Court File No:

ONTARIO

SUPERIOR COURT

BETWEEN

ATTAWAPISKAT FIRST NATION, APITIPI ANICINAPEK NATION, AROLAND FIRST NATION, CONSTANCE LAKE FIRST NATION, EABAMETOONG FIRST NATION, FORT ALBANY FIRST NATION, GINOOGAMING FIRST NATION, KASHECHEWAN FIRST NATION, KITCHENUHMAYKOOSIB INNINUWUG FIRST NATION, and NESKANTAGA FIRST NATION

Plaintiffs

-and-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO, and

THE ATTORNEY GENERAL OF CANADA

Defendants

DRAFT

DRAFT STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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

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

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

Date ..... Issued by.....

Local registrar

TO: **The ATTORNEY GENERAL OF CANADA**
284 Wellington St, Ottawa ON K1A 0H8

AND TO: **THE ATTORNEY GENERAL OF ONTARIO AND**
HIS MAJESTY THE KING IN RIGHT OF ONTARIO
Crown Law Office – Civil
Ministry of the Attorney General
8th Floor, 720 Bay Street
Toronto, ON M7A 2S9

CLAIM

PART I: RELIEF CLAIMED

The Plaintiffs seek the following relief:

1. Declarations that:

   a) the Plaintiffs, as Treaty 9 First Nations, hold Treaty Rights of decision-making governance authority over land ("Jurisdiction"), including land under water and natural resources on, in, and from the land ("Land") within the territory covered by Treaty 9 ("Treaty") as depicted at Schedule A ("Treaty 9 Territory") which authority is necessitated by and emanates from their way of life derived from the Land, that Treaty 9 confirmed would continue;

   b) Treaty 9 confirms that the Plaintiffs' way of life including Jurisdiction is to continue without interference;

   c) In the alternative to paragraph (b) above, the written text containing the clause that the Treaty 9 Nations cede, release, surrender and yield up does not apply to and is of no force and effect in respect of Jurisdiction;

   d) Treaty 9 did not include the ceding, releasing, surrendering or yielding up of Jurisdiction, but rather sharing of Jurisdiction, with the His Majesty the King in right of Canada ("Canada") and His Majesty the King in right of the Province of Ontario ("Ontario"), resulting in co-Jurisdiction, the nature, structure and process of which are to be negotiated in accordance with Canada's and Ontario's duties to negotiate in good faith;

e) Canada and Ontario have breached Treaty 9 by granting rights and authorizing activities in and to, and regulating uses of Land (collectively, "Regulating the Land") without the Plaintiffs' consent, especially where such Regulating threatens their way of life;

f) Canada and Ontario have unjustifiably infringed and would continue to unjustifiably infringe the Plaintiffs' Treaty Rights by Regulating the Land without the Plaintiffs' consent, especially where such Regulating threatens their way of life;

g) Canada and Ontario have constitutional, fiduciary and other duties (the "Duties") to protect the Plaintiffs' meaningful exercise of Treaty Rights by refraining from Regulating the Land without the Plaintiffs' consent, especially where such Regulating threatens their way of life;

h) Canada and Ontario have breached their Duties to the Plaintiffs and failed to act honourably, and would continue to do so, in failing to diligently implement the Treaty Rights by Regulating the Land without the Plaintiffs' consent, especially where such Regulating threatens their way of life;

i) permits, approvals or other authorizations granted by Canada and Ontario on or after the date on which this Statement of Claim is issued and served, that Regulates the Land without the Plaintiffs' consent, especially where such Regulating threatens their way of life, including pursuant to the following Acts or their regulations, unjustifiably infringes on the Plaintiffs' Jurisdiction Rights and are of no force or effect pursuant to the *Constitution Act, 1982,* ss 35(1) and 52:

    i. *Mining Act*, RSO 1990, c M.14;

ii. *Crown Forest Sustainability Act, 1994,* SO 1994, c 25;

iii. *Fish and Wildlife Conservation Act, 1997,* SO 1997, c 41;

iv. *Public Lands,* RSO 1990, c P.43;

v. *Ontario Water Resources Act,* RSO 1990, c O.40;

vi. *Lakes and Rivers Improvement Act,* RSO 1990, c L.3;

vii. *Aggregate Resources Act,* RSO 1990, c A.8; and

viii. *Planning Act,* RSO 1990, c P.13;

ix. *Environmental Assessment Act,* RSO 1990, c E.18;

x. *Impact Assessment Act,* SC 2019, c 28, s 1;

xi. *Canadian Navigable Waters Act,* RSC 1985, c N-22; and,

xii. *Fisheries Act,* RSC 1985, c F-14.

j) the Acts listed in paragraph (i) above are unconstitutional or inapplicable and of no force and effect in respect of Treaty 9 Territory;

k) the declarations in paragraphs (i) and (j) above, are suspended for a reasonable period of time not exceeding five years, in order for the Parties to negotiate a co-Jurisdiction regime in respect of the Land;

2. An order that no claims initiated or continued by any Treaty 9 Nation for relief in respect of Treaty 9, such as claims for new reserve land owing as a treaty land entitlement, defences against charges related to the harvesting of resources brought by the Crown, claims for fulfilment of treaty promises and commitments, shall be adversely affected by the herein Claim;

3. An interim, interlocutory, and permanent injunction or declaration in lieu restraining Canada and Ontario and those persons acting thereunder, from, without the Plaintiffs' consent, Regulating the Land or acting pursuant to such Regulating, where such Regulating threatens their way of life;

4. A permanent injunction or declaration in lieu restraining Canada and Ontario and those persons acting thereunder from, without the Plaintiffs' consent, Regulating the Land or acting pursuant to such Regulating, where such Regulating threatens their way of life after this Statement of Claim is issued and served;

5. Judgement in the form of equitable compensation and/or damages for Treaty 9 Nations in the amount of $95,000,000,000 from Canada and Ontario for breach of Treaty and breach of the Duties, to be allocated based on a formula determined by the Court;

6. Pre and post-judgement interest;

7. Costs in the action; and

8. Such further, other, equitable and related relief as this Court may deem appropriate and just.

Part II: OVERVIEW

1. The Plaintiffs are among the Anishinaabe (Ojibway), Oji-Cree, Algonquin and Cree Nations that signed Treaty 9 (the "Treaty 9 Nations" or "Indigenous Signatories") which are the first peoples of the area known today as being in Treaty 9 (the "Treaty 9 Territory").

2. At the establishment of Treaty 9 relations with Canada and Ontario, the Treaty 9 Nations exercised Jurisdiction, that is, they used and made decisions about and governed the use of the Land, and they practiced

3. The Crown assertion of sovereignty in the Treaty 9 Territory did not affect the Jurisdiction of the Treaty 9 Nations of the area prior to Treaty 9: either in a de jure or a de facto sense. There was no basis in applicable law between Nations or governments for the taking of such Crown sovereignty.

4. Treaty 9 did not amount to a granting of exclusive Jurisdiction to the Crown. The Plaintiffs never agreed to cede, release, surrender or yield up their Jurisdiction in Treaty 9 Territory. Similarly, the Plaintiffs never agreed that the Crown could take up lands in Treaty 9 Territory without their consent. Crown officials prepared the written text of Treaty 9 including the cede, release and surrender clause and the taking up clause before the meetings with Treaty 9 Nations (Treaty Councils) were even scheduled, and without the Indigenous Signatories' knowledge or consent. At the Treaty Councils, the Treaty Commissioners never explained these clauses to the Indigenous Signatories and rarely even mentioned the words. The Indigenous Signatories cannot be held to have agreed to them or their effect on their Jurisdiction.

