Many of these claims require appeals through the courts in order to fully and finally determine these issues which have a significant impact on our communities and collective rights.

44. I firmly believe that if the Treaty 3 Class Action is not certified, members of the First Nations Class will be denied access to justice. I believe that requiring any given member of the Class to bear the full costs and risks associated with obtaining their own lawyer, advancing the claim and hiring their own experts would waste the resources of the Court and the Class, particularly when a single action would answer all the common issues for everyone. Multiple actions may also lead to inconsistent interpretations of the Treaty promises at issue. I firmly believe that the Crown should not be allowed to benefit from the vulnerable position of a First Nation when the Nation is trying to advance a claim independently.

Grand Council Treaty #3 Meeting

45. I have been told and verily believe that for quite some time members of GCT3 have had issues with the Treaty 3 Promises. Our development of agricultural economy and the sustainability this would have brought was stunted from the lack of full and timely provision of Agricultural Benefits. Our ability to preserve our traditional practices of hunting and fishing has been hindered because of the Crown's failure to properly administer and maintain the value of the Ammunition and Twine Payments. Our ability to protect and sustain our children and communities has been challenged because of the complete erosion of the Annuity Payments which has frozen its value in time and is disrespectful to their spirit of our Treaty relationship.

46. Grand Council Treaty 3 is the governing body of the Anishinaabe Nation of Treaty 3. The mandate of GCT3 is to protect, preserve, and enhance the Treaty and Aboriginal rights of all Treaty 3 members. GCT3 represents 28 First Nations and a total population of approximately 25,000

people. The current Ogichidaa (Grand Chief) of GCT3 is Ogichidaa Francis Kavanaugh. GCT3 is an organizational forum for Treaty 3 First Nations to work collaboratively on issues related to education, community health and the implementation of Jordan's Principle, legal and justice services, supports and programs for community members impacted by Indian Residential and Day Schools, social supports for gender and poverty-related issues, economic development, environmental stewardship, and the preservation of Treaty and Aboriginal rights.

47. On October 3, 2024, exactly 151 years to the day after signing of Treaty 3, members of GCT3 Chiefs Assembly met at Naotkamegwanning First Nation to discuss Wabaseemoong's proposed class action. We discussed the process of class actions, and specific details about the contents of the Treaty 3 Class Action. The exact wording of our proposed resolution was discussed collaboratively. At the conclusion of the meeting the GCT3 Chiefs passed a resolution in which the majority of First Nations supported the Treaty 3 Class Action filed by Wabaseemoong (the **"GCT3 Resolution"**). The GCT3 Resolution is attached and marked as **Exhibit "D"**.

ACTING AS REPRESENTATIVE PLAINTIFF

Commitment to Represent Interests of the Class

48. Wabaseemoong is prepared to act as one of the Representative Plaintiffs for the First Nations Class in this class action. As the Representative Plaintiff, Wabaseemoong is obliged to direct the litigation, give instructions to its lawyers and to act in the best interests of the Class. For example, any settlement discussions with the Crown cannot relate only to Wabaseemoong's damages but must relate to the claims and damages of the Class as a whole.

49. Wabaseemoong is strongly motivated to move this action forward in order to:

a. ensure that all members of the Class are appropriately compensated by the Crown for damages that they have suffered;

b. use this litigation to hold the Crown accountable for its actions; and

c. protect others who, in the future, may be at risk of suffering similar wrongs as those committed by the Crown against the Class.

50. As the Representative Plaintiff for the Class, Wabaseemoong intends to take the following steps to ensure that the interests of the Class are fairly and adequately represented, including, but not limited to:

a. instructing and seeking advice from counsel, and generally remaining informed of and engaged in the litigation;

b. producing any relevant documents with respect to the Treaty 3 Promises Class Action;

c. attending an examination for discovery to be conducted by the Crown;

d. ensuring that counsel act in the best interests of the Class as a whole;

e. ensuring that the Class is kept informed of this proceeding, as required;

f. discussing this proceeding with members of the Class and media, as required;

g. attending any settlement meetings, or mediations and pretrial conferences as required;

h. attending and giving my evidence at the trial of common issues, and at a hearing of individual issues, if necessary; and

i. participating as otherwise may be required in moving this action forward.

Acting as Representative Plaintiff for the Class

51. I am aware that the following steps in the Treaty 3 Promises Class Action have occurred:

a. on December 12, 2024, the Statement of Claim was issued by the Ontario Superior Court of Justice in Kenora;

b. on June 10, 2025, Wabaseemoong legal counsel and the Crown met for a Case Management Conference to discus the timetable for the certification of this proceeding as a class action.

52. I am aware that the next steps in the Treaty 3 Promises Class Action include, but are not limited to the following:

a. Wabaseemoong may serve and file the Amended Statement of Claim;

b. Wabaseemoong will file motion asking the Court to certify the action as a class action;

c. if the Court certifies the action as a class action, the Notice of Certification will be provided to the First Nations Class who have the right to opt-out of the class action within a fixed period of time;

d. Wabaseemoong, as Representative Plaintiff, must list all relevant documents in an Affidavit of Documents and the Crown too must list all of its relevant documents in an Affidavit of Documents;

e. examinations for discovery will be held at which lawyers for the Crown may ask the appropriate representative from the Plaintiff First Nation questions and the Plaintiffs counsel will ask questions of the Crown's representative;

f. case management conferences will be held with the designated judge from time to time;

g. if the action is not settled, there will be a trial of the common issues;

h. if the Representative Plaintiff is successful at the trial of the common issues, there may be a trial of individual issues at which time the Treaty 3 First Nations may participate;

i. appeals of judicial decisions may be made at various stages of the action; and

j. this action may be settled at any stage, but only with the Court's approval.

53. Throughout this action, Wabaseemoong will represent the interests of the First Nations Class who do not opt-out of the proceeding. Wabaseemoong's representation of the First Nations Class must be fair to all members of the Class, and in particular, no Class Member's interests may be advanced to the prejudice of the other members of the Class. Wabaseemoong's Chief and Council must interact with and instruct counsel, ensure that all class members are kept informed of developments in the litigation, and make themselves available to the Court as required.

54. To my knowledge, and I do verily believe, the action herein is the only proposed class proceeding in Treaty 3 concerning the same subject matter.

Litigation Plan

55. I have reviewed the Litigation Plan, marked and attached here as **Exhibit "E"** which legal counsel have developed to advance the within proceeding. It is my understanding that the

Litigation Plan provides, among other things, for notice to the Class if the action is certified. I have reviewed the notice program and believe that, if implemented, it is a reasonable way to give notice to all members of the Class.

56. I also understand that the Litigation Plan is subject to review by the Court and that it may need to be adjusted to account for new developments and changing circumstances.

Conflict of Interest

57. Wabaseemoong does not have a conflict of interest with any member of the Class with respect to any of the Common Issues or an issue arising from same. I understand that this Affidavit will be used in Wabaseemoong's Application for Certification.

58. I know of no fact that is material to the Application for Certification that has not been disclosed in this Affidavit.

Retainer Agreement

59. Wabaseemoong signed an agreement with Maurice Law respecting fees and disbursements (the "**Retainer Agreement**"). Pursuant to the Retainer Agreement, Counsel will only be paid if they are successful at obtaining a judgment or settlement with the Crown. Maurice Law will cover any costs awarded against Wabaseemoong in the event that the Claim is dismissed. From the total amount of settlement, award, compensation, or damages recovered for the Class, counsel's fee will be 6% of the total compensation including any costs recovered for the Class through a negotiated settlement with the Crown or 8% of the total compensation including any costs recovered for the Class after the completion of trial or earlier resolution through the courts, including without limitation, a motion for summary judgment. The contingency fee is subject to a cap of $100 million.

60. All of the above fees are subject to the approval of the Court.

I make this Affidavit in support of an application for an Order that this lawsuit be certified as a class proceeding and for no other purpose.

Affirmed remotely by **Chief Waylon Scott** stated as being located in the City of Toronto in the Province of Ontario, before me at the City of Calgary in the Province of Alberta on 25 day of June 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

Kelley V. Humber
A Commissioner of Oaths in the Province of Alberta (LSA: #26777) and Ontario (LSO #89406W)

Chief Waylon Scott

Kelley V. Humber
Commissioner for Oaths in and for the Province of
Ontario

This is Exhibit “A” referred to in the Affidavit of

CHIEF WAYLON SCOTT

Affirmed before me on this 25 day of June, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

WABASEEMOONG
INDEPENDENT NATIONS

ONE MAN LAKE • WHITEDOG • SWAN LAKE

WABASEEMOONG INDEPENDENT NATIONS

CUSTOMARY CARE CODE

A Code of the **Wabaseemoong Independent Nations** adopted under the authority of the Inherent powers of the Wabaseemoong Independent Nations for the purposes of establishing a **Community Code** for the safety and security of our children and as an additional enactment of law arising from the **Abinoojii Inakonigewin.**

September 2017

WABSEEMOONG INDEPENDENT NATIONS

CUSTOMARY CARE CODE

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WABASEEMOONG INDEPENDENT NATIONS

CUSTOMARY CARE CODE

WHEREAS:

1. The Wabaseemoong Independent Nations are not a signatory to Treaty No. 3 but nonetheless have participated in the Grand Council as members of the Anishinaabe Nation, since time immemorial and have adopted the Abinoojii Inakonigewin;
2. The Wabaseemoong Independent Nations believe in the Anishinaabe Law with respect to the safety and the security of children as continuing and that this Law has not been severed or surrendered by any other act of Law or Agreement;
3. The Wabaseemoong Independent Nations have and possess the inherent authority and power to care for and assure the safety and security for our children without any interruption from any other jurisdiction or authority;
4. The Wabaseemoong Independent Nations have taken part in the development and enactment of the Abinoojii Inakonigewin and has assented to the Law in the manner set out in Part 4, Paragraph 60.

THEREFORE:

1. UNDER the advice and consent of the Elders and as ratified by Cultural Validation Ceremonies, the Wabaseemoong Independent First Nations enact this Customary Care Code:

PART I
Short Title, Interpretation, Declaration and Jurisdiction

Short Title

This community code shall be entitled the Wabaseemoong Independent Nations Customary Care Code.

Interpretation

This Customary Care Code is intended to be and it should be interpreted as being consistent with Anishinaabe Law respecting the protection and care of children including, but not limited to, the provisions of the Abinoojii Inakonigewin.

Declaration of Policy

1. It is the fundamental belief of the Wabaseemoong Independent Nations that our children are the sacred responsibility of the Anishinaabeg as endowed to us by the Creator.
2. One of our basic Inherent Sovereign Rights is the Right to make decisions regarding the best interests of our children including who should provide for the care, supervision and control of our children. This Code is intended to assure a safe, stable, nurturing and permanent social environment for Wabaseemoong Independent Nations children and to provide for the protection of our children, our people and our way of life.
3. The principles that shall guide decisions pursuant to this Code are: protection of the child's safety, well-being and welfare and their sense of belonging; preservation of the child's identity as a Anishinabe and a member of an extended family and Clan; preservation of the culture, language, beliefs, values, Clan system and social relationships of Wabaseemoong Independent Nations.
4. As an exercise of our Inherent sovereignty, the Wabaseemoong Independent Nations have and possess the authority and jurisdiction for the safety and security of our children and to formally delegate this responsibility to Wabashki Maakinaakoons to assume our Inherent authority and dispense our customary care practices regarding child protection and family services.

Jurisdiction

1. It is recognized and hereby enacted that the Wabaseemoong Independent First Nations have and possess the sacred responsibility for our children as endowed to us by the Creator.
2. The Customary Care Code applies to all Band Members, Residents and Community Members who are residing in the communities of One Man Lake, Swan Lake, Wabaseemoong or any other Lands acquired hereafter.
3. The Wabaseemoong Independent Nations have and possess the authority and jurisdiction for all Band Members regardless of their residency and retain the Right of Notification and participation in all other jurisdictions, territories, provinces and states.
4. The Customary Care Code is a protraction of the Abinoojii Inakonigewin.

PART II
Purpose, Definitions and Authority

Purpose

The Customary Care Code shall be liberally interpreted and construed as an exercise of the Inherent sovereign authority of the Wabaseemoong Independent First Nations to fulfill the following express purposes:

1. To embody and promote the basic traditional values of the Wabaseemoong Independent Nations regarding the safety and security of our children. The Wabaseemoong Independent Nations believes that it is the responsibility of the Wabaseemoong Independent Nations, the communities and extended families to protect and nurture our children.
2. To promote the belief of the Wabaseemoong Independent Nations that our children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their culture including their Anishinaabe customs, history, language, beliefs and values.
3. To provide for the best interests of the First Nations, the communities and for the families and their children.

4. To afford facilitative processes which allow for formal dispensations that address the issues of the Rights, responsibilities, care, supervision and control of our children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent social environment for their children by conferring jurisdiction upon Wabashki Maakinaakoons to dispense with such matters.

Definitions

As used in this Code:

1. **"Adoptee"** is defined as the individual, child or adult who is adopted or is to be adopted.
2. **"Adoptive Parent"** is defined as the person establishing or seeking to establish a permanent parent-child relationship with a child who is not their biological child.
3. **"Band"** means the Wabaseemoong Independent Nations.
4. **"Best Interests of the Child"** is defined as a variety of factors including: the ability of the First Nation to provide for the care of the child; the wishes of the Band, parents, party or parties; the preference of the child if the child is of sufficient age to express a preference; the intimacy of the relationship between the parties and the child; the child's adjustment to the home, school and community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed placement or adoptive home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child, love, affection, guidance and to continue educating the child in the child's culture and heritage.
5. **"Best Interests of the First Nation"** is defined as a variety of factors including but not limited to: the ability of the Band and its members to provide for the child; the ability of the Band and its members to provide for the continuation of the Band's culture, language, history, beliefs, traditions and values through its children if those children are taken away and not taught these things throughout their daily lives. The ability of the Band to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the Creator and is viewed by the Band as crucial to the future of the Band as a whole.
6. **"Birth Parent"** is defined as the biological parent.
7. **"By-law"** means the Wabaseemoong Independent Nations Bylaws 2008-01 and 2008-02 respectively enacted in accordance to the Indian Acts, R.C. c. 1-6.
8. **"Child"** is defined as a person under the age of eighteen (18) years of age.
9. **"Code"** means the Wabaseemoong Customary Care Code.
10. **"Court"** means a court having jurisdiction over the child or children who are the subject of a Suspension of Parental Rights or Customary Care or Custom Adoption Petition under this Code.
11. **"Custom Adoption"** means a traditional practice recognized by the community and Band which gives a child a permanent parent-child relationship with someone other than the child's birth parent(s) or provides an adult the opportunity to become a member of a family or Clan.
12. **"Customary Care"** means a traditional practice recognized by the community and Band which gives places a child into a parent-child relationship with someone other than the child's birth parent(s).
13. **"Family member"** is defined as a person related by blood or marriage who maintains some form of significant contact with the child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren, cousins, Clan and significant others, and any other persons who might be considered a family member or a relative under Anishinaabe Law or custom.
14. **"First Nation"** is defined as the same as Wabaseemoong Independent Nations.

15. **"Final Decree of Custom Adoption"** is defined as the Final Order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any access or contact which may be allowed with the biological parent.
16. **"Final Order Suspending Parental Rights"** means a Final Order of the ONAKKONIGEWAD Committee which permanently suspends the Rights of a biological parent to provide for the care, custody and control of their child. Said Order may establish the parameters of contact between the birth parent and the child if said contact is in the child's best interests.
17. **"ONAKONIGEWAD"** means a committee established by the Wabaseemoong Independent Nations. Such a committee or community board shall possess and will exercise the Inherent authority of the Wabaseemoong Independent Nations and to protect our children through Customary Care and Custom Adoption.
18. **"Suspension of Parental Rights"** is defined as the permanent suspension of the Rights of biological parents to provide for the care, custody and control of their child.
19. **"Traditional Practitioner"** means any person(s) who posses the authority to practice customary and ceremonial healing ways and who is reputed as such by the community of Wabaseemoong.
20. **"Wabashki Maakinaakoons Board"** means community board established by the Wabaseemoong Independent Nations. Such a community board shall possess the delegated authority to partake in the making of decisions for the provision of family services.
21. **"WIIDOKAZOWAD"** means a committee established by the Wabaseemoong Independent First Nations. Such a committee shall possess and will exercise the Inherent authority of the First Nations to partake in the protect of our children through case reviews, case conferences and case consultations and assuring all alternative actions have been exhausted.

Authority

1. The ONAKONIGEWAD shall have the responsibility to hear and dispense petitions seeking an Order for Customary Care or Custom Adoption or the suspension of parental Rights for protection of a child or; to issue temporary and permanent Customary Care or Custom Adoption Orders and such other Orders as may be just and reasonable and designed to carry out the intent and purposes of this Customary Care Code, including use of the Inherent Anishinaabe powers as set out in the Abinoojii Inakonigewin.
2. The WIIDOKAZOWAD shall have the authority to hear and partake in case reviews, case conferences, case consultation that pertain to the provision of protection or; to issue temporary placements for children and Declare Customary Care for up to one year; to provide pertinent family information and advice; to explore alternative actions as may be just and reasonable to contribute to the provision of service. The role of the WIIDOKAZOWAD is designed to carry out the facilitative intent and purposes of this Customary Care Code, including use of the Inherent Anishinaabe powers as set out in the Abinoojii Inakonigewin. Wabaseemoong Independent Nations will establish and issue Terms of Reference for the WIIDOKAZOWAD, from time to time.

PART III
Structure, Programs and Services

Structure

In addition to any other structures afforded under the Abinoojii Inakonigewin, the Customary Care Code will have following structures and components:

1. An Agency called Waabashki Maakinaakoons Family Services will have a community board of directors and other functions as prescribed in the Child, Youth and Family Services Act and more specifically to Abinoojii Inakonigewin, Paragraphs 39-46.
2. The Agency will cause to be established culturally competent and congruent methods for assigning members to the community board such as the Traditional Selection Process or other methods such as secret ballot elections or appointments.
3. The Agency shall abide by and indeed adhere to all Customary Protocols as established and set by the Elders and Traditional Practitioners from, time to time, upon the receipt of Customary and Sacred Endowments such as a Name, Pipe, Drum and Flag Staff.
4. The Agency shall assume a Cultural Duty to assure that the Customary Protocols are observed and that this duty extends to all persons whom are involved with the Agency.
5. The Agency will investigate and determine the type of care for all referrals made to it for child protection matters as prescribed in the Child, Youth and Family Services Act and more specifically to the Abinoojii Inakonigewin, Paragraphs 28-33.
6. The Agency will establish programs and services for Customary Care and Custom Adoption aimed at family preservation and conferencing, cultural competence and congruence as per Abinoojii Inakonigewin, Paragraph 38.
7. The Agency will recruit, hire and train Managers, Supervisors and Workers to perform all programs and services activities in accordance with this Code and the Abinoojii Inakonigewin, Paragraphs 45-46.

ONAKONIGEWAD Under this Code

In addition to any other structures afforded under the Abinoojii Inakonigewin, the Customary Care Code establishes the ONAKONIGEWAD as follows:

1. An ONAKONIGEWAD is hereby established and endorsed as a Community Judicial Committee that has the authority under Part I, Authority to dispense with Customary Care and Custom Adoption Orders under this Code.
2. The ONAKONIGEWAD has been established and constituted in concert with the community of Wabaseemoong and as prescribed in the Grand Council Treaty No. 3-Abinoojii Inakonigewin, Paragraphs 39-46.
3. The ONAKONIGEWAD will cause to be developed Procedural Rules outlining its authority, roles and responsibilities, terms of office, policies and procedures and any other requirements as defined and determined by the Wabaseemoong Independent Nations and its Communities, from time to time.

WIIDOKAZOWAD Under this Code

The WIIDOKAZOWAD is hereby established and shall have the authority to hear and partake in case reviews, case conferences, case consultation that pertain to the provision of protection or; to issue temporary placements for children and Declare Customary Care for up to one year; to provide pertinent family information and advice; to explore alternative actions as may be just and reasonable to contribute to the provision of service. The role of the WIIDOKAZOWAD is designed to carry out the facilitative intent and purposes of this Customary Care Code, including use of the Inherent Anishinaabe powers as set out in the Abinoojii Inakonigewin. Wabaseemoong

Independent Nations will establish and issue Terms of Reference for the WIIDOKAZOWAD, from time to time.

PART IV
Customary Care, Custom Adoption and Orders

Child in need of Customary Care under this Code

The Agency upon receiving a referral will investigate and determine if the child is need of customary care. In making that determination, the Agency will be guided and directed by:

1. The definition of in need of customary care is the same as the meaning as described in the provisions of the Child, Youth and Family Services Act and the Abinoojii Inakonigewin dealing with this subject matter.
2. After determining a child to be in need of customary care the Agency will forthwith bring a request before the WIIDOKAZOWAD in a manner prescribed in this Code.
3. Depending on the urgency and gravity of the need for customary care the Agency may make an emergency placement by endorsing a Safe Home Declaration.
4. When appearing before the WIIDOKAZOWAD, the Agency will provide explanation for the emergency placement and may seek a temporary declaration from the Committee to continue with the placement and the Declaration of Customary Care for up to one year.

Extension of Customary Care under this Code

When the Agency and the WIIDOKAZOWAD are considering the extension of Customary Care, they shall will be guided and directed by:

1. The provisions of the Abinoojii Inakonigewin, Part 2, Paragraph 18, that requires that all placements shall be made with consent.
2. The paramount principle that the Family, including extended and Clan has the primary responsibility of providing for the care and supervision of their children.
3. Only after considering all the facts and with the consent of the Family including extended and Clan, will the extension of Customary Care be granted.
4. All Customary Care arrangements authorized by the WIIDOAZOWAD will not exceed 12 months, in succession or length and period that the child is in care of the Agency.
5. All Customary Care arrangements exceeding the 12 months, must be forwarded to the ONAKONIGEWAD for the issuance of an Order for Customary Care or Custom Adoption.
6. Only after considering all the facts and barring any other options will the extension of Customary Care be granted WITHOUT consent.

Customary Care placements and preferences under this Code

When the Agency and the WIIDOKAZOWAD are considering the placement of children, they shall be guided and directed by the following preferences:

1. Family members including extended and Clan and who are residing in the communities.
2. Family members including extended and Clan and who are residing outside the communities.
3. Another Family who are Band Members regardless of residency.
4. Another Anishinaabe Family who may be Non-Band Members regardless of residency.
5. A Blended Family where at least one of the partners is Anishinaabe regardless of residency.
6. ONLY under extenuating and inescapable circumstances will placement be granted to Non-Anishinaabe Families.

Petition for Customary Care under this Code

The Agency may file a petition with the ONAKONIGEWAD seeking an Order for the Customary Care of a child or an adult. A Wabaseemoong Independent Nations child, over the age of 12 years old may, seek an order for Customary Care. The petition shall contain the following information:

1. The name, address and telephone number of the child's First Nation, if applicable;
2. The name, Clan, address, telephone number and age of the child to be considered for customary care;
3. The name, Clan, address, and telephone number of the parents and the parent's relationship, if any; to the child;
4. The name, Clan, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the child;
5. A statement as to why an order for customary care is in the best interests of the child and the best interests of the child's First Nation, if applicable.
6. A statement as to the basis for the Customary Care supported by a home study, child protection worker, family member, Traditional Practitioner testimony, report or account;
7. A statement that no similar action is pending in another court or First Nation having jurisdiction over the child.
8. Evidence of Notification to the child's First Nation, if applicable.
9. The provision of a Criminal Reference and Vulnerable Persons Check. Pardons do not qualify a person to provide Customary Care for Wabaseemoong Independent Nations children except those contraventions dealing with the exercise of Rights under Treaty No. 3.

Customary Care Orders under this Code

Within and before 10 days of application, the ONAKONIGEWAD will consider all facts that are presented and substantiated before making or rendering an Order. After due consideration and deliberation, the ONAKONIGEWAD shall impose the following:

1. Shawentasoowin Order: Supervision Order that allows the Agency to supervise the family home while the children remain in the familial home;
2. Ganawentasoowin Order: Temporary Placement Order that removes the children from the parental home and placed in a Customary Care home with parental consent and access;
3. Ombigiasoowin Order: Impermanent Placement Order that removes the children from the parental home and placed in a Customary Care home with or without parental consent or access.
4. Gagiigimawasoowin Order: Permanency Order that provides for the permanent care of the children in a long-term Customary Care home with or without parental consent and in the absence of any plans for Custom Adoption.
5. Odapinawsowin Order: Permanent Custom Adoption Order as prescribed and provided for in this Code.

Petition for Custom Adoption under this Code

Any adult Band Member may file a petition with the ONAKONIGEWAD seeking an order for the Customary Adoption of a child. A Wabaseemoong Independent Nations child, over the age of 12 years old, may seek an order for Custom Adoption. The petition shall contain the following information:

1. The address and telephone number of the Agency or Agencies who may have interest in the child, if applicable;
2. The name, Clan, address, telephone number and age of the child to be placed;
3. The name, Clan, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;

4. The name, Clan, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the child;
5. The proposed name of the adoptee after the entry of the Final Order of Custom Adoption;
6. A statement or a copy of the Final Order suspending the Parental Rights of the biological parent(s), if applicable;
7. A statement as to why a final Order for Customary Adoption is in the best interests of the child and the best interests of the child's First Nation.
8. A statement as to the basis for the Custom Adoption supported by a Home study, Child Protection Worker, family member, Traditional Practitioner or Healer testimony, reports or accounts;
9. A statement that no similar action is pending in another court or First Nation having jurisdiction over the child.
10. A statement that no violations or contraventions to the By-laws No: 2008-01 and 2008-02 have occurred within the past five years.
11. A statement that a Custom Adoption has occurred in accordance to the customs of the First Nation as signaled by a Traditional Practitioner who conducted the ceremony.
12. The provision of a Criminal Reference and Vulnerable Persons Check. Pardons do not qualify a person to provide Custom Adoption for Wabaseemoong Independent Nations children except those contraventions dealing with the exercise of Rights under Treaty No. 3.
13. Only persons who hold or are entitled to hold Band Membership to Wabaseemoong Independent Nations are eligible for Custom Adoption.

Satisfaction and substantiation for Custom Adoption under this Code

When the ONAKONIGEWAD is determining an Order for Custom Adoption, they need to be satisfied with and be guided by and be directed by the following criteria:

1. Consent from the Pre-adoption and Adopting parents. In the case of another person who has raised the child then their permission is required and will satisfy requirements under the Code.
2. Child has been voluntarily placed with the Adoptive parents by the Parents or the person who raised the child.
3. Adopting parents are indeed Anishinaabeg or entitled to rely on Anishinaabe custom.
4. Rationale for Custom Adoption is present including knowledge and consent of the petition by extended and Clan members.
5. The Pre-adoptive and Adoptive Families including extended and Clan have signaled their consent.
6. The Grand Mothers of the Pre-adoptive and Adoptive Families have discussed and reached an agreement for the Custom Adoption.
7. A ceremony for Custom Adoption has occurred in accordance to the customs of the Wabaseemoong Independent Nations.
8. Persons of a different faith are permitted to adopt a child in accordance to this criteria and in accordance to the Wabaseemoong Custom Adoption Rules.
9. Only persons who hold or entitled to hold Band Membership to Wabaseemoong Independent Nations are to Custom Adoption under this Code.

Certification of Customary Care or Custom Adoption under this Code

1. A Customary Care or Custom Adoption, conducted in a manner that is a long-established, continued, reasonable process and considered by the people of the Wabaseemoong to be binding and authentic, based upon the testimony of Traditional Practitioner, may be certified by the ONAKONIGEWAD as having the same effect as an child protection or adoption order issued

under the Child, Youth and Family Services Act so long as it is in the best interests of the child and the child's First Nation.
2. A decree certifying a Customary Care or Custom Adoption has the same effect as a decree or Final Order of Custom Adoption issued by any other jurisdiction or court.

Selection of Customary Care and Custom Adoption Homes under this Code

When the Agency and the ONAKONIGEWAD Committee are considering the approval of Customary Care and Custom Adoption Homes they shall will be guided and directed by:

1. The provision of the Abinoojii Inakonigewin, Part 2, Paragraphs 7-20, that describes the authority and responsibilities.
2. The policies and procedures of the Waabashki Maakinaakoons Customary Care and Adoption Home Directives.
3. Due consideration of Home and Adoption Studies as conducted by the Agency with particular attention to Medical and Chemical Clearance.
4. Any violations and contraventions to By-laws 2008-1 and 2008-02 reported or recorded over a five-year period.
5. All applicants shall provide current Criminal Reference and Vulnerable Persons Checks.

PART V
Investigation and Management of Child Abuse

Abuse Investigations and management under this Code

In the event that the Agency is investigating a referral for Child Abuse, they shall will be guided and directed by:

1. The provision of the Abinoojii Inakonigewin, Part 2, Paragraphs 7-20, that describes the authority and responsibilities.
2. Protect the children from any further endangerment by taking the necessary steps.
3. The policies and procedures of the Waabashki Maakinaakoons Child Abuse Manual.
4. Maintain control and management of the child welfare investigative process and conduct conjoint investigations with Law Enforcement Agencies.
5. All criminal investigations will be conducted and concluded by Law Enforcement Agencies.

PART VI
Rights, Parties and Hearings

Rights of Children in Customary Care Hearings under this Code

In addition to any other Rights afforded under the Abinoojii Inakonigewin, the children have the following Rights:

1. A Right to Safety and Security without any interruption to the quality of their care, supervision and nurturance as Anishinaabeg.
2. A Right to be Heard and express their wishes and desires at any Hearing that is considering their protection and permanency.
3. A Right to their Family which includes their extended and Clan Families.
4. A Right to their Culture including their Anishinaabe Name, Clan and access to Traditional Healing activities without limiting or restricting their religious orientation.
5. A Right to their Language and to access language programs and Speakers of Anishinaabemoowin.
6. A Right to the Land and to experience the Sacrosanct Relationship with Aki.

7. A Right to the Lifeways of the Anishinaabeg which includes the Right to exercise their Rights under Treaty No. 3.

Rights of Parents in Customary Care Hearings under this Code

In addition to any other Rights afforded under the Abinoojii Inakonigewin, the parents have the following Rights:

1. A Right to be Heard and express their wishes and desires at any Hearing that is considering the Customary Care and Custom Adoption of their children.
2. A Right of Access to their Children unless the access will or may impart undue social distress to the children.
3. A Right to Information and to be informed of any petition for a Customary Care or Custom Adoption proceeding.
4. A Right of Notification to any Customary Care and Custom Adoption proceeding or to any Hearing that is considering the care and supervision of their children;

Petition for Suspension of Parental Rights under this Code

The Agency may under extenuating circumstances petition the ONAKONIGEWAD for the suspension of Parental Rights. The Agency will need to clearly demonstrate that the suspension is undeniably needed for the best interest of the children. The Agency must unequivocally prove that parental access unquestionably endangers the children and any continued access is injurious.

Rights of Parties in the Suspension of Parental Rights under this Code

In addition to any other Rights afforded under the Abinoojii Inakonigewin, the parties have the following Rights:

1. The parties have the Right to refuse services provided by the Agency however; their refusal to accept services may have a significant impact on their ability to have contact with their children.
2. The Right to have reasonable Notice and to attend any Hearing arising out of the filing of a petition for the suspension of Parental Rights pursuant to this Code. The biological parents and the petitioner have the Right to be represented by a person of their choosing at their own expense and at all proceedings and Hearings.
3. The parties have the Right to summon and cross-examine witnesses, if this is necessary.
4. The parties have the Right to seek independent advice on any evaluations that are relied upon as evidence, at their own expense.

Petition to Suspend Parental Rights under this Code

The Agency may file a petition with the ONAKONIGEWAD seeking an Order for the suspension of Parental Rights to a child. The petition shall contain the following information:

1. The name, address and telephone number of the child's First Nation;
2. The name, Clan, address, telephone number and age of the child's parent whose parental rights are to be suspended;
3. The name, address, and telephone number of the Agency and the Agency's relationship, if any; to the child;
4. The name, Clan, address, and telephone number of any other relatives who may have an interest in the care, custody and supervision of the child;
5. A statement as to why an Order for the suspension of Parental Rights of the parent is in the best interests of the child and the child's First Nation.

6. A statement as to basis for the request for the suspension of Parental Rights, supported by a child protection worker, family member, Traditional Practitioner or Healer testimony, reports or accounts;
7. A statement that no similar action is pending in a court or First Nation having jurisdiction over the child.
8. The Agency shall sign the petition in the presence of the Manager(s) and shall affirm under Pledge that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

Notice of Hearing on Petition to Suspend Parental Rights under this Code

Upon the filing of a petition seeking an Order for the suspension of Parental Rights, the ONAKONIGEWAD shall schedule a Hearing to be held thereon and shall cause written Notice of such Hearing to be served upon the petitioner; the child's First Nation; the child's parent(s); family members including extended and Clan; caregiver, if any; and appropriate Agencies who may either have an interest in the proceedings or be of assistance to the ONAKONIGEWAD in dispensing the matter. Such notice shall be served in the manner provided for in the Procedural Rules Manual.

Final Order for the Suspension of Parental Rights under this Code

A. If the ONAKONIGEWAD determines that it is in the best interests of the child and the child's First Nation, it shall issue a Final Order for a suspension of Parental rights. Such an Order for the suspension of Parental Rights may include, but is not limited, to the following:

1. A permanent suspension of the Parental Rights of the parent including the suspension of the Right to the care, supervision and control of the minor child and allowing the child to be placed in Customary Care or Custom Adoption.
2. A permanent suspension of the Right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or by electronic means or through third parties or the Order may allow for a contact agreement as agreed upon by the parties to be ordered by the committee
3. Restraining a parent from contacting the child, the child's Customary Care parent, the child's Custom Adoptive parent and/or the social services Agency or Agencies possessing information regarding the child;
4. Ordering that the biological parent's obligation to pay child support, except for arrearages, is hereby terminated.
5. Ordering that any prior order for custody, visitation or contact with the child is hereby terminated.
6. The parent shall have no standing to appear at any future proceedings or Hearings involving the child.
7. The suspension of Parental Rights does not sever or affect in any way a child's relationship to his/her First Nation; any Rights of inheritance from the biological parent(s) or to the child's Clan membership;
8. The Order shall contain a statement regarding why it is in the best interests of the child and the child's First Nation to enter this Order;

B. Copies of any Order for suspension of Parental Rights shall be served upon the parent and the Agency or Agencies having legal custody of the child and any other parties as directed by the ONAKONIGEWAD.

C. Final Orders for the suspension of parental Rights may be reviewed by the ONAKONIGEWAD at the request of the biological parent, the Agency or Agencies possessing custody of the child only if one of the following occurs: a. If there is no final Customary Care Order in effect after a period of one (1) year after the entry of the final order suspending Parental Rights; b. the Custom Adoption of the child fails or the Custom Adoptive parent is deceased. Notice of this review shall be provided to all parties to the Hearing at which the final suspension of Parental Rights Order was first issued.

Parties to the Hearing under this Code

Unless otherwise determined by the ONAKONIGEWAD or prescribed in other sections of this Code, the following are Parties to the Hearing of the ONAKONIGEWAD:

1. The Agency as represented by its Managers, Supervisors and Workers.
2. The Children as represented by a person of their choosing or by themselves.
3. The Parents of the children as presented by a person of their choosing or by themselves.
4. The Extended Family as represented by a person of their choosing or by themselves.
5. The Clan Members as represented by a person of their choosing or by themselves.
6. The Customary Care and Custom Adoptive parents as represented by a person of their choosing or by themselves.
7. All Elders, witnesses and persons providing evidence or information, upon request of any of the Parties.

ONAKONIGEWAD Hearing under this Code

A. Attendance at the Hearing.

1. The parents, family members including extended and Clan, Agencies and petitioner shall be present at the hearing in person unless he or she has waived the Right to appear in a writing executed before the Agency and filed with the committee or unless the parent is unable to attend by reason of a medical condition as evidenced by a written statement from a licensed physician or other appropriate professional.
2. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.
3. The parent(s) named in the petition shall also be present. The parent(s) failure to appear shall not prevent the issuance of an order including the suspension of parental Rights.

B. Conduct of the Hearing.

1. The ONAKONIGEWAD shall inform the parent of their Rights under this Code and of the nature and consequences of the proceedings.
2. The ONAKONIGEWAD shall further inform all other parties of their rights under the Code and pursuant to the Abinoojii Inakonigewin including the Right to summon and cross-examine witnesses.
3. The Rules of Evidence set by the ONAKONIGEWAD or as established, shall apply.
4. The burden of proving the reasons of the petition shall be upon the Agency and the standard of proof shall be clear and convincing evidence. There shall be a presumption of the parent's ability to parent until proven otherwise.
5. The ONAKONIGEWAD may adjourn the Hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Code.

C. Record of Proceedings.

In all proceedings, the ONAKONIGEWAD shall take and preserve an accurate record or recording of the proceedings.

D. Findings.

1. In all cases, the ONAKONIGEWAD shall make specific written findings of fact, state separately its conclusions, and enter an appropriate Order.
2. The ONAKONIGEWAD may make findings that it is in the child's best interests that a Final Order for suspending the parental rights be entered and shall specify the basis of those findings.

Notice of Hearing on Petition for Custom Adoption under this Code

Upon the filing of a petition seeking an Order for a Custom Adoption of a child, the ONAKONIGEWAD shall schedule a Hearing to be held thereon and shall cause written Notice of such Hearing to be served upon the petitioner; the child's First Nation; appropriate family members including extended and Clan, if any; caregiver, if any; and appropriate Agencies of the First Nation which may either have an interest in the proceedings or be of assistance to the Committee in dispensing the matter. Such notice shall be served in the manner provided for in Procedural Rules Manual.

Hearing on Petition for Custom Adoption under this Code

A. Attendance at the Hearing.

1. The child who is the subject of a petition for Custom Adoption, Agency, petitioner, parent(s) and any appropriate Family members including extended, Clan and siblings may be present at the Hearing in person or represented by a person of their choosing
2. The petitioner shall be present at the Hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

B. Conduct of the Hearing.

1. The ONAKONIGEWAD shall inform the parties of their Rights under this Code and of the nature and consequences of the proceedings.
2. The committee shall further inform all other parties of their Rights under the Abinoojii Inakonigewin, including the Right to summon and cross-examine witnesses.
3. The Rules of Evidence as set by the Committee or as established, shall apply.
4. The burden of proving the facts of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence.
5. The ONAKONIGEWAD may adjourn the Hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary Orders, if any, as may be deemed just and reasonable to carry out the purposes of this Code.

C. Record of proceedings.

In all proceedings, the ONAKONIGEWAD shall take and preserve an accurate record or recording of the proceedings.

D. Findings.

1. In all cases, the ONAKONIGEWAD shall make specific written findings of fact, state separately its conclusions pursuant to this Code, and enter an appropriate Order.
2. The Committee may make findings that it is in the child's best interests that a Final Order for a Custom Adoption be entered and the Committee shall specify the basis of those findings.

PART VII
Enforcement, Appeals, Records, Conflict of Laws and Severability

Enforcement of inherent powers under this Code

Final Orders for the suspension of Parental Rights, Customary Care or Custom Adoption are enforceable by the inherent authority and powers of the Wabaseemoong Independent First Nations.

Appeals under this Code

A. Who Can Appeal:

Any party to a petition for the suspension parental Rights, Customary Care or Custom Adoption pursuant to this Code may appeal a Final Order.

B. Appeals Procedure

All Appeals from any Proceedings or Hearing under this Code shall be heard pursuant to provisions of this Code or any established Appeal procedures except to the extent that any Rule of Procedure is in direct conflict with the expressed provisions of this Code. In such a case, the provisions of this Code shall apply and take precedence.

Right of Access to Records under this Code

Any party deemed appropriate by the WIISOKAZOWAD and the child who has been the subject of a suspension of a parental Rights proceeding, a Customary Care or a Customary Adoption proceeding, has the Right, upon reaching the age of 12 years old, to request a review all of the contents of their file, in writing and subject to redaction of names or the Rights of Confidentiality of some documents under the Abinoojii Inakonigewin.

Conflict with law and jurisdictions

The Agency may establish and maintain agreements with other jurisdictions for harmonizing the administration of this Code and the administration of their Laws. Every jurisdiction is advised and requested to have due regard, to the purposes and provisions of this Code or as otherwise prescribed in the Abinoojii Inakonigewin, Paragraphs 47-49.

Severability

If any provision of this Code, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Code which can be given effect without the invalid provisions, and to this end the provisions of this Code are declared severable.

PART VIII
Amendments and Coming Into Force

Amendments

Any amendment to the Customary Care Code of the Wabaseemoong Independent Nations will come into force after the Elders who have conducted the Cultural Validation Ceremonies confirming and sanctioning such amendments Serve Notice.

Coming Into Force

This Customary Care Code of the Wabaseemoong Independent Nations will come into force on the date announced by the Elders who have conducted the Cultural Validation Ceremonies confirming and sanctioning the ratification and the coming into force of this Code.

WABASEEMOONG
INDEPENDENT NATIONS

ONE MAN LAKE • WHITEDOG • SWAN LAKE

Whereas the WIN Customary Care Code has been developed through the input of Wabaseemoong Elders, women and community members, and;

Whereas the WIN Customary Care Code captures and embraces the Inherent Governance structures and processes of Traditional Sacred Laws, and;

Whereas the WIN Customary Care Code was endorsed through sacred ceremony on November 13, 2017, and;

Whereas the community in attendance on December 11, 2017 did stand in favor for the Chief and Council to sign the WIN Customary Care Code on December 12, 2017

THEREFORE BE IT DECIDED that the Chief and Council will endorse the WIN Customary Care Code.

Wabaseemoong Chief and Council will sign the WIN Customary Care Code so that the members of Wabaseemoong Independent Nations will move forward in reclaiming their Inherent Duties and Responsibilities in protecting, caring and providing safety for their children, youth, families and community.

Signed on Tuesday, December 12, 2017 at Wabaseemoong Independent Nations in front of sacred items and the Ogichidaa of the Anishinaabe Nation in Treaty #3.

Chief: **Witness:**

Council: **Ogichidaa:**

Council:

Council:

Council:

This is Exhibit "B" referred to in the Affidavit of

CHIEF WAYLON SCOTT

Affirmed before me on this 25 day of June, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

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

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Lawyers for the Plaintiffs

Electronically issued / Délivré par voie électronique : 12-Dec-2024
Kenora Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-24-00000091-00CP

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

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Fax: 403-266-2701
Lawyers for the Plaintiffs

This is Exhibit "C" referred to in the Affidavit of

CHIEF WAYLON SCOTT

Affirmed before me on this 25 day of June, 2025

Kelley Humber

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

Treaty No. 3

Band number	First Nation	Region
152	Animakee Wa Zhing #37	ON
153	Anishinabe of Wauzhushk Onigum	ON
125	Anishnaabeg of Naongashiing	ON
124	Big Grassy	ON
265	Buffalo Point First Nation	MB
126	Couchiching First Nation	ON
148	Eagle Lake	ON
826	GENERAL LIST/WESTERN	ON
149	Grassy Narrows First Nation	ON
154	Iskatewizaagegan #39 Independent First Nation	ON
189	Lac Des Mille Lacs	ON
127	Lac La Croix	ON
205	Lac Seul	ON
133	Mitaanjigamiing First Nation	ON
128	Naicatchewenin	ON
158	Naotkamegwanning	ON
129	Nicickousemenecaning First Nation	ON
147	Niisaachewan Anishinaabe Nation	ON
151	Northwest Angle No. 33	ON
235	Obashkaandagaang	ON
258	Ojibway Nation of Saugeen	ON
131	Ojibways of Onigaming First Nation	ON
130	Rainy River First Nations	ON
132	Seine River First Nation	ON
155	Shoal Lake No. 40	ON
150	Wabaseemoong Independent Nations	ON
156	Wabauskang First Nation	ON
157	Wabigoon Lake Ojibway Nation	ON

This is Exhibit "D" referred to in the Affidavit of

CHIEF WAYLON SCOTT

Affirmed before me on this 25 day of June, 2025

Kelley Humber

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

Grand Council Treaty #3

Office of the Ogichidaa

RESOLUTION OF THE GRAND COUNCIL TREATY# 3
Chiefs-in-Assembly

Support for Wabaseemoong Lawsuit

RESOLUTION CA-24-24

WHEREAS since time immemorial, Creator entrusted the Anishinaabe to govern based on laws to live in harmony and for the benefit of all of creation; and

WHEREAS the Anishinaabe Nation in Treaty #3 signed Treaty #3 on October 3, 1873 and exercises inherent and treaty rights to jurisdiction, sovereignty, and nationhood; and

WHEREAS Wabaseemoong Independent Nations will commence a Lawsuit (the "Lawsuit"); and

WHEREAS the Action argues the breaches of Treaty #3, specifically, the Crown's failure to implement the provision for agricultural benefits, the enactment of policies and legislation that specifically disadvantaged First Nations, and its failure to increase, index or augment the Annuity Payment promises (the "Treaty Promises"); and

WHEREAS this resolution does not prejudice the individual rights, efforts and past and future agreements of any individual Treaty #3 First Nation; and

WHEREAS the Grand Council Treaty #3 is not obliged to provide any financial commitment to the litigation.

THEREFORE BE IT RESOLVED that the Chiefs in Assembly endorse and support Wabaseemoong Independent Nations in the Lawsuit

Decided on October 3, 2024 at Naotkamegwanning First Nation.

Certified a true copy

Ogichidaa Francis Kavanaugh

Moved by: Chief Waylon Scott, Wabaseemoong First Nation
Seconded by: Chief Clifford Bull, Lac Seul First Nation
Note:
For: 11
Opposed: 4

- Chief Lynn Indian, Mishkosiminiziibiing First Nation
- Chief Linda McVicar, Animakee Wa Zhing First Nation
- Proxy Chief Henry Swampy, Sagkeeng First Nation
- Proxy Chief Dave Bruyere, Couchiching First Nation

This is Exhibit "E" referred to in the Affidavit of

CHIEF WAYLON SCOTT

Affirmed before me on this 25 day of June, 2025

Kelley Humber

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

Court File No. CV-24-00000091-00CP

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

Plaintiff

\- and -

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

Defendant

LITIGATION PLAN

June 25, 2025

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

TABLE OF CONTENTS

DEFINITIONS

1. The definitions below will be used throughout this Litigation Plan. Any term defined in the Statement of Claim that is also used in this Litigation Plan has the same meaning as that included in the Statement of Claim or as otherwise defined by the Court. The definitions are as follows:

(a) **Aggregate Compensation Distribution Process or Distribution Process** means the system directed by the Court for the Class Action Administrator to distribute aggregate compensation to the Approved First Nation Class Members and Approved Individual Treaty 3 Indians;

(b) **Approved First Nations Class Member(s)** means a First Nation who has been approved by the Class Action Administrator as meeting the criteria for being a First Nation Class Member and whose approval as an Approved Class Member has not been successfully challenged;

(c) **Approved Individual Treaty 3 Indian** means those individual persons who have been approved by the Class Action Administrator as meeting the criteria for being an Individual Treaty 3 Indian and whose approval as such has not been successfully challenged;

(d) **Certification Notice** means Notice to be determined and approved by the Court;

(e) **Class Action Administrator** means any settlement administrator or other appropriate firm appointed by the Court to assist in the administration of the class proceeding,;

(f) **Class Counsel** means the law firm acting as counsel in this class action, the firm of Maurice Law Barristers;

(g) **Common Issues** means the issues listed in the Application for Certification, or as found by the Court, as may be subsequently amended, and as approved by the Court;

(h) **Common Issues Notice** means the information set out in the notice regarding the Common Issues to be certified by the Court at Certification, as may be subsequently amended, and as approved by the Court;

(i) **First Nations Class Members or Class Member(s)** means a First Nation who is the successor in interest to the bands that signed Treaty 3;

(j) **First Nations Class Member Claim Form** means the form to be determined and approved by the Court used by the First Nations Class Members to submit a claim, as may be subsequently amended and as approved by the Court;

(k) **Indigenous Services Canada Information** means information to be provided by the Crown, via Indigenous Services Canada to the Class Action Administrator and/or Class Counsel, which includes but is not limited to:

a. the last known contact information of all Treaty 3 First Nations who meet the criteria of the First Nations Class as set out in the Statement of Claim or as otherwise defined by the Court, and

b. a list and last known contact information of all persons who have received a Treaty Annuity under the terms of Treaty 3 and the status of their recognition by Indigenous Services Canada as a member of a First Nations Class Member as set out in the Statement of Claim or as otherwise defined by the Court;

(l) **Individual Compensation Distribution Process** means the system directed by the Court for the Class Action Administrator to distribute individual specific compensation to Approved First Nations Class Members and/or Approved Individual Treaty 3 Indians;

(m) **Individual Treaty 3 Indian** means an individual person who is living as of the date of award or settlement and is entitled to receive an Annuity Payment under the terms of Treaty 3 being an "Indian" person under the *Indian Act*, R.S.C. 1985, c. 1-5, as amended, and recognized by Indigenous Services Canada as a member of a First Nations Class Member. For certainty, an Approved Individual Treaty 3 Indian is not themselves a "Class Member" and is so defined for the sole purpose of distributing specific compensation to these individual persons.

(n) **Notice Program** means the process, set out in the Litigation Plan for disseminating the Certification Notice and/or the Common Issues Notice to Class Members as may be subsequently amended and as approved by the Court;

(o) **Opt Out Form** means the form to be determined and approved by the Court used by Class Members to opt out of the Class Action, as may be subsequently amended, and as approved by the Court;

(p) **Opt Out Period** means the deadline, proposed by the Plaintiff as 180 days after the Certification Notice is provided to the Class Members, or as determined by the Court, to opt out of the class action;

(q) **Opt Out Procedure** means the procedures, set out in the Litigation Plan for Class Members to opt out of the Class Action, as may subsequently amended and as approved by the Court;

(r) **Representative Plaintiff or Plaintiff** means Wabaseemoong Independent Nations; and

(s) **Special Opt Out Procedure** means the procedures, set out in the Litigation Plan for Class Members who have already commenced a civil proceeding in Canada or who are known by the Attorney General of Canada or Crown to have already retained legal counsel to opt out of this class action, as may be subsequently amended, and as approved by the Court.

OVERVIEW

2. This Claim is about the Crown's failure to diligently implement certain terms of the *North-West Angle Treaty* otherwise known as *Treaty No. 3* ("**Treaty 3**") and to honour the spirit and intent of the solemn Treaty

relationship and promises made by the Crown arising therefrom. In particular this claim relates to the Crown's failure to:

a. increase, index, or augment the amount of the annual payment of five dollars ($5.00) under Treaty 3 (the "**Annuity Payment**");

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

c. 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. increase, index, or augment the Ammunition and Twine Payment.

3. The Plaintiff claim that when properly interpreted, the promise to pay the Treaty 3 Annuity Payment and Ammunition and Twine Payment required the Crown to increase, index or augment the corresponding dollar amounts to offset the impacts of inflation, maintain the real value thereof and/or to share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3. Additionally, the Crown has failed to fulfill the promised entitlement to Agricultural Benefits under the terms of Treaty 3.

4. Since the time Treaty 3 was entered into in October 1873, the Crown has never increased, augmented, or indexed the Treaty 3 Annuity Payment and the Ammunition and Twine Payment, and has failed to deliver the Agricultural Benefits Treaty 3 First Nations were entitled to under Treaty 3. The Crown has been unjustly enriched at the expense of the First Nation signatories to Treaty 3, whose treaty rights have been rendered nugatory and who have suffered a corresponding deprivation.

5. In the alternative, and in the event that the Crown was not required to increase, index, or augment the Treaty 3 Annuity 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. 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. Accordingly, the Crown breached its fiduciary duty and/or the honour of the Crown, and/or Treaty 3 is invalid.

6. This Litigation Plan is advanced as a workable method of advancing the Class Action on behalf of the Class, and of notifying the Class of how the Class Action is progressing, pursuant to s. 17 of the *Class Proceedings Act,*

1992, S.O. 1992, c.6 (the "*Act*"). It sets out a detailed plan for the common stages of this litigation, and on a without prejudice basis, an early plan for how the individual stage of the action may progress. Given the early stage of the litigation, the plan may be subject to revisions as the case progresses.

PRE-CERTIFICATION PROCESS

A. The Parties

i. The Plaintiff and Proposed Class

7. The Plaintiff are Wabaseemoong Independent Nations on behalf of all Treaty 3 First Nations ("**First Nation Class**"). The proposed Class includes twenty-six (26) additional Treaty 3 First Nations and those members entitled under the 826 General List/Western.

ii. The Defendant

8. The Defendant is the His Majesty the King in Right of Canada as represented by the Attorney General of Canada (the "**Crown**").

B. The Pleadings

i. The Statement of Claim

9. The Plaintiff filed their Statement of Claim on December 12, 2024, and was personally served on the Defendant January 20, 2025. An Amended Statement of Claim is to be served and filed at the same time the Application for Certification which includes the herein Litigation Plan.

ii. The Statement of Defence

10. The Crown asked to delay service of their Statement of Defence until after the Application for Certification. The Plaintiff has consented to this.

iii. The Reply to the Statement of Defence

11. The Plaintiff will likewise delay service of their Reply to the Statement of Defence until after the Statement of Defence has been filed.

ii. Third Party Claim

12. The Crown has not issued any Third Party Claims.

C. Preliminary Motions

13. The Plaintiff proposes that any preliminary motions be dealt with at or after the Motion for Certification. The Plaintiff also propose that any applications, questions of law, or determination of issues that may be heard in chambers or by case conference are done so accordingly to preserve judicial economy and case efficiency.

D. Class Counsel

14. Maurice Law Barristers & Solicitors ("Maurice Law") are counsel for the Class (collectively "**Class Counsel**").

E. Pre-Certification Communication Strategy

i. Responding to Inquiries from Putative Class Members

15. The proposed Class Counsel expect to receive many communications from the Treaty 3 First Nations' governments consisting of Chiefs and Councils, who are the representatives of the Class Members affected by this class action. Maurice Law will be responsible for responding to inquiries and communicating with Class Members.

16. With respect to each inquiry, the inquiring government's information will be added to a confidential database. Class Members will be asked to register on the website of Maurice Law, including either its own website or an established specific website for this class action. Once registered, they will receive regular updates on the progress of the class action. Any individual Class Member who contacts Class Counsel will be responded to in their preferred official language.

ii. Pre-Certification Status Reports

17. In addition to responding to individual inquiries, Class Counsel will create a webpage concerning the class action in English and French. The most current information on the status of the class action will be posted and updated regularly.

18. Copies of publicly filed court documents and court decisions will be accessible from the dedicated webpage and downloadable in PDF format. Links to any decisions that are posted on CanLII will also be posted on the dedicated Class Counsel webpage. Phone numbers and emails for Class Counsel in Ontario and Alberta will also be provided on the webpage.

19. Class Counsel will send routine reports by e-mail to Class Members who have provided their contact information and have indicated an interest in being notified of further developments in the class action.

iii. Pre-Certification Outreach

20. Class Counsel presented the proposed class action to the Grand Council Treaty No. 3 ("**GCT3**") on October 3, 2024. Class Counsel will make best efforts to give similar presentations to Class Members through organizations like the Assembly of First Nations and the Chiefs of Ontario Assembly.

F. Settlement Conference

i. Pre-Certification Procedures

21. The Plaintiff would be willing to participate in a pre-Certification mediation to determine whether any or all of the issues arising in the Class Action can be narrowed or resolved. The Plaintiff propose that a pre-Certification Settlement Conference be conducted at least one month after the Application for Certification and responding materials, if any, have been filed with the Court.

G. Timetable

i. Plaintiff Proposed Timetable for the Pre-Certification

22. The Plaintiff propose that the pre-Certification process timetable set out below be imposed by Court Order at an early case management conference.

Step To Be Completed	**Date To Be Completed By**
Defendant's Statement of Defence	--TBD—after Certification
Plaintiff Reply to Defence, if any	--TBD—after Certification
Plaintiff Application for Certification	Date of Serving and Filing the Application for Certification and Motion Record ("DOF")
Defendant's Affidavit(s) in Response	To be filed and served within 90 days from the DOF
Plaintiff Reply, if any	To be filed and served within 30 days from the Response Affidavit(s)
Cross-examinations, if any, to be completed	To be completed within 60 days after delivery of the Response Affidavit(s)
Applications arising from cross-examinations ("Refusal Applications"), if any,	To be completed 30 days after completion of cross-examinations
Delivery of answers to undertakings	To be completed 30 days after Refusal Applications, or 60 days after completion of cross-examinations if no Refusal Applications arise
Delivery of Plaintiff's Factum	To be completed within 250 days from DOF
Delivery of Defendant's Responding Factum	To be completed within 280 days from DOF
Delivery of Plaintiff's Reply Factum, if any	To be completed within 300 days from DOF
Hearing of Application for Certification and all other Applications	Within 310 days from DOF

POST-CERTIFICATION PROCESS

A. Timetable

i. Plaintiff' Timetable for the Post-Certification Process

23. The Plaintiff intend to proceed to trial on an expedited basis. The Plaintiff intend to proceed to trial under Rule 12 of the *Rules of Civil Procedure, R.R.O. 1990, Reg 194* (the *"Rules"*) and the applicable rules for trial. However, if appropriate, where the Parties consent or the Court directs, the Parties may proceed to a Summary Trial.

24. The Plaintiff propose that the following post-Certification process timetable, as explained in detail below, be imposed by the Court upon Certification.

Step To Be Completed	**Date To Be Completed By**
Delivery of Certification Notice to Class Members	At a date to be determined by the Court upon Certification
Exchange of Affidavits of Documents	30 days after Certification Notice to Class Members
Production of Documents, Examinations of Crown Representatives or for Examinations of Non-Parties	60 days after the Certification Notice to Class Members
Examinations for Discovery	90 days after the Certification Notice to Class Members
Trial Management Conference re: Expert Evidence	100 days after Certification Notice to Class Members
Applications arising from Examinations for Discovery	120 days after Certification Notice to Class Members
Answers to Undertakings	140 days after Certification Notice to Class Members
Further Examinations, if necessary	160 days after Certification Notice to Class Members
Common Issues Pre-Trial	160 days after Certification Notice to Class Members
Opt Out Period	90 days after Certification Notice to Class Members
Common Issues Trial or Hybrid Trial	250 days after Certification Notice to Class Members

B. Certification Notice, Notice Program and Opt Out Procedures

i. Certification Notice

25. On the motion for Certification, the Plaintiff will ask that the Court settle the form and content for the Notice of Certification of this class action ("**Notice of Certification**"), the timing and the manner of providing Notice of Certification (**"Notice Program**") and set out an opt-out date as ninety (90) days after some form of notice is first published, or such other date as the Court may order (**"Opt-Out Period**"). The Notice of Certification will be translated into French.

26. The Certification Notice will, subject to any amendments, be in the form to be determined and approved by the Court.

ii. Notice Program

27. The Plaintiff propose to communicate the Certification Notice to Class Members through the below described Notice Program.

28. The Plaintiff will provide the Certification Notice to Class Members by arranging to have the Certification Notice (and its translated versions where applicable) communicated or published in the following media within 90 days of Certification, as frequently as may be reasonable or as directed by the Court under s. 17 of the *Act*. In particular, the Plaintiff propose the following means of providing the Certification Notice:

a. A press release within 15 days of the Certification Order being issued;

b. Direct communication with Class Members:

   i. By the Class Administrator distributing the Certification Notice to the Band Offices of all the Treaty 3 First Nations that make up the Approved First Nations Class, and the head offices of the Assembly of First Nations, the Chiefs of Ontario Assembly, Grand Council Treaty 3, , together with a request that the Certification Notice be posted in a prominent place;

   ii. By the Class Administrator to any Class Member who requests the Certification Notice;

c. Circulation through the following media:

   i. Aboriginal newspapers/publications on APTN National News;

   ii. Other local news outlets/ publications such as the Kenora Miner, the Winnipeg Free Press, and/or the Thunder Bay Chronicle-Journal;

   iii. Radio outlets, such as Aboriginal radio, CBC Regional;

   iv. Television outlets, such as CBC/ICI Television and The Aboriginal Peoples Television Network; and/or

   v. Social media outlets, such as Facebook and Instagram.

ii. Opt Out Procedures

29. The Certification Notice will include information about how to Opt Out of the Class Action and will provide information about how to obtain and submit the appropriate Opt Out Forms to the Class Action Administrator and/or Class Counsel. Only the recognized government (Chief and Council) may opt-out a First Nation from the Class Action. In order for an opt-out to be valid, a Band Council Resolution must be passed by a quorum of Chief and Council opting the First Nation out of the Class Action.

30. There will be one standard Opt Out Form for all Class Members. Class Members will be required to file the Opt Out Form with the Class Action Administrator and/or Class Counsel within the Opt Out Period, proposed by the Plaintiff as 90 days after the Certification Notice is provided to the Class Members or as directed by the Court.

31. The Class Action Administrator or Class Counsel shall, within 30 days after the expiration of the Opt Out Period, deliver to the Court and the Parties an Affidavit listing the names of all of the Treaty 3 First Nations who have opted out of the Class Action.

C. Identifying and Communicating with Class Members

i. Identifying Class Members

32. As stated above, the Plaintiff intend to rely on the Class Member information provided by the Crown.

ii. Database of Class Members

33. Class Counsel will maintain a confidential database of all Class Members who contact Class Counsel. The database will include contact information for each Chief and Council of each First Nation, including their address, telephone number, and/or email address where available.

iii. Responding to Inquiries from Class Members

34. Class Counsel and their staff will respond to each inquiry by Class Members.

35. Class Counsel will have a system in place to allow for responses to inquiries by Class Members in their official language of their choice, and where necessary, a First Nations language spoken by a First Nation band in Treaty 3 territory.

iv. Post-Certification Status Report

36. In addition to responding to individual inquiries, Class Counsel will continually update the webpage dedicated to this Class Action with information concerning the status of the Class Action.

37. Class Counsel will send update reports to Class Members who have provided their contact information. These reports will be sent as determined to be necessary by Class Counsel or as directed by the Court.

D. Documentary Production

i. Affidavit/List of Documents

38. The Plaintiff will be required to deliver an Affidavit of Documents within 30 days after Certification. The Crown will similarly be required to deliver a List of Documents within 30 days after Certification.

39. The Parties are expected to serve Supplementary Affidavits (or Lists) of Documents as additional relevant documents are located in accordance with the regular law and Rules with respect to ongoing discovery and disclosure.

ii. Production of Documents

40. All Parties are expected to provide, at their own expense, electronic copies of all Schedule "A" productions at the time of delivering their Affidavit of Documents. All productions are to be made in electronic format.

iii. Applications for Documentary Production

41. Any applications for documentary production shall be made within 60 days of Certification.

iv. Document Management

42. The Parties will each manage their productions with a compatible document management system, or as directed by the Court. All documents are to be produced in OCR format. The Plaintiff and the Crown will coordinate compatibility with each of their respective eDiscovery and document management systems.

43. All productions should be numbered and scanned electronically to enable quick access and efficient organization of documents. The Plaintiff and the Crown will create a unified document index and bates numbering systems.

E. Examinations for Discovery

44. Examinations for discovery will take place within 120 days after Certification.

45. The Plaintiff expect to request the Crown's consent to examine more than one Crown representative. In the event that a dispute arises in this regard, the Plaintiff propose to resolve the matter at a case management conference, failing which, the Plaintiff will bring an application within 60 days after Certification.

46. The Plaintiff anticipate that the examination for discovery of a properly selected and informed officer of the Crown will take no longer than one week to complete, subject to refusals and undertakings.

47. The Plaintiff anticipate that the examination for discovery of the Representative Plaintiff will take no longer than one week to complete, subject to refusal and undertakings.

F. Interlocutory Matters

i. Applications for Refusals and Undertakings

48. Specific dates for applications for undertakings and refusals that arise from the examinations for discovery will be requested upon Certification. Applications for refusals and undertakings will be heard within 180 days after Certification.

ii. Undertakings

49. Undertakings are to be answered within 60 days of the completion of Examinations for Discovery.

iii. Re-Attendances and Further Examinations for Discovery

50. Any re-attendances or further examinations for discovery required as a result of answers to undertakings or as a result of the outcome of the applications for refusal and undertakings should be completed within 30 days of receiving answers to undertakings or a final decision with respect to the applications for refusal and undertakings.

G. Expert Evidence

i. Identifying Experts and Issues

51. A trial management conference will take place following examinations for discovery at which guidelines for identifying experts and their proposed evidence at trial will be determined. The experts may or may not include those experts that were retained by either the Plaintiff or the Crown for the purposes of the Application for Certification.

52. The Plaintiff have identified the following initial experts that are required:

a. An expert to testify to a plausible methodology for the calculation of damages.

b. An expert to testify to the historical record as it relates to the common issues between Class Members.

53. The Parties will identify further experts as the matter progresses and as they become necessary.

H. Reception of Elders' Oral History Evidence

i. Elder Oral History Evidence

54. Within 120 days after Certification, the parties will conclude an Oral History Protocol and schedule a Special Hearing to receive the oral history evidence of the Approved Class Member First Nations.

I. Determination of the Common Issues

i. Trial of the Common Issues

55. Upon Certification, the Court will be asked to assign a date for the trial of the Common Issues. The Plaintiff proposes that the trial of the Common Issues be held 250 days after Certification.

56. The length of time required for the trial of the Common Issues will depend on many factors and will be determined at the trial management conference.

POST COMMON ISSUES DECISION PROCESS

A. Timetable

i. Plaintiff Timetable for the Post-Common Issues Decision Process

57. The Plaintiff propose that the following timetable be imposed by the Court following the Court's judgment on the Common Issues:

Step To Be Completed	**Date To Be Completed By**
Common Issues Notice provided	Within 90 days of the Common Issues decision
Individual Compensation Assessments, if any	Beginning 240 days after the Common Issues decision
Deadline to Submit Claim Forms (as of right)	Within 1 year of the Common Issues decision
Deadline to Submit Claim Forms (as of right in prescribed circumstances or with leave of the Court)	1 year after Common Issues decision

58. Given the nature of the class action, the Plaintiff do not expect there to be any Individual Issues. However, if this changes, the Plaintiff will amend the Litigation Plan to include a procedure with respect to Individual Issues in accordance with s. 25 of the *Act.*

B. Common Issues Notice

i. Notifying Class Members

59. The Common Issues Notice will, subject to further amendments, be substantially in the form approved by the Court after the trial of the Common Issues. The Common Issues Notice may contain, amongst others, information on any aggregate damages awarded and any issues requiring individual determination, as approved by the Court.

60. The Plaintiff proposes to circulate the Common Issues Notice within 90 days after judgment is rendered on the Common Issues.

61. The Common Issues Notice will be circulated in the same manner as set out above dealing with the Certification Notice or as directed by the Court.

C. Claim Forms

i. Use of Claim Forms

62. The Court will be asked to approve under s.24(6) of the *Act* the use of standardized Claim Forms by Class Members who may be entitled to a portion of the aggregate damage award or who may be entitled to individual specific compensation.

ii. Obtaining and Filing Claim Forms

63. The procedure for obtaining and filing Claim Forms will be set out in the Common Issues Notice.

64. The Plaintiff propose to use a single standard Claim Form, for the Class subject to further amendments and as approved by the Court.

65. The Plaintiff propose that support be made available to Class in need of support and assistance when completing the Claim Forms. Where necessary, a process for appointing a trustee to assist the Class Members will be developed.

66. Before completing a Claim Form, members of the Class will be able to review information about them in the possession of Canada relevant to their claim (the Indigenous Services Canada Information).

67. Class Members will be required to file the appropriate Claim Form with the Class Action Administrator within the deadlines set out below or as directed by the Court.

68. The Class Action Administrator will be responsible for receiving all Claim Forms.

iii. Deadline for Filing Claim Forms

69. Class Members will be advised of the deadline for filing Claim Forms in the Common Issues Notice.

70. The Plaintiff propose that Class Members be given one year, or such period as set out by the Court, after the Common Issues judgment to file Claim Forms as of right.

D. Determining Approved Class Membership

i. Approving Class Members

71. The Class Action Administrator will determine whether a First Nation submitting a Claim Form as a Class Member properly qualifies as an Approved Class Member. The Class Administrator will make these determinations by referring to the information set out in the Claim Form as well as the Indigenous Services Canada Information.

ii. Notifying Class Members, Challenging and Recording Decisions

72. Within 30 days of receipt of a Claim Form, the Class Action Administrator will notify the First Nation on whether the First Nation is an Approved Class Member. First Nations who are not approved as an Approved Class Members will be provided with information on procedures to follow to challenge the decision of the Class Action Administrator. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court in a manner to be prescribed.

73. The Class Action Administrator will keep records of all Approved Class Members and their respective Claim Forms and will provide this information to Class Counsel, the Crown, and other interested parties upon request. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

E. Determining Approved Individual Treaty 3 Indians

i. Approving Individual Treaty 3 Indians

74. The Class Action Administrator will determine whether a person properly qualifies as an Approved Individual Treaty 3 Indian. The Class Administrator will make these determinations by referring to the information set out in the Claim Form as well as whether the person is listed within the Indigenous Services Canada Information as a recipient of Annuity Payments under the terms of Treaty 3 as a member of a First Nations Class Member.

75. For certainty, a determination by the Class Action Administrator as to the status of an Approved Individual Treaty 3 Indian as a member of a First Nations Class Member is for the sole purposes of the Aggregate Compensation Distribution Process. This determination shall not be construed so as to abrogate or derogate from any First Nation Class Members' Aboriginal, treaty, constitutional, statutory, or other rights to determine the composition of its membership.

ii. Notifying Class Members, Challenging and Recording Decisions

76. Within 30 days of receipt of a Claim Form by a Class Member and the necessary Indigenous Services Canada Information, whichever is later, the Class Action Administrator will notify the Approved Class Members of the list of persons it has deemed as an Approved Individual Treaty 3 Indian who are listed within the Indigenous

Services Canada Information as recipients of Annuity Payments under the terms of Treaty 3 as members of the First Nation.

77. Within 30 days of receipt of a Claim Form by a Class Member and the necessary Indigenous Services Canada Information, whichever is later, the Class Action Administrator will notify the Individual Treaty 3 Indians of its decision to include them in the list of Approved Treaty 3 Indians who are listed within the Indigenous Services Canada Information as recipients of Annuity Payments under the terms of Treaty 3 as members of the First Nation.

78. Class Members or Individual Treaty 3 Indians who dispute the status of Approved Treaty 3 Indians will be provided with information on procedures to follow to challenge the decision of the Class Action Administrator.

79. All interested parties will be provided with the ability to appeal a decision by the Class Action Administrator to the Court in a manner to be prescribed.

80. The Class Action Administrator will keep records of all Approved Individual Treaty 3 Indians and their respective association with an Approved Class Member and will provide this information to Class Counsel, the Crown, and other interested parties upon request. Class Counsel and/or other interested parties will have 30 days after receiving this information to challenge the Class Action Administrator's decision by advising the Class Action Administrator and the other affected parties in writing of the basis for their challenge. The responding party will be given 30 days thereafter to respond in writing to the challenge at which time the Class Action Administrator will reconsider its decision and advise all parties.

F. Aggregate Damages Distribution Process

i. Distribution of Aggregate Compensation to the Class Members

81. The Class Action Administrator will distribute the aggregate damages to all Approved First Nations Class Members in a manner directed by the Court.

82. The Plaintiff propose that the Approved First Nations Class Members are entitled to a proportion of the aggregate damage as determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to those losses that they have suffered as a result of the Crown's:

a. failure to increase, index, or augment the amount of the Annuity Payment since 1873 exclusive of losses attributable to Approved Individual Treaty 3 Indians, and

b. failure to fulfill the First Nation signatories' and adherents' entitlement to agricultural implements, tools, livestock, seed and instruction;

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

83. The Class Action Administrator, upon advising Approved First Nations Class Members of its decision on their membership as set out above, will within a reasonable period of time to be determined by the Court, advise the Approved First Nations Class Members of the proportion of aggregate damages owing to each Approved First Nations Class Member via the Aggregate Damages Distribution Process to be approved by the Court.

84. In addition, if applicable, the Class Action Administrator will provide Approved First Nation Class Members with a package of materials including: information on how to collect their aggregate damage awards, information on Class Members' ability to proceed through the Individual Compensation Assessment Process, copies of the Individual Compensation Assessment Form along with a guide on how to complete the form.

ii. Distribution of Compensation to Approved Individual Treaty 3 Indians

85. The Plaintiff propose that the Approved Individual Treaty 3 Indians are entitled to a proportion of the aggregate damages determined by the Class Action Administrator based on factors to be approved by the Court, including but not limited to the losses that they have suffered as a result of the Crown's failure to increase, index, or augment the amount of the Annuity Payment from time to time for the period of time they were so entitled to receive such Annuity Payments.

