

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CHIEF CLIFFORD BULL, FOR HIMSELF, AND ON
BEHALF OF THE MEMBERS OF THE LAC SEUL BAND
OF INDIANS**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out on 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, at this Court office, WITHIN TWENTY (20) DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty

days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by: _____

Local Register

Address of the court office:
216 Water Street
Kenora, Ontario
P9N 1S4

TO: DEPUTY ATTORNEY GENERAL OF CANADA
Department of Justice Canada
234 Wellington Street
East Tower
Ottawa, Ontario
K1A 0H8

AND TO: MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office, Civil
720 Bay St., 8th Floor
Toronto, Ontario
M5G 2K1

CLAIM

1. The plaintiffs claim:
 - a. Damages for loss of use of, and damage to, the plaintiffs' reserve lands at Shoal Lake, now known as Bruce Lake, in an amount to be determined;
 - b. General damages in an amount to be determined;
 - c. Special damages in an amount to be determined;
 - d. Exemplary and punitive damages in an amount to be determined;
 - e. Provision of lands reserved on a permanent basis, sufficient to satisfy the Plaintiffs' lost reserve lands at Shoal Lake;
 - f. The costs of this action on a substantial indemnity scale;
 - g. Pre-judgment and post judgment interest pursuant to statute; and
 - h. Such further relief as this honorable court deems just.

The Parties

2. Lac Seul First Nation is a Band of Indians under the *Indian Act*, R.S.C. 1985, c. I-5.
3. The Plaintiff, Clifford Bull, is the Chief of the Lac Seul Band of Indians, duly elected pursuant to the *Indian Act*, R.S.C. 1985, c. I-5.
4. Chief Bull brings this action by himself and on behalf of the Lac Seul Band of Indians.

5. The members of the Band are ‘Indians’ registered pursuant to the *Indian Act*, R.S.C. 1985, c. I-5, all of whom have an interest in the Band’s reserve lands, and in the lands claimed in this action.
6. The Lac Seul Reserve No. 28 is an Indian reserve pursuant to the *Indian Act*, R.S.C. 1985, c. I-5. The Lac Seul Reserve is located near the Town of Sioux Lookout, in the District of Kenora, in the province of Ontario.
7. The Plaintiffs bring this action against Her Majesty the Crown in Right of Canada and in so doing the Plaintiffs plead and rely upon the provisions of sections 3, 10 and 23 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
8. The Plaintiffs bring this action against Her Majesty the Crown in Right of Ontario, and in so doing the Plaintiffs plead and rely upon the provisions of sections 3, 5, and 6 of the *Proceedings Against the Crown Act*, R.S.O, c.23.

The Facts

Treaty 3

9. On October 13, 1873, the Defendant, Canada, entered into Treaty 3¹ with the Aboriginal people living in the southeastern part of the District of Keewatin (now northwestern Ontario and eastern Manitoba).
10. Members of the Lac Seul Band adhered to Treaty 3 on June 9, 1874. The adhesion was confirmed by Order-in-Council July 18, 1874.

¹ *Treaty No. 3 Between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods With Adhesions*

11. By Treaty 3, the Aboriginal signatories surrendered to Canada 55,000 square miles of resource rich lands in exchange for reserve lands and other promises.
12. At the time of Treaty and thereafter, the members of the Lac Seul Band carried on traditional Aboriginal activities in northwestern Ontario.
13. By 1930, both Ontario and Manitoba had become the beneficiaries of the 55,000 square miles of lands surrendered by the Aboriginal signatories of Treaty 3.
14. In exchange for this surrender, Treaty 3 mandated that Canada set apart reserves of land for the Plaintiffs.
15. The Treaty stipulated two types of reserves to be set aside. First, reserves for farming lands (taking into account already existing Aboriginal farms), which were to be kept in the permanent possession of the Aboriginal people. Second, other reserves of land that were to be selected and set aside after conference with the Aboriginal people.
16. During the negotiation of Treaty 3, Canada's Commissioners directed the Aboriginal people to identify lands that would be set aside as reserves. Canada subsequently passed an 1871 Order in Council, which spoke to retaining the identified lands desired as reserves.
17. At the time of the negotiation of Treaty 3, a spokesman for the Chiefs indicated the Aboriginal people had already marked out lands they wished to receive on entering the Treaty.

18. Treaty 3 enshrined rights held by the Aboriginal signatories in the surrendered territories for “the said Indians... to pursue their avocations of hunting and fishing”, among other rights.
19. Under Treaty 3, Canada made a commitment to set aside special lands reserved for the exclusive use and benefit, forever, of the various Aboriginal people who entered into Treaty 3.

Lac Seul Reserve

20. In July 1874, S.J. Dawson and R.J.N. Pither were appointed by federal Order in Council to select reserves promised under Treaty 3. In 1875, Indian Agent Pither and the members of the Lac Seul Band met to confirm their reserve selections.
21. Later that year, Indian Agent Pither sent a letter to the Surveyor General of Canada in which he reported that the Band had selected three reserves: two on Lac Seul and one on Shoal Lake (now known as Bruce Lake). The reserves were included in the schedule of reserves published by the Department of Indian Affairs in 1877.
22. In 1878, Indian Agent Pither reported that the Lac Seul Band had not yet had its reserves surveyed. He stated that:
 - a. Chief Cromarty was anxious to have the three reserves surveyed; and
 - b. That the Band had requested cattle, tools, and saws for those Band members residing at Shoal Lake.

23. In 1882, Indian Agent Pither reported that four families of the Lac Seul Band had built and were farming at Shoal Lake. In the report, Agent Pither outlined that the Shoal Lake reserve:
 - a. Was a reserve that had been initially selected by the Lac Seul Band; and
 - b. Was abandoned due to its distant location.
24. Agent Pither did not explain why he concluded that the Shoal Lake reserve was abandoned, despite the fact that four Lac Seul families resided and farmed there.
25. In 1883, Indian Agent Pither amended the reserve selections of the Lac Seul Band while the surveyor Vaughan was at Lac Seul. This amendment:
 - a. Excluded the reserve at Shoal Lake, ignoring the consultations that had already taken place with the Lac Seul Band following its adhesion to Treaty 3;
 - b. Disregarded the Band's specific selection of this reserve, which was known to Pither, following the Band's adhesion to Treaty 3; and
 - c. Was made without consulting with the Band, and without the Band's consent.
26. In the Annual Report of the Department of Indian Affairs for 1885, federal officials recognized that Lac Seul reserve was created through the conclusion of Treaty 3.
27. The Lac Seul Reserve is an Indian reserve under the *Indian Act*, R.S.C. 1985, c. I-5. The portion of the Lac Seul reserve selected, and under cultivation at

Shoal Lake has never been surrendered, designated, or otherwise disposed of pursuant to the *Indian Act*, R.S.C. 1985, c. I-5.

28. As a result of the 1883 amendment, Lac Seul Band members have lost the use of the claimed lands as reserve lands.
29. The Plaintiffs have not enjoyed any benefits flowing from the resources that were extracted from the claimed lands since the 1883 amendment.

Settlement of the Reserve Question between Ontario and Canada

30. In 1891, statutes of the Legislature of Ontario and of the Parliament of Canada were proclaimed authorizing Canada and Ontario to enter into an agreement. The agreement was to recite that Canada had selected and set aside certain reserves and that Ontario would make full enquiry concerning those reserves with a view to acquiescing in the location and extent thereof.
31. On or about April 16, 1894, the agreement authorized by the 1891 statutes was duly entered into by Canada and Ontario (the 1894 Agreement).
32. On May 8, 1914 Canada provided to Ontario a list of the Indian reserves set aside pursuant to the treaty.
33. In 1915, Ontario agreed to confirm the reserves and to transfer administration and control of most lands set aside as reserves to Canada, subject to the “usual trusts” regarding the administration of Indian lands (the 1915 Agreement).
34. On April 8, 1915, the Legislature of Ontario enacted a statute which provides that full enquiry pursuant to the 1894 Agreement had been made by Ontario. According to the statute, Ontario resolved to acquiesce in the location and extent of the reserves referred to in the 1915 Agreement, confirmed, and

agreed to transfer the reserves to Canada, subject to certain exceptions not relevant to this action.