5. Even if the taking up clause does form part of Treaty 9, which the Plaintiffs deny, any right or ability of the Crown to take up land in the Treaty 9 Territory is not absolute and does not confer exclusive Jurisdiction on the Crown. It is subject to and burdened by the Crown's obligations to protect, honour and respect and not interfere with the Treaty 9 Nations' way of life, which, as explained below, includes their Jurisdiction.

6. The Indigenous Signatories way of life at the time of treaty negotiations included and relied on hunting, fishing, trapping and gathering of plants and all ancillary and related activities ("Harvesting") which had economic, social, spiritual and cultural characteristics and purposes. The Indigenous Signatories' Harvesting was facilitated, sustained, managed and governed by the Indigenous Signatories' Jurisdiction. Harvesting and Jurisdiction, collectively, comprise their "Way of Life".

7. Jurisdiction is an essential aspect of the Plaintiffs' Way of Life. It is inseparable from Harvesting when viewed from the Indigenous perspective. From the Plaintiffs' perspective, they had and have a sacred responsibility to protect the Land so as to ensure that it remained and remains in a viable and healthy state to support future generations of humans and other-than-humans. This reflects a relational, collective and holistic perspective. The Plaintiffs' Way of Life requires that they manage and govern the Land and its uses, including Harvesting, in accordance with this responsibility and relational perspective.

8. Canada has acknowledged the need to respect and protect First Nations' Jurisdiction. Specifically, Canada has agreed that First Nations require jurisdiction over any matter that is necessary to ensure an Indigenous community's survival and flourishing as a distinctive Indigenous community and that jurisdiction includes management of relations with the Crown. Management of the lands and resources is necessary to this survival and to facilitate a Way of Life.

9. Indigenous Signatories entered into Treaty 9 to protect their Way of Life, which was under threat from the rapid influx of settlers and the decline of the fur trade. They did not enter into Treaty 9 with the intention of signing away their Way of Life including all decision-

making authority over the Lands. In fact, the Indigenous Signatories' perspective of their sacred responsibility to and relationships with the Land would not have allowed them to do so.

10. The Plaintiffs did not agree to cede, release, surrender or yield up their Jurisdiction to the Crown so that the Crown had exclusive Jurisdiction in respect of the Land. Rather, Treaty 9 resulted in co-, dual or shared Jurisdiction whereby the Crown could not interfere with the Plaintiffs' Way of Life (which includes their Jurisdiction) without their consent, especially when such interference (including through Regulating the Land) threatened their Way of Life.

11. The Indigenous Signatories contemplated that the Crown would undertake some governance, which would guard against incursions into the Treaty 9 Nations' Way of Life. The Indigenous Signatories agreed to the Treaty on the basis that, among other promises made by Canada and Ontario, "their present manner of making their livelihood [Harvesting and Jurisdiction] would in no way be interfered with."

12. Today, the Plaintiffs contemplate that such dual or co Jurisdiction would be structured into a regime whereby, through negotiations, it is agreed and established who gives consent in certain circumstances, which processes are used to obtain this consent, and how disputes are resolved when impasses arise. To resolve impasses, the Plaintiffs contemplate an independent dispute resolution mechanism, rather than ad hoc process, similar to other situations governed by bilateral or multilateral treaties with multiple governments or decision-makers.

13. The written text of the Treaty was prepared "at headquarters" (Ottawa and Toronto) as between Canada and Ontario without any Indigenous Signatories' input. The Treaty Commissioners representing Canada and Ontario took the prepared written text and met with the Treaty 9 Nations in their territories. The Treaty Commissioners did not speak to the Treaty 9 Nations about the language, concepts or implications of the written text, including the cede, release and surrender or taking up clauses. The Treaty Commissioners did not alter the language of the written text of the Treaty based on anything that was said by any Treaty 9 Nations. The Treaty Commissioners did not have the intent of negotiating the written terms of the Treaty at all. Rather, when meeting with the Treaty 9 Nations, the Treaty Commissioners made promises and commitments that are very different than the written text of the Treaty, which the Treaty 9 Nations agreed to and constitute the actual Treaty 9. The Crown has since held up the written text to be Treaty 9; it was not and is not. The oral agreement was and is Treaty 9.

14. The oral agreement that constitutes Treaty 9 is that the Treaty 9 Nations were to maintain their Way of Life which includes Harvesting and Jurisdiction; that the Crown was granted some decision-making governance authority burdened by this commitment to protect the Treaty 9 Nations' Way of Life including their Jurisdiction; and as such, what results is co- or dual or shared Jurisdiction whereby the Crown could not interfere with or threaten the Way of Life (which includes the Jurisdiction) of the Plaintiffs without their consent.

15. However, Canada and Ontario have repeatedly acted as if the Treaty 9 Nations did cede and surrender all their Jurisdiction over to the Crown. The Crown governments took exclusive Jurisdiction when they knew or ought to have known that they did not have it

and that the Treaty 9 Nations did not grant it away to them. They did so by duplicitous, dishonourable and often forceful means.

16. By extending various legislative schemes to Treaty 9 Territory, Canada and Ontario (but largely Ontario) have given themselves the ultimate sole authority to grant and restrict ownership, sale of, use of, access to, exploitation of, development on and harm to the Land. They have given themselves the authority to reap benefits from the Land and leave the Land in a depleted and sickened state.

17. This is an unjustified infringement of the Plaintiffs' Treaty Rights pertaining to Jurisdiction. It is a breach of the Crowns' constitutional, fiduciary and other duties ("Duties") and inconsistent with the honour of the Crown. This has been perpetrated for over 100 years, and cumulatively has had profound devastating effects on the Plaintiffs' capacity and power to effect self-determination. This has also had severe adverse cumulative effects on Harvesting and other Treaty Rights.

18. The Plaintiffs have never consented to the Crown taking exclusive Jurisdiction over the Land. The Crown's taking and forced imposition of exclusive Jurisdiction disabled any ability of the Plaintiffs to give or withhold free, prior and informed consent.

19. Jurisdiction centres around the power to make decisions, the power to choose, or in other words, the power to consent or withhold consent. In this case, the Plaintiffs are asking this Court to find that their Treaty Rights include the right to a Way of Life which necessarily includes decision-making governance authority in respect of the Land they rely on for this way of life, which has economic, social, cultural and spiritual characteristics and purposes.

This is their Right of Jurisdiction. The Crown must acquire the Plaintiffs' consent for any Regulating of the Land especially where it threatens the Plaintiffs' Way of Life.

20. The Plaintiffs plead that the harm of colonialism lies not so much that other people came and settled, or that the other people took some land and resources, but that they purported to *take over*, to bestow upon themselves some supreme right to rule it all.

21. The Plaintiffs plead that the Crown cannot meet the test for justification of the infringements to their Treaty Rights that pertain to Jurisdiction over the last 100+ years, given the Crown's ongoing representation that there was no Treaty 9 Nations' Jurisdiction and thus the Crown's failures to take any steps to attempt to meet requirements to justify infringements that the Crown refused to acknowledge existed, and given the severe effects of such infringements.

22. The Plaintiffs plead that the infringements and breaches of Treaty Rights pertaining to Jurisdiction must stop and seek declaratory and injunctive relief to that effect. For infringements and breaches already committed, the Plaintiffs seek compensatory relief.

23. The Plaintiffs bring this Claim against Canada and Ontario in the spirit of reconciliation, which is to enable distinct powers, positions and perspectives to co-exist where one does not subjugate, run roughshod over and render impotent the other. The Plaintiffs seek the direction of the Court to compel Canada and Ontario to the negotiating table with the Plaintiffs to establish the nature, structure, processes and dispute resolution mechanisms for a co-Jurisdiction regime. The Plaintiffs ask this Court to consider the words of Nelson Mandela and the context of moving away from apartheid: "It aways seems impossible until it's done."

