Q.B. No. 2655 of 1987

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

CHIEF MYLES VENNE, and all of the Councillors of the Lac La Ronge Indian Band, representing themselves and all other members of the Lac La Ronge Indian Band, and all members of the James Roberts Band of Cree Indians and Amos Charles Band of Cree Indians, and all of the lawful successors of those two Bands,

PLAINTIFFS

- and -

HER MAJESTY THE QUEEN In Right of Canada, and HER MAJESTY THE QUEEN in Right of the Province of Saskatchewan

DEFENDANTS

AMENDED STATEMENT OF CLAIM

AMENDED WITH THE CONSENT OF THE DEFENDANTS AND PURSUANT TO THE ORDER OF MR. JUSTICE GROTSKY AT THE PRETRIAL CONFERENCE HELD ON OCTOBER 31ST, 1996

WOLOSHYN MATTISON
Barristers and Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

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DEFENDANTS

NOTICE TO DEFENDANTS

1. The Plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court unless:

within twenty (20) days if you were served in Saskatchewan

within thirty (30) days if you were served elsewhere in Canada or in the United States of America

within forty (40) days if you were served outside Canada and the United States of America

(excluding the day of service) you serve a Statement of Defence on the Plaintiff and file a copy thereof in the office of the Local Registrar of the court for the Judicial Centre of Regina.

2. In many cases a Defendant may have the trial of the action held at a Judicial Centre other than the one at which the Statement of Claim is issued. Every Defendant should consult her lawyer as to her rights.

3. This Statement of Claim is to be served within six (6) months from the date on which it is issued.

4. This Statement of Claim is issued at the above-named Judicial Centre the "14th" day of "July", A.D. 1987.

(SEAL)

"IRENE M. BEITEL"
Deputy Local Registrar

AMENDED STATEMENT OF CLAIM

FACTS:

1. The Plaintiff, Chief Myles Venne, is the Chief of the Lac La Ronge Indian Band and duly elected as such pursuant to the bylaws, customs and practices in force and effect in the Lac La Ronge Indian Band, and pursuant to the provisions of the Indian Act, R.S.C. 1970, c. I-6.

2. The Plaintiff Councillors of the Lac La Ronge Indian Band have all been duly elected to the Band Council of the Lac La Ronge Indian Band pursuant to the bylaws, customs and practices in force and effect in the Lac La Ronge Indian Band, and pursuant to the provisions of the Indian Act, R.S.C. 1970, c. I-6.

3. The Plaintiffs, being the rest of the members of the Lac La Ronge Indian Band, are all descendants of former members of the James Roberts Band and Amos Charles Band of Cree Indians.

4. All of the above named Plaintiffs reside on or about the various reserves set aside for the Lac La Ronge Indian Band in the Province of Saskatchewan, are Indians within the meaning of the Indian Act, R.S.C. 1970, c. I-6, and are members of the Lac La Ronge Indian Band.

5. The Plaintiffs are suing on their behalf and on behalf of all past members of the James Roberts Band of Cree Indians and Amos Charles Band of Cree Indians, and on behalf of all

successors of these two Bands of Cree Indians, ascertained and unascertained, and their legal and personal representatives.

6. The Plaintiffs are suing on their behalf and on behalf of all past, present and future members of the Lac La Ronge Indian Band, as such bands are defined in the Indian Act, ascertained and unascertained and their legal and personal representatives.

7. The Defendants, Her Majesty the Queen in Right of Canada, sometimes referred to as the Crown in Right of Canada or the Government of Canada, and Her Majesty the Queen in Right of the Province of Saskatchewan, sometimes referred to as the Crown in Right of Saskatchewan or the Government of Saskatchewan, are the lawful Governments of Canada and Saskatchewan, respectively.

8. The Plaintiffs claim the right to sue Her Majesty the Queen in Right of Canada, in this Court, pursuant to section 17 of the Federal Court Act, R.S.C. 1985, c.F-7, and pursuant to the inherent jurisdiction of this Court.

9. By a document entitled "Adhesion by Cree Indians", dated February 11, 1889, (hereinafter referred to as the "Adhesion Agreement") Her Majesty the Queen and certain members of the Wood Cree Tribe of Indians entered into a Treaty Agreement. The said Adhesion Agreement provided, inter alia:

a. That the Wood Cree Tribe of Indians would transfer, surrender and relinquish to Her Majesty the Queen all right, title and interest in certain

described parcels of land, and to all other lands wherever situated in the North-West Territories or elsewhere in Her Majesty's Dominion;

b. That the said Indian Bands would accept the benefits, payments and reserves promised to the Indians adhering to the Treaty of Fort Pitt or Carlton, which subsequently became known as Treaty No. 6;

c. That the named parties would abide by, carry out and fulfil all of the stipulations, obligations and conditions contained in the Treaty of Fort Pitt or Carlton, which subsequently became known as Treaty No. 6.

10. The Plaintiffs say that the said Adhesion Agreement was duly executed by representatives of Her Majesty the Queen and by representatives of the James Roberts Band of Cree Indians and the William Charles Band of Cree Indians, all of whom were known at the time as the Lac La Ronge and Montreal Lake Indians.

11. The Plaintiffs say that the Adhesion Agreement was a valid and legally binding treaty between Her Majesty the Queen and the James Roberts Indian Band thereby creating valid and legally enforcable rights and obligations on both of the parties, which remain valid and enforcable according to law today.

12. The Plaintiffs further say that in 1905, by amendment to the British North America Act the Province of Saskatchewan entered the Canadian Confederation, and the Crown in Right of Canada and the Crown in Right of Saskatchewan, assumed all legal obligations of Her Majesty the Queen regarding the land that formed Saskatchewan and the people occupying those lands.

More specifically, all of the legal obligations of Her Majesty the Queen pursuant to the Adhesion Agreement have now been assumed by the Defendants hereto, the Crown in Right of Canada and the Crown in Right of Saskatchewan.

13. In 1910, by Order of Her Majesty's Privy Council, the James Roberts Band of Cree Indians (which subsequently became known as the Lac La Ronge Indian Band) divided into the James Roberts Band and the Amos Charles Band. These two Bands maintained their separate existence until 1949, at which time they were consolidated into one Band, being the Lac La Ronge Indian Band, the Plaintiffs in this action. This consolidation was done pursuant to the Order of Her Majesty's Privy Council.

14. The Plaintiffs state that articles of treaty, known as Treaty No. 6, were made and concluded on the 23rd day of August, the 28th day of August and the 9th day of September, A.D. 1876, between Her Majesty the Queen of Great Britain and Ireland, by certain commissioners, and the Plain and Wood Cree Tribes of Indians, and other tribes of Indians, inhabitants of the country therein defined and described by their Chiefs.

15. The Plaintiffs state that Treaty No. 6 provided, inter alia, in consideration of the release and surrender of certain described parcels of land, that Her Majesty the Queen undertook to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of The Dominion of Canada, provided all such reserves were not to exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, and that the Chief Superintendent of Indian Affairs was to

depute and send a suitable person to determine and set apart the reserves for each Band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them. The Plaintiffs say that these provisions were specifically adopted by the parties executing the Adhesion Agreement.

16. The said Treaty further provided, inter alia:

a. That Her Majesty the Queen would pay to the Indians a sum for ammunition and twine "in the same proportion to the number of Indians now treated with as the amounts for those two items as mentioned in Treaty No. 6, bore to the number of Indians then treated with"; and

b. That the Indians will in all respects obey and abide by the law and maintain peace and good order between each other and also between themselves and other Tribes of Indians and between themselves and Her Majesty's subjects, whether Indians or whites.

The Plaintiffs say that these provisions were specifically adopted by the parties executing the Adhesion Agreement.

17. By the Natural Resources Transfer Agreement dated March 20th, 1930, between the Government of the Dominion of Canada and the Government of the Province of Saskatchewan, which was subsequently ratified by the British North America Act, 1930, The Saskatchewan Natural Resources Act, S.C. 20-21 George V, 1930, Chapter 41 and An Act Relating to the Transfer of Natural Resources to The Province, S.S. 20 George V, 1930, Chapter 87, the

interest of the Crown in all Crown lands, mines and minerals was transferred from the Government of Canada to the Government of the Province of Saskatchewan.

18. The said Natural Resources Transfer Agreement provides, inter alia

a. That all Crown lands mines and minerals shall belong to the Province, "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same,...";

b. That "all lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof".

19. The Plaintiffs say that by the above mentioned terms and conditions of the Natural Resources Transfer Agreement each of the Defendants acknowledged and admitted liability to Indian peoples pursuant to Indian Treaties, and more particularly to the Plaintiffs pursuant to the Adhesion Agreement and Treaty No. 6.

20. The Plaintiffs say that the Defendant, Her Majesty the Queen in Right of the Province of Saskatchewan, is an assignee of all rights in Crown lands from Her Majesty the Queen in Right of Canada, and as such has no greater right in the Crown lands than did the Government of Canada prior to the execution of the Natural Resources Transfer Agreement. As such, the Plaintiffs say that the provisions of the above mentioned Adhesion Agreement and Treaty No 6 in relation to the setting aside of reserves for native peoples are fully binding upon the Government of the Province of Saskatchewan, and the Government of Saskatchewan is legally bound to transfer lands due and owing to the bands that executed the said Adhesion Agreement and Treaty No. 6.

21. The Plaintiffs say that the Lac La Ronge Indian Band is the lawful successor of the James Roberts Band and/or the Amos Charles Band, and as such is entitled to receive all benefits under the Adhesion Agreement and/or Treaty No. 6, that either of the said Bands or the Lac La Ronge Band itself would otherwise be entitled to receive.

22. The Plaintiffs say that in or about 1897 the Defendant, Her Majesty the Queen in Right of Canada, acknowledged and admitted liability to the Plaintiffs under the above mentioned Adhesion Agreement and/or Treaty No. 6, in that the Government of Canada granted unto the James Roberts Band of Cree Indians certain lands in the total amount of 30,400 acres as partial fulfillment of the said Band's land entitlement. The said grants were subsequently confirmed by Order of Her Majesty's Privy Council for Canada.

23. The Plaintiffs say that in or about 1909, the Defendant, Her Majesty the Queen in Right of Canada, acknowledged and admitted liability to the Plaintiffs under the above mentioned

Adhesion Agreement and/or Treaty No. 6, in that the Government of Canada granted unto the James Roberts Band of Cree Indians certain lands in the amount of 5,354 acres as partial fulfillment of the Band's land entitlement. The said grants were subsequently confirmed by Order of Her Majesty's Privy Council for Canada.

24. The Plaintiffs say that in or about 1909, the Defendant, Her Majesty the Queen in Right of Canada, by and through the actions of the Department of Indian Affairs, surveyed, selected and mapped certain lands as an Indian reserve for the James Roberts Band of Cree Indians, which lands were described as the La Ronge School lands parcel A.

25. The Plaintiffs say these lands were used and occupied by the Plaintiffs as an Indian reserve in that an Anglican Church and Missions School were constructed thereon for the education of the Plaintiffs. In addition, in later times, a nursing station and hospital was constructed thereon, a saw mill was constructed thereon, and the lands were utilized for agricultural purposes to produce food to feed members of the Plaintiff Indian Band that were attending at the school. In addition, a grave site for the burial of certain members of the Plaintiff Band was established on these lands. The Plaintiffs say that by reason of all of these uses made of the said land and by reason of their occupation of the said lands, these lands were a de facto Indian reserve for the Lac La Ronge Indian Band.

26. The Plaintiffs further say that pursuant to the terms of Treaty No. 6, Her Majesty the Queen agreed "to maintain schools for instruction in such reserves... whenever the Indians of the reserve shall desire it." The Plaintiffs say that the establishment of an Indian reserve on the La Ronge School lands was an attempt by the Crown to meet this Treaty obligation.

Alternatively, if a school was not established on the Indian reserve by the Crown, as alleged, then the Crown is in breach of this provision of the Treaty, as it has failed to establish a school on the said reserve of the Lac La Ronge Indian Band.

27. The Plaintiffs further say that on or about the 4th day of May, 1925, Her Majesty's Privy Council passed an Order-in-Council in relation to the school lands, as follows:

> "Therefore, His Excellency The Governor General in Council, on the recommendation of The Minister of The Interior is pleased to order that the said lots be and they are hereby transferred to the control of The Department of Indian Affairs for the purposes of The Indian Boarding School and Hospital at La Ronge, Saskatchewan."

28. The Plaintiffs say that by this Order-in-Council, the Defendant, Her Majesty the Queen in Right of Canada, recognized these lands as being for the use and benefit of the Lac La Ronge Indian Band.

29. The Plaintiffs say that in or about 1947, the Defendant, Her Majesty the Queen in Right of Canada, wrongfully and unlawfully converted all of these lands to her own use. The said lands were converted in that Her Majesty the Queen in Right of Canada ceased to use these lands as an Indian reserve. In so doing, it did not arrange for the surrender of the lands by the James Roberts Band or the Amos Charles Band, and did not follow any of the procedures required for surrender as set out in the Indian Act as it existed at that time.

30. The Plaintiffs say that certain portions of the La Ronge School lands were retained by the Government of Canada for its own use, and are still retained by the Government of Canada today, however, these lands still retained by the Government of Canada are not utilized for the

use and benefit of the Lac La Ronge Indian Band and thus have been wrongfully converted by Her Majesty the Queen in Right of Canada.

31. The Plaintiffs further say that by Privy Council Order No. P.C. 21 passed in 1947 and Privy Council Order No. 6002 passed in 1951, the Crown in Right of Canada transferred the La Ronge School lands to the Defendant, the Crown in Right of the Province of Saskatchewan. The said transfers were null and void in that the land was not surrendered by the Lac La Ronge Indian Band and thus remained an Indian reserve for the use and benefit of the Plaintiffs throughout.

32. The Plaintiffs further say that Her Majesty the Queen in Right of the Province of Saskatchewan has since purported to assume control of the said lands, has subdivided the lands to put them into the provincial land titles system, and has issued titles to various private land owners. The Plaintiffs further say that each and every subsequent land transaction is null and void and of no effect and that all portions of the La Ronge School lands remain and are today an Indian reserve for the use and benefit of the Lac La Ronge Indian Band.

33. The Plaintiffs further say that by reason of this conversion of the La Ronge School lands and the loss of use of those school lands by the Plaintiffs, the Plaintiffs have suffered damages and continue to suffer damages today. The Plaintiffs claim return of any and all lands in this Indian reserve that are still in the possession of either of the Defendants, and damages for the loss of all lands that either of the Defendants cannot return to the Plaintiffs.

34. The Plaintiffs further say that the Crown in Right of Canada acted as trustee of the La Ronge School lands for the Lac La Ronge Indian Band and assumed a fiduciary duty with

respect to the Plaintiffs to retain and use the reserve lands in the best interest of the Plaintiffs. The Plaintiffs further say that the actions of the Defendant, Her Majesty the Queen in Right of Canada, in relation to these lands, constitute a breach of trust and a breach of fiduciary duty as a result of which the Plaintiffs have and continue to suffer damages.

35. The Plaintiffs say that in or about the year 1926, the Plaintiffs requested that their land entitlement be satisfied.

36. The Plaintiffs say that in or about the late 1920's, the Department of the Interior of the Government of Canada developed plans for establishing a national park in the vicinity of existing Indian reserves, including one of the Plaintiffs'. The Plaintiffs requested further land in the vicinity of Emma Lake, Saskatchewan near the national park, however the Federal Government denied this request in or about the year 1928 pending establishment of what was commonly referred to as the "new reserve" near Candle Lake, Saskatchewan, for the Plaintiffs. The Canadian National Parks branch of the Department of the Interior requested that further Indian reserves be established in the vicinity of Candle Lake, rather than in the proximity of the national park.

37. In the month of January, 1930, the Department of Indian Affairs of the Government of Canada requested the Department of the Interior to withhold from sale and settlement, pending final selection, all certain and specified surveyed lands not already disposed of in Township 55, in Ranges 22, 23 and 24; Township 56, in Ranges 23 and 24; unsurveyed Township 56, in Range 22; and the south half of Township 57, in Range 22 and 23, all West of the 2nd Meridian in the vicinity of Candle Lake, for the purpose of fulfilling some of the obligations of

the Government of Canada to the Plaintiffs pursuant to the terms of Treaty No. 6, and to enable the Government of Canada to allocate some or all of the additional land that the Lac La Ronge Indian Band was entitled to under the terms of Treaty No. 6.

38. On March 20, 1930, the Commissioner of Dominion Lands placed a reservation on the records of Dominion Lands at Prince Albert in favour of the Department of Indian Affairs against the vacant and available lands in Township 55, in Ranges 22, 23 and 24; Township 56, in Ranges 23 and 24; unsurveyed Township 56, in Range 22; and the South half of Township 57 in Ranges 22 and 23, all West of the 2nd Meridian.

39. The Plaintiffs specifically plead and rely upon Clause 19 of the Natural Resources Transfer Agreement and state that when the Government of Canada placed the reservation against the specific lands referred to herein, the land was placed "in use or reserved by Canada for the purpose of the Federal Administration" within the meaning of Clause 19 of the Natural Resources Transfer Agreement. As such, the said lands were exempted from the general transfer provisions of the Natural Resources Transfer Agreement, and the legal title to said lands remained with the Government of Canada. The Plaintiffs further say that no subsequent steps have been taken by the Government of Canada to transfer the lands to the Province of Saskatchewan, and as a result, the legal title to said lands, as of this date, remains with the Government of Canada. The Plaintiffs further say that all subsequent subdivisions and issuance of titles purportedly made by the Province of Saskatchewan, in reliance upon their having received title to the said lands, are a nullity and of no effect.

40. The Plaintiffs further say that by reason of the aforementioned facts, the Federal Crown declared that a trust existed and that it held all of the lands mentioned in paragraphs 37 and 38 in trust for the Lac La Ronge Indian Band. The Plaintiffs further say that the said trust has never been fulfilled or terminated and that the Plaintiffs have never surrendered or terminated their beneficial interest in these lands. The Plaintiffs say that the trust remains in effect today even though the Federal Crown has taken no steps to fulfill the terms of the trust and has in fact acted in breach of the trust.

41. The Plaintiffs specifically plead and rely upon section 2 of the Natural Resources Transfer Agreement.

42. The Plaintiffs further say that in the year 1931, the Government of Canada undertook to meet with and met with the Plaintiffs for the purpose of having the Plaintiffs accept an Indian reserve created by the Government of Canada for the use and benefit of the Plaintiffs at Candle Lake in partial satisfaction of the Plaintiffs' Treaty land entitlement.

43. The Plaintiffs further say that in or about the month of October, 1931, duly authorized representatives of the Plaintiffs, together with duly authorized representatives of the Government of Canada, travelled upon, in and over the said lands, and selected 33,401 acres of surveyed land as the Candle Lake Indian reserve for the use and benefit of the Lac La Ronge Indian Band. The said selections and Indian reserve were to be in partial satisfaction of the Plaintiffs' Treaty land entitlement. The specific lands selected are fully described and detailed in a schedule attached to a letter from W.M. Murison, Inspector of Indian Agencies for the

Department of Indian Affairs, Government of Canada, dated November 4, 1931, a copy of which schedule is attached as Appendix "A".

44. The Plaintiffs further say that the above mentioned steps taken by representatives of the Lac La Ronge Indian Band and representatives of the Government of Canada were sufficient to and did establish and create these lands as an Indian reserve, known as the Candle Lake Indian reserve, for the use and benefit of the Lac La Ronge Indian Band. The Plaintiffs specifically plead and rely upon the historical practices then in place in the Department of Indian Affairs for the establishment of Indian reserves.

45. The Plaintiffs further say that in numerous pieces of correspondence prepared by representatives of the Government of Canada following November 4, 1931, representatives of the Government of Canada admitted, on behalf of Canada, that sufficient steps were taken to establish these lands as the Candle Lake Indian Reserve and thus admitted the lawful beneficial interest of the Plaintiffs in these lands.

46. The Plaintiffs say, by reason of the foregoing, that these tracts of land above referred in to paragraph 43 hereof, are valid and fully constituted Indian reserve lands within the meaning of the Indian Act and remain vested in Her Majesty the Queen in Right of Canada for the use and benefit of the Plaintiffs. The Plaintiffs further say that the said Indian reserve was never released or surrendered or otherwise in any manner whatsoever alienated by the Plaintiffs in accordance with the provisions of the Indian Act or otherwise howsoever. The Plaintiffs state that any disposition of any portion of the above Indian reserve after selection of these lands by Murison and representatives of the Plaintiffs are null and void and of no effect and that the said

Indian reserve is presently held by Her Majesty the Queen in Right of Canada as an Indian reserve for the use and benefit of the Plaintiffs. The Plaintiffs specifically plead and rely upon the surrender provisions of the Indian Act, as amended from time to time, and upon sections 2 and 10 of the Natural Resources Transfer Agreement.

47. Further, and in the alternative, the Plaintiffs say that the acts of the Federal Government in placing a general reservation over these lands, and the acts of surveying and selecting portions of these lands for the Lac La Ronge Indian Band, made the Government of Canada a trustee of the said lands for the use and benefit of the Lac La Ronge Indian Band. They further say that as trustee of the lands, and because of the fiduciary relationship of the Federal Crown to Indian peoples and to the Lac La Ronge Indian Band in particular, the Government of Canada assumed a fiduciary duty to retain possession of the said lands for the use and benefit of the Plaintiffs, and a fiduciary duty to act in the best interests of the Plaintiffs. Alternatively, the Government of Canada became an agent for the Lac La Ronge Indian Band for the purpose of acquiring and retaining these lands and establishing them as an Indian reserve, and thereby owed a fiduciary duty to the Plaintiffs. The said duty continued until such time as the said lands were either lawfully surrendered as above described, or the trust or agency was fulfilled or terminated, none of which has occurred.

48. The Plaintiffs further state that the Government of Canada breached its fiduciary duty to the Plaintiffs and continues to breach its fiduciary duty to the Plaintiffs, as a result of which the Plaintiffs have suffered damages and continue to suffer damages, in that the Government of Canada:

a. Failed and/or neglected to retain possession and/or control of the lands referred to in paragraphs 37 and 38 which were and presently are held in trust for the Plaintiffs;

b. Failed and/or neglected to retain possession and/ or control of the Indian reserve lands referred to in paragraph 43 hereof;

c. Failed and/or neglected to establish alternative Indian reserve lands for the use and benefit of the Lac La Ronge Indian Band;

d. Failed and/or neglected to satisfy the Treaty land entitlement of the Plaintiffs;

e. Purported to alienate and/or transfer the said lands referred to in paragraphs 37, 38 and 43 hereof to the Province of Saskatchewan, and thereby failing to adequately represent and protect the interests of the Plaintiffs.

49. The Plaintiffs say that whether the said Indian reserve was created; or whether the Government of Canada became a trustee or agent of the said lands; or whether the Government of Canada assumed a fiduciary duty with respect to the Plaintiffs to retain or acquire possession of the said Indian reserve lands; the Province of Saskatchewan received these lands subject to the claim and interest of the Plaintiffs.

50. The Plaintiffs specifically plead and rely upon sections 1, 2, 10 and 19 of the Natural Resources Transfer Agreement.

51. As pleaded above, Her Majesty the Queen owed a fiduciary duty to the Plaintiffs. This duty rested primarily with the Government of Canada. The Plaintiffs say that this duty also

rested and continues to rest with the Provincial Crown when their actions have an impact upon Aboriginal peoples. The Plaintiffs say that Treaty No. 6 and the Adhesion Agreement were negotiated and executed with Her Majesty the Queen prior to the establishment of the Province of Saskatchewan and prior to the division of responsibilities relating to Crown lands and the creation of Indian reserves between Canada and Saskatchewan. As a result, the Plaintiffs say that both Canada and Saskatchewan owed a fiduciary duty to the Plaintiffs, in relation to, inter alia, matters involving Crown lands and the creation of Indian reserves at all times relevant to this action. The Plaintiffs specifically plead and rely upon the doctrine of the indivisibility of the Crown.

52. The Plaintiffs say further that when the natural resources passed to Saskatchewan on October 1, 1930, the Federal Crown was under a fiduciary duty to establish the Candle Lake Indian Reserve. When Saskatchewan accepted and received the natural resources, which included all unoccupied Crown lands within the geographic boundaries of Saskatchewan surrounding the Candle Lake lands, subject to the Reservation of the Department of the Interior dated March 20, 1930, the Province of Saskatchewan assumed and owed a fiduciary duty to the Plaintiffs in relation to the creation of an Indian reserve for the Plaintiffs, similar to that owed by the Federal Crown, as a result of the doctrine of the indivisibility of the Crown.

53. In and about 1937 and 1938, Saskatchewan determined and accepted that the Federal Crown had a legal right and obligation to recognize the Candle Lake Indian Reserve with or without the approval of Saskatchewan. Nevertheless, in breach of its fiduciary duty to the Plaintiffs, Saskatchewan continually urged Canada to ignore its obligations to the Plaintiffs,

urged Canada not to formally recognize this Indian reserve and urged Canada to instead transfer the Candle Lake lands to Saskatchewan.

54. On or about May 6th, 1939, Canada succumbed to provincial demands and purported to transfer the Candle Lake lands to Saskatchewan. The Plaintiffs say the incessant urging of Saskatchewan to Canada to breach its legal obligations to the Plaintiffs and to act contrary to law, Saskatchewan's failure to acknowledge the existence of a recognized Indian reserve, and Saskatchewan's interference with the legal interests of the Lac La Ronge Indian Band, were breaches of the fiduciary duty that Saskatchewan owed to the Plaintiffs, as a result of which the Plaintiffs have suffered damages.

55. The Plaintiffs further say that the failure of Canada to competently negotiate with Saskatchewan, their acceptance of political reasons for not recognizing the Candle Lake Indian Reserve, and their agreement to transfer these lands to Saskatchewan, was a breach of the fiduciary duty that Canada owed to the Plaintiffs, as a result of which the Plaintiffs have suffered damages.

56. In the alternative, the Plaintiffs say that in 1938 and 1939 Canada and Saskatchewan agreed that in lieu of the Candle Lake lands, the Plaintiffs would receive preferential treatment when their Treaty land entitlement was finally satisfied.

57. The Plaintiffs say that both Defendants have acted in breach of the said agreement in that they have failed and/or refused to provide any special or preferential treatment to the Plaintiffs. In fact they have refused to provide even the same amount of Treaty land as other Indian Bands have received, and as a result the Plaintiffs have suffered further damages.

58. In the further alternative, and in further breach of their fiduciary obligation to the Plaintiffs, Canada and Saskatchewan did not formalize the said Agreement, to provide preferential treatment to the Band, and as a result the Plaintiffs have suffered further damages.

59. The Plaintiffs further say that Her Majesty the Queen in Right of the Province of Saskatchewan has, since the transfer of the natural resources, purported to assume control of the Candle Lake lands, has subdivided the lands to put them into the Provincial land titles system, and has issued titles to various private land owners. The Plaintiffs further say that each and every subsequent land transaction is null and void and of no effect and that all portions of the Candle Lake Indian Reserve remain and are today an Indian reserve for the use and benefit of the Lac La Ronge Indian Band. The Plaintiffs claim return of any and all lands in this Indian reserve that are in possession of either of the Defendants, and damages for the loss of all lands that either of the Defendants cannot return to the Plaintiffs. The Plaintiffs further say that all other lands in the seven townships surrounding Candle Lake, referred to in paragraphs 37 and 38, remain the property of Canada, and Canada holds those lands in trust for the Plaintiffs and are available from which the Plaintiff should be entitled to select further Indian reserves owed to it, as outlined and alleged hereunder.

60. The Plaintiffs say that in or about 1935, the Defendant, Her Majesty the Queen in Right of Canada, acknowledged and admitted liability to the Plaintiffs under the above mentioned Adhesion Agreement and/or Treaty No. 6, in that the Government of Canada granted unto the James Roberts Band of Cree Indians and the Amos Charles Band of Cree Indians certain lands in the total amount of 1,607 acres as partial fulfillment of the two Bands' total land entitlement.

The said grants were subsequently confirmed by Order of Her Majesty's Privy Council for Canada.

61. The Plaintiffs say that the Defendant, Her Majesty the Queen in Right of the Province of Saskatchewan, acknowledged and admitted liability to the Plaintiffs under the above mentioned Adhesion Agreement and/or Treaty No. 6 in that the Province of Saskatchewan transferred certain Crown lands to the Government of Canada in order to enable it to make the grant of land referred to in paragraph 60 hereof.

62. The Plaintiffs say that in or about 1948, the Defendant, Her Majesty the Queen in Right of Canada, acknowledged and admitted liability to the Plaintiffs under the above mentioned Adhesion Agreement and/or Treaty No. 6 in that the Government of Canada granted unto the James Roberts Band of Cree Indians and the Amos Charles Band of Cree Indians certain lands in the total amount of 6.400 acres as partial fulfillment of the two Bands' total land entitlement. The said grants were subsequently confirmed by Order of Her Majesty's Privy Council for Canada.

63. The Plaintiffs say that the Defendant, Her Majesty the Queen in Right of the Province of Saskatchewan, acknowledged and admitted liability to the Plaintiffs under the above mentioned Adhesion Agreement and/or Treaty No. 6 in that the Province of Saskatchewan transferred certain Crown lands to the Government of Canada in order to enable it to make the grant of land referred to in paragraph 62 hereof.

64. The Plaintiffs say that between 1964 to 1972, both years inclusive, the Defendant, Her Majesty the Queen in Right of Canada, acknowledged and admitted liability to the Plaintiffs

under the above mentioned Adhesion Agreement and/or Treaty No. 6 in that the Government of Canada granted unto the Lac La Ronge Indian Band certain lands in the amount of 63,33[illegible] acres as partial fulfillment of the Band's land entitlement. The said grants were subsequently confirmed by Order of Her Majesty's Privy Council for Canada.

65. The Plaintiffs say that the Defendant, Her Majesty the Queen in Right of the Province of Saskatchewan, acknowledged and admitted liability to the Plaintiffs under the above mentioned Adhesion Agreement and/or Treaty No. 6 in that the Province of Saskatchewan transferred certain Crown lands to the Government of Canada in order to enable it to make the grant of land referred to in paragraph 64 hereof.

66. The Plaintiffs state that the above stated lands set aside by the Defendants and granted unto the Plaintiffs did not satisfy the legal obligations of the Defendants to the Plaintiffs pursuant to Treaty No. 6 and the Adhesion Agreement.

67. The Plaintiffs say that Canadian Courts have developed and adopted rules for the interpretation of treaties. The Plaintiffs specifically plead and rely upon the rules of interpretation of treaty as set out by the Courts. In particular, the Plaintiffs specifically plead and rely upon the rule that the Court may look to how the parties themselves interpreted and implemented treaty in order to give content to the terms of the treaty.

68. The Plaintiffs say that treaty, and in particular Treaty No. 6, is and has been interpreted and understood by numerous Indians who were signatories to treaty, and their descendants, and numerous other Indians who are members of Bands which at some point in time executed or adhered to the terms of treaty, and in particular Treaty No. 6, to entitle Bands to have their

Treaty land entitlement calculated on the basis of what is known as the "Current Population Formula", using present population figures.

69. The Plaintiffs further say that for a period of approximately 118 years since the execution of the numbered Treaties, and in particular Treaty No. 6, the Government of Canada has repeatedly and consistently interpreted and implemented the relevant treaty provisions according to the Current Population Formula. The Government of Saskatchewan has also interpreted and implemented the relevant treaty provisions according to the Current Population Formula on numerous occasions. The Plaintiffs say that by interpretation and implementation of treaty in this fashion, all parties, and in particular both Defendants, have admitted that the Current Population Formula is the appropriate interpretation of Treaty No. 6 and the proper formula and method of calculation and satisfaction of Treaty land entitlement.

70. The Plaintiffs say that they are and have been entitled to additional land by way of Indian reserve pursuant to the provisions of Treaty No. 6 and the Adhesion Agreement; that the Treaty land entitlement of the Lac La Ronge Indian Band has never been fulfilled on the basis of the Current Population Formula using current population figures; that the entitlement of the Plaintiff Band on the basis of the Current Population Formula using current population figures remains outstanding; and that such further entitlement ought to be calculated on the basis of the Current Population Formula using the present population of the Plaintiff Band at the date of the trial of this action. The Plaintiffs say further that the Government of Canada has acknowledged or admitted liability to the Plaintiffs on the basis of the Current Population Formula in their actions and in numerous pieces of correspondence; in setting apart land <u>on the basis of the Current Population Formula</u> for other Indian Bands before, <u>at the same time as,</u>

and after setting aside land for the Lac La Ronge Indian Band, and in an agreement reached between the Government of Canada, the Province of Saskatchewan and the Federation of Saskatchewan Indians in and about 1976. The Plaintiffs say that the Current Population Formula, using the present day population of any Indian Band and in particular the Lac La Ronge Indian Band, is the proper formula and population base upon which to calculate Treaty land entitlement pursuant to Treaty No. 6 and the Adhesion Agreement. The Plaintiffs further say that by reason of the above mentioned facts, the Government of Canada is now estopped from denying the validity of the Plaintiffs' claim and the existence of its obligations to the Plaintiffs on the basis of the Current Population Formula and the present population of the Lac La Ronge Indian Band.

71. The Plaintiffs say that on April 17th, 1982, Section 35 of the Constitution Act, 1982 came into force and all existing Treaty rights of the Plaintiffs on that date acquired constitutionally protection. Further, as of April 17th, 1982, the parties to Treaty had always settled Treaty land entitlement according to the Current Population Formula. As a result, the Plaintiffs have, since April 17th, 1982, a constitutionally protected right to have their outstanding Treaty land entitlement settled on the basis of the Current Population Formula, as defined below.

72. The Plaintiffs also specifically plead the provisions of Sections 24 and 25 of the Canadian Charter of Rights and Freedoms.

73. Further, the Plaintiffs say that in or about the year 1976, the Government of Canada, the Government of Saskatchewan and the Federation of Saskatchewan Indians entered into an

agreement that the Current Population Formula using the present population of any Indian band in Saskatchewan at that time, was the proper base upon which to calculate land entitlement of the Plaintiff Band pursuant to Treaty No. 6 and the Adhesion Agreement. The Plaintiffs say that accordingly the Governments of Canada and Saskatchewan acknowledged and admitted liability under the Current Population Formula to Indian Bands with outstanding Treaty land entitlement, and in particular the Lac La Ronge Indian Band.

74. The Plaintiffs state that on or about September 22, 1992, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of Saskatchewan, executed the "Saskatchewan Treaty Land Entitlement Framework Agreement" with twenty-two "entitlement bands" in the Province of Saskatchewan. This Agreement was based upon the May 1991 Report of the Office of the Treaty Commissioner (for Saskatchewan), which set out the "Equity Formula" as a method of calculating Treaty land entitlement. By the execution of that Agreement, and by the terms of that Agreement, each of the Defendants hereto admitted:

a) That the Treaties were made by Her Majesty the Queen;

b) That the Treaties created binding legal obligations upon Her Majesty the Queen;

c) That the position of Her Majesty the Queen was validly assumed by Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of Saskatchewan;

d) That the provisions of Treaty are still binding and legally enforceable against Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of Saskatchewan;

e) That numerous Saskatchewan Indian Bands have still not received their lawful land entitlement pursuant to the Treaties;

f) That Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of Saskatchewan are legally obligated to provide sufficient lands for the Indian Bands pursuant to Treaty; and

g) That where an outstanding Treaty land entitlement exists, it is, at very least, appropriate and fair to calculate the Treaty land entitlement of a Band in accordance with the "Equity Formula" of the Office of the Treaty Commissioner (for Saskatchewan) and in accordance with the terms of the Saskatchewan Treaty Land Entitlement Framework Agreement, and in particular, Article 2 thereof.

75. As a result, the Plaintiffs say that each of the Defendants have admitted, in effect, that the Plaintiffs have an outstanding Treaty land entitlement in excess of 230,000 acres, having a value in excess of $70,000,000.00.

76. The Plaintiffs further say that by amendments to the Indian Act, which were given Royal Assent and became law on June 28, 1985, which amendments are commonly referred to as Bill C-31, the Government of Canada added hundreds of members to the Lac La Ronge Indian Band, who had previously not been recognized by the Government of Canada as

members of the Plaintiff Band. The Plaintiffs say that each and every member so added is entitled to receive land pursuant to Treaty No. 6 and the Adhesion Agreement. The Plaintiffs therefore claim the additional and lawful land entitlement for all additional and new members added to the Plaintiff Band pursuant to the provisions of Bill C-31.

77. The Plaintiffs say that the Governments of Canada and of the Province of Saskatchewan have been and continue to be in breach of the Adhesion Agreement and Treaty No. 6, particulars of which breaches are as follows:

a. They continue to neglect and/or refuse to set aside the appropriate amount of reserve lands, being 128 acres per person, as required by Treaty No. 6 and the Adhesion Agreement;

b. They continue to neglect and/or refuse to pay over the appropriate and required funds for ammunition and twine for nets, as required by Treaty No. 6 and the Adhesion Agreement.

78. The Plaintiffs state that further lands, and funds for ammunition and twine for nets, are due and owing to the Lac La Ronge Indian Band.

79. The Plaintiffs further state that they have demanded the said lands, funds for ammunition and twine for nets, or compensation in lieu thereof from the Defendants, but the Defendants have refused and/or neglected and continue to refuse and/or neglect to transfer the same or pay the proper compensation in lieu thereof and the same remain due and owing to the Plaintiffs.

80. The Plaintiffs say that by acting in breach of and continuing to act in breach of the said Adhesion Agreement and Treaty No. 6, the Government of Canada has failed and continues to fail to comply with the provisions of the Indian Act, and in particular has failed and continues to fail to act in the best interest of Indian peoples, and failed to administer lands for the benefit of Indian peoples, and in particular the Plaintiffs hereof.

81. The Plaintiffs further say that by reason of the foregoing the Defendant, the Government of Canada, has acted in breach of trust and has failed to fulfill and discharge its fiduciary duty toward Indian people, and has in fact, acted to the detriment of Indian peoples and in particular the members of the Plaintiff Band, as a result of which the Plaintiffs have suffered damages.

82. The Plaintiffs further say that the Governments of Canada and the Province of Saskatchewan have acted arbitrarily, high-handed, callous, willful, wanton, and in disregard of the Plaintiffs' legal rights at all times relevant to this action.

83. By reason of all of the above, the Plaintiffs say that they have suffered damages, and will continue to suffer damages until their land claim is settled, and until all other provisions of the Adhesion Agreement and Treaty No. 6 are complied with by the Governments of Canada and the Province of Saskatchewan.

84. The Plaintiffs therefore claim:

a. A Declaration that the Plaintiffs are entitled to an Order, and an Order that the Governments of Canada and Saskatchewan carry out and fulfill and continue to carry out and fulfill the terms of Treaty No. 6 and the Adhesion Agreement;

b. A Declaration and an Order that the lands described as the La Ronge School lands Parcel A were set apart by Her Majesty the Queen in Right of the Government of Canada for the use and benefit of the Plaintiffs within the meaning of the Indian Act and are valid and fully constituted Indian reserve lands within the meaning of the said Act; and remain vested in Her Majesty the Queen in the Right of Canada, and that any disposition of the above stated lands otherwise then to the Plaintiffs are null and void and have no effect;

c. In the alternative, a Declaration and an Order that the Plaintiffs are entitled to further and other lands in the place of the La Ronge School lands and damages for loss of use of the said lands;

d. In the further alternative, a Declaration and an Order that Her Majesty the Queen in Right of the Government of Canada has acted in breach of the surrender provisions of the Indian Act in relation to the Reserve for the Plaintiffs known as the La Ronge School lands and in breach of the provisions of the Indian Act in the disposition of the said La Ronge School lands, or in breach of the trust and fiduciary relationship, and damages for the said breaches;

e. A Declaration and an Order that the land vacant and available on March 20, 1930 in Township 55, Ranges 22, 23 and 24; Township 56, in Ranges 23 and 24; unsurveyed Township 56, Range 22; and the South half of Township 57, in Ranges 22 and 23, all West of the 2nd Meridian in the vicinity of Candle Lake, is held in trust by the Government of Canada for the use and benefit of and for the Lac La Ronge Indian Band;

f. A Declaration and an Order that the lands referred to in paragraphs 42 and 45 hereof are valid and fully constituted Indian reserve lands within the meaning of the Indian Act and remain vested in Her Majesty the Queen in Right of Canada for the use and benefit of the Lac La Ronge Indian Band, and that any disposition of any of the above-stated lands otherwise than to the Plaintiffs are null and void and of no effect;

g. In the alternative, a Declaration and an Order that the Plaintiffs are entitled to further and other land in place of the above-stated lands;

h. In the further alternative, a Declaration and an Order that the Government of Canada has acted in breach of the surrender provisions of the Indian Act in relation to the reserve lands for the Plaintiffs in the vicinity of Candle Lake or elsewhere referred to in paragraph 43 hereof, or in breach of the trust and/or fiduciary relationship, and damages for the said breaches;

i. A Declaration that both Defendants breached their fiduciary obligation to the Plaintiffs by failing to formally recognize the Candle Lake Indian Reserve and converting it to their own use, and damages for the said breach;

j. A Declaration and an Order as to the amount of land to which the Plaintiffs are now entitled, based on the Current Population Formula, and as to the amount of funds for ammunition and twine to which the Plaintiffs are now entitled and Orders for the transmission of such land and payment of such funds to the Plaintiffs;

k. Further or in the alternative, a Declaration and an Order that the Plaintiffs are entitled to damages in respect of the failure and refusal of the Defendants, or either of them, to carry out and fulfill their obligations under Treaty No. 6 and Adhesion Agreement, including further damages for the loss of the use, enjoyment and benefit of lands, together with interest thereon, in an amount exceeding 50 million dollars;

l. Further or in the alternative, a Declaration and an Order that the Plaintiffs are entitled to punitive and or exemplary damages. The actions of the Defendants have been arbitrary, high-handed, callous, willful, wanton and in disregard of the Plaintiffs' legal rights, thereby entitling them to punitive and exemplary damages;

m. The costs of this action;

n. Such further and other relief as Counsel may advise and this Honourable Court may allow.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 6th day of February, A.D. 1997.

WOLOSHYN MATTISON

PER: _____
JAMES D. JODOUIN, Solicitor
for all of the Plaintiffs in
the within action.

ADDRESS AND OCCUPATION OR LEGAL CHARACTER OF THE PLAINTIFFS:

All of the Plaintiffs reside on or about
the various Indian reserves set aside for
the Lac La Ronge Indian Band.

NAME OF THE SOLICITORS FOR THE PLAINTIFFS:

WOLOSHYN MATTISON
Barristers & Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

and the address for service of the Plaintiffs is same as above.
Lawyers in charge of file: DOUGLAS J. KOVATCH and JAMES D. JODOUIN
Telephone: (306) 244-2242

SCHEDULE "A"

Lands selected for a reserve for the James Roberts and Amos Charles Bands, Ile a la Crosse Agency, in Township 55, Ranges 22, 23 & 24, all West of the 2nd. Meridian, in the Province of Saskatchewan.

Township 55, Range 22

	Section	1	650 acres	
	"	2	650 "	
	"	3	650 "	
Fr.	"	4	619.6 "	
"	"	5	509 "	
"	"	6	151.8 "	
"	"	7	291 "	
"	"	8	553 "	
	"	9	644 "	
	"	10	644 "	
	"	11	644 "	
	"	12	644 "	
	"	13	640 "	
Fr.	"	14	623.9 "	
	"	15	644 "	
	"	16	644 "	
Fr.	"	17	573.3 "	
"	"	18	154 "	N.W.¼ Homesteaded.
"	"	19	112.4 "	Part Timber Limit.
"	"	20	632.5 "	" " "
"	"	21	415.1 "	
"	"	22	256.2 "	
"	"	23	211.5 "	
	"	24	640 "	
	"	25	640 "	
Fr.	"	26	300 "	Approximate - no
"	"	34	300 "	township plan
"	"	35	635 "	available.
	"	36	640 "	
				14,713.3 ac.

Township 55, Range 23

All Fr.	Section	35	157.7 acres	
W½	"	26	320 "	
Fr.N.E.¼	"	26	19.3 "	
Fr.S.E.¼	"	26	110.3 "	
W½	"	23	320 "	
S.E.¼	"	23	160 "	N.E.¼ homesteaded.
Fr.	"	14	591.6 "	S.E.¼ part timber limit
Fr.S.W.¼	"	24	63.9 "	Part taken as homestead
Fr. N.½	"	13	98.2 "	
Fr. W.½	"	12	261.3 "	
Fr.S.E.¼	"	12	70.2 "	
All	"	11	644 "	
All	"	2	644 "	S.W.part timber limit.
All Fr.	"	1	424.2 "	Small timber limit.
All	"	27	644 "	
All Fr.	"	34	637 "	
				5,165.9 ac.

Checked

W.D.Wilkinson

Lands selected for a reserve for the James Roberts and Amos Charles Bands, Ile a la Crosse Agency, in Township 55, Ranges 22, 23 & 24, all West of the 2nd. Meridian, in the Province of Saskatchewan(Cont'd.)

Township 55, Range 24

	Section 1	648	acres
	" 2	650	"
	" 3	652	"
	" 4	652	"
	" 5	652	"
	" 6	651	"
	" 7	642	"
	" 8	641	"
	" 9	642	"
	" 10	644	"
	" 11	642	"
	" 12	640	"
	" 13	640	"
	" 14	641	"
	" 15	643	"
	" 16	642	"
	" 17	640	"
	" 18	640	"
S.½	" 19	320	"
"	" 20	320	"
"	" 21	320	"
"	" 22	320	"
"	" 23	320	"
"	" 24	320	"

SUMMARY

Township 55, Range 22	14,713.3	Acres.
" " Range 23	5,165.9	"
" " Range 24	13,522.	"
	33,401.2	"

original of this Document has been [illegible] for retention in the Records of [illegible] Land Registry.

M. Carey
Signature

Checked
W. Ellerington