35. In settling the reserve question, Ontario demanded, and Canada made, certain concessions without the knowledge or consent of the plaintiffs including, *inter alia*, the right to royalties from or development of any significant hydro power on the reserves and the right to any royalties or other revenues from minerals that might be found on the reserves.
36. The plaintiffs say these concessions compromised their treaty and aboriginal rights in their reserve lands.
37. Both the 1894 and 1915 Agreements were confirmed by legislation of both governments and currently remain in effect, to the extent that such legislation may be constitutionally valid.

The Crown's Breaches of Fiduciary Duties

38. Treaty 3 was made “...so that...[the Aboriginal people] may know and be assured of what allowance they are to count upon and receive from Her Majesty's bounty and benevolence...” Treaty 3 created fiduciary obligations that now bind Canada and Ontario (collectively, the Crown).
39. The plaintiffs assert that the Crown, in breach of its duties:
 - a. Compromised, deferred and defeated the plaintiffs right to select and set aside preferred, good quality lands as required by the Treaty by unilaterally excluding Shoal Lake reserve from the First Nations Treaty land entitlement;

- b. Failed to implement its Treaty obligation to preserve reserve lands selected by the Plaintiffs in accordance with the Treaty;
- c. Failed to implement its Treaty obligation to preserve reserve lands under cultivation by the plaintiffs in accordance with the Treaty;
- d. Frustrated the plaintiffs' right to one square mile per family of 5 of good quality farming and other good quality lands;
- e. Failed to follow an Order in Council supporting the retention of the lands selected as reserves by the Plaintiffs during treaty negotiations;
- f. Alienated the plaintiffs from their reserve lands at Shoal Lake;
- g. Allowed encroachment on lands chosen by the plaintiffs;
- h. Failed to inform the plaintiffs of Canada's deficiency in legal authority to set aside lands as reserves when that authority was disputed by Ontario;
- i. Frustrated the setting aside of specific parcels of land that the plaintiffs had identified at Treaty signings and at the 1874 conferences;
- j. Failed to protect the plaintiffs' reserve selections known to the Crown from encroachment by third parties;
- k. Failed to consult with the plaintiffs concerning modifications to its reserve selections;
- l. Failed to secure lands already agreed upon, thereby resulting in the loss of economic benefits that would have flowed from uninterrupted beneficial ownership of those lands;

- m. Failed to take timely action to allow for alternate selections of land to be made in consultation with the Plaintiffs;
 - n. Failed to intervene, advance, promote, and protect the plaintiffs' Treaty and aboriginal rights at stake in a timely, reasonable, and competent manner;
 - o. Relied upon the inaccurate reporting of Agent Pither, and accepted his statement of "abandonment" as satisfying the Crown's duty to act honourably;
 - p. Failed to obtain the consent of the Lac Seul First Nation in issuing the unilateral amendment disposing of the land selected and under cultivation at Shoal Lake;
 - q. Failed to take any constructive steps to correct the unilateral amendment made by Agent Pither in 1883; and
 - r. Having resolved the Reserve question in 1915, failed to take any constructive steps to ensure proper implementation of any unfulfilled Treaty land obligations.
40. The plaintiffs say that the Crown, including Canada and Ontario, has constitutional and statutory duties to safeguard Indian lands from, *inter alia*, trespass and illegal or improvident alienation.
41. The plaintiffs claim damages arising out of the Crown's failure to properly discharge all duties owed to the plaintiffs, resulting in the loss of use and resources removed from the lands, valued at the time of the breach, and interest thereon to the date of judgment.

42. The plaintiffs say that at all relevant times the Crown owed the duties specified above to the plaintiffs, and that those duties were to be carried out by whichever ministry of the Crown had the relevant authority, regardless of which government the ministry belonged. Therefore, the plaintiffs say that all relief granted herein should be binding jointly and severally upon Canada and Ontario.
43. The Plaintiffs rely upon *Treaty 3*, and the *Constitution Act, 1867*, s. 109 and s. 35(1).
44. The Plaintiffs propose that this action be tried in Kenora, Ontario.

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