Part II: THE PARTIES

The Plaintiffs

24. Attawapiskat First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

25. Aroland First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

26. Apitipi Anicinapek Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

27. Kitchenuhmaykoosib Inninuwug has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

28. Constance Lake First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

29. Eabametoong First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

30. Ginoogaming First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

31. Kashechewan First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

32. Fort Albany First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act,* 1982.

33. Neskantaga First Nation has the capacity of a band within the meaning of the *Indian Act*, RSC, 1985, c I-5 and an Aboriginal people within the meaning of s 35 of the *Constitution Act*, 1982.

34. The Plaintiffs are among the Anishinaabe (Ojibway), Oji-Cree, Algonquin and Cree Nations that signed Treaty 9 (the "Treaty 9 Nations" or "Indigenous Signatories"). Treaty 9 Nations continue to occupy, use and govern the territories and resources in Ontario north of the height of land that marks the boundary of the Robinson Huron and Superior Treaties, in what are now the Land in Treaty 9 Territory.

35. The Plaintiffs signed Treaty 9 in 1905-1906 and 1929-1930.

36. The Treaty 9 Nations were subjected to the Crown imposition of the *Indian Act* such that they were continued by a number of 'bands' within the meaning of the *Indian Act.* The Plaintiffs represent 10 of those bands that are party to Treaty 9.

The Defendants

37. The Defendant His Majesty the King in Right of Ontario (or "Ontario") is named in this proceeding pursuant to section 14 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17.

38. Ontario exercises jurisdiction over the lands material to the issues in this proceeding, as well as the resources on or under those lands, pursuant to sections 109, 92(5) and 92A of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, subject to the Plaintiff First Nations' Treaty and Aboriginal Rights.

39. Notice of this action was given to His Majesty the King in Right of Ontario by letter dated [X] pursuant to section 18 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17.

40. The Defendant the Attorney General of Canada is the representative of His Majesty the King in right of Canada (or "Canada"), and is named in this proceeding pursuant to ss. 21(1) and 23(1) of the *Crown Proceedings and Liability Act*, RSC 1985, c C-50.

41. Canada exercises jurisdiction over Indians and Lands Reserved for Indians pursuant to section 91(24) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, subject to the Plaintiff First Nations' Treaty and Aboriginal Rights. Canada is also responsible for the negotiation and implementation of international agreements such as the United Nations Convention on Biological Diversity, and for the conservation and protection of species at risk on federal lands.

42. The Crown Defendants are, either alone or together, successors to all of the obligations, duties, and liabilities of the Imperial Crown and Upper Canada, and in particular, the obligations, duties and liabilities owed the Plaintiffs under Treaty 9. Reference in this statement of claim to "the Crown" includes either or both Defendants to the extent of their respective obligations, duties and liabilities.

43. The Defendants are jointly and severally responsible for upholding the promises made to the Plaintiffs in Treaty 9, the Crown's fiduciary duties to the Plaintiffs, and the Crown's Honour, each to the extent of their respective jurisdictional competence.

PART IV: TREATY 9

44. Treaty 9 is a treaty within the meaning of section 35 of the *Constitution Act, 1982*. It was ratified by Parliament by Order in Council 1906-2499.

Context of the Parties' relationship

45. Early political relations between Euro-Canadians and First Nations in the Treaty 9 Territory involved traders from the major fur trading companies.

46. In 1670, British King Charles II signed a Royal Charter establishing the Hudson's Bay Company ("HBC"). The King granted it rights to colonize and trade in all the lands draining into the Hudson's Bay and Straight, which the King named Rupert's Land.

47. When the British began colonizing North America they encountered Indigenous Nations that were well established, with their own laws, customs, practices, and traditions. Rather

than risking open conflict with these Nations, officials formed alliances with them and signed treaties of peace, neutrality and friendship over identifiable areas of land.

48. As such, the Royal Charter created no political or legal rights over, or subjugated, the Indigenous peoples of the region. To secure rights to use the lands, HBC officials signed compacts or 'treaties' with so called 'trading captains' to secure "liberty of trade and commerce and a league of friendship and peaceful cohabitation."

49. Ceremonies with defined protocols, feasts and gift-giving formed an important part of these alliances. The Anishinaabe, Cree, Oji-Cree and Algonquin received annual gifts from HBC officials in return for the privilege of sharing the land.

50. When war broke out between the English and the French, Indigenous Nations participated as allies on one side or the other.

51. After the Pontiac War, King George III issued a Royal Proclamation in 1763. The Proclamation entrenched the principle that "Indians" in the British American colonies were not to be "molested or disturbed in the Possession of such Parts of Our Dominion and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds."

52. Such lands, according to the Proclamation, could not be patented or taken until ceded and surrendered to the Crown. This policy is, in part, a recognition of the existence of a set of land rights possessed by the "Indians" over their own lands, including the lands that became Treaty 9 Territory. Consent of the Indigenous Nations and the Crown was and remains a requirement in order to displace or "extinguish" those rights.

53. The Royal Proclamation was followed and elaborated upon in 1794 when Governor General Lord Dorchester issued a more detailed list of protocols to rectify omissions in the official land cession records. These protocols included a blend of Indigenous and British customs which further entrenched acceptable treaty making procedures, including the principle that the terms of the treaty should be properly translated and explained, and the text of the treaty should be signed by the parties at a public ceremony consistent with Indigenous customary practices of allyship.

54. In the late 1800s, a growing interest in mining, logging, trapping, and fishing in the region that later became the Treaty 9 Territory began to attract resource exploitation and settlement in ever larger numbers.

55. The Canadian Pacific Railway ("CPR"), built rail lines across unsurrendered lands near Long Lake, brought miners, surveyors and prospectors who occupied the lands, spread disease, started bush fires, depleted and disrupted game in the region and took resources without Indigenous consent.

56. Leaders in some Indigenous communities began to voice their frustration about the influx of settlers, trappers, prospectors and miners, and fishers and the fact that no compensation had been received in exchange for their use and occupation of the lands. They petitioned the Crown to enter into treaty with the Indigenous Nations north of the height of land, which marked the boundary of the Robinson Huron and Superior Treaty territories.

57. Initially, the Crown ignored these requests for treaty, but before long Indigenous assertions of jurisdiction over the lands and resources against the encroachment of resource exploitation and settlement would press the issue. With the discovery of new

mineral deposits in the region and a desire to develop infrastructure for timber extraction and hydro-electric power, the Crown recognized that a treaty was necessary to avoid violence in the lands that became Treaty 9 Territory.

Negotiation of Treaty 9

58. The Treaty was negotiated between Canada and Ontario from approximately 1901 to 1905 without the involvement of the Treaty 9 Nations and before any Treaty Councils (meeting with the Indigenous Nations) were held. The Treaty incorporates by reference the terms of a separate agreement entered into between Canada and Ontario (the "Written Treaty").

59. Ontario and Canada each appointed Treaty Commissioners. Duncan Campbell Scott and Samuel Stewart, employees of the Department of Indian Affairs, were appointed on behalf of Canada and Daniel McMartin, a lawyer from Perth was appointed for Ontario (together the "Commissioners").

60. To try to get the Treaty agreed to, the Commissioners travelled by canoe on two separate expeditions to HBC posts across the lands that became Treaty 9 Territory. Indigenous leaders gathered at the posts and eleven signing ceremonies were held between July 1905 and August 1906 (the "Treaty Councils").

61. The first expedition began in July 1905 with a Treaty Council at Osnaburgh Post, modern day Mishkeegogamang First Nation. From there the Commissioners travelled down the Albany River and held Treaty Councils at:

    a. Fort Hope Post (Eabamatoong First Nation);

b. Marten Falls Post (Marten Falls First Nation);

c. Fort Albany Post (Kashechewan First Nation);

d. Moose Factory Post (Moose Cree First Nation); and

e. New Post (Taykwa Tagamou Nation).

