

COURT FILE NO

**Form 10**  
[Rule 3.25]

COURT

COURT OF KING'S BENCH OF  
ALBERTA

JUDICIAL CENTRE

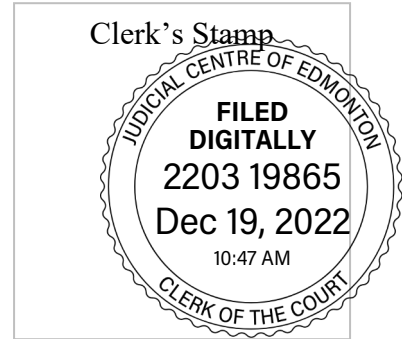
EDMONTON

PLAINTIFF(S)

ONION LAKE CREE NATION  
as represented by its duly elected  
Okimaw and Onikaniwak

DEFENDANT(S)

HIS MAJESTY THE KING IN  
RIGHT OF ALBERTA and the  
LIEUTENANT GOVERNOR OF  
ALBERTA, as both represented  
by the MINISTER OF JUSTICE  
OF ALBERTA



DOCUMENT

**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

HLADUN & COMPANY  
Barristers and Solicitors  
#300, 10711 – 102 Street NW  
Phone: 780-423-1888  
Fax: 780-424-0934  
**Attn: Robert W. Hladun, K.C.**  
**Michael J. Marchen**

### **NOTICE TO DEFENDANT(S)**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

### **Statement of facts relied on:**

#### **The Parties**

1. The Peoples of Onion Lake Cree Nation are the successors to their Ancestors who made Treaty 6 with the Crown in 1876 at Waskahikanis (Fort Pitt). They are “aboriginal peoples of Canada” within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the “*Constitution Act, 1982*”), and “Indians” under the rubric of section 91(24) of the *Constitution Act, 1867 (UK), 30 & 31 Vict, c 3*, reprinted in RSC 1985, Appendix II, No 5 (the “*Constitution Act, 1867*”).

2. The Plaintiff, Onion Lake Cree Nation (the “Plaintiff”), was formed in 1914 from the Makaoo and Seekaskootch Bands; and is thus a “band” within the meaning of section 2 of the *Indian Act*, RSC 1985, c I-5. The Plaintiff is representative of, and litigates for and on behalf of, its membership.
3. The lands reserved to the Plaintiff and its membership coincide with parts of the Province of Alberta as well as the Province of Saskatchewan.
4. The Crown, designated in section 12 of the *Proceedings Against the Crown Act*, RSA 2000, c P-25 as His Majesty the King in Right of Alberta, exercises executive power in Alberta through the agency of His Majesty’s Lieutenant Governor in Council. Both His Majesty in Right of Alberta and the Lieutenant Governor in Council are properly represented in this proceeding by the Minister of Justice of Alberta.

## Treaty 6

5. On, or about, September 9, 1876, at Waskahikanis, the Ancestors of the Makaoo and the Seekaskootch Peoples, including Chiefs and Headmen, negotiated and entered into Treaty 6 (the “Treaty”) as invited and subscribed by the Honourable Alexander Morris, commissioned to act as representative of Her Late Majesty Queen Victoria.
6. The Treaty was viewed by the Crown as being essential to establishing peaceful and legal nation-to-nation relations with the Crown’s subjects who lived on lands within the metes and bounds of Treaty 6 territory; and, *inter alia*, to give proper effect to the *Royal Proclamation of 1763*, George R, Proclamation, 7 October 1763 (3 Geo III), reprinted in RSC 1985, App II, No 1.
7. The Treaty is understood by the Peoples of the Makaoo and the Seekaskootch as a Treaty that has been passed down to the present, from generation to generation, through the Cree Oral Tradition.
8. The Treaty created a formal alliance whereby the Crown was to provide, at all material times, protection and assistance to the Plaintiff’s Peoples, as Treaty Peoples, including, *inter alia*, guarantees of material and other benefits that would assist the Elders and Peoples of the Makaoo and the Seekaskootch in their daily lives, which allowed them to remain free within the Treaty area and, in the course of that, continue in their traditional way of life.
9. The Treaty is a “treaty” within the meaning of section 35 of the *Constitution Act, 1982*: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”
10. The Plaintiff has sovereign control over its area of reserved lands by exercising its own system of customs and laws governing the Plaintiff’s Peoples, consistent with their Treaty.

11. The Defendant Crown owes Treaty Peoples a fiduciary duty to honour and follow the written, oral, and implied terms of the Treaty – both the letter and the spirit of the Treaty.
12. In the Treaty, the Crown guaranteed that the Plaintiff’s Peoples’ rights of passage and rights of avocation would be maintained and not unreasonably infringed, to wit:

“... [the Plaintiff’s People] shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered ... subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes ...”
13. The Treaty also included the promise by the Ancestral Peoples of the Plaintiff not to unjustifiably:

“... molest the person or property of any inhabitant ... or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tracts, or any part thereof ...”
14. The Plaintiff states that in the decades since the making of the Treaty, the Crown and certain of its servants have approached its Treaty contrary to the spirit and intent of the Treaty and without any particular regard to the reciprocal rights and obligations between the Crown and the Plaintiff.