86. The Class Action Administrator, upon advising Approved Individual Treaty 3 Indians of its decision on their status as such, will within a reasonable period of time to be determined by the Court, advise the Approved Individual Treaty 3 Indians of the proportion of equitable compensation owing to each Approved Individual Treaty 3 Indians under the Distribution Process to be approved by the Court.

G. Class Proceeding Funding and Fees

i. Plaintiff Legal Fees

87. The Plaintiff' fees are to be paid on contingency basis, subject to the Court's approval under r. 334.4 of the *Rules*.

88. The agreement between the Representative Plaintiff and Class Counsel states that Class Counsel will be entitled from the total amount of settlement, award, compensation, or damages recovered for the Class, the following:

a. 6% of the total compensation including any costs recovered for the Class through a negotiated settlement with the Crown, or

b. 8% of the total compensation including any costs recovered for the Class after the completion of trial or earlier resolution through the courts, including without limitation, a motion for summary judgment.

89. The contingency fee is subject to a cap of $100 million.

90. Disbursements for the Representative Plaintiff have been, and will continue to be, advanced through Class Counsel. Class Counsel will advise the Court if third-party funding is required and seek approval thereof.

H. Settlement Issues

i. Settlement Offers, Negotiations and Mediation

91. The Plaintiff will conduct settlement negotiations with the Crown from time to time with a view to achieving a fair and timely resolution. The Plaintiff will participate in mediation, if and when appropriate, in an effort to try and resolve the dispute or narrow the issues in dispute between the Parties.

I. Review of the Litigation Plan

i. Flexibility of the Litigation Plan

92. This Litigation Plan will be reconsidered on an ongoing basis and may be revised under the continued case management authority of the Court before or after the determination of the Common Issues or as the Court sees fit.

Dated: June 25, 2025

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Lawyers for the Plaintiff

Court File No. CV-24-00000091-00CP

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

Plaintiff

- and -

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

Defendant

AFFIDAVIT OF DAVID J. HUTCHINGS

Sworn on June 27, 2025

(in support of the Application for Certification brought pursuant to *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

I, **DAVID J. HUTCHINGS**, of the City of Montreal, in the Province of Québec, do solemnly AFFIRM THAT:

1. I am a Managing Principal of Analysis Group, an international economics consulting firm. I was retained by Maurice Law Barristers and Solicitors to provide expert evidence in this matter.
2. I prepared a report dated June 27, 2025, a copy of which is attached to this affidavit and marked as **Exhibit "A".** My curriculum vitae as well as the Acknowledgement of Expert's Duty in Form 53 are enclosed with my report.

Affirmed remotely by **David J. Hutchings** stated as being located in the City of Montreal in the Province of Québec, before me at the City of Calgary in the Province of Alberta on 27 day of June 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

Kelley V. Humber A Commissioner of Oaths in the Province of Alberta (LSA: #26777) and Ontario (LSO #89406W)	**David J. Hutchings**

Kelley V. Humber
Commissioner for Oaths in and for the Province of
Ontario

This is Exhibit "A" referred to in the Affidavit of

DAVID J. HUTCHINGS

Affirmed before me on this 27 day

of June, 2025

Commissioner of Oaths in Province of Alberta (LSA: #26777)

and Ontario (LSO #89406W)

Kelley V. Humber
Commissioner for Oaths in
and for the Province of
Ontario

Court File No. CV-24-00000091-00CP

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

Plaintiff

- and -

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

Defendant

EXPERT REPORT OF DAVID J. HUTCHINGS
June 27, 2025

TABLE OF CONTENTS

I. INTRODUCTION AND QUALIFICATIONS

A. Qualifications

1. I am a Managing Principal at Groupe d'analyse (Analysis Group), a consulting firm headquartered in Boston, Massachusetts with offices throughout North America, Europe, and China. Analysis Group specializes in providing economic, financial, statistical, and business strategy consulting to law firms, corporations, and government agencies. My business address is 1190 avenue des Canadiens-de-Montreal, Tour Deloitte, Suite 1500, Montreal, QC, H3B 0G7.

2. I have been undertaking economic research projects for clients for 15 years, with a focus on valuation and damages estimates, tax and transfer pricing, and competition matters. Relevant to my work in this matter, I have presented well-established methodologies for calculating damages on a class-wide basis arising from the Crown's failure to augment treaty annuities, in addition to valuing land and natural resources for purposes of augmentation of treaty annuities. I have also authored whitepapers on energy markets, opined on cost allocation matters, and studied questions of liability and fiduciary duty for First Nations in the United States (related to the United States government's investment policies for settlements paid to First Nations).

3. I have presented my findings in Canadian courts, by testifying as an expert in economic and financial data analysis, valuation, and taxation, with a focus on the application of economic principles to the valuation of large-scale economic activity and resources, in Red Rock First Nation and Whitesand First Nation v Canada (Attorney General), et al. I have also offered expert evidence on valuation questions, tax matters, and assessing fair pricing of transactions in U.S. courts.

4. I have an M.A. in Economics from the University of Toronto and an S.B. in Economics and an S.B. in Mathematics from the Massachusetts Institute of Technology. I also have a J.D. with Distinction from the University of Toronto Faculty of Law. My curriculum vitae, which includes my publications, prior expert reports, and testifying experience, is attached as **Appendix A**. My work in this matter is ongoing and I reserve the right to revise or supplement my opinions as new information becomes available to me. I have been assisted by staff at Analysis Group in preparing my responses to the questions posed by counsel, but all opinions are my own and I am the sole author of this report.

5. Attached to this report is Form 53 from the *Courts of Justice Act* where I acknowledge my overriding duty to the Court. I have read and have abided by Rule 4.1.01 of the *Ontario Rules of Civil Procedure* which provides:

Duty of Expert

4.1.01 (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,

(a) to provide opinion evidence that is fair, objective and non-partisan;

(b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and

(c) to provide such additional assistance as the court may reasonably require to determine a matter in issue.

Duty Prevails

(2) The duty in subrule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

6. I acknowledge my overriding duty to the Court to be independent and to assist the Court, and my report has been prepared in conformity with Rule 4.1.01 of the *Ontario Rules of Civil Procedure*. If I am called on to give oral or written testimony, I will give such testimony in conformity with that duty.

B. Scope and Summary of Opinion

7. I have been asked by Class Counsel to provide expert evidence with respect to the quantification of the damages available to the Class, should the Plaintiffs succeed in establishing the allegations in the Statement of Claim. Specifically, I have been asked to assume that the Crown had an obligation to:

a. Increase, index, or augment the amount of the annual payment of five dollars ($5) "to each Indian person" (the "Annuity Payment") under Treaty 3;[1]

b. 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;[2]

c. 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");[3] and

1 Statement of Claim, *Wabaseemoong Independent Nations, Chief Waylon Scott v. Attorney General of Canada*, CV-24-00000091-00CP, Ontario Superior Court of Justice, December 12, 2024 ("Statement of Claim") at para 1a.

2 Statement of Claim at para 1b.

3 Statement of Claim at para 1c.

d. Increase, index, or augment the Ammunition and Twine Payment.[4]

8. Based on these assumptions, I have been asked to provide my evidence in response to the following questions:

Question 1: Is it possible to determine the extent to which the purchasing power and/or the real value of the Annuity Payment has decreased from 1873 to the present?

Question 2: Is there a methodology or methodologies to calculate or assess the present-day value from losses arising from the decrease in the value of the Annuity Payment since 1873? If no, is it possible to devise a methodology or methodologies for this purpose?

Question 3: Is there a methodology or methodologies to calculate or assess the present-day value of losses arising from the Crown's failure to provide the promised Agricultural Benefits?

Question 4: Is it possible to determine the extent to which the purchasing power and/or the real value of the Ammunition and Twine Payment has decreased from 1873 to the present?

Question 5: Is there a methodology or methodologies to calculate or assess the present-day value of losses arising from the decrease in the value of the Ammunition and Twine Payment since 1873? If no, is it possible to devise a methodology or methodologies for this purpose?

Question 6: Do the methodologies referred to in Question 2, 3, and 5 allow for the calculation or assessment of losses on a class wide or aggregate basis?

9. In summary, my answer is "yes" to Questions 1 through 6. More specifically:

a. In response to Question 1 and 4, publicly available data exist and can be used, applying well-established methodologies, to evaluate the extent to which the purchasing power and/or the real value of the Annuity Payment and Ammunition and Twine Payment has decreased from 1873 to the present. These data include the Consumer Price Index, GDP, deflator, data on land values, household disposable income, and GDP per capita. I discuss these further in **Section III.2.a** and **Section III.4**.

b. In response to Question 2, a standard and straightforward methodology exists that allows me to calculate the present-day value from losses arising from the decrease in the value of the Annuity Payment since 1873. After adjusting for changes in their purchasing power or real value, I can "bring forward" the amounts into present-day dollars, reflecting that unpaid amounts would have been spent or invested in ways that would

4 Statement of Claim at para 1d.

bring great present-day values. Compensation should reflect the opportunity cost of funds, and should thus be based on what an economic actor in the position of the recipients of the Payments could reasonably have done with the funds had they been received in a timely fashion. I discuss methods to do this in **Section III.2.b.**

c. In response to Question 3, publicly available data exist and can be used, applying well-established methodologies, to calculate the present-day value of losses arising from the arising from the Crown's failure to provide the promised Agricultural Benefits from 1873 to the present. These data include those related to agricultural capital and equipment costs, and data related to the incomes of Treaty 3 First Nation farmers' and settler counterparts. I discuss these further in **Section III.3**.

d. In response to Question 5, a standard and straightforward methodology exists that allows me to calculate the present-day value from losses arising from the decrease in the value of the Ammunition and Twine Payment since 1873. After adjusting for changes in their purchasing power or real value, I can "bring forward" the amounts into present-day dollars, reflecting that unpaid amounts would have been spent or invested in ways that would bring great present-day values. Compensation should reflect the opportunity cost of funds, and should thus be based on what an economic actor in the position of the recipients of the Ammunition and Twine Payments could reasonably have done with the funds had they been received in a timely fashion. I discuss methods to do this in **Section III.4.**

e. In response to Question 6, the methodology I describe allows, once I have a complete set of data available, to explicitly calculate losses on a class-wide basis. Moreover, the methodology can easily be adapted to account for any proposed Class Treaty 3 First Nation who decides to opt out of the class. I discuss further in **Section III.5**.

10. In formulating my opinion, I rely on publicly available data series to account for changes in the purchasing power or real value of the Annuity Payment and the Ammunition and Twine Payment. I would use these series to index payments in each year, subtract what was actually paid, account for the population of individuals contained in the proposed Class First Nations, and then grow these amounts to present-day dollars using widely recognized scenarios for investing these amounts. I would also rely on publicly available data series and perform similar calculations for the Agricultural Benefit.

11. The materials I relied on in preparing this report are cited in the footnotes and listed in **Appendix B**. My instructions from counsel are attached to this report as **Exhibit 1**.

II. CASE BACKGROUND

12. The representative Plaintiff is Wabaseemoong Independent Nations, acting on behalf of all Treaty 3 First Nations (the "First Nation Class"). [5] Treaty 3 was signed in 1873 with additional adhesions in 1874 and 1875.[6]

13. The Defendant is His Majesty the King in Right of Canada as represented by the Attorney General of Canada ("the Crown").

14. Treaty 3 is one of the ten numbered treaties that the Crown entered with First Nations between 1871 and to "open up the west for settlement, immigration, mining, lumbering, trading and other purposes,"[7] with the promise "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."[8] Signed on October 3, 1873, with additional adhesions later in 1874 and 1875, Treaty 3 covers 55,000 square miles of what is now northwestern Ontario and a small part of eastern Manitoba. [9] Treaty 3 includes 26 recognized First Nations with reserve lands in Ontario and 1 recognized First Nation in Manitoba, and as of the 2016 Census, has a population of approximately 8,500.[10]

III. RESPONSES TO QUESTIONS

15. I address each question in **Section I.B.** asked by me of Class Counsel in sequence below.

> *1.* ***Question 1:*** *Is it possible to determine the extent to which the purchasing power and/or the real value of the Annuity Payment has decreased from 1873 to the present?*

16. Under Treaty 3, members of signatory First Nations were promised a one-time gratuity payment of $12 per person, as well as the Annuity Payments of $5 per person per year.[11] The Annuity Payment has remained at $5 per person to today. The failure to increase the payment is a quantifiable and

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5 Statement of Claim at para 10, 13.

6 Statement of Claim at para 26–27.

7 Statement of Claim at para 17.

8 Statement of Claim at para 17.

9 Statement of Claim at para 8, 26, 27, 29.

10 Statement of Claim at para 12; Statistics Canada, Aboriginal Population Profile, 2016 Census, Treaty 3 – Total [Historic treaty area], Ontario, https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/details/page.cfm?Lang=E&Geo1=AB&Code1=2016C1005023&Data=Count&SearchText=treaty%203&SearchType=Begins&B1=Aboriginal%20peoples&C1=All&SEX_ID=1&AGE_ID=1&RESGEO_ID=1

11 Crown-Indigenous Relations and Northern Affairs Canada, "Treaty Texts: Treaty No 3," https://www.rcaanc-cirnac.gc.ca/eng/1100100028675/1581294028469.

compensable harm and it is possible to determine the extent to which the purchasing power and/or real value of the Annuity Payment has decreased from 1873 to the present using publicly available data related to purchasing power.

2. ***Question 2:*** *Is there a methodology or methodologies to calculate or assess the present-day value from losses arising from the decrease in the value of the Annuity Payment since 1873? If no, is it possible to devise a methodology or methodologies for this purpose?*

17. There are well-established methodologies to calculate damages arising from the Crown's failure to increase the Annuity Payment since 1873, by indexing the cash annuities to economic indicators. I discuss three types of indices here, as well as the methodology for accounting for foregone interest income on the unpaid annuities. The methodology is straightforward: calculate what the annuity would have been had it been increased in proportion to the index to calculate the unpaid amounts, multiply the unpaid amounts by the number of individuals in each year who should have been paid, and then adjust for the time value of money.

a. Potential Data Series for Indexing Annuities

18. One can easily and reliably calculate what the Annuity Payment would have been had it increased at the rate of inflation. Economists and governments have long studied inflation, the process by which prices for goods and services increase over time. Understanding inflation allows us to assess the purchasing power of money over time: $1 in 1873 could buy many more goods and services than $1 could buy in 2025.

19. Some scholarship has examined the question of increasing the annuities paid under the Numbered Treaties to maintain their purchasing power over time.[12] Statistics Canada provides many data series that allow us to understand how prices have changed since 1873.[13] These data series can be used to estimate the path of the Annuity Payment had it maintained the same purchasing power: if $5 in 1873 could buy X amount of goods and services, then, to adjust for inflation, the annuity in 2025 would be the dollar value necessary to buy the same X amount of goods and services at 2025 prices. Past scholarly

[12] Robert Metcs, (2008) "The Common Intention of the Parties and the Payment of Annuities Under the Numbered Treaties: Who Assumed the Risk of Inflation?" *Alberta Law Review* 46 (1): 41-76; Erik Anderson, (2010) "The Treaty Annuity as Livelihood Assistance and Relationship Renewal," *Aboriginal Policy Research Consortium International (APRCi)*.

[13] Datasets that include various price indices include, e.g., [CPI] Statistics Canada. Table 18-10-0005-01: Consumer Price Index, annual average, not seasonally adjusted; [Household Income] Statistics Canada. Table 36-10-0229-01: Long-run provincial and territorial data; [GDP per capita and GDP Deflator] Statistics Canada. Table 36-10-0212-01: Long run real income estimates.

work has performed similar analyses to adjust the annuities paid under the Numbered Treaties for inflation.[14]

20. Inflation can account for changes in purchasing power. However, a better and more economically appropriate measure would be to maintain the value of the Annuity Payments through indexing to increases in the standard of living, as reflected by increases in incomes or land values, so that a certain relative standard of living can be maintained.

21. The Annuity Payments could be increased at a rate that reflects the growth in living standards experienced by settlers in the Treaty 3 area, as measured by incomes and related measures such as GDP per capita.[15] Incomes have generally grown at a rate greater than inflation: settlers today can purchase more goods and services with their earnings than they could in the past. If the Treaty promise underlying the Annuity Payment were understood to include a promise to maintain a certain *relative* standing to the settlers,[16] a methodology can be applied to assess damages by estimating what the Annuity Payments would have been using data on incomes in the area.[17] Additionally, GDP per capita, another proxy for income or economic growth, which is a measure of the total value of goods and services produced within a region, divided by the population of that region, has grown at a faster pace than

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14 Erik Anderson, (2010) "The Treaty Annuity as Livelihood Assistance and Relationship Renewal," *Aboriginal Policy Research Consortium International (APRCi)* 74.

15 Gross domestic product (GDP) measures the total output created through the production of goods and services in a country/zone during a certain period (often quarterly, or yearly). It also measures the income earned from that production. GDP per capita of a country/zone is calculated by dividing the total GDP of that country/zone by its total population. *See* Statistics Canada. "Gross domestic product (GDP) per capita", 2024, https://www160.statcan.gc.ca/prosperity-prosperite/gdp-pib-eng.htm.

16 Anderson (2010) examines the Numbered Treaties and discusses how signatories to the Numbered Treaties conceptualized of the annuity: "It is clear that the Aboriginal treaty signatories viewed the annuity as a significant economic benefit, and had expectations that the treaty terms, including the annuity amount, would be sufficient ongoing government livelihood support in exchange for land. As historian Jean Friesen put it: 'The only price which could balance the loss of such property was the assurance of full economic security.'" *See* Erik Anderson, (2010) "The Treaty Annuity as Livelihood Assistance and Relationship Renewal," *Aboriginal Policy Research Consortium International (APRCi)* at 79, citing Jean Friesen, "Magnificent Gifts: The Treaties of Canada with the Indians of the Northwest 1869-76," in Richard Price, ed., *The Spirit of the Alberta Indian Treaties* (University of Alberta Press, 1999). Jones (2018) also contextualizes the annuity payments by reference to incomes, in addition to purchasing power: "At the time of treaty-writing, the five-dollar annuity was the equivalent to about one-third of the annual wage of an unskilled labourer. The $25 for a family of five was enough for outfitting a hunter with ammunition, nets, lines, traps, knives and other goods, with some left over for tea and tobacco, and other comforts for the family." *See* Sheilla Jones, (2018) "Treaty Annuity Right: The Right No One Wanted to Talk About. Until Now," *Frontier Backgrounder*, No. 124 at 3.

17 Data provided by Statistics Canada provide information on long-run incomes in Ontario, Manitoba and Canada. *See* Statistics Canada, Table 36-10-0229-01: Long-run provincial and territorial data; Statistics Canada, Table 36-10-0212-01: Long run real income estimates. These can be supplemented with data more specific to the Treaty 3 through the analysis of historical data on incomes available at varying levels of geographic granularity at the sub-provincial level from the Census of Canada. Data from the most recent census is available via Statistics Canada, Census of Canada, 2021, https://www12.statcan.gc.ca/census-recensement/index-eng.cfm/.

inflation. A methodology can be applied to assess damages by estimating what the Annuity Payments would have been using data on GDP per capita growth in the Treaty 3 area.

22. The Annuity Payments could also be increased at a rate that reflects the growth in the value of the lands surrendered in Treaty 3. The undeveloped value of land is a useful and economically sensible reference point for increasing the Annuity Payments. First, the price of land will capture increases in the costs of living in an area, as the price of land is directly relevant to the cost of housing and will be affected by the rise of the overall price level. Second, land values are a good indicator of the state of the economy in an area—similar to incomes, land values have tended to increase at a rate higher than inflation, reflecting the rise in economic productivity that has contributed to the rise in living standards over time, and indexing to land values will maintain relative living standards (while indexing only to inflation will not). Available data on land values and economic activity in the area can be used to estimate the path of the Annuity Payment over time.[18]

23. Figure 1 below provides an illustration of the data that can be used to estimate how the Annuity Payments would have increased under the various alternatives that I have discussed. It shows the increase in two measures of inflation,[19] as well as nominal household incomes, GDP per capita, and land values in an illustrative section of Ontario (where the majority of the areas covered under Treaty 3 are located). The data for illustrative purposes show the period 1873–2024. Data series unavailable at the signing of Treaty 3 are extended back to 1873, while data series unavailable in 2024 are extended forward until that year. The graph shows the availability of the data and the significant per-person harm (which over the 150 years plotted on the chart show more than a 30-fold increase based on the consumer price index, and over 400-fold increase based on the disposable household income in Ontario, with three other indexes in between).

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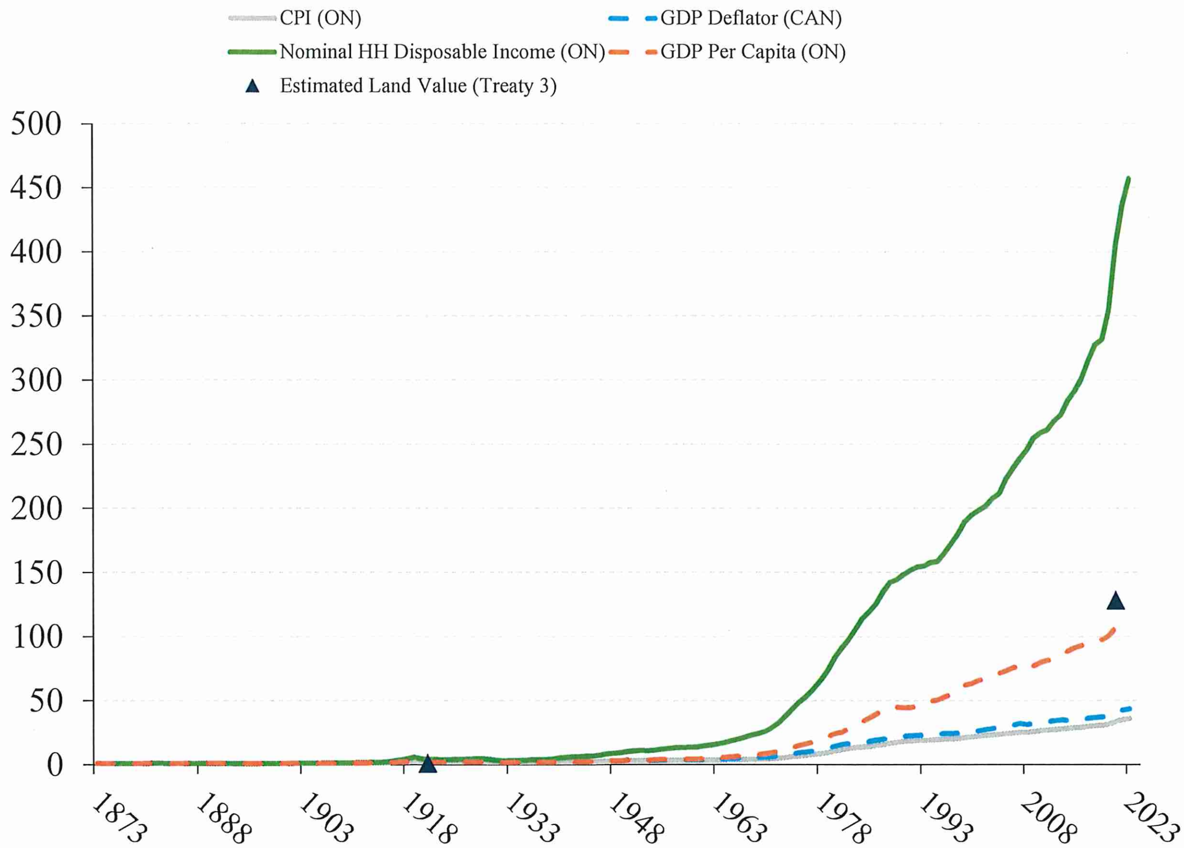
[18] Historical data on land values for the provinces and sub-provincial regions are available through statistical programs like the Census of Agriculture, which is carried out by Statistics Canada, as well as other sources. The most recent Census of Agriculture was undertaken in 2021. *See* Statistics Canada, Guide to the Census of Agriculture, 2021 (Release date: April 14, 2022), https://www150.statcan.gc.ca/n1/pub/32-26-0002/322600022021001-eng.htm. Historical censuses are available through to the 19th century. In my illustrative chart, I utilize farmland value data from the 1921 Census. *See* Department of Trade and Commerce, *Sixth Census of Canada, 1921,* Volume V: Agriculture, https://publications.gc.ca/collections/collection_2017/statcan/CS98-1921-5-1925.pdf. Such data can be combined with geographical information to construct estimates of the value of land that are specific to the Treaty 3 area.

[19] Specifically, it shows the change in the Consumer Price Index ("CPI"), which measures the change in the price of a consistent set of consumer goods and services; and the GDP Deflator, which measures the change in prices in the overall economy, reflecting the changes in the composition of the economy.

Figure 1: Illustration of change in measures over time, 1873–2024 (Indexes, 1873 = 1)



Sources and notes: Statistics Canada.[20, 21]

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[20] CPI per Statistics Canada, Table 18-10-0005-01: Consumer Price Index, Annual Average, Not Seasonally Adjusted. GDP Deflator per Statistics Canada, Table 36-10-0212-01: Long run real income estimates. Nominal household disposable income and GDP per capita via Statistics Canada, Table 36-10-0229-01: Long-run provincial and territorial data. Estimated Land value (Treaty 3) for 1921 via Department of Trade and Commerce, S*ixth Census of Canada, 1921,* Volume V: Agriculture. Estimated Land value (Treaty 3) for 2021 land values is estimated using tables from the 2021 Census of Agriculture. *See* Statistics Canada. Table 32-10-0237-01: Farm capital, Census of Agriculture, 2021, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210023701; Statistics Canada. Table 32-10-0234-01: Land tenure, Census of Agriculture, 2021, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210023401. In both censuses, estimated land value is at the Census Division ("CD") level using the CDs of Kenora and Rainy River.

[21] CPI data for Canada is available from 1921–2024. CPI data for Ontario is only available from 1979–2024. For this exercise it was appropriate to use Ontario CPI data. To estimate CPI data for Ontario back to the year 1921, I used Canada-wide data to calculate the percent change in CPI year-on-year. I confirmed that the Canada-wide percent change tracks roughly the Ontario percent change for the Ontario data available (1979–2024). I then applied the percentage change calculated for Canada for the years 1921–1979 to the Ontario data. To estimate CPI data from 1873–1920, I used Canada-wide GDP Deflator data to calculate the percent change in GDP Deflator year-on-year. I confirmed that the Canada-wide percent change tracks roughly the CPI percent change for the data available (1921–2016). I then applied the percentage change calculated for the GDP Deflator for

* Estimated Land Value in Treaty 3 shown for 1921 and 2021 Census districts most overlapping with the Treaty 3 area (Kenora and Rainy River); in the calculation of damages, additional analyses can tailor these estimates to be more specific to the Treaty 3 area. For this series only, the index at 1921=1, for all of indices 1873=1.

b. *Adjusting for the time value of money*

24. Whichever index (or blend of indexes) is chosen, one must calculate interest on the portion of the Annuity Payments that were not made over the last 150 years by "bringing forward" historical harms into present-day dollars, reflecting that unpaid annuities would have been spent or invested in ways that would bring greater present-day values. As a standard economic text describes: "[a] dollar today is worth more than a dollar tomorrow, because the dollar today can be invested to start earning interest immediately."[22] One can substitute yesterday for today and today for tomorrow in the quote to understand why past losses are worth more today. Interest rates provide a useful metric for assessing the time value of money. This adjustment is standard in economics for calculating "present values" or the value of lost opportunities in the past in present-day dollars (or future costs and benefits in today's dollars).

25. Compensation in today's dollars should reflect the opportunity cost of funds, sometimes called the opportunity cost of capital by economists, and therefore should be based on what an economic actor in the position of the annuity recipients could reasonably have done with the funds had they been received in a timely fashion.[23]

Canada for the years 1873–1921 to the Canada-wide CPI data. GDP Deflator data is available from 1870–2016. For 2016–2024, I calculate and apply the percentage change in the Canada-wide CPI data to estimate the GDP Deflator for 2016–2024. Data for Real Household Disposable Income for Ontario is only available from 1926–2016. I used the percentage change of the Ontario CPI to represent inflation and calculate the values from 1873–1925 and from 2016–2024 and convert to nominal terms using the CPI. GDP Per Capita, Income Based is available from 1926–2016. I used the percentage change of the Ontario CPI to represent inflation and calculate GDP Per Capita values from 1873–1925 and from 2016–2024.

22 Richard A. Brealey, Stewart C. Myers, and Franklin Allen, *Principles of Corporate Finance,* (10th ed.), (New York: McGraw-Hill Irwin, 2011) at 21.

23 *See* Richard A. Brealey, Stewart C. Myers, and Franklin Allen, *Principles of Corporate Finance,* (10th ed.), (New York: McGraw-Hill Irwin, 2011) at 8, describing the opportunity cost of capital in the context of a corporation investing in new projects: "As long as a corporation's proposed investments offer higher rates of return than its shareholders can earn for themselves in the stock market (or in other financial markets), its shareholders will applaud the investments and its stock price will increase. But if the company earns an inferior return, shareholders boo, stock price falls, and stockholders demand their money back so that they can invest on their own. [...] **[The] minimum rate of return is called a hurdle rate or cost of capital. It is really an opportunity cost of capital, because it depends on the investment opportunities available to investors in financial markets.** Whenever a corporation invests cash in a new project, its shareholders lose the opportunity to invest the cash on their own. Corporations increase value by accepting all investment projects that earn more than the opportunity cost of capital." [Emphasis added]

26. At least three plausible alternatives for the proposed Class First Nations are:

a. The funds would have been invested at the same rates as would have been paid had the Crown held the money in trust, consistent with Section 61(2) of the *Indian Act*.[24] The government of Canada provides data on Band Trust Account rates, which are the rates the Crown pays on monies held in trust for First Nations, from Confederation (July 1, 1867) to the present-day.

b. A scenario in which the funds would have been invested in a diversified portfolio of equities and fixed-income securities, with the mix of such securities reflecting the advisable composition for an investor with a similar long-term horizon to First Nations. Financial markets are well studied, and data are generally available back to the early part of the 20th century and reliably extended to the early 19th century.[25]

c. A scenario in which the money could be invested in readily available participating life insurance plans. Life insurance providers have offered "participating" policies in Canada since at least 1871,[26] whereby policyholders' premium payments are pooled into the "participating account" and the life insurance firm invests the funds in the participating account to ensure it is able to meet its guarantees and commitments to policyholders.[27] If the participating account generates earnings in excess of what it needs to meet its obligations, policyholders can share, or "participate", in those earnings by receiving dividends.[28]

27. To summarize the algebra of the methodology for calculating damages arising from the Crown's failure to increase the Annuity Payment over time: for each year from 1873 to today, calculate the annuity based on one more of the indexes plotted in Figure 1 and subtract $5; multiply that shortfall

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24 Aboriginal Affairs and Northern Development Canada, *Manual for the Administration of Band Moneys*, (2012), https://www.sac-isc.gc.ca/eng/1100100032353/1581870508698.

25 *See, e.g.*, Laurence Booth, (2019) "Estimating the Equity Risk Premium and Expected Equity Rates of Return: The Case of Canada," *Journal of Applied Corporate Finance*, 31(1): 113-125; Jeremy J. Siegel, (2005) "Perspectives on the Equity Risk Premium," *Financial Analysts Journal,* 61(6):– 61-73; Sidney Homer and Richard Sylla, *A History of Interest Rates,* (4th ed.) (New Jersey: Wiley, 2005); and Statistics Canada, Table 10-10-0122-01: Financial market statistics, last Wednesday unless otherwise stated, Bank of Canada, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1010012201.

26 Sun Life, *Sun Life Participating Account* (2012) at 1 ("Since 1871, many changes have occurred in the economy and Sun Life's participating (par) account has remained and continues to remain stable, compared to other financial investment vehicles.").

27 Canada Life, *2022 Financial facts – Canada Life combined open participating account*, (2022) at 10.

28 Canada Life, *2022 Financial facts – Canada Life combined open participating account*, (2022) at 10.

by the population eligible for annuities in that year; and multiply that quantity by the present-value factor calculated using the opportunity cost of capital. The sum of that quantity in each year is the compensation owing today.

3. ***Question 3:*** *Is there a methodology or methodologies to calculate or assess the present-day value of losses arising from the Crown's failure to provide the promised Agricultural Benefits?*

28. The Numbered Treaties generally offered First Nations signatories multiple avenues of economic support, such as assistance in agriculture, assistance in stock-raising, assistance in other work, assistance in earning a livelihood through wage labor, farming implements, cattle, chests of carpentry tools, and yearly distribution of twine, net, and ammunition. The academic literature discusses the importance placed upon these support provisions by the signatories to those treaties.[29] While Treaty 3 included provisions for economic support, the Crown's failure to fulfill the First Nation signatories' and adherents' entitlement to receive Agricultural Benefits, an annual Ammunition and Twine Payment, and increase, index or augment the Ammunition and Twine Payment to Treaty 3 First Nations is a quantifiable and compensable harm.

29. Plausible methodologies exist to quantify the compensate harm suffered. If the intent of the Agricultural Benefits provision is to provide the assistance necessary for Treaty 3 First Nations's Bands to transition to an agricultural economy, the provision can be understood—from an economic perspective—as a promise to assist Treaty 3 First Nation members to earn a livelihood through agriculture. To calculate damages arising from the Crown's failure to provide the full complement of Agricultural Benefits, there are at least two methodologies that can be applied:

a. An estimation of the initial capital and equipment costs required to start a farm today, measuring the present-day equivalent value of the promise provided to the Treaty 3 First Nations to enable them to establish farms.

b. An empirical analysis of the historical income disparity between Treaty 3 First Nations people engaged in agriculture and settler/non-Indigenous farmers in the Treaty 3 area.

30. First, interpreting the Agricultural Benefits provision as providing for sufficient resources and instruction to establish farms to provide sustenance, the Treaty 3 signatories suffered a loss of the

[29] *See* Erik Anderson, (2010) "The Treaty Annuity as Livelihood Assistance and Relationship Renewal," Aboriginal Policy Research Consortium International (APRCi). The extent to which such support was provided is a separate issue. *See, e.g.*, Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy (2nd ed.)* (McGill-Queen's University Press, 2019).

ability to provide themselves sustenance from cultivation because of the Crown's failure to provide the livestock, implements, seed and instruction required under the terms of Treaty 3.[30]

31. The method to estimate these harms is what the costs would be to establish such sustenance-providing farms today. One can estimate the costs of establishing an equivalent agricultural operation in the present-day (reflecting the basic understanding that the specific implements that would have been used in 1873 are generally obsolete, but we want to achieve those same goals as what the implements in 1873 would have provided).

32. A farm, ranch, or other agricultural operation requires capital investments in instruction, equipment, structures, livestock, and more. Data on such costs can be used to estimate the modern equivalents of the Treaty 3 supports promised.[31] Data from the Census of Agriculture and other programs can be used to account for the viable forms of agricultural activity undertaken in the Treaty 3 area. This analysis can be tailored to the regions specific to the Treaty 3 area, as data from the 2021 Census of Agriculture provides information on the land use and farm capital by province, Census Agricultural Region ("CAR") and Census Division ("CD").[32]

33. Second, compensation can be informed by an analysis of the historical income inequalities between First Nations people and settlers engaged in agriculture in the area. Two different measures of income inequality can be provided to assess the damages arising from the Crown's failure to provide sufficient Agricultural Benefits, depending on the interpretation of the Agricultural Benefits provision:

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30 Statement of Claim on para 41.

31 The Census of Agriculture provides data on farms according to several dimensions, including size of farm (by annual farm sales), which allows one to tailor the analysis to farms equivalent to the 'start-up' size that is economically most comparable to the farming contemplated by the support provisions. *See* Statistics Canada, Guide to the Census of Agriculture, 2021 (Release date: April 14, 2022), https://www150.statcan.gc.ca/n1/pub/32-26-0002/322600022021001-eng.htm. Other Statistics Canada programs provide annual estimates of relevant variables which can supplement the Census data, which is collected every 5 years. *See, e.g.*, Statistics Canada, Surveys and statistical programs: Value of Farm Capital at July 1, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210005001&pickMembers%5B0%5D=1.2&cubeTimeFrame.startYear=1908&cubeTimeFrame.endYear=2023&referencePeriods=19080101%2C20230101; Statistics Canada, Table 32-10- 0049-01: Farm Operating Expenses and Depreciation Charges (x 1,000), https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210004901.