62. The expedition also stopped at English River but did not hold a Treaty Council. The second expedition in 1906 went to:

a. Abitibi Post (Abitiwinni First Nation, Wahgoshig First Nation, now Apitipi Anicinapek Nation);

b. Matachewan Post (Matachewan First Nation);

c. Mattagami Post (Mattagami First Nation);

d. Flying Post (Flying Post First Nation);

e. New Brunswick House Post (Brunswick House First Nation); and

f. Long Lake Post (Ginoogaming First Nation).

63. At each Treaty Council a similar process was followed to formally execute the Treaty, with some minor variations. The Commissioners:

a. selected translators to assist with negotiations;

b. requested that the community select representatives;

c. provided a brief overview of select terms of the Treaty orally in English, with translators interpreting for the Indigenous leaders;

d. answered questions posed by Indigenous leaders; and

e. presented the Written Treaty to the leaders as a completed document for signature.

64. The Written Treaty itself was not translated into Anishinaabe or Cree.

65. In most locations the Commissioners also discussed and agreed upon the location of reserves with the Indigenous leaders.

66. A common point of discussion was protection of the Indigenous Signatories' Way of Life. They often requested or demanded that their Way of Life not be interfered with or narrowed, that their fishing and hunting grounds not be encroached upon by the granting of rights to others, and the Commissioners repeatedly assured them it would not be, nor would they be restricted as to territory.

67. The Commissioners did not provide Indigenous Signatories with an English nor translated copy of the Treaty, that is, neither the pre-developed Written Treaty nor the contents of the Oral Treaty reduced to writing were provided.

68. In 1929 and 1930 further adhesions were signed to incorporate lands north of the Albany River. These lands were included within the boundaries of Ontario pursuant to the *Ontario Boundaries Extension Act, 1912*.

69. Treaty Councils were again held to formally sign the Treaty at HBC posts. This time the Commissioners toured the region by airplane with signing ceremonies at Big Trout Lake in 1929, and Wendigo River at Nikip Lake, Trout Lake, Fort Severn, and Winisk in 1930. Paragraphs 63 through 67 apply to these Councils as well.

70. The Crown's goals in concluding Treaty 9 include:

a. to encourage and facilitate the exploitation of mineral resources and settlement in the region in a peaceful and orderly way;

b. to secure a large-scale surrender of lands so that settlement and resource exploitation could proceed in the region in compliance with the Royal Proclamation of 1763 and the *Indian Act*, without the need to continuously sign *ad hoc* surrenders like those that were signed in Upper Canada;

c. to respond to petitions from Indigenous Nations, who were seeking to control increased settlement and resource exploitation by Euro-Canadians in the lands that became Treaty 9 Territory; and

d. to avoid the kind of violence they knew could arise when squatters, miners, surveyors and prospectors poured onto unsurrendered lands.

71. The Crown's intention was also to achieve its objectives as cheaply as possible.

72. Unlike with other numbered treaties of the era, there was no consideration given to the provision of agricultural implements, owing in part to the largely non-arable landscape of Treaty 9 Territory, unsuitable for agriculture. As the Commissioners noted, the Indigenous Signatories "could not hope to depend on agriculture as a means of subsistence; that hunting and fishing, in which occupations they were not to be interfered with, should for very many years prove lucrative sources of revenue."

73. The objectives for Indigenous Signatories to the Treaty include;

a. to preserve *bimaadiziwin* in Ojibwe or *pimaatisiium* in Cree — happiness, prosperity, and protection of their traditional way of life;

b. to exercise a measure of control over the influx of Euro-Canadians into their territories; and

c. to secure monetary payments through annuities that would assist communities suffering from the decline of the fur trade, the impacts of the railway and the disease, disruption and displacement occasioned by the arrival of Euro-Canadians into the southern end of Treaty 9 Territory.

74. Indigenous Signatories intended to retain all their existing rights and authorities with regard to their Way of Life which included their Jurisdiction, and to share in the lands and resources.

The Written Treaty Terms

75. Treaty 9 was drafted in English according to Euro-Canadian legal norms and worldviews.

76. According to the Written Treaty first circulated between Canada and Ontario in 1905, the Indigenous Signatories would:

a. agree to "cede, release, surrender and yield up… all their rights titles and privileges whatsoever" to territory amounting to 90,000 square miles, more or less;

b. grant the Crown a right to take up any tracts of land within the surrendered territory for the purpose of settlement; and

c. agree to obey the law, maintain peace among settlers and themselves, and to be "good and loyal subjects of the King".

77. In exchange, the Treaty 9 Nations were supposed to receive:

a. $8 gratuity per person, $4 less than Treaties 3 and 5 with no scale for Chiefs and headmen;

b. $4 annuity per person, $1 less per year than Treaties 3 and 5 with no scale for Chiefs and headmen;

c. reserves included in the Schedule to the Treaty for each band, which would not exceed one square mile for each family of five, to be surveyed and defined at a later date;

d. a right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered, subject to regulations when lands are "taken up" by the Crown;

e. such school buildings and educational equipment "as may seem advisable" to His Majesty's government of Canada; and

f. a flag, and a copy of the Treaty.

78. According to the terms of the Written Treaty, Treaty 9 was also subject to an agreement between the Dominion of Canada and Province of Ontario, which was "attached" to the Treaty. This agreement was concluded after the Commissioners had set out on the Treaty expedition, only nine days before the Treaty was first signed by any Indigenous Signatory at Osnaburgh Post.

79. This Crown agreement contained, among other things, a clause stipulating that no hydro-electric resources capable of generating 500 horsepower could be included in reserves set aside under Treaty 9.

Indigenous perspective of Treaty 9 (the "Oral Treaty")

80. The Written Treaty was not translated into Anishinaabemowin or Cree. Indigenous leaders did not have an opportunity to create their own written record of the agreement, and a copy of the Treaty was not provided to them upon signing.

81. Instead, the Commissioners briefly described select terms of the Treaty, and that explanation was translated orally by translators selected by the Crown (the "Oral Treaty"). The Commissioners had no authority to alter the terms of the Written Treaty.

82. The description of select terms provided to the Treaty 9 Nations bore little relationship to the full Written Treaty.

83. At each Treaty Council in 1905 and 1906 the Commissioners explained that:

    a. the Treaty 9 Nations would be given a "present" of $8;

    b. they would receive an annuity of $4 per annum in perpetuity;

    c. the Treaty 9 Nations could continue to hunt, trap and fish in the Treaty 9 Territory as they and their forefathers had always done and their manner of doing so would "in no way" be interfered with; and

    d. a reserve would be set aside for each Treaty 9 Nation.

84. At several Treaty Councils the Commissioners explained that the Treaty 9 Nations:

    a. would not be required to reside on the reserves; and

    b. the reserve was not to exceed one square mile of land for each family of five.

85. Funding for schooling was mentioned at some Treaty Councils.

86. The Commissioners were clear that the Treaty 9 Nations would be able to retain their relationship to the Land and live as they and their forefathers had done on their lands. This was a primary issue for discussion and the Commissioners had to repeatedly satisfy the Treaty 9 Nations that this was the case.

87. In exchange, Treaty 9 Nations agreed to share the Land with settlers.

88. The treaty was not explained to the Indigenous Signatories as giving up their management or development of the Land; as preventing them from hunting, fishing and trapping on any particular areas occupied by settlers; nor as subjecting their hunting, fishing and trapping to regulation by the Crown as it saw fit.

89. The laws, beliefs, languages, customs for of the Anishinaabe, Cree, Oji-Cree and Algonquin reflected the inherent, historic and inextricable connection between the very identities and lives of their peoples and their Lands. Land use and stewardship laws were oriented toward protection of the environment for future generations.

