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North Bay Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00000187-0000

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TEME-AUGAMA ANISHNABAI and TEMAGAMI FIRST NATION

Plaintiffs

- and -

MARC DESCOTEAUX, PETER DESCOTEAUX, and HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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.

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

Date: .....

Issued by: .....
Local registrar

Ontario Court of Justice

TO: MARC DESCOTEAUX

AND TO: PETER DESCOTEAUX

AND TO: HIS MAJESTY THE KING IN RIGHT OF ONTARIO
(Ministry of the Attorney General)
Crown Law Office – Civil
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Toronto, Ontario M5G 2K1

OVERVIEW

1. The Teme-Augama Anishnabai and Temagami First Nation (collectively, the "**TAA**") bring this action to protect their inherent and constitutionally protected rights, which have been unjustifiably infringed by His Majesty the King in right of Ontario's ("**Ontario**") recognition of a Métis community with section 35 rights within N'dakimenan.

2. The TAA have occupied, governed, managed, used, and cared for lands and waters in northeastern Ontario known as N'dakimenan (Our Lands) for thousands of years. The TAA's stories speak of times when N'dakimenan was submerged below water and before there was any vegetation on the land.

3. In 2017, Ontario and the Métis Nation of Ontario ("**MNO**") recognized six new historic Métis communities, including the Abitibi Inland Historic Métis Community (the "**Abitibi Community**") and Mattawa/Ottawa River Historic Métis Community (the "**Mattawa Community**").

4. In 2018, Ontario and the MNO entered into a harvesting agreement by which Ontario recognized the right of MNO members to harvest in designated "Métis Harvesting Areas" (the "**Métis Harvesting Agreement**"). The Abitibi Community and Mattawa Community's claimed Métis Harvesting Areas include N'dakimenan.

5. Also in 2018, Ontario approved or authorized MNO members Peter Descoteaux and/or Marc Descoteaux (collectively, the "**Descoteaux**") to build an incidental harvesting cabin on Pond Lake (the "**Pond Lake Cabin**") in N'dakimenan.

6. The Métis Harvesting Agreement and the Pond Lake Cabin infringe the TAA's inherent and constitutionally protected rights and undermine the TAA's inherent jurisdiction over N'dakimenan.

7. Despite this, Ontario failed to consult with the TAA before entering the Métis Harvesting Agreement or approving the Pond Lake Cabin. Ontario also failed to justify the infringement of the TAA's inherent and constitutionally protected rights.

8. The Descoteaux' building and use of the Pond Lake Cabin unreasonably interferes with the TAA's inherent and constitutionally protected rights.

PLAINTIFFS' CLAIM

9. The TAA seek the following relief:

    a. a declaration that Ontario incorrectly concluded that the Abitibi Community and Mattawa Community (or any Métis community) hold rights protected under section 35 of the *Constitution Act, 1982* (defined below) within N'dakimenan;

    b. a declaration that the Métis Harvesting Agreement results in a *prima facie* infringement of the TAA's Harvesting Rights (defined below);

    c. a declaration that Ontario breached the Crown's obligations to justify the infringement of the TAA's Harvesting Rights prior to entering the Métis Harvesting Agreement;

    d. a declaration that Ontario breached the Crown's obligations to consult and accommodate the TAA in respect of the potential impacts of entering into the Métis Harvesting Agreement on the exercise of the TAA's inherent and constitutionally protected rights before entering the Métis Harvesting Agreement;

    e. a declaration that the Pond Lake Cabin results in a *prima facie* infringement of the TAA's Harvesting Rights;

    f. a declaration that Ontario breached the Crown's obligations to justify the infringement of the TAA's Harvesting Rights prior to authorizing the Pond Lake Cabin;

    g. a declaration that Ontario breached the Crown's obligations to consult and accommodate the TAA in respect of the potential impacts of the Pond Lake Cabin on the exercise of the TAA's inherent and constitutional rights prior to authorizing the Pond Lake Cabin;

h. a declaration that the Descoteaux unreasonably interfered with the TAA's Harvesting Rights by constructing the Pond Lake Cabin;

i. an order that the Descoteaux remedy the nuisance referred to in paragraph 9(h) by removing the Pond Lake Cabin within 30 days from the date of the Court's decision in this matter, or within a period of time the Court deems just;

j. an interim injunction restraining the Descoteaux from accessing or using the Pond Lake Cabin for any purpose other than removal;

k. costs of this action; and

l. such further and other relief as this Honourable Court deems just.

THE PARTIES

The Plaintiffs

10. The TAA are an "aboriginal people" within the meaning of section 35 of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("***Constitution Act, 1982***"). The Temagami First Nation is a "band" within the meaning of the *Indian Act*, RSC 1985, c I-5 ("***Indian Act***").

11. The TAA represent and speak for the Teme-Augama Anishnabai people who have used and occupied N'dakimenan since time immemorial.

12. The TAA hold and exercise rights protected under section 35 of the *Constitution Act, 1982* in respect of N'dakimenan. They are the sole bearer of Indigenous rights in N'dakimenan.

The Defendants

13. The Defendant, Ontario, is designated as the representative of the Ontario Crown pursuant to section 14 of the *Crown Liability and Proceedings Act*, 2019, SO 2019, c 7, Sch 17.

14. Ontario is vested with the administration, control, and beneficial interest in provincial Crown lands within N'dakimenan pursuant to the *Constitution Act, 1867*, 1867, 30 & 31 Vict, c 3 ("***Constitution Act, 1867***"), subject to the rights and interests of the TAA.

15. The Defendant, Marc Descoteaux is a member of the MNO who claims Aboriginal rights within N'dakimenan on the basis of his asserted Métis identity.

16. The Defendant, Peter Descoteaux is a member of the MNO who claims Aboriginal rights within N'dakimenan on the basