

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**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

- and -

**ANIMAKEE WA ZHING #37 FIRST NATION, COUCHICHING FIRST NATION,
GAKIJIWANONG ANISHINAABE NATION, MITAANJIGAMIING FIRST NATION,
NAICATCHEWENIN FIRST NATION, NAOTKAMEGWANNING FIRST NATION,
NIGIGOONSIMINIKAANING FIRST NATION, RAINY RIVER FIRST NATIONS, SEINE
RIVER FIRST NATION**

Intervenors

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

**MOTION RECORD OF THE INTERVENORS
(Motion for Certification)**

JFK LAW LLP
65 Queen Street West
Suite 1100
Toronto, ON M5H 2M5

Robert Janes, KC (LSO #33464P)
Email: rjanes@jfkllaw.ca

Lara Koerner-Yeo (LSO #75765B)

Email: lkoerneryeo@jfkclaw.ca

Bryce Lansdell (LSO #91569V)

Email: blansdell@jfkclaw.ca

Tel: 1-888-687-8388

Fax: 437-293-5367

Lawyers for the Intervenors

TO: **MAURICE LAW**
602 12th Avenue SW
Suite 100
Calgary, AB T2R 1J3

Ron S. Maurice (LSO #36428D)
Tel: 403-266-1201 ext. 719
Email: rmaurice@mauricelaw.com

Ryan M. Lake (LSO #60165W)
Tel: 403-266-1201 ext. 236
Email: rlake@mauricelaw.com

Anjalika Rogers (LSBC #508438)
Tel: 778-847-4911
Email: arogers@mauricelaw.com

Geneviève Boulay (LSO #74227K)
Tel: 514-264-3576
Email: gboulay@mauricelaw.com

Kelley V. Humber (LSO #89406W)
Tel: 403-266-1201 ext. 222
Email: khumber@mauricelaw.com

Fax: 403-266-2701

Lawyers for the Plaintiffs, 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

AND TO: **ATTORNEY GENERAL OF CANADA**
Office of the Deputy Attorney General of Canada

50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8

Heather Thompson

Email: Heather.Thompson@justice.gc.ca

Genevieve Tremblay-Tardif

Email: Genevieve.Tremblay-Tardif@justice.gc.ca

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

Lawyers for the Defendant, His Majesty the King in Right of Canada as
represented by the Attorney General of Canada

INDEX

Tab	Document	Page
1.	Order of Regional Senior Justice Newton, dated May 12, 2026	1
2.	Affidavit of Chief Linda McVicar, affirmed May 1, 2026	4
A.	Exhibit 1- Statement of Claim- Court File No. CV-25-00000087-0000	12
B.	Exhibit 2 - Map of the Anishinaabe Nation in Treaty #3	30

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE

)
)
)

TUESDAY , THE 12th DAY

W. DANIAL NEWTON

OF MAY, 2026

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)

ORDER

THIS APPLICATION, made by Animakee Wa Zhing #37 First Nation, Couchiching First Nation, Gakijiwanong Anishinaabe Nation, Mitaanjigamiing First Nation, Naicatchewenin First Nation, Naotkamegwaning First Nation, Nigigoonsiminikaaning First Nation, Rainy River First Nations, and Seine River First Nation (jointly the “**Proposed Added Parties**”), for an order pursuant to *Rule 13.01* of the *Rules of Civil Procedure*, and sections 14 and 35 of the *Class Proceedings Act*, granting leave to intervene as Added Parties in this proceeding at the Certification Hearing to be heard on August 5-7th, 2026.

UPON noting the consent of the Plaintiff, Wabaseemoong Independent Nations et al., to the application;



AND UPON noting that the Parties and Proposed Added Parties have agreed that, if added to this proceeding, the Proposed Added Parties may make submissions with respect to:

1. The form and scope of the relief to be granted in certifying the proposed class action;
2. The scope of the stay to be granted, if any, and its application to the action commenced by the Added Parties in Court File No. CV-25-00000087-0000 (the **"Treaty 3 Multi-Plaintiff Action"**);
3. The process for opting-out and/or opting-in to the proposed class action; and
4. The coordination of the Treaty 3 Multi-Plaintiff Action with the proposed class action (collectively, the **"Added Party Issues"**).

THEREFORE, UPON APPLICATION on behalf of the Proposed Added Parties, the Plaintiff, and the Defendant **AND BY CONSENT, THE COURT ORDERS THAT:**

1. the Proposed Added Parties be appointed as Added Parties in this proceeding for the Certification Hearing dated August 5-7th, 2026, and:
 - a. file a factum of not more than twenty-five pages in respect of the Added Party Issues;
 - b. make oral submissions in respect of the Added Party Issues; and,
 - c. File the affidavit of Chief McVicar for the purposes of the Certification Hearing dated August 5-7th, 2026.
2. That there shall be no costs for this application.

Simranjeet Kaur

Digitally signed by Simranjeet

Kaur

Date: 2026.05.25 08:38:40 -05'00'

Registrar for
The Honourable Justice W. Danial Newton

WABASEEMOONG INDEPENDENT NATIONS et al. - and -
Plaintiffs / Responding Parties

HIS MAJESTY THE KING IN RIGHT OF CANADA³
Defendant / Responding Party

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Kenora

ORDER

JFK LAW LLP

65 Queen Street West
Suite 1100
Toronto, ON M5H 2M5

Robert Janes, KC (LSO #33464P)

Email: rjanes@jfkllaw.ca

Lara Koerner-Yeo (LSO #75765B)

Email: lkoerneryeo@jfkllaw.ca

Bryce Lansdell (LSO #91569V)

Email: blansdell@jfkllaw.ca

Tel: 1-888-687-8388

Fax: 437-293-5367

Counsel for the Proposed Added Parties

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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)

AFFIDAVIT OF CHIEF LINDA MCVICAR
Affirmed May 1, 2026

I, **Chief Linda McVicar**, of the City of Winnipeg, in the Province of Manitoba,
AFFIRM:

1. I am a member and the duly elected Chief of Animakee Wa Zhing #37 First Nation ("**Animakee Wa Zhing**"). I have served as Chief for five years and was most recently elected in April 2025. Prior to serving as Chief, I was an elected Councillor for two years. As such, I have personal knowledge of the facts set out herein, except where the facts are stated to be based on information and belief, in which case I believe them to be true.

Animakee Wa Zhing

2. Animakee Wa Zhing is a community within the Anishinaabe Nation in Treaty #3. We are recognized as a First Nation and a “band” within the meaning of the *Indian Act*, RSC 1985, C I-5. Animakee Wa Zhing members are “Aboriginal peoples of Canada” within the meaning of section 35 of the *Constitution Act*, 1982. We have two reserves on Lake of the Woods in Northwestern Ontario.
3. Animakee Wa Zhing is the collective rights holder of Treaty 3 rights with members who are entitled to receive annuity payments under Treaty 3.
4. Animakee Wa Zhing and our members are Treaty 3 beneficiaries.

Treaty 3 Annuities Action

5. Animakee Wa Zhing is a Plaintiff in a Treaty 3 annuities action (Court File No. CV-25-00000087-0000) with the following eight (8) other Treaty 3 Communities (collectively, the “**Plaintiff Treaty 3 Communities**”):
 - a. Couchiching First Nation;
 - b. Gakijiwanong Anishinaabe Nation;
 - c. Mitaanjigamiing First Nation;
 - d. Naicatchewenin First Nation;
 - e. Naothamegwaning First Nation;
 - f. Nigigoonsiminikaaning First Nation;
 - g. Rainy River First Nations; and
 - h. Seine River First Nation.
6. A copy of the Statement of Claim in Court File No. CV-25-00000087-0000 is attached as **Exhibit “1”** to my affidavit.

7. The Plaintiff Treaty 3 Communities are all member communities of the Anishinaabe Nation in Treaty #3 and Grand Council Treaty #3. Our communities are all located within Treaty 3 territory in Northwestern Ontario. Attached to my affidavit as **Exhibit “2”** is a copy of a map of the Anishinaabe Nation in Treaty #3 that shows where the Plaintiff Treaty 3 Communities are located in Treaty 3 territory.
8. The Plaintiff Treaty 3 Communities are all collective Treaty 3 rights holders as successor communities of the Anishinaabeg of Rainy River and Lake of the Woods, who entered Treaty 3.
9. Our communities are referred to as First Nations and “bands” within the meaning of the *Indian Act*. We have members who are “Aboriginal peoples” within the meaning of section 35 of the *Constitution Act, 1982*, and who are entitled to receive annuity payments under Treaty 3.

Parties’ Position on Plaintiff Treaty 3 Communities Being Added as Parties for the Certification Motion

10. Our Treaty 3 annuities action has issues in common with the proposed Treaty 3 class action advanced by Wabaseemoong Independent Nations in this proceeding (“**Wabaseemoong’s action**” or “**proposed class action**”). The Certification Motion in Wabaseemoong’s action is scheduled for August 5-7, 2026.
11. The Plaintiff Treaty 3 Communities have obtained the consent of the Wabaseemoong to be added as parties for the Certification Motion and to make submissions on:
 - a. the relief to be granted in certifying Wabaseemoong’s action as a class action;
 - b. the scope of an order staying our Treaty 3 annuities action, if any, that may be granted by the Court;

- c. the process for opting-out and/or opting-in to the proposed class action;
and
- d. the coordination of the proposed class action with the Treaty 3 annuities action.

12. Canada has confirmed that it will not oppose our motion to be added as parties for the Certification Motion.

13. I make this affidavit in support of the Plaintiff Treaty 3 Communities being added as parties to this proceeding in order to make submissions on the issues presented below at the Certification Motion.

Differences between Wabaseemoong's Proposed Class Action and our Treaty 3 Annuities Action

14. The proposed class action and our Treaty 3 annuities action were both issued at the Kenora Courthouse of the Ontario Superior Court in December 2024, and November 2025, respectively. Both claims have issues in common related to the Treaty 3 annuity promises and the honour of the Crown.

15. While there is overlap in the pleadings, there are important differences between the claims. Here are some examples of key differences:

- a. Wabaseemoong's claim pleads breach of fiduciary duty and breaches of multiple Treaty 3 promises, including Treaty promises on \$5 annuity payments, ammunition and twine payments, and agricultural benefits. Our Treaty 3 annuities action focuses on Treaty 3 negotiations and annuity promises. We do not include Treaty promises on ammunition and twine payments or agricultural benefits in our claim; we also do not plead a Crown breach of fiduciary duty;
- b. Our Treaty 3 annuities action pleads that the Treaty Commissioners negotiated Treaty 3 in bad faith when they:
 - i. failed to share the impact of inflation on the value and/or purchasing

- power of annuity payments;
- ii. failed to share the possibility that the Crown could augment the annuity payments; and
 - iii. knowingly made false statements about their mandate to negotiate the annuities provisions;
- c. Wabaseemoong's claim focuses on \$5 annuity payments to Treaty 3 members, while our Treaty 3 annuities action includes Treaty 3 annuities promises of \$25 to Chiefs, \$15 to Councillors, and \$5 to members; and
- d. Wabaseemoong's claim is being advanced as a class action. If certified, all Treaty 3 Communities would be automatically included in the claim unless they opt out. We advance our claim as an action that only binds the Plaintiff Treaty 3 Communities.

Interests Engaged and Certification Motion Submissions

16. Collective Treaty 3 rights and history are raised in Wabaseemoong's proposed class action. Because of this, the Plaintiff Treaty 3 Communities have a direct legal interest in Wabaseemoong's claim.
17. Our interests are also engaged in Wabaseemoong's proposed class action because the communities that make up the Anishinaabe Nation in Treaty #3, including the Plaintiff Treaty 3 Communities, are the proposed members of the First Nations Class.
18. Further, the interests of the Plaintiff Treaty 3 Communities are engaged because of the overlap between Wabaseemoong's proposed class action and our Treaty 3 annuities action and because in the Notice of Motion for Certification, Wabaseemoong seeks an order staying any other proceeding before the Ontario Superior Court of Justice based on the facts giving rise to Wabaseemoong's proposed class action.

19. At the Certification Motion, we would share our perspective on the following issues. These issues all relate to our primary concern that we be able to advance our Treaty 3 annuities action should the Court certify Wabaseemoong's proposed class action.
20. As a starting point, if Wabaseemoong's proposed class action is certified, we want to ensure that any certification order does *not* stay our Treaty 3 annuities action and is tailored appropriately to allow our Treaty 3 annuities action to proceed. Wabaseemoong and the Plaintiff Treaty 3 Communities are in agreement that any order for a stay should not apply to our Treaty 3 annuities action.
21. Second, and relatedly, we wish to ensure that there are effective mechanisms in place to allow for the appropriate coordination of Wabaseemoong's class action, if certified, and our Treaty 3 annuities action, and to avoid conflicting procedural or substantive rulings in the respective proceedings.
22. Third, the Plaintiff Treaty 3 Communities and Wabaseemoong both seek to ensure that common issues on annuities in Wabaseemoong's proposed class action are coordinated with the annuity issues advanced in our Treaty 3 annuities action.
23. Fourth, at present, we intend to opt out of Wabaseemoong's proposed class action, if certified, to continue to pursue our Treaty 3 annuities action. Accordingly, it is important to us that any opt-out procedure that is in the certification order, if granted, is clear, practical, and readily explains the steps Treaty 3 Communities need to take to continue to advance their own claims.
24. In sum, we would not take a position on *whether* Wabaseemoong's proposed class action should be certified. We respect Wabaseemoong's decision to advance its proposed class action. For us, it is a matter of the *how* of certification, i.e. how the court may certify the proposed class action to ensure that any certification is fashioned in a way that allows our Treaty 3 annuities

action to proceed. To that end, we support an order that will allow our Treaty 3 annuities action and the proposed class action, if certified, to be case managed together.

25. I make this affidavit for no improper purpose.

AFFIRMED remotely by Chief Linda)
McVicar, stated as being located in)
the City of Winnipeg, in the Province of)
Manitoba, before me at the City of)
Toronto in the Province of Ontario on)
May 1, 2026, in accordance with O.)
Reg 431/20, Administering Oath or)
Declaration Remotely)

DocuSigned by:
Bryce Lansdell
7C469986EE99476...
Bryce Lansdell
LSO # 91569V

Signed by:
Chief Linda McVicar
21B67789217545C...
Chief Linda McVicar

**This is Exhibit "A"
to the Affidavit of
Chief Linda McVicar
affirmed May 1, 2026**

DocuSigned by:

Bryce Lansdell

7C469986EE99476

**Bryce Lansdell
LSO # 91569V**

12



COURT FILE NO. _____

ONTARIO**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ANIMAKEE WA ZHING 37 FIRST NATION, COUCHICHING FIRST
NATION, GAKIJIWANONG ANISHINAABE NATION, MITAANJIGAMIING
FIRST NATION, NAICATCHEWENIN FIRST NATION,
NAOTKAMEGWANNING FIRST NATION, NIGIGOONSIMINIKAANING
FIRST NATION, RAINY RIVER FIRST NATIONS,
AND SEINE RIVER FIRST NATION

PLAINTIFFS

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

DEFENDANT

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

13

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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of Superior Court of Justice
court office: 216 Water Street
Kenora, Ontario P9N 1S4

TO: HIS MAJESTY THE KING IN RIGHT OF CANADA

Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

A. CLAIM

1. The Plaintiffs seek the following relief:
 - a. A declaration that the Crown failed to act honourably by failing to negotiate honestly or in good faith with respect to the Annuity Provisions;
 - b. A declaration that the Annuity Provisions of Treaty 3 require the annual payment of monetary amounts equivalent to the value and/or purchasing power in 1873 of the nominal dollar figures set out in the Treaty;
 - c. A declaration that the honour of the Crown requires Canada to adjust its Annuity Payments under the Treaty so that they are equivalent to the value and/or purchasing power in 1873 of the nominal dollar figures set out in the Treaty;
 - d. A declaration that, from 1873 to the present, the Crown has breached its obligations under the Treaty by failing to make Annuity Payments as provided for in the Treaty in amounts that are equivalent to the value and/or purchasing power in 1873 of the nominal dollar figures set out in the Treaty;
 - e. A declaration that, from 1873 to the present, the Crown has failed to act honourably, by failing to make Annuity Payments provided for in the Treaties in amounts that are equivalent to the value and/or purchasing power in 1873 of the nominal dollar figures set out in the Treaty;
 - f. A declaration that, from 1873 to the present, the Crown has breached its obligations under the Treaty and/or failed to act honourably by failing to take steps to eliminate the negative impacts on the Plaintiffs

of any reduction in the value and/or purchasing power of the monetary amounts set out in the Treaty;

g. Equitable compensation;

h. Damages;

i. Post-judgment interest;

j. Punitive damages;

k. Costs; and

l. Such further and other relief as this Honourable Court may deem just.

B. OVERVIEW

2. Following multiple years of attempted negotiations, the Anishinaabeg of Rainy River and Lake of the Woods and the Crown entered into Treaty 3 in 1873. Treaty 3 includes provisions (“Annuity Provisions”), requiring annual payments to Chiefs, Councillors and members of the Anishinaabe Nation in Treaty #3 (“Annuity Payments”).
3. During negotiations of Treaty 3, the Crown, as represented by Treaty Commissioners, breached its duty to negotiate in good faith by:
 - a. failing to disclose the effect of inflation on the value and/or purchasing power of Annuity Payments; and
 - b. failing to disclose the possibility of including a provision for the augmentation of the Annuity Payments if the Anishinaabeg territory in Rainy River and Lake of the Woods became more productive.
4. The Crown also breached its duty to negotiate honestly when Treaty Commissioners actively misrepresented the amount that they were able to offer for Annuity Provisions pursuant to their mandate from the Crown.

5. Properly interpreted, the Annuity Provisions in Treaty 3 are intended to provide members of the Anishinaabe Nation in Treaty #3 with annual Annuity Payments equivalent to the real value and/or purchasing power of the nominal dollar figures agreed to in 1873.
6. By refusing to adjust the nominal dollar figures of the Annuity Payments since 1873 to account for changes in value and/or purchasing power, the Crown has breached the Treaty and its duty of diligent implementation, has frustrated the purpose of the Treaty, and has failed to act honourably.
7. Canada's breach of Treaty 3 has occurred each year since 1873 and continues to occur each year that the Annuity Payments are not adjusted to account for changes in value and/or purchasing power.

C. THE PARTIES TO THE CLAIM

The Plaintiffs

8. The Plaintiffs bring this claim on their own behalf as member communities of the Anishinaabe Nation in Treaty #3. Specifically, each of the following Treaty 3 Anishinaabe communities bring this action:
 - a. Animakee Wa Zhing 37 First Nation;
 - b. Couchiching First Nation;
 - c. Gakijiwanong Anishinaabe Nation;
 - d. Mitaanjigamiing First Nation;
 - e. Naicatchewenin First Nation;
 - f. Naotkamegwanning First Nation;
 - g. Nigigoonsiminikaaning First Nation;

h. Rainy River First Nations; and

i. Seine River First Nation.

9. Each of the Plaintiffs is an Indian Band under the *Indian Act*, RSC 1985, c I-5 as amended, and are successors of the Anishinaabeg of Rainy River and Lake of the Woods (the “Anishinaabeg”) who entered Treaty 3. The Plaintiffs are First Nation peoples within the meaning of section 35 of the *Constitution Act, 1982*.

10. The traditional territory inhabited by the Plaintiffs included the region in and about the watershed of the Lake of the Woods, including the Rainy River and the lands known as the Boundary Waters.

The Defendant

11. His Majesty the King in Right of Canada (“Canada” or “the Crown”) is primarily responsible for carrying out and honouring the Crown’s obligations under Treaty 3. One of those Crown obligations is the payment of annuities to First Nations.

12. The Defendant is represented in this action by his designated Minister, the Attorney General of Canada, in accordance with section 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, as amended.

D. FACTUAL BACKGROUND GIVING RISE TO THE CLAIM

Crown-Anishinaabeg Relations prior to Treaty

13. Prior to Treaty in 1873, the Anishinaabeg had longstanding relationships with the British and the French before them. Founded on the principles of mutual respect, mutual responsibility, reciprocity, and renewal, the British and the Anishinaabeg maintained relationship through annual gift-giving around sacred “council fires” as expressions of mutual generosity, goodwill, and interdependence.

14. Although the Anishinaabeg had previously engaged in some trade with Europeans, experience with the Dominion of Canada’s monetary economy before Treaty was

limited. The Anishinaabeg were not familiar with concepts of monetary inflation or its potential impacts on the value and/or purchasing power of money over time.

Initial Treaty Discussions and Anishinaabeg 1869 Treaty Demands

15. Commencing in or around 1869, representatives of the Dominion of Canada began meeting with Anishinaabeg Chiefs to discuss securing peaceful relations to allow for Canadian westward expansion and settlement. Various options were considered by the parties, ranging from the negotiation of transitory rights of passage in particular contexts to a more comprehensive treaty.
16. For the purposes of any potential treaty, the Anishinaabeg expected to obtain certain guarantees of material and other benefits which would assist them in improving their standard of living while allowing them to continue to remain on their lands and continue their way of life.
17. With these objects in mind, on January 22, 1869, a group of Anishinaabeg Chiefs submitted a document to the Crown setting out their detailed expectations for financial payments to be considered in any future treaty negotiations (the “1869 Demands”).

1871-1872 Treaty Negotiations

18. In 1871, after two years of periodic negotiations, the Dominion of Canada appointed Wemyss Simpson, Simon Dawson and Robert Pither as Treaty Commissioners for the purposes of negotiating a treaty with the Anishinaabeg. The Treaty Commissioners were empowered to act as representatives of Her Majesty the Queen, pursuant to instructions given by the Privy Council for the Dominion of Canada (the “Dominion Government”).
19. The Dominion Government’s instructions given to the Treaty Commissioners included an Order in Council in April/May 1871 authorizing the Treaty Commissioners to provide twelve dollars per annum for a family of five, with a

discretionary power to add small sums in addition when the families exceed that number.

20. The Treaty Commissioners of 1871-1872 were aware of the negotiation of the Robinson-Superior and Robinson-Huron Treaties (the “Robinson Treaties”) in 1850 and knew the terms of those treaties included provisions allowing for increases to annual annuity payments based on increased productivity and value of the territory. While the Anishinaabeg had some limited knowledge of the Robinson Treaties, they were not familiar with the specific terms of those treaties.
21. In and around this time, the Treaty Commissioners developed a draft of the Treaty (the “Draft Treaty”). The Draft Treaty included provisions, similar to those used in the Robinson Treaties, to increase the amount of the Annuity Payments if the territory became more productive in future.
22. The Draft Treaty was not shared with the Anishinaabeg, nor was the possibility of including provisions that would progressively increase the amount of the Annuity Payments presented to them. Instead, the Treaty Commissioners offered the Anishinaabeg an Annuity Payment of \$3 per person.
23. The Anishinaabeg communicated to the Treaty Commissioners their desire for Annuity Payments that would provide for material benefits commensurate with the wealth of resources available in their lands and consequently rejected the Crown’s proposal.
24. Negotiations between the Treaty Commissioners and the Anishinaabeg in 1871-1872 were therefore unsuccessful.

Treaty Negotiations Reconvene in September 1873

25. In 1873, Canada appointed Alexander Morris, Simon Dawson, and J.A.N. Provencher as new Treaty Commissioners. Alexander Morris, the Lieutenant-Governor of the Northwest Territories, was appointed as Chief Commissioner.

Commissioner Morris had negotiated the Robinson Treaties and was familiar with the terms of those treaties.

26. On August 5, 1873, Canada issued an Order in Council granting the Treaty Commissioners the authority to provide Annuity Payments, fixed annually, to the extent of \$7 per person and \$15 per person as an initial cash present.
27. In 1873, Commissioner Morris received materials related to the negotiations in 1871-1872. These materials included the Draft Treaty, which Commissioner Morris reviewed and edited.
28. The Anishinaabeg and the Treaty Commissioners met at the Northwest Angle in September 1873, with substantive negotiations commencing on October 1, 1873, and continuing for three days. Since the Anishinaabeg did not speak or read English, the negotiations were carried out with the assistance of interpreters, who interpreted the statements of each party and communicated them to the other party.
- Breach of the Duty to Negotiate Honourably and in Good Faith: Disclosures***
29. In negotiations with the Anishinaabeg, the honour of the Crown required that the Treaty Commissioners negotiate in good faith. The duty to negotiate in good faith required, among other things, that the Crown disclose all relevant factors to the Anishinaabeg in negotiations.
30. During the three days of negotiations between the Treaty Commissioners and the Anishinaabeg, the Crown breached its duty to negotiate in good faith and fell below the standard of honourable conduct required by failing to disclose to the Anishinaabeg the effect of inflation on the value and/or purchasing power on Annuity Payments.
31. The Treaty Commissioners also breached the Crown's duty to negotiate in good faith and fell below the standard of honourable conduct required by failing to disclose the possibility of including a provision for the augmentation of the Annuity Payments

if the Anishinaabeg territory became more productive, despite this having been included in the Draft Treaty and used in the Robinson Treaties.

32. The Anishinaabeg were not equipped to acquire information about inflation or the terms of the Draft Treaty independently and were thus vulnerable to being misled by Crown representations which failed to disclose this information.
33. In failing to make these disclosures, the Crown deprived the Anishinaabeg of the opportunity to negotiate Annuity Provisions that could explicitly allow for periodic adjustments, based either on inflation or the increased value of the Anishinaabeg territory through an augmentation clause. The Crown's breach of its duty to negotiate honourably and in good faith, and the corresponding losses born by the Anishinaabeg, entitle the Plaintiffs to declaratory relief and compensation in the form of equitable compensation and damages.

Breach of the Duty to Negotiate Honourably and in Good Faith: Honesty

34. The honour of the Crown and the duty to negotiate in good faith also required the Treaty Commissioners to be truthful when making representations to the Anishinaabeg and to avoid even the appearance of sharp dealing.
35. During negotiations with the Anishinaabeg, the Treaty Commissioners breached this duty to negotiate honestly and in good faith by actively misrepresenting the authority granted to them by Order in Council for the negotiation of Annuity Provisions.
36. On October 1, 1873, Commissioner Morris informed the Anishinaabeg gathered at Northwest Angle that he only had authority to offer \$10 per person on the spot and \$5 per person every year thereafter, and that this was all that was within his power.
37. On October 2, 1873, the Anishinaabeg countered by repeating their 1869 Demands for Annuity Payments, comprised of \$15 to all individuals in 1873 and \$10 per person for all the years thereafter, as well as \$50 to Chiefs, \$20 to Councillors, and \$15 to warriors. In response, Commissioner Morris stated that he was a servant of the Queen and had no authority to give more than his original offer of \$10 per

person on the spot and \$5 per person every year thereafter. He then threatened to leave without making a treaty if the Anishinaabeg did not accept his offer.

38. By representing to the Anishinaabeg that the Crown had only granted authority to the Treaty Commissioners to offer a \$5 Annuity Payment, despite having authority to increase the annuity to \$7, and by threatening to leave negotiations on that basis, the Crown failed to negotiate honestly and in good faith, engaged in sharp dealing, and fell below the standard of honourable conduct required.

39. This breach on the part of the Treaty Commissioners prevented the Anishinaabeg from being adequately informed during negotiations and deprived the Anishinaabeg of the opportunity to negotiate higher Annuity Provisions. The Crown's breach of its duty to negotiate honourably, honestly, and in good faith, and the corresponding losses born by the Anishinaabeg, entitle the Plaintiffs to declaratory relief and compensation in the form of equitable compensation and damages.

Signing of the Treaty and the Treaty 3 Memorial

40. On October 3, 1873, the Anishinaabeg and Her Majesty the Queen in Right of Canada entered into Treaty 3. In the Anishinaabe language, the Treaty is referred to as Manidoo Mazina'igan, translated as the Sacred Papers of Treaty 3. In English, the Treaty is formally referred to by the Crown as Treaty 3 between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods.

41. After the Anishinaabeg and the Treaty Commissioners reached agreement on the terms of the Treaty, the Treaty Commissioners completed the preparation of a written memorial of the terms of the Treaty, for the signatures of the Anishinaabeg Chiefs and the Treaty Commissioners (the "Treaty 3 Memorial").

42. The Treaty 3 Memorial was completed on the basis of a text prepared by officials of the Government of Canada and provided in draft to the Treaty Commissioners. The

Treaty 3 Memorial was written in English with the signs or signatures of the Anishinaabeg Chiefs and Treaty Commissioners affixed to the document.

The Treaty 3 Annuity Promises

43. As part of the Treaty with the Anishinaabe Nation in Treaty #3, the Crown undertook to provide Annuity Payments to the beneficiaries of Treaty 3. The Treaty 3 Memorial recorded the annuity promises in the following Annuity Provisions:

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.

...

It is further agreed between Her Majesty and the said Indians that each Chief duly recognized as such shall receive an annual salary of twenty-five dollars per annum, and each subordinate officer, not exceeding three for each band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer as aforesaid shall also receive once in every three years a suitable suit of clothing; and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal.

44. In brief, the Annuity Provisions provide for the Crown to make annual Annuity Payments, and set the amount of those payments at \$25 to Chiefs, \$15 to Councillors, and \$5 to other members of the Anishinaabe Nation in Treaty #3 (the "Nominal Annuity Amounts").

The Honour of the Crown and Interpretation of Annuity Provisions

45. Treaty 3 is enforceable by the Plaintiffs against Canada as a *sui generis* agreement embodying both Anishinaabe law and the common law, which was solemnly entered into between the Anishinaabe Nation in Treaty #3 and the Crown with the intention

of having legal effect. Post-1982, the Treaty has constitutional force and is part of the supreme law of the land pursuant to sections 35(1) and 52(1) of the *Constitution Act, 1982*. Accordingly, the entitlement to perpetual Annuity Payments and their adjustment constitutes a Treaty right that is hereby recognized and affirmed pursuant to section 35(1).

46. The honour of the Crown requires that Canada take a broad, purposive approach to the interpretation of the promises made in the Treaty.

47. Properly interpreted, the Annuity Provisions are intended to provide members of the Anishinaabe Nation in Treaty #3 with Annuity Payments in amounts equivalent to the value and/or purchasing power, in 1873, of the Nominal Annuity Amounts of \$5, \$15, and \$25.

The Duty of Diligent Implementation

48. In addition to taking a broad purposive approach to the interpretation of Treaty promises, the Crown has a duty to act in a manner that is consistent with the honour of the Crown in the implementation and performance of its Treaty promises and obligations.

49. The honour of the Crown holds the Crown to a high standard of honourable dealing. It requires the Crown to act honourably in a way that allows the parties to accomplish the written, oral, and implied terms of the Treaty and the expectations of the Anishinaabe Nation in Treaty #3, as understood by both the Crown and the Anishinaabe Nation in Treaty #3 according to their respective laws and governance systems.

50. The honour of the Crown requires the Crown to diligently and effectively fulfil its Treaty obligations in a way that advances the purpose behind Treaty promises according to both the letter, and the spirit and intent of the Treaty.

51. This duty also extends to resolving issues and claims related to implementing the terms of the Treaty.

Post-Treaty Breach of Treaty and Duty of Diligent Implementation

52. Canada, and specifically the Minister of Indigenous Services, is responsible for implementing the terms of the Treaty in respect of the Annuity Payments, including by distributing Annuity Payments to members of the Anishinaabe Nation in Treaty #3 through Indigenous Services Canada's Indian Moneys Program.
53. Since 1873, significant levels of inflation in Canada have substantially eroded the real value and/or purchasing power of the Annuity Payments for members of the Anishinaabe Nation in Treaty #3.
54. In 1909, Chiefs of the Anishinaabe Nation in Treaty #3 sent a petition to the Crown regarding the diminishing value and/or purchasing power of the Annuity Payments being provided by the Crown. The Chiefs raised with the Crown the Crown's failure to provide the material value that was promised in Treaty 3 and asked the Crown to rectify this error and provide Annuity Payments reflecting the value and/or purchasing power that was agreed to by way of the Treaty.
55. Similar complaints were renewed in 1924 and 1947.
56. Since entering Treaty 3 in 1873, Canada knew or ought to have known that the effect of inflation would significantly decrease the value and/or purchasing power of the Annuity Payments if paid in the Nominal Annuity Amounts.
57. Despite that knowledge, Canada has at no time increased Annuity Payments to amounts that would reflect the original value and/or purchasing power in 1873. Canada still pays only \$25 to Chiefs, \$15 to Councillors, and \$5 to members of the Anishinaabe Nation in Treaty #3.
58. By refusing to adjust the Annuity Payments since 1873 to account for the changing value and/or purchasing power, Canada has unjustifiably breached the Treaty, has failed to act liberally and justly in accordance with the intention of the Treaty, has failed to diligently implement the Treaty promises as properly interpreted, and has frustrated the purpose of the Annuity Provisions.

59. Today the value and/or purchasing power of the Annuity Payments is a small fraction of what the Annuity Payments were worth in 1873 when the Treaty was entered into. The Annuity Payments no longer make a significant contribution to the welfare of members of the Anishinaabe Nation in Treaty #3, who have suffered a loss in value and/or purchasing power each year since 1873 due to Canada's inaction.
60. Canada's failure to take steps to eliminate the negative impacts on the Plaintiffs of any reduction in the value and/or purchasing power of the Annuity Payments also represents a breach of the Treaty and of the Crown's duty of diligent implementation.
61. Canada's breaches of Treaty 3 occur each year that the Annuity Payments are not adjusted to account for changes in value and/or purchasing power. The Crown's breaches of the Annuity Provisions and the corresponding past and on-going monetary losses born by the Anishinaabe Nation in Treaty #3 entitle the Plaintiffs to declaratory relief and compensation in the form of equitable compensation and damages.

E. PUNITIVE DAMAGES

62. Canada's conduct in failing to increase the Annuity Payments to account for changes in value and/or purchasing power is high-handed, malicious, arbitrary, highly reprehensible, or otherwise in bad faith. This conduct warrants the Court's condemnation in the form of an award of punitive damages.

F. LOCATION OF TRIAL

63. The Plaintiffs request that this action be tried at Kenora, Ontario.

27

November 18, 2025

JFK LAW LLP

Suite 1100
65 Queen Street West,
Toronto, Ontario M5H 2M5

Robert Janes, KC (LSO #33646P)

Lara Koerner-Yeo (LSO #75765B)

Bryce Lansdell (LSO #91569V)

Tel/Fax: (888) 687-8388

rjanes@jfkllaw.ca

lkoerneryeo@jfkllaw.ca

blansdell@jfkllaw.ca

Lawyers for the Plaintiffs

ANIMAKEE WA ZHING et al.
Plaintiffs

-and-

HIS MAJESTY THE KING IN RIGHT OF CANADA
Defendant

28

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Kenora

STATEMENT OF CLAIM

JFK LAW LLP

Suite 1100
65 Queen Street West,
Toronto, Ontario M5H 2M5

Robert Janes, KC (LSO #33646P)

Email: rjanes@jfkllaw.ca

Lara Koerner-Yeo (LSO #75765B)

Email: lkoerneryeo@jfkllaw.ca

Bryce Lansdell (LSO #91569V)

Email: blansdell@jfkllaw.ca

Tel/Fax: (888) 687-8388

Lawyers for the Plaintiffs

**This is Exhibit "B"
to the Affidavit of
Chief Linda McVicar
affirmed May 1, 2026**

DocuSigned by:

Bryce Lansdell

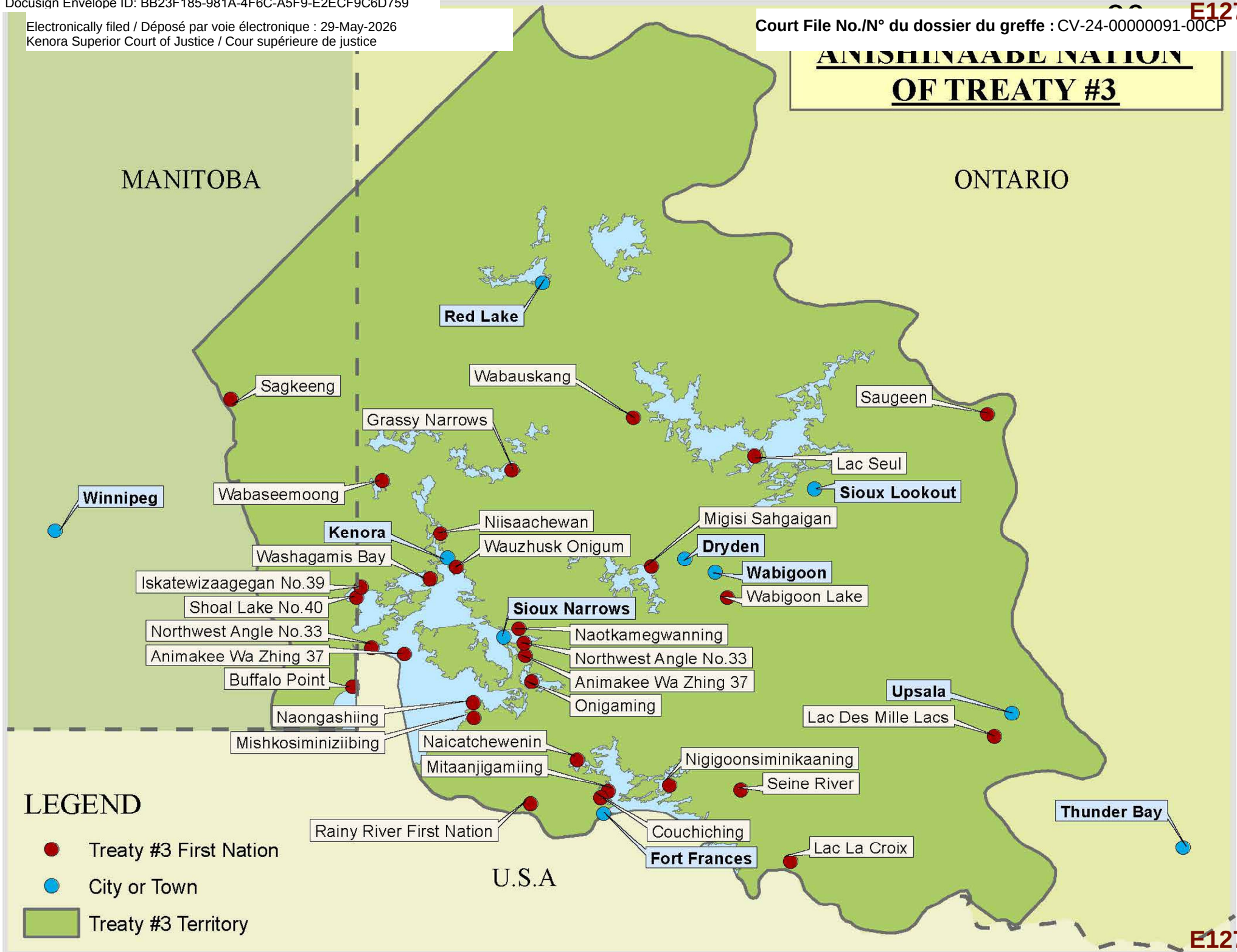
76460086EE00476...

**Bryce Lansdell
LSO # 91569V**

ANISHINABE NATION
OF TREATY #3

MANITOBA

ONTARIO



LEGEND

- Treaty #3 First Nation
- City or Town
- Treaty #3 Territory

Electronically filed / Déposé par voie électronique : 29-May-2026
Kenora Superior Court of Justice / Cour supérieure de justice

WABOOLEMOONS INDEPENDENT NATIONS et al.
Plaintiffs / Responding Parties

- and -

~ 1 E128
Court File No./N° du dossier du greffe : CV-24-00000091-00CP
HIS MAJESTY THE KING IN RIGHT OF CANADA
Defendant / Responding Party

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Kenora

**AFFIDAVIT OF CHIEF LINDA MCVICAR
Affirmed May 1, 2026**

JFK LAW LLP
65 Queen Street West
Suite 1100
Toronto, ON M5H 2M5

Robert J.M. Janes, KC (LSO #33464P)
Email: rjanes@jfkllaw.ca

Lara Koerner-Yeo (LSO #75765B)
Email: lkoerneryeo@jfkllaw.ca

Bryce Lansdell (LSO #91569V)
Email: blansdell@jfkllaw.ca

Tel: 1-888-687-8388
Fax: 437-293-5367

Lawyers for the Proposed Interveners

WABOZHEMOONS INDEPENDENT NATIONS et al.

Plaintiffs / Responding Parties

- and -

HER MAJESTY THE KING IN RIGHT OF CANADA

Defendant / Responding Party

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Kenora

**MOTION RECORD OF THE INTERVENORS
(Motion for Certification)**

JFK LAW LLP

65 Queen Street West
Suite 1100
Toronto, ON M5H 2M5

Robert Janes, KC (LSO #33464P)

Email: rjanes@jfkllaw.ca

Lara Koerner-Yeo (LSO #75765B)

Email: lkoerneryeo@jfkllaw.ca

Bryce Lansdell (LSO #91569V)

Email: blansdell@jfkllaw.ca

Tel: 1-888-687-8388

Fax: 437-293-5367

Lawyers for the Intervenor