32 Statistics Canada, Guide to the Census of Agriculture, 2021 (Release date: April 14, 2022), https://www150.statcan.gc.ca/n1/pub/32-26-0002/322600022021001-eng.htm. The analysis can be tailored to CARs and CDs specific to the Treaty 3 area. For an illustration of the boundaries of these areas, *see* Statistics Canada, Census of Agriculture: Reference Maps, 2021, "Ontario Map 1 - 2021 census agricultural regions and census divisions," https://www150.statcan.gc.ca/n1/pub/95-630-x/95-630-x2022001-eng.htm.

a. If the Agricultural Benefits provision is understood to have been a promise to provide the necessary material support and instruction to earn a living engaged in such activities, then the Agricultural Benefits would be expected to make signatories as effective as settlers. The historical income disparity between settlers and Treaty 3 First Nations people engaged in such activities is a relevant economic consideration when determining damages.[33]

b. If the Agricultural Benefits provision is understood to have been a promise for Treaty 3 First Nations to achieve a level of subsistence, then it is reasonable to expect that the support would allow for the signatories to live above the poverty line. Under this approach, one can compare the incomes of farmers in the Treaty Area compared to the income required to live above commonly used definitions of the poverty line, such as Statistics Canada Market Basket Measure ("MBM").[34]

34. To summarize the algebra of the methodology for calculating damages arising from the Crown's failure to the full complement of Agricultural Benefits as promised under the terms of Treaty 3: for each year that the Crown has failed to fulfill such promise, calculate the difference between Treaty 3 First Nation farmers' average income and their settlers' counterparts and/or the MBM; adjust the shortfall for inflation in that year; and multiply that quantity by both the present-value factor calculated using the opportunity cost of capital, and the relevant population.[35] The sum of that quantity each year is the compensation owing today.

4. ***Question 4****: Is it possible to determine the extent to which the purchasing power and/or the real value of the Ammunition and Twine Payment has decreased from 1873 to the present?* ***Question 5:*** *Is there a methodology or methodologies to*

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[33] Incomes for First Nations can be obtained from the Census, other programs by Statistics Canada, and, historically, from the reports of the Department of Indian Affairs. For an example, *see* the Statistics Canada, Table 98-10-0587-01, Employment income statistics by occupation minor group, https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=9810058701. Incomes for settlers can be determined from data provided by Statistics Canada and similar resources, including the Census.

[34] The Market Basket Measure ("MBM") refers to Canada's official measure of poverty based on the cost of a specific basket of goods and services representing a modest, basic standard of living developed by Employment and Social Development Canada ("ESDC"). The MBM thresholds represent the costs of specified qualities and quantities of food, clothing, shelter, transportation and other necessities for a reference family of two adults and two children. *See* Statistics Canada, Dictionary, Census of Population, 2021, Market Basket Measure (MBM) (Release date: November 17, 2021), https://www12.statcan.gc.ca/census-recensement/2021/ref/dict/az/definition-eng.cfm?ID=pop165.

[35] The relevant population depends on the interpretation of the Agricultural Benefits provision. For example, if the provision is understood to apply to those engaged in Agricultural, the relevant population includes only farmers in the Treaty 3 area. If the provision is understood to be a promise to provide subsistence to the entire community, the relevant population is the total population in the Treaty 3 area.

calculate or assess the present-day value of losses arising from the decrease in the value of the Ammunition and Twine Payment since 1873? If no, is it possible to devise a methodology or methodologies for this purpose?

35. Compensation for damages arising from the Crown's failure to provide annual distribution of ammunition and twine can be determined as comprising two elements.

a. First is the actual Ammunition and Twine Payment to be distributed annually. An analysis of how the $1,500 commitment would have increased over time can determine the extent to which Treaty 3 First Nation members should have benefited from this provision.

b. Second is the economic substance of the Ammunition and Twine Payment: the materials themselves are of little utility if the Treaty 3 First Nations did not have sufficient game and fish to hunt, trap, and catch using ammunition and twine.

36. As a baseline, if the $1,500 Ammunition and Twine Payment is only understood to be a specific amount of goods, the monetary value of such goods would have increased over time on pace with inflation. This is a readily estimable quantity with reliable methodologies similar to the indexing methods described above for the cash annuities.

37. From an economic perspective, it is reasonable for the Ammunition and Twine Payment to be understood to be related to the Treaty 3 First Nation population size, especially in connection with the Crown's promise to provide hunting and fishing rights to the Treaty 3 First Nations.[36] As the Treaty 3 First Nation population would have grown, additional ammunition and twine would have been required to hunt and fish (i.e., the $1,500 commitment may be understood as a floor, while increasing as population grows beyond initial level).[37] Based on this understanding, the initial promised amounts should further increase (in addition to inflation) and be indexed to population growth. An analysis of how the $1,500 annual Ammunition and Twine Payment would have changed as the population of the First Nation bands

[36] As stated, in Treaty 3 text, "Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered." *See* Crown-Indigenous Relations and Northern Affairs Canada, "Treaty Texts – Treaty No 3," https://www.rcaanc-cirnac.gc.ca/eng/1100100028675/1581294028469.

[37] I also note that at least one other Numbered Treaties, Treaty 11, contains a similar ammunition and twine provision promised on a per capita basis. *See* Crown-Indigenous Relations and Northern Affairs Canada, "Treaty Texts – Treaty No. 11," https://www.rcaanc-cirnac.gc.ca/eng/1100100028916/1581294101357.

under Treaty 3 changed is possible using current[38] and historic[39] indigenous population statistics from Statistics Canada.

38. The compensation in today's dollars should reflect the opportunity cost of funds. Again, reliable methodologies similar to the indexing methods described above for the cash annuities are applicable here.

39. To summarize the algebra of the methodology for calculating damages arising from the Crown's failure to provide the Ammunition and Twine Payment and increase this payment over time: for each year from 1873 to today, calculate the annual payment amount based on one of the inflation indexes plotted in Figure 1 (further adjusted for population growth if the payment can be understood to increase with Treaty 3 population) and subtract $1,500 for the years in which the Crown provided payment; and multiply that quantity by the present-value factor calculated using the opportunity cost of capital (if it is determined that the payment has similar flexibility to the provision in Treaty 7). The sum of that quantity in each year is the compensation owing today.

40. In addition to actual payment, the economic substance of the Ammunition and Twine Payment needs to be considered when quantifying harm. Other Numbered Treaties, such as Treaty 7, include additional flexibility in the ammunition provision, as it allows for the annual sum to be used for other purposes, should "ammunition become comparatively unnecessary".[40] Because ammunition and twine themselves have little utility without sufficient stock of animals to hunt and fish, economic principles can be applied to estimate the value of the land required to maintain sufficient stocks of game and fish. This additional consideration helps to support an economically meaningful understanding of the Ammunition and Twine Payment. Prices paid by conservancy groups, such as Nature Conservancy Canada, can provide benchmarks for the value of lands maintained in the relatively undisturbed state necessary to support such game populations.[41]

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[38] Statistics Canada, Indigenous Population Profile, 2021 Census, https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/ipp-ppa/index.cfm?Lang=E.

[39] Department of Agriculture, Fourth census of Canada 1901, Table XI, Origins of the People, https://publications.gc.ca/site/eng/9.828248/publication.html.

[40] As stated in Treaty 7, "Provided that if at any future time ammunition become comparatively unnecessary for said Indians, Her Government, with the consent of said Indians, or any of the Bands thereof, may expend the proportion due to such Band otherwise for their benefit." *See* Crown-Indigenous Relations and Northern Affairs Canada, "Treaty Texts: Treaty and Supplementary Treaty no. 7," https://www.rcaanc-cirnac.gc.ca/eng/1100100028793/1581292336658.

[41] For example, the Nature Conservancy of Canada raised $2.85 million to acquire 82 hectares of Town Island owned by the city of Kenora. *See* NWO News, "A property management plan is the next step for Town Island in the Lake of the Woods" (August 31, 2022) https://www.nwonewswatch.com/local-news/a-property-management-plan-is-the-next-step-for-town-island-in-the-lake-of-the-woods-5762634.

41. To estimate the harm caused to the Treaty 3 First Nations by the Crown's failure to provide an annual Ammunition and Twine Payment, it is necessary to consider both the actual Ammunition and Twine Payment and the economic substance of the ammunition and twine, and data is available to implement a reliable methodology.

> *5.* ***Question 6:*** *Do the methodologies referred to in Question 2, 3, and 5 allow for the calculation or assessment of losses on a class wide or aggregate basis?*

42. The methodology for assessing how the Annuity Payment and Ammunition and Twine Payment would have increased using any of the measures discussed would be substantially the same for all proposed Class First Nations, relying on the same data sources and approach. So too would the methods for bringing forward past harms related to the Annuity Payment, Agricultural Benefits and Ammunition and Twine Payment to present-day dollars. Many of the data sources are at the national and provincial level, while others are at a more granular, sub-provincial level. To the extent that any geographic adjustment would be made to reflect, for instance, the difference in prices experienced by remote communities, this analysis would be similar for all First Nations in the proposed Class, as these factors are similar across the area covered by Treaty 3.

IV. CONCLUSION

43. I reaffirm that I have read the guidance from the Court on my duties to the Court to be impartial and provide my best objective evidence and that I have abided by that duty, in conformity with Rule 4.1 Of the Ontario *Rules of Civil Procedure*. My opinions are based on the data and information available to me and subject to the limitations noted in the report.

David J. Hutchings

June 27, 2025

APPENDIX A
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Mr. Hutchings' economics expertise spans a wide array of topics, including tax and transfer pricing, securities and finance, valuation and damages, and antitrust. Deeply experienced in litigation, international arbitration, and investigations, he has led case teams, conducted economic and financial analyses, estimated damages and liability, and performed valuation analyses in complex matters across many jurisdictions, including the US, Canada, the UK, the EU, Latin America, and Australia.

In tax controversy and transfer pricing matters, he has assisted expert witnesses and attorneys for both taxpayers and taxing authorities in jurisdictions around the world. Mr. Hutchings has analyzed intercompany financings for both debt/equity characterization and debt pricing questions, valued closely held corporations, studied issues of cost allocations between related parties, and assessed arm's-length pricing in a variety of contexts. For example, he has worked with financial institutions on allocating losses amongst subsidiaries, studied the sources of value for consumer packaged goods, priced related party transactions for pharmaceutical products, and worked with medical device manufacturers on transfer pricing between related parties. Mr. Hutchings has provided expert reports on tax dispute and transfer pricing issues for both planning and litigation. He has also applied transfer pricing principles in non-tax disputes such as assessing fairness in corporate transactions between related parties.

In antitrust and competition matters, Mr. Hutchings has analyzed anticompetitive effects, evaluated potential remedies, examined the economics of platform markets, and assisted in the preparation of analysis and testimony before courts and government regulators, such as the US Federal Trade Commission (FTC).

In addition, he has quantified harms and foregone benefits, and valued natural resources and treaty entitlements, in several disputes between Canadian First Nations and the Crown, both testifying at trial and consulting to reach pre-dispute resolutions. He has also quantified damages arising from tortious interference, breach of contract, and other contractual and extra-contractual remedies, and provided valuation analyses in numerous commercial disputes.

EDUCATION

J.D., University of Toronto Faculty of Law

M.A., economics, University of Toronto

B.S., mathematics, and B.S., economics, Massachusetts Institute of Technology

PROFESSIONAL EXPERIENCE

2023–Present Analysis Group, Inc.
Managing Principal

2009–2023 The Brattle Group
Interim President (2022–2023)
Principal (2019–2023)
Senior Associate (2016–2019)
Associate (2014–2016)
Research Analyst (2010–2013)
Research Analyst Intern (2009)

SELECTED EXPERT CASE WORK

- ***Opaskwayak Cree Nation, et al. v. His Majesty the King in Right of Canada***
  Federal Court, Canada
  Provided report.

- ***Little Black Bear First Nation and Pasqua First Nation v. Canada (Attorney General)***
  Court of King's Bench, Saskatchewan
  Provided report.

- ***Narcise Alex Kakegabon v. His Majesty the King in Right of Canada as represented by the Attorney General of Canada***
  Ontario Superior Court of Justice
  Provided report.

- ***Chief Jason Gauthier, on behalf of the Missanabie Cree First Nation and on behalf of all Treaty 9 First Nations in the Province of Ontario v. Canada (Attorney General)***
  Ontario Superior Court of Justice
  Provided report.

- ***Malii, et al. v. British Columbia and Canada (Attorney General)***
  Supreme Court of British Columbia
  Provided report.

- ***Red Rock First Nation and Whitesand First Nation v. Canada (Attorney General), et al.***
  Ontario Superior Court of Justice
  Provided reports and trial testimony.

- ***Restoule, et al. v. Canada (Attorney General), et al.***
  Ontario Superior Court of Justice
  Provided reports.

- ***In re: Baker Hughes, a GE Company, Derivative Litigation***
  Court of Chancery, State of Delaware
  Provided deposition.

- **Confidential matter at Internal Revenue Service (IRS) appeals**
  Provided report.

- **Confidential matter at IRS appeals**
  Provided report and interview.

- ***In the Matter of Securitized Asset Backed Receivables LLC Trust 2007-BR2 and Securitized Asset Backed Receivables LLC Trust 2007-BR3***
  Superior Court, State of California, County of Orange, Probate Division
  Provided reports and depositions.

SELECTED CONSULTING EXPERIENCE

Tax Controversy

- **Veolia Environnement S.A. dispute with IRS over worthless stock deduction**
  Analyzed a worthless stock deduction claim in a long-running IRS appeal for Veolia that was ultimately resolved favorably for the client in 2019. Developed a contract-by-contract analysis of profitability and other financial analyses to rebut IRS claims and support valuation and ultimate deduction. The IRS conceded the matter in full.

- ***Athene USA Corporation v. United States of America***
  US District Court, Southern District of Iowa
  Investigated hedging policies of a large insurance firm in a dispute with the IRS over the tax treatments of hedging strategies. Managed a team of that evaluated derivative products and reconciled varying state and federal regulations. Case settled favorably for the client.

- ***Philip Morris USA Inc. v. US Department of Treasury***
  US Court of Claims, Michigan
  Led a team on behalf of Altria Group, Inc. that advised the taxpayer on the taxation of extraterritorial investment gains. The team worked closely with counsel and the finance team to undertake a detailed functional analysis and prepare an analysis on the unitary nature of the businesses at issue. The state tax authority conceded the matter in full.

- Authored a report and provided an interview to the IRS on behalf of a large financial services provider regarding entrepreneurial risk. The matter was resolved favorably for the taxpayer.

- ***American International Group v. United States of America***
  US District Court, Southern District of New York
  Supported Nobel laureate and Columbia University Professor Joseph Stiglitz in his testimony for the US Department of Justice (DOJ) regarding a series of transactions between US and foreign financial institutions that were alleged to have created improper claims of tax benefits. Provided consulting support to attorneys, including those new to the case, and extensive collaboration with Professor Stiglitz on the cash flows and structures of the transactions. The matter settled favorably before trial.

- ***Cross Refined Coal, LLC and USA Refined Coal, LLC, Tax Matters Partner v. Commissioner of Internal Revenue***
  US Tax Court
  Provided consulting support to a taxpayer in developing expert strategy and supported testifying economist. Developed economic and financial analyses to model risk exposure to partnership and individual investors to assess the substance of the transaction. The client prevailed in a rare bench opinion.

- ***Reddam v. Commissioner of Internal Revenue***
  Blum v. Commissioner of Internal Revenue
  US Tax Court
  Performed extensive analyses of two Offshore Portfolio Investment Strategy (OPIS) transactions in support of an expert's reports and testimony for the IRS. Investigated the pre-tax profitability and non-tax business purposes of these transactions and provided consulting support to the attorneys and expert through trial and appeal. Involved valuing a number of exotic options using analytic and simulation methods, comparing the transactions to alternative investment strategies, and reconciling transaction documents. Both cases were decided for the IRS in US Tax Court and upheld by two different circuit courts.

- ***AD Global FX Fund v. United States of America***
  AD Equity Investment Fund LLC v. United States of America

AD Global 2001 Fund LLC v. United States of America
US District Court, Southern District of New York
Analyzed a series of different tax-motivated transactions, including a Son of BOSS structure to offset significant income on taxpayers' tax returns. Provided consulting support to DOJ attorneys on valuing options, evaluating the economic substance, and identifying economic similarities among a wide set of transactions. Worked with an expert to develop testimony and prepare for deposition. The matter settled favorably before trial.

- ***RERI Holdings I, LLC and Harold Levine, Tax Matters Partner v. Commissioner of Internal Revenue***
  US Tax Court
  Supported an expert in the preparation of testimony in US Tax Court regarding the valuation of residual interests in a long-running dispute with the IRS. The analysis turned on assessing the different risks of near-term and long-term cash flows and how to properly apportion value. The matter was decided favorably for the IRS with heavy reliance on the expert's opinions.

- ***Exelon Corporation v. Commissioner of Internal Revenue***
  US Tax Court
  Provided support to MIT Sloan School of Management Professor Stewart Myers in his testimony for Exelon in its tax dispute regarding Section 1031 like-kind exchanges and Exelon's purchase of coal-fired electrical plants. Analysis involved extensive financial analysis of leases, options, and assets.

Transfer Pricing

- For a large Canadian financial institution in a transfer pricing dispute with the Canada Revenue Agency, developed evidence regarding the proper bargaining framework for allocating losses.

- ***Eaton Corporation and Subsidiaries v. Commissioner of Internal Revenue***
  US Tax Court
  Involved in analyzing all aspects of Eaton's transfer pricing policies in its dispute with the IRS regarding cancelled advance pricing agreements. Worked with a team to coordinate the testimony of six experts, with primary responsibility for the main transfer pricing economist's report, testimony, and trial preparation. Collaborated closely with the trial team before and at trial to craft an effective direct testimony presentation and provide real-time support for redirect testimony and cross-examination topics for opposing experts. The matter was decided favorably for the client.

- ***The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue***
  US Tax Court
  Analyzed The Coca-Cola Company's transfer pricing policies in its dispute with the IRS involving over $9 billion in proposed adjustments. Involved in detailed functional and transfer pricing analysis of the best method.

- Developed rebuttal testimony to IRS expert testimony in a major transfer pricing dispute regarding the manufacture of medical devices. Analysis required novel valuation techniques for in-process R&D, a detailed functional analysis of the industry, and adjustments to accounting statements to properly measure economic profit for a system profit-style analysis. The matter settled favorably before trial.

- Supported an industry expert in credit analysis in forming an opinion on the reasonableness of an intercompany debt guarantee between a US parent and its Australian subsidiary in a dispute with the Australian taxing authority.

- Provided consulting support to counsel on various intercompany financing arrangements. This included analyzing the creditworthiness of several corporate subsidiaries in support of an academic expert, formerly of a major credit rating agency, providing analysis and opinion as to the implied credit rating of each as independent entities.

Commercial Damages

- Provided consulting support in valuing and evaluating valuation issues, including the reliability with which damages might be measured, in disputes involving pharmaceutical products, biopharmaceutical products, nascent technology, platforms, patents, natural resources, and trade secrets.

- ***Jicarilla Apache Nation f/k/a Jicarilla Apache Tribe v. United States of America***
  US Court of Federal Claims
  Provided expert support in a successful dispute over the US government's imprudent management of tribal funds. Involved benchmarking the performance of a fixed-income portfolio strategy over time, constructing alternative portfolios and simulating their performance, and rebutting the government experts' claims regarding the prudent time horizon for investment and the liquidity requirements of the fund. The Nation prevailed in its Phase I claims and settled with the government on favorable terms before trial for Phase II.

- ***Confidential Arbitration***
  Netherland Arbitration Institute
  Led a team that analyzed the financial performance of a major consumer-goods manufacturer and its relationships with distributors in Eastern Europe in defending a claim for breach of contract and tortious interference. Assessed whether damages could be reliably estimated. Involved detailed review of financial statements, assessing the reasonableness of forecasted future earnings, proper allocation of overhead costs, and conceptual issues of perpetual growth and the use of ex ante and ex post data in damages estimates. The arbitral panel ultimately decided favorably for the client.

- Provided expert support in preparing testimony on irreparable harm for a global human resources company defending itself against a competitor's efforts to obtain a preliminary injunction that would have barred the client from selling certain software products.

- Analyzed a failed Latin American merger at the center of an arbitration dispute over whether the merger was improperly prevented by one of the parties. Provided expert support in estimating the value of the potential merger based on market reactions and the erosion of the value over time. As part of the work, reviewed proposal documents to demonstrate why certain analyses by the other party's advisors that had been used to conclude the merger was ill-advised rested on faulty assumptions. The matter settled favorably before the hearing.

- ***Abaclat and Others v. Argentine Republic***
  International Centre for Settlement of Investment Disputes
  For an international arbitration proceeding related to the Argentine Republic's handling of the sovereign debt crisis of the early 2000s, aided an expert in developing testimony analyzing the appropriateness of sovereign responses to the crisis and critiquing opposing reports that the actions taken were inappropriate. In particular, examined the value of then-novel GDP-indexed bonds, compared their returns to other holdings, and analyzed how their use contributed to economic recovery.

- ***Meda AB v. 3M Company, 3M Innovative Properties Company, and Riker Laboratories, Inc.***
  US District Court, Southern District of New York
  Part of a team that developed testimony and analysis quantifying damages for a Fortune 500 firm involved in a dispute over whether it had disclosed a regulatory pricing restriction when it sold its pharmaceuticals division. As part of the analysis, assessed the degree to which information had already been encompassed in disclosures made during the acquisition process.

- In a securities class action arising from alleged manipulation by a US cosmetics company involving unique hybrid securities, assisted an expert in advising counsel on the range of damages to plaintiffs using event-study methodology and derivative pricing.

Securities and Finance

- ***Ambac Assurance Corporation v. EMC Mortgage LLC f/k/a EMC Mortgage Corporation, J.P. Morgan Securities LLC f/k/a Bear, Stearns & Co. Inc., and JPMorgan Chase Bank, N.A.***

  Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., and Bank of America Corp.

  Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., and Bank of America Corp.

  Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation v. First Franklin Financial Corporation, Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Mortgage Lending, Inc., and Merrill Lynch Mortgage Investors

  MBIA Insurance Corporation v Credit Suisse Securities, DLJ Mortgage Capital, and Select Portfolio Servicing
  Supreme Court of the State of New York, County of New York
  Supported Nobel laureate and Columbia University Professor Joseph Stiglitz in developing testimony for financial guaranty insurers in a series of disputes against mortgage banks related to alleged breaches of representations and warranties regarding the quality of mortgage assets in RMBS and allegedly fraudulent activity. Additionally, led the team that developed econometric analyses around RMBS securitizations. Involved in all phases of case development and preparation with attorneys, including in-person deposition and cross-examination support of both sides' experts, working on summary judgment motions, and trial preparation for relevant matters.

- ***Abu Dhabi Commercial Bank, et al. v. Morgan Stanley & Co., et al.***
  US District Court, Southern District of New York
  In a matter related to the collapse of a structured investment vehicle (SIV) during the 2008 financial crisis, developed direct and rebuttal reports on behalf of named plaintiffs on the structure of the SIV market, the importance of credit rating agencies, and the impact of misrepresentations by credit rating agencies on the plaintiffs. This work involved extensive analysis of documents, review of relevant literature, and critiquing opposing experts' claims. The matter settled favorably before trial.

- Provided historic valuations for the acquirer of a fund that failed during the 2008 credit crisis for the purpose of making whole the investors in the fund that had alleged imprudent management. Securities analyzed and valued included a variety of mortgage-backed securities, collateralized debt obligations, and other asset-backed securities.

Regulation and Public Policy

- ***Kelsey Cascadia Rose Juliana, et al., v. United States of America, et al.***
  US District Court, District of Oregon
  Supported, pro bono, Professor Joseph Stiglitz in his expert testimony regarding the economics of climate change and consulted with counsel on economic and remedy issues.

- ***In the Matter of Certain Microprocessors, Components Thereof, and Products Containing Same***
  US International Trade Commission
  Working on behalf of respondents Intel, Hewlett-Packard, and Apple in a Section 337 investigation at

the US International Trade Commission (ITC), prepared testimony and rebuttal testimony for Nobel laureate and Columbia University Professor Joseph Stiglitz demonstrating that an ITC exclusion order preventing the importation of the respondents' accused products was adverse to the public interest and should not issue. Provided pre-trial and trial support to Professor Stiglitz and attorneys. This work involved the estimation of market impacts and the economic effects of injunctions on markets and the economy as a whole. The investigation was ultimately decided for the respondents.

- ***Dellway, et al. v. National Asset Management Agency, Ireland and the Attorney General***
  High Court of Ireland
  In a case challenging the legitimacy of the Irish government's response to that country's banking crisis, prepared testimony demonstrating that the government's seizure of a multibillion-dollar loan portfolio secured by the properties of Paddy McKillen, a leading Irish investor, was economically inappropriate given Irish economic conditions and the quality of the loans themselves. In addition to a review of the economic literature and best practices for such restructuring, this work required a thorough analysis of the history of the banking sector in Ireland, an in-depth study of Mr. McKillen's companies' operations, and contrasting the stated goals of the government's response with the likely outcomes in this specific case. The matter made its way to the Supreme Court of Ireland, where the testimony of experts was favorably cited, and the matter concluded successfully for Mr. McKillen.
- ***United Airlines, Inc. and American Airlines, Inc. v. City of Chicago***
  US Circuit Court, State of Illinois, County of Cook, Chancery Division
  For a matter in which United Airlines and American Airlines sought to enjoin the City of Chicago from commencing an extensive expansion program at Chicago O'Hare International Airport, provided consulting support for attorneys on behalf of the City, demonstrating that the airlines failed to meet the economic criteria for obtaining a preliminary injunction. This work involved assessing the welfare gains from more efficient airport operations, analyzing the effect of major construction during an economic downturn, and investigating the impact on airlines' operations due to the expansion. This case was successfully resolved with a settlement that allowed the City of Chicago's construction plans to proceed.
- Part of the team that supported Professor Joseph Stiglitz in preparing an amicus brief submitted to the Supreme Court of the United States in Kiobel, related to the economics of the Alien Tort Statute and the Torture Victim Protection Act.

Antitrust and Competition

- ***Epic Games, Inc. v. Apple, Inc.*; *Epic Games, Inc. v. Google LLC, et al.***
  US District Court, Northern District of California
  Led a team that supported the experts in the *Epic v. Apple* litigation, including trial expert report development, rebuttal reports, and deposition and trial support to attorneys.
- Provided consulting support in an expedited matter before the FTC involving leading health care software providers. Prepared analysis and potential testimony for a number of experts on industry structure, technology interfaces, allegedly anticompetitive acts, and the implications for general public welfare, especially in light of changing regulations in the health care market (e.g., the Affordable Care Act, ICD-10). Focused particularly on developing analyses that estimated the magnitude of the welfare impact. Assisted attorneys in crafting their initial complaint and subsequent briefings with the FTC, after which the matter was resolved favorably for the client.
- Analyzed potential anticompetitive effects of transactions for clients considering merger in Canada. Considered potential remedies that the Canadian Competition Bureau could require.
- ***US Airways, Inc. v. Sabre Holdings Corp.***
  US District Court, Southern District of New York
  Led a team that investigated the allegedly anticompetitive behavior of a major travel technology firm,

supporting experts in reports, deposition, and trial. The analysis focused on the economics of platform markets, understanding the flows of commissions and fees between firms, and the willingness of consumers to pay for certain services.

- On behalf of a leading producer of pulp and paper products, supported an expert in the development of testimony rebutting claims that the firm had exercised monopsony power against lumber harvesters. The analysis involved the economics of the lumber industry supply chain and demonstrated that the client did not possess monopsony power over the plaintiffs.

ARTICLES AND PUBLICATIONS

"The Proper Measure of Profits for Assessing Market Power," with Michael Cragg, Patrick Holder, and Bin Zhou, *Antitrust* (March 21, 2023)

"An Economic Framework for Identifying the Tested Party," with Michael I. Cragg, *Tax Notes* (November 30, 2015)

Public Disclosure versus Confidentiality in Liquid Fuel Markets, with Evan Cohen, Michael Cragg, and Bin Zhou, The Brattle Group (January 2015)

Can the U.S. Congressional Ethanol Mandate be Met?, with Metin Celebi, Evan Cohen, Michael Cragg, and Minal Shankar, The Brattle Group (May 2010)

PRESENTATIONS AND SPEAKING ENGAGEMENTS

"Undoing Colonial Behaviour in the Modern Era: An Economic Approach to Indigenous Property Rights," 80 years of Joseph Stiglitz: An economy for a just, free, and prosperous society (May 24, 2023)

"Transfer Pricing Amid COVID-19: Trends, Developments and Practical Guide," with Jamie Eagan, Robin Hart, and Michael Cragg, The Knowledge Group (October 8, 2020)

"Joint Venture Products and Distribution: The Case of the NFL Sunday Ticket Challenge," with Michael Cragg (July 6, 2020)

"Transfer Pricing Regulation in the 2020 Landscape: Maximizing Opportunities and Overcoming Challenges," with Robin Hart, The Knowledge Group (March 13, 2020)

"Virtual PE Challenge," with Bin Zhou and Jehan deFonseka, National Association for Business Economics Transfer Pricing Symposium (July 18, 2018)

"Recent Trends and Developments on the Organization for Economic Cooperation and Development's (OECD) Transfer Pricing Guidelines: What You Need to Know," with Evan Cohen, OECD (February 15, 2018)

"Global Transfer Pricing Litigation: Trends and Developments Explored," with Christine Polek, The Knowledge Group (August 17, 2017)

Appendix B
Materials Relied Upon

Academic Literature

Erik Anderson, (2010) "The Treaty Annuity as Livelihood Assistance and Relationship Renewal," Aboriginal Policy Research Consortium International (APRCi).

Jeremy J. Siegel, "Perspectives on the Equity Risk Premium," Financial Analysts Journal, 61(6), (Nov. - Dec., 2005), pp. 61-73.

Laurence Booth, (2019) "Estimating the Equity Risk Premium and Expected Equity Rates of Return: The Case of Canada," Journal of Applied Corporate Finance, 31(1): 113-125.

Richard A. Brealey, Stewart C. Myers, and Franklin Allen, Principles of Corporate Finance, 10th Edition, (New York: McGraw-Hill Irwin, 2011).

Robert Metcs, (2008) "The Common Intention of the Parties and the Payment of Annuities Under the Numbered Treaties: Who Assumed the Risk of Inflation?" Alberta Law Review, Vol. 46 (1): 41-76.

Sarah Carter, Lost Harvests: Prairie Indian Reserve Farmers and Government Policy (2nd ed.) (McGill-Queen's University Press, 2019).

Shiela Jones, (2018) "Treaty Annuity Right: The Right No One Wanted to Talk About. Until Now," Frontier Backgrounder, Vol. 124.

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Case Documents

Statement of Claim, *Wabaseemoong Independent Nations, Chief Waylon Scott v. Attorney General of Canada,* CV-24-00000091-00CP, Ontario Superior Court of Justice, December 12, 2024.

Government Publications and Similar

Aboriginal Affairs and Northern Development Canada, Manual for the Administration of Band Moneys, (2012), https://www.sac-isc.gc.ca/eng/1100100032353/1581870508698.

Crown-Indigenous Relations and Northern Affairs Canada, "Treaty Texts – Treaty No. 11," https://www.rcaanc-cirnac.gc.ca/eng/1100100028916/1581294101357.

Crown-Indigenous Relations and Northern Affairs Canada, "Treaty Texts: Treaty and Supplementary Treaty no. 7," https://www.rcaanc-cirnac.gc.ca/eng/1100100028793/1581292336658.

Crown-Indigenous Relations and Northern Affairs Canada, "Treaty Texts: Treaty No 3," https://www.rcaanc-cirnac.gc.ca/eng/1100100028675/1581294028469.

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Department of Trade and Commerce, Sixth Census of Canada, 1921, Volume V: Agriculture, https://publications.gc.ca/collections/collection_2017/statcan/CS98-1921-5-1925.pdf.

Other Public Sources

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NWO News, "A property management plan is the next step for Town Island in the Lake of the Woods" (August 31, 2022) https://www.nwonewswatch.com/local-news/a-property-management-plan-is-the-next-step-for-town-island-in-the-lake-of-the-woods-5762634.

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Statistics Canada

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Statistics Canada, Guide to the Census of Agriculture, 2021 (Release date: April 14, 2022), https://www150.statcan.gc.ca/n1/pub/32-26-0002/322600022021001-eng.htm.

Statistics Canada, Surveys and statistical programs: Value of Farm Capital, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210005001&pickMembers%5B0%5D=1.2&cubeTimeFrame.startYear=1908&cubeTimeFrame.endYear=2023&referencePeriods=19080101%2C20230101.

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Statistics Canada. Table 18-10-0005-01. Consumer Price Index, Annual Average, Not Seasonally Adjusted, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000501.

Statistics Canada. Table 36-10-0212-01: Long run real income estimates, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3610021201.

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June 26, 2025

David J. Hutchings
Analysis Group
1190 Avenue des Canadiens-de-Montreal
Tour Deloitte
Suite 1500
Montreal, QC H3B 0G7

Via Email

RE : Instructions for Expert re Preparation of Report to be used in *Wabaseemoong Independent Nations v. AGC* – CV-24-00000091-00CP

I confirm that we have retained you to provide expert opinion evidence regarding methodologies for the calculation of damages on a class-wide basis pursuant to an motion for certification of the above-noted class action in the Ontario Superior Court of Justice. In particular, I confirm our instructions are to complete a report in which you answer the following questions:

Question 1: Is it possible to determine the extent to which the purchasing power and/or the real value of the Annuity Payment has decreased from 1873 to the present?

Question 2: Is there a methodology or methodologies to calculate or assess the present-day value from losses arising from the decrease in the value of the Annuity Payment since 1873? If no, is it possible to devise a methodology or methodologies for this purpose?

Question 3: Is there a methodology or methodologies to calculate or assess the present-day value of losses arising from the Crown's failure to provide the promised Agricultural Benefits?

Question 4: Is it possible to determine the extent to which the purchasing power and/or the real value of the Ammunition and Twine Payment has decreased from 1873 to the present?

Question 5: Is there a methodology or methodologies to calculate or assess the present-day value of losses arising from the decrease in the value of the Ammunition and Twine Payment since 1873? If no, is it possible to devise a methodology or methodologies for this purpose?

Question 6: Do the methodologies referred to in Question 2, 3, and 5 allow for the calculation or assessment of losses on a class wide or aggregate basis?

Thank you for your attention to the foregoing.

Sincerely,
MAURICE LAW

Per: ______________________________
Anjalika Rogers
Counsel for the Plaintiff

FORM 53

Courts of Justice Act

ACKNOWLEDGMENT OF EXPERT'S DUTY

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

Plaintiff

- and -

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

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is **DAVID J. HUTCHINGS** I live at ....***Mount Royal***......................... *(city)*, in the ....***province***........................ *(province/state)* of ....***Quebec***............................ *(name of province/state)*.

2. I have been engaged by or on behalf of **WABASEEMOONG INDEPENDENT NATIONS** to provide evidence in relation to the above-noted court proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

   (a) to provide opinion evidence that is fair, objective and non-partisan;

   (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and

   (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

5. I certify that I am satisfied as to the authenticity of every authority or other document or record to which I have referred in the expert report accompanying this form, other than:

   a. documents and records provided to me by or on behalf of the party intending to call me as a witness and consisting of evidence or potential evidence in the court proceeding that I have analysed or interpreted in my report;

   b. authorities and other documents and records to which I have referred in my report **only** in order to address how another expert witness in the same court proceeding has used them in their report; and

   c. the following authorities, documents and records, for which I have doubts as to their authenticity as detailed within my report:

Date ....27 June 2025..........................

Signature

Court File No. CV-24-00000091-00CP

WABASEEMOONG INDEPENDENT NATIONS, *et al* -and- HIS MAJESTY THE KING IN RIGHT OF CANADA

Plaintiff(s) Defendant(s)

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced in Kenora

MOTION RECORD OF THE PLAINTIFF
Motion for Certification

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