90. From the perspective of the Indigenous Signatories, it was not possible to “alienate” the Land and sever this profound connection with the Land by signing Treaty 9.

91. Indigenous Signatories could not have intended to simultaneously retain their Way of Life and deep, multifaceted, and embedded relationship to the Land, including their use and occupation of the Land, while forfeiting authority to make decisions about that Land that was central to that Way of Life.

92. The Treaty 9 Nations were skeptical and questioned the Commissioners about why they were being asked to give up so little for what they were to receive in return. The

Commissioners assured them that "there was not something behind the terms of the agreement" that were being presented orally at the Treaty Councils and that "nothing but good was intended".

93. Treaty 9 Nations understood that settlers would be coming, and in their dealings with the settlers they understood they were expected to "obey the law" and refrain from interfering with them. They understood that they were expected to maintain peace between each other.

94. Treaty 9 Nations did not believe that to "obey the law" meant surrendering authority to make decisions about their Lands, continued access to which they had been promised. Nor from the Treaty 9 Nations' perspective would this be possible.

95. The Commissioners were aware the Treaty 9 Nations did not view their relationship with the Land through the lens of "Indian Tenure". Despite their belief that the Treaty 9 Nations had no understanding of the law of "Indian tenure", the Commissioners did not explain the concept during the Treaty Councils. The Commissioners also did not suggest or explain:

    a. the "taking up" clause;

    b. that Treaty 9 Nations were surrendering their ability to make decisions about the Land; and

    c. that their right to harvest and their right to a reserve would be subject to regulation and extinguishment at the discretion of the Crown.

96. In summary, the Treaty Commissioners did not speak to the First Nations about the language, concepts or implications of the written text, notably cede, release and surrender or taking up. They did not alter the language of the written text of the Treaty based on anything that was said by any Treaty 9 Nations. They did not negotiate the written terms of the Treaty at all. Rather, the Treaty Commissioners when meeting with the Treaty 9 Nations made promises and commitments *orally*, which the Treaty 9 Nations agreed to, which are very different than the written text, and which constitute the oral agreement being the actual Treaty 9. The Crown has since held up the written text to be Treaty 9; it was not and is not. The oral agreement was and is Treaty 9.

PART V: THE TREATY RIGHTS

The Plaintiffs' Treaty Rights

97. As described above, the Crown required and sought the consent of the Plaintiffs' ancestors to open the tract of land they inhabited for settlement and other activities.

98. The Plaintiffs ancestors gave consent to sharing of the Land with settlers in exchange for the solemn promises made by the Crown, in particular that:

    a. entering into Treaty 9 would not lead to interference with the Plaintiffs' Way of Life;

    b. their "present manner of making their livelihood would in no way be interfered with";

    c. "that hunting and fishing, [are] occupations they were not to be interfered with,";

d. that the same manner of making their livelihood and patterns of economic activity would continue for the Plaintiffs' ancestors and their descendants after the Treaty as existed before it and that the Plaintiffs would be expected to continue to make use of these means;

e. they would be free to hunt, trap, fish and gather resources throughout the Treaty 9 Territory as they had before entering into Treaty 9; and

f. the Land would be left in their care and control.

99. The manner by which the Indigenous Signatories made their livelihood prior to and at the time of treaty negotiations was through Harvesting as facilitated and ensured by their Jurisdiction, that is, their access to and management of the Land both as among themselves and as against settlers and explorers.

100. At the time of treaty-making, the Plaintiffs' ancestors were organized in societies, exercised their Jurisdiction, and used and occupied the Land that became known as the Treaty 9 Territory, which they had done from time immemorial.

101. Treaty 9 Nations, including but not limited to the Plaintiffs, practiced a model of governance that was premised on ensuring the continued ability of their way of life including, especially, Harvesting. They practiced a socio-political and economic system of alliance and reciprocity to ensure the continued peaceful occupation and use of their Lands within what became Treaty 9 Territory.

102. The Treaty 9 Nations' perspective is that they are the guardians of the Land and continue to be. At the root of their law, culture and way of life is the belief that their land is given by the Creator and can be neither bought nor sold.

103. There were regional and local variations in the practice of Land management within what that became known as Treaty 9 Territory, but common among the Anishinaabe, Algonquin, Oji-Cree and Cree traditions were systems of decision-making that connected particular communities (variously referred to as bands, tribes, clans, council fires etc.) with identifiable territories.

104. These communities governed their territories with their own rules and laws that determined who could use the Land, and how the Land could be used sustainably.

105. Matters that concerned multiple communities were addressed collaboratively at general councils convened for the purposes of making decisions that were important to the maintenance of their way of life and the Land that became Treaty 9 Territory, including Treaty-making.

106. Accordingly, the Harvesting reliant on the Treaty 9 Nations' Jurisdiction as described above, collectively, constituted the Treaty 9 Nations' "Way of Life".

107. As such, the solemn promises made by the Crown ensured that maintenance and protection of the Plaintiffs' Way of Life included:

    a. establishing the infrastructure necessary for Harvesting, including building cabins, camps, and trails;

    b. accessing traplines and trapline infrastructure, including trails and cabins;

c. accessing and protecting adequate quantities of clean and fresh water, capable of sustaining life;

d. protecting and using terrestrial, riparian and water habitats to prevent interference with continuity of Harvesting;

e. engaging in cultural transition – how the way of life can be passed on to subsequent generations;

f. accessing preferred Lands for Harvesting;

g. undertaking traditional and spiritual activities on and for the Land;

h. manage natural resources within Treaty 9 Territory;

i. gathering and use of various natural resources, including animals and plants; and

j. travelling for the above purposes.

108. Collectively, the rights set out in paragraph 107 are the Plaintiffs' "Treaty Rights". Treaty Rights include protection of the Plaintiffs' Way of Life, that is, their Harvesting and Jurisdiction.

109. The Crown cannot lawfully infringe the Plaintiffs' Treaty Rights without justification and no other person may unreasonably interfere with the Plaintiffs' meaningful exercise of their Treaty Rights.

110. The guarantee of the Treaty Rights was central to the Indigenous Signatories' willingness to enter into treaty with the Crown, including because they could not be expected to make

their livelihood through other means such as farming given the non-arable nature of much of the Treaty 9 Territory.

Crown obligations under Treaty 9

111. The Defendants' entitlement under Treaty 9 to take up lands is subject to and burdened by its obligations to the Plaintiffs under Treaty 9, the *Constitution* and the legal doctrine of the honour of the Crown.

112. Pursuant to Treaty 9, the Defendants' obligations include:

a. to not force or permit interference with the Plaintiffs' way of life;

b. to not force or permit interference with the Plaintiffs' traditional patterns of economic activities;

c. to not interfere with the Plaintiffs' meaningful exercise of their Treaty Rights;

d. to not authorize or permit any person to do any of the things identified in subparagraphs (a) through (c);

e. to prevent others from interfering with the Plaintiffs' meaningful exercise of their Treaty Rights;

f. to exercise any Crown rights under the Treaty, including entitlements to take up land, in a manner that upholds the honour of the Crown and that does not infringe on the Plaintiffs' continued meaningful exercise of the Treaty Rights;

g. to maintain adequate terrestrial and riparian habitat to support the activities of Harvesting, including for each species in respect of which these activities may be exercised; and

h. to use or allow settlers' use of the Lands in such a way as to ensure the continued meaningful exercise of the Treaty Rights by the Plaintiffs within the Treaty 9 Territory.

113. Treaty 9, either on its own or by operation s 35(1) of the *Constitution Act, 1982,* is imbued with the honour of the Crown and created a fiduciary or special legal relationship between the Plaintiffs and the Crown. Since entering into the Treaty, the Crown has been required to uphold the honour of the Crown in all its dealings in respect of the Plaintiffs' Treaty Rights and is under a fiduciary duty to the Plaintiffs to ensure the continued meaningful exercise of the Treaty Rights.

114. The clauses contained in the Written Treaty that refer to concepts such as cession, surrender, release and yielding up rights, titles and privileges to the Land (the "Cession Clauses") are, to the extent they interfere with Treaty 9 Nations' Jurisdiction, contrary to the Crown obligations listed above. Further, these concepts were not referred to nor explained at most of the negotiations with the Indigenous Signatories.

115. Accordingly, to the extent they require interference with the Treaty 9 Nations' Jurisdiction, all of the Cession Clauses are inconsistent with the Oral Treaty and inconsistent with the Treaty Rights.

PART VI: THE CROWN'S PURPORTED EXCLUSIVE JURISDICTION OVER RESOURCE EXPLOITATION WITHIN TREATY 9 TERRITORY

116. The Defendants have exercised legislative authority and discretionary control over the management of the Treaty 9 Territory without the consent of the Plaintiffs ("Exclusive Jurisdiction"), including but not limited to:

    a. granting and restricting of ownership or use of the Land;

    b. granting and restricting access to the Land;

    c. granting and restricting the sale of the Land;

    d. setting processes for obtaining the above, and compelling compliance while economically benefitting through collection of financial penalties for non-compliance;

    e. waiving compliance;

    f. economically benefitting from the granting of rights to the Land;

    g. setting standards for conservation of the Land;

    h. selecting which Indigenous communities are entitled to input about the Land use while restricting the amount, manner, and consequences of such input; and

    i. compelling disclosure of information and controlling access to information about the Land use.

(collectively, the "Regulation of Land" or "Regulating")

117. Through the Regulation of Land, the Defendants have authorized resource exploitation within the Treaty 9 Territory, including through:

    a. mining;

b. forestry;

c. commercial hunting, trapping and fishing;

d. land alienation and encumbrance;

e. hydroelectric infrastructure;

f. roads and other infrastructure;

g. agricultural land clearing; and

h. other industrial development.

(collectively, the "Resource Exploitation")

118. The Defendants Regulate Land within Treaty 9 Territory without the Plaintiffs' consent which has resulted in severe adverse cumulative effects on the Plaintiffs' meaningful exercise of their Treaty Rights.

119. The Defendants' Regulation of Land within the Treaty 9 Territory has left the Plaintiffs without any meaningful ability to exercise their Treaty Rights that pertain to Jurisdiction. Jurisdiction is vital to the Plaintiffs' ability to meaningfully exercise their Harvesting, and preservation of their Jurisdiction is essential for that purpose.

Lack of Treaty Authority for Exclusive Jurisdiction to authorize Resource Extraction

120. On behalf of the Crown, beginning in 1905, the Treaty Commissioners promised the Indigenous Signatories that the Crown would protect their way of life and relationship to

the Land so long as they remained at peace with the settlers. The Indigenous Signatories did remain at peace with settlers.

121. The Treaty Rights continued to apply throughout Treaty 9 Territory at all material times, including at the time the Crown asserted Exclusive Jurisdiction over Regulation of Land within Treaty 9 Territory.

122. As of the signing of Treaty 9 in 1905, Ontario had been historically asserting Exclusive Jurisdiction through its continued application of several statutory regimes for the Regulation of Land to Treaty 9 Territory. These included, but are not limited to:

    a. *The General Mining Act of 1869,* SO 1868, c 34 that remained in force until 1906 when it was replaced by *The Mines Act, 1906*, RSO 1897, c 36, s 1, and in 1908 with the *The Mining Act of Ontario*, 6 Edw VII c 11 and subsequent amendments all of which set out a statutory regime whereby Ontario could grant permission to and manage the ability of parties to conduct mining activities within Treaty 9 Territory;

    b. *An Act respecting the Sale and Management of Timber on Public Lands,* RSO 1897, c 32 consolidating a statutory regime whereby Ontario could grant permission to and manage the ability of parties to cut timber within and remove timber from Treaty 9 Territory for commercial gain; and

    c. *The Ontario Fisheries Act,* RSO 1897, c 288 and the *Ontario Game Protection Act,* RSO 1897, c 287, consolidating statutory regimes whereby Ontario could grant permission to and manage the ability of parties to kill and remove animals and fish from Treaty 9 Territory for commercial gain.

123. Ontario also historically exercised Exclusive Jurisdiction to Regulate Land in Treaty 9 Territory when, in 1911, Ontario incorporated the town of Timmins within the south-eastern portion of Treaty 9 Territory, at the present townsite of Timmins, Ontario.

124. The Crown, under *An Act to provide for the Incorporation of Towns in Territorial Districts,* SO 1902, c 30, established the Town of Timmins on the Land without Treaty authority.

125. At all material times the Treaty 9 Nations' Jurisdiction was neither surrendered, unused or unnecessary to the Plaintiffs' continued Harvesting, and accordingly could not be interfered with.

126. As of the signing of Treaty 9 in 1905 and shortly thereafter, Canada had been historically asserting Exclusive Jurisdiction through its continued application of several statutory regimes that Regulate Land to Treaty 9 Territory. These included, but are not limited to:

    a. the *Dominion Lands Act,* RSC 1886, c 54 that set out a statutory regime whereby Ontario could grant permission to and manage the ability of parties to cut timber within and remove timber for commercial gain within Treaty 9 Territory;

    b. the *Dominion Lands Act,* RSC 1906, c 54, that set out a statutory regime whereby Canada could grant permission to and manage the ability of parties to conduct mining activities within Treaty 9 Territory; and

    c. the *Fisheries Act,* RSC 1886, c 95 consolidating a statutory regime whereby Canada could grant permission to and manage the ability of parties to kill and remove fish from within Treaty 9 Territory for commercial gain.

127. The Acts and instrument referred to in paragraphs 122 to 126 above collectively constitute the "Historic Legislation".

128. Currently Ontario and Canada continue to use statutory authorities to Regulate Land in Treaty 9 Territory, including, but not limited to:

    a. *Mining Act*, RSO 1990, c M.14;

    b. *Crown Forest Sustainability Act, 1994,* SO 1994, c 25;

    c. *Fish and Wildlife Conservation Act, 1997,* SO 1997, c 41;

    d. *Public Lands,* RSO 1990, c P.43;

    e. *Ontario Water Resources Act,* RSO 1990, c O.40;

    f. *Lakes and Rivers Improvement Act,* RSO 1990, c L.3;

    g. *Aggregate Resources Act,* RSO 1990, c A.8;

    h. *Planning Act,* RSO 1990, c P.13;

    i. *Environmental Assessment Act,* RSO 1990, c E.18;

    j. *Impact Assessment Act,* SC 2019, c 28, s 1;

    k. *Canadian Navigable Waters Act,* RSC 1985, c N-22; and

    l. *Fisheries Act,* RSC 1985, c F-14.

(collectively, the "Current Legislation")

129. Together, the Historic Legislation and the Current Legislation constitute the "Exclusionary Legislation" and form part of the Defendants exercise of Exclusive Jurisdiction.

130. The application of the Exclusionary Legislation to Treaty 9 Territory was done without the Treaty 9 Nations' consent.

131. The application of Exclusive Jurisdiction had no basis in law prior to Treaty 9 and was not given legal authority by Treaty 9. The Treaty 9 promises and commitments made by the Crown to which the Treaty 9 Nations agreed, reflect commitments to protect the Treaty 9 Nations' Way of Life, that is, Jurisdiction and Harvesting, which would not be possible at the same time as applying Crown Exclusive Jurisdiction.

132. In the alternative, had any Historic Legislation or application of Exclusive Jurisdiction been valid under law prior to Treaty 9, which is denied, it was overridden and rendered nullified or inapplicable by Treaty 9 and the promises and commitments of the Crown therein to uphold and protect Treaty 9 Nations' Way of Life that encompasses Harvesting and Jurisdiction, as the former is in direct conflict with the latter.

133. The Exclusionary Legislation and application of Exclusive Jurisdiction in relation to Treaty 9 Territory adversely interfered and interferes with the exercise of the Treaty Rights and as such is an infringement and breach of Treaty 9.

Impacts of the Exclusive Jurisdiction on the exercise of Treaty Rights

134. The cumulative impacts of the Exclusive Jurisdiction have resulted in:

    a. Deterioration of the Plaintiffs' ability to exercise Jurisdiction including over Harvesting and Land required for Harvesting;

    b. Deterioration of the Plaintiffs' ability to exercise Jurisdiction to preserve and to protect Land from taking up, fragmentation, industrial and commercial

development by non-Indigenous persons that has caused contamination, pollution, loss of Land, climate change, and threats to species;

c. Deterioration of the Plaintiffs' ability to exercise Jurisdiction so as to protect the cultural and spiritual aspects of Harvesting ways of life including through teaching and passing on language and laws as part of their Way of Life; and

d. Deterioration of the Plaintiffs' ability to exercise Jurisdiction over health management including through access to traditional foods and medicines.

135. The Plaintiffs have suffered severe deterioration to the ability to exercise Harvesting as a result of the above.

136. The cumulative effects of the Exclusive Jurisdiction have had and will have (if not stopped) significant adverse impacts on the meaningful exercise of the Plaintiffs' Treaty Rights, breached and will breach the Treaty and infringed and will infringe the Plaintiffs' Treaty Rights.

137. The Plaintiffs have made their concerns regarding the cumulative impacts of the Exclusive Jurisdiction and Regulation of Land on the continued meaningful exercise of their Treaty Rights, and the resulting breach of the Treaty and infringement of their Treaty Rights, known to the Defendants, but the Defendants have failed or refused to adequately address the impacts to and infringement of those rights.

138. The Defendants have not taken any, or sufficient, steps to prevent the breach of the Treaty, address the infringement of the Treaty Rights, or to ameliorate the impacts of the Exclusive Jurisdiction on the continued exercise of the Plaintiffs' Treaty Rights.

139. The Defendants have continued, and will continue unless restrained from doing so, to exercise Exclusive Jurisdiction within the Treaty 9 Territory contrary to the Defendants' obligations under the Treaty.

PART VII: THE DEFENDANTS' CONDUCT IS UNLAWFUL

140. The Plaintiffs have rights under the Treaty against the curtailment by the Crown of the Way of Life that the Plaintiffs enjoyed before entering into the Treaty.

141. The existing treaty rights of the Aboriginal peoples of Canada are recognized and affirmed by the *Constitution Act, 1982.*

142. The Defendants are bound by the Treaty, as both levels of government are responsible for fulfilling the promises in the Treaty, in accordance with the division of powers under the *Constitution Act, 1867,* 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

143. The exercise of the Defendants' rights under the Treaty, including any rights to make regulations or to take up lands, are subject to and burdened by the Defendants' obligations to the Plaintiffs under the Treaty, and the Crown's Duties. The Defendants must act in a way that seeks to preserve and accomplish the intended purposes of the Treaty Rights, seeks to minimize impacts on the Treaty Rights and to ensure the continuing meaningful exercise of the Treaty Rights by the Plaintiffs.

144. Through the Exclusionary Legislation, the Defendants have undertaken Exclusive Jurisdiction to Regulate the Land within Treaty 9 Territory and through this have undertaken, caused and/or authorized Resource Exploitation within and adjacent to Treaty 9 Territory, which has resulted in:

a. forcible interference with the Plaintiffs' Way of Life;

b. interference with the continuity of the Plaintiffs' traditional patterns of economic activity and restraint of the Plaintiffs' means of earning a livelihood; and

c. significant interference with and curtailment of the Plaintiffs' ability to exercise their Treaty Rights, such that the Plaintiffs have been left with no meaningful ability to exercise some or all of their Jurisdiction within the Treaty 9 Territory

145. As such, the Defendants have breached and infringed, and continue to breach and infringe, the Treaty and the Treaty Rights of the Plaintiffs, contrary to their Duties.

146. Further, or in the alternative, the Defendants have unlawfully caused adverse effects upon the Plaintiffs' Treaty Rights without having fulfilled the obligations required of the Defendants pursuant to the Treaty, the constitution and the legal doctrine of the honour of the Crown.

147. Further, or in the alternative, any rights of the Defendants under the Treaty to make regulations or to take up land are subject to the legal doctrine of the honour of the Crown and the fiduciary duties of the Crown to the Plaintiffs, including the duty to act in the interests of the Plaintiffs and to seek to ensure the continuing meaningful exercise of the Treaty Rights.

148. The Exclusionary Legislation and the Defendants' exercise of Exclusive Jurisdiction to Regulate Land has adversely impacted the ability of the Plaintiffs to meaningfully exercise their Treaty Rights within Treaty 9 Territory, contrary to the interests of the Plaintiffs. As such, the Exclusionary Legislation and the Defendants' exercise of

Exclusive Jurisdiction to Regulate Land constitutes breaches of fiduciary duty and, or in the alternative, the legal doctrine of the honour of the Crown.

149. Further, or in the alternative, by Regulating Land as herein described, the Defendants have taken benefit from their discretionary control over the Treaty 9 Territory, and have put their own strategic and financial interests in the development of the Treaty 9 Territory before the Plaintiffs' interests. This conduct breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.

150. Further, or in the alternative, the Defendants have failed to act with reasonable care, skill and diligence required of them by law, as the Defendants have failed to inform themselves or the Plaintiffs of the potential cumulative impacts of the Exclusionary Legislation and the Regulation of Lands on the exercise of the Plaintiffs' Treaty Rights or to consider the cumulative impacts upon the Plaintiffs in Regulating the Land, and thus failed to seek to ensure the Plaintiffs' continuing meaningful exercise of their Treaty Rights. This conduct breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.

PART VIII: THE CESSION CLAUSES ARE NOT PART OF THE TREATY OR ARE UNCONSTITUTIONAL

151. The Cession Clauses in so far as they apply to the Jurisdiction of Treaty 9 Nations do not form part of Treaty 9. They were largely not disclosed to the Indigenous Signatories, and

the Indigenous Signatories did not enter Treaty 9 with the intention to be bound by them in respect of their Jurisdiction.

152. In the alternative, if the Cession Clauses are part of Treaty 9, which is denied, the Cession Clauses in so far as they pertain to the Jurisdiction of the Treaty 9 Nations are contrary to the Treaty Rights and the Crown's obligations of non-interference in the Plaintiffs' Way of Life which includes Harvesting and Jurisdiction.

153. The Crown's failure to disclose the Cession Clauses' application to the Treaty 9 Nations' Jurisdiction is inconsistent with a clear and plain intention to extinguish any rights of the Plaintiffs, including the Treaty Rights.

154. As a result, all of the Plaintiffs' Treaty Rights, including protection for their Way of Life that includes Jurisdiction, are recognized and affirmed by s 35 of *the Constitution Act, 1982.*

155. Section 52(1) of the *Constitution Act*, *1982* renders laws inconsistent with the provisions of the Constitution, including s 35, of no force or effect to the extent of the inconsistency.

156. In so far as they breach the Plaintiffs' Treaty Rights that pertain to their Jurisdiction, the legal effects of the Cession Clauses, if any, are inconsistent with the Constitution, and are of no force or effect.

157. Further, or in the alternative, the Defendants failed to uphold the Honour of the Crown when negotiating the terms of Treaty 9 with the Indigenous Signatories, and as a result, any legal effects on the Plaintiffs' Jurisdiction of the Cession Clauses the Defendants

purport to have obtained agreement to, which is denied, were obtained contrary to the Honour of the Crown and are of no force or effect.

PART IX: EQUITABLE COMPENSATION AND/OR DAMAGES

158. The Plaintiffs are entitled to equitable compensation and/or damages for breach of the Treaty, the Defendants' Duties and the honour of the Crown, and for infringement of the Plaintiffs' Treaty Rights.

159. As a result of the Exclusionary Legislation and the Defendants' Regulation of Land within Treaty 9 Territory, the Plaintiffs have lost access to and management of lands and resources and the ability to continue their traditional patterns of livelihood.

160. This loss has contributed to a loss of the Plaintiffs' cultural and spiritual traditions. It has also had a detrimental impact on the health and well-being of the members and descendants of the Plaintiff First Nations.

161. Further, the Defendants have materially benefited from their Regulation of Lands within Treaty 9 Territory in breach of the Treaty, their Duties and the honour of the Crown.

162. The Defendants have and continue to use the Exclusionary Legislation to extract resources, resource revenues and other financial compensation from parties engaged in Resource Exploitation.

163. By reason of the facts set out herein, the Plaintiffs claim equitable compensation and/or damages.

164. The Plaintiffs claim equitable compensation and/or damages for Treaty 9 Nations in the amount of $95,000,000,000, to be allocated based on a formula determined by the Court.

PART X: MISCELLANEOUS

165. The Plaintiffs plead and rely upon Treaty 9 and its adhesions and:

a. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3;

b. *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c11;

c. *The General Mining Act of 1869,* SO 1868, c 34;

d. *The Mines Act, 1906*, RSO 1897, c 36, s 1;

e. *The Mining Act of Ontario*, 6 Edw VII c 11;

f. *An Act respecting the Sale and Management of Timber on Public Lands,* RSO 1897, c 32;

g. *The Ontario Fisheries Act,* RSO 1897, c 288;

h. *Ontario Game Protection Act,* RSO 1897, c 287;

i. *An Act to provide for the Incorporation of Towns in Territorial Districts,* SO 1902, c 30;

j. *Dominion Lands Act,* RSC 1886, c 54;

k. *Dominion Lands Act,* RSC 1906, c 54;

l. *Fisheries Act,* RSC 1886, c 95;

m. *Mining Act*, RSO 1990, c M.14;

n. *Crown Forest Sustainability Act, 1994,* SO 1994, c 25;

o. *Fish and Wildlife Conservation Act, 1997,* SO 1997, c 41;

p. *Public Lands,* RSO 1990, c P.43;

q. *Ontario Water Resources Act,* RSO 1990, c O.40;

r. *Lakes and Rivers Improvement Act,* RSO 1990, c L.3;

s. *Aggregate Resources Act,* RSO 1990, c A.8;

t. *Planning Act,* RSO 1990, c P.13;

u. *Environmental Assessment Act,* RSO 1990, c E.18;

v. *Impact Assessment Act,* SC 2019, c 28, s 1;

w. *Canadian Navigable Waters Act,* RSC 1985, c N-22;

x. *Fisheries Act,* RSC 1985, c F-14.

y. *Royal Proclamation, 1763*, RSC, 1985, App II, No 1;

z. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007); and

aa. further and other statutory instruments as counsel may advise and this Honourable Court may permit.

166. The Plaintiffs further rely on the following enactments for the relief sought:

a. *Courts of Justice Act,* RSO 1990, c C.43;

b. *Crown Liability and Proceedings Act,* SO 2019, c. 7, Sched 17;

c. *Constitution Act, 1982,* s 52;

d. *United Nations Declaration on the Rights of Indigenous Peoples Act,* SC 2021, c. 14; and

e. such further enactment(s) as counsel may advise.

167. The Plaintiffs propose that this action be tried in Toronto, Ontario.

DATE: [X]

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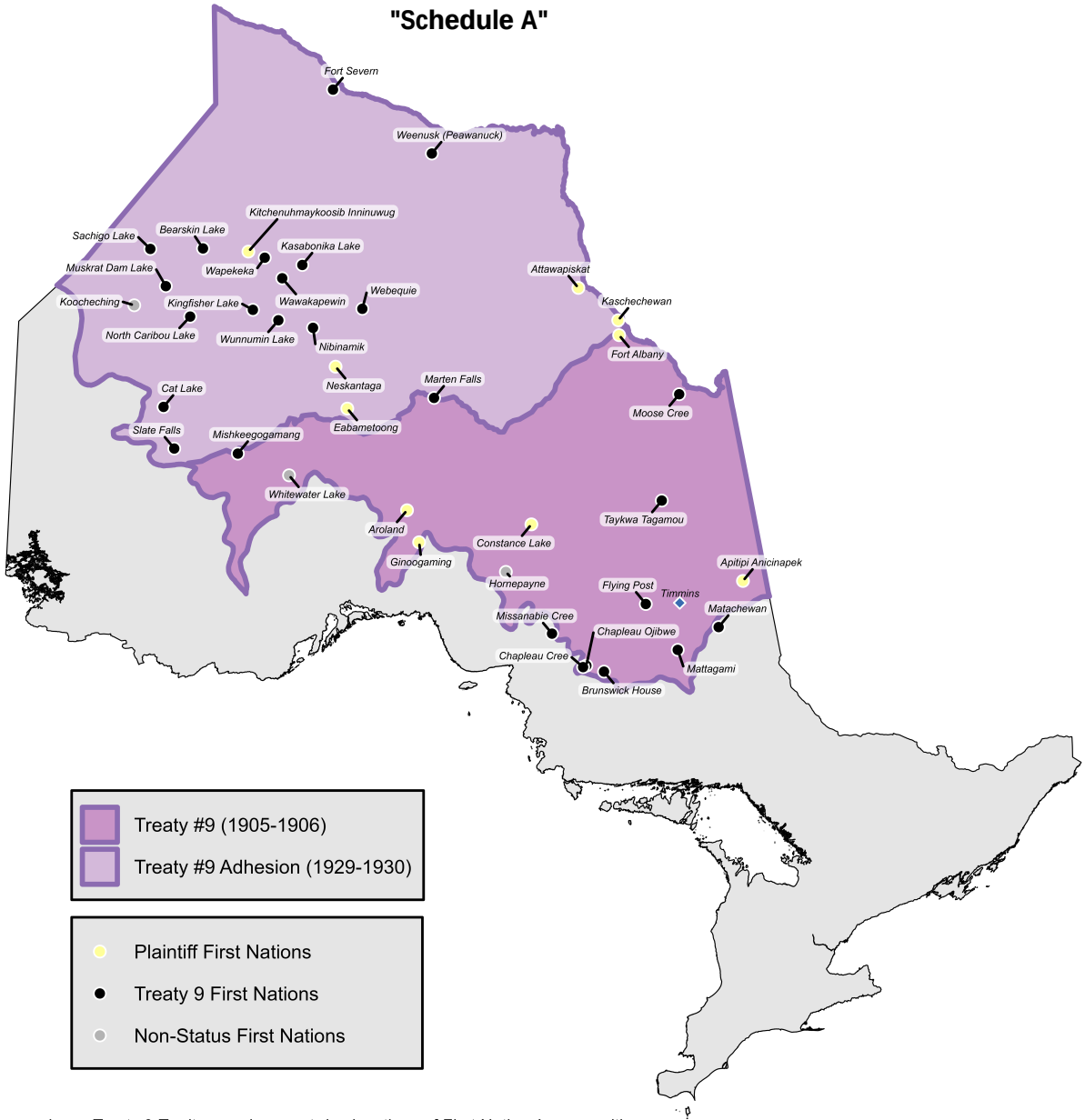

This map shows Treaty 9 Territory and present-day locations of First Nations' communities, which may not correspond to those Nations' Traditional Territories