### **Enactment of the *Alberta Sovereignty Act***

15. On November 29, 2022, the Premier, the Honourable Danielle Smith, introduced Bill 1, *Alberta Sovereignty Within a United Canada Act*, 4th Sess, 30th Leg, Alberta, 2022 (“Bill 1”). Bill 1 passed Second Reading on December 6, 2022, and, following referral from the Committee of the Whole, Bill 1 passed Third Reading on December 7, 2022.
16. In the course of legislative debate upon Bill 1, several Honourable Members noted, *inter alia*, that:
  - a. no consultation had apparently been done with any First Nations in respect of Bill 1;
  - b. Bill 1, and the manner in which Bill 1 was passed, was itself an infringement of Treaty rights;
  - c. Bill 1 gave the Lieutenant Governor in Council the power to fundamentally re-write legislation without the Legislature;
  - d. Bill 1 invoked the doctrine of interjurisdictional immunity in areas of clearly overlapping Federal and Provincial jurisdictions; and
  - e. Bill 1 effectively circumvented section 91(24) of the *Constitution Act, 1867*, which delegates jurisdiction with respect to “Indians, and Lands reserved for the Indians” to (the Federal) Parliament.

17. On December 15, 2022, Bill 1 received Royal Assent, becoming the *Alberta Sovereignty Within a United Canada Act* (the “*Alberta Sovereignty Act*”).

**The *Alberta Sovereignty Act* Infringes Upon Treaty Rights and Derogates the Treaty Relationship**

18. The Plaintiff states that the *Alberta Sovereignty Act*, as a whole, infringes upon the rights of the Plaintiff as guaranteed by the Treaty, the particulars of which include, but are not limited to, the following:
  - a. the *Alberta Sovereignty Act* infringes upon the rights of the Plaintiff’s Peoples to pursue their traditional ceremonies, associations, and avocations (such as hunting, fishing, trapping, etc.), through the effective derogation of the Plaintiff’s sovereignty and jurisdiction in favour of the Lieutenant Governor in Council of Alberta;
  - b. the *Alberta Sovereignty Act* derogates from the reciprocal promises made in the Treaty, as aforesaid, by effectively substituting those reciprocal promises with the fiat of the Lieutenant Governor in Council of Alberta;
  - c. the *Alberta Sovereignty Act* negates the guarantees of livelihood and freedom that the Treaty was made to protect, by wresting control of all Treaty Rights and the Treaty relationship from the Crown in Right of Canada to the Lieutenant Governor in Council of Alberta; and
  - d. the *Alberta Sovereignty Act* was enacted wholly without input, consultation, or consideration of the Plaintiff’s concerns, contrary to the spirit of the Treaty and in derogation of the Honour of the Crown;
19. The Plaintiff states that the *Alberta Sovereignty Act*, as a whole, has both the purpose and effect of negating the guarantees in the Treaty of freedom and agency appertaining to the Plaintiff’s lands, as well as the freedom and agency appertaining to the Plaintiff’s Treaty Rights throughout Alberta.
20. The *Alberta Sovereignty Act* is utterly repugnant to the letter and spirit of the Treaty.

**The *Alberta Sovereignty Act* is *Ultra Vires* His Majesty in Right of Alberta**

21. Section 91 of the *Constitution Act, 1867* lists specific powers to be solely within the lawmaking power or competence of (the Federal) Parliament, including subsection 24: “Indians, and Land reserved for the Indians”.
22. The Plaintiff states that the *Alberta Sovereignty Act* is *ultra vires* the Crown in Right of Alberta. The *Alberta Sovereignty Act* directly concerns lands reserved to Indians, as the metes and bounds of the Province of Alberta overlap with the lands reserved to the Plaintiff and its Peoples.

## **The *Alberta Sovereignty Act* was Enacted Without Consultation**

23. Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2017) states that:
- “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”
24. Further, the letter and spirit of the Treaty, as recognized and affirmed by section 35 of the *Constitution Act, 1982*, requires the consent of the Plaintiff “first had and obtained” in Crown conduct that affects, or potentially affects, the Plaintiff’s Treaty and Aboriginal Rights - in particular, the Plaintiff’s rights pertaining to land.
25. The *Alberta Sovereignty Act* was both introduced by the Premier, the Honourable Danielle Smith, and assented to by the Lieutenant Governor of Alberta without any consultation with the Plaintiff’s leadership or Peoples. There is no evidence in the debates, or elsewhere, of consultation with any of the Plaintiff’s leadership or people.
26. The Plaintiff states that this complete lack of consultation with respect to the *Alberta Sovereignty Act* constitutes a breach of its Treaty and Constitutional Rights, independent of the aforementioned breaches and infringements.

## **Remedy sought**

27. The Plaintiff seeks the following relief:
- a. a Declaration that the *Alberta Sovereignty Act* unjustifiably infringes upon and derogates the Treaty, as recognized and affirmed by section 35 of the *Constitution Act, 1982*;
  - b. a Declaration that the *Alberta Sovereignty Act*, or parts thereof, is *ultra vires* the Crown in Right of Alberta;
  - c. a Declaration that the *Alberta Sovereignty Act*, or parts thereof, is of no force and effect;
  - d. temporary and permanent injunctions declaring the *Alberta Sovereignty Act*, or parts thereof, inoperative as against the Plaintiff and its Peoples;
  - e. such further and other relief as may obtain under sections 35 and 52 of the *Constitution Act, 1982*;
  - f. indemnity costs and interest; and
  - g. such further and other consequential relief as this Honourable Court deems just.

## NOTICE TO THE DEFENDANT(S)

You have only a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

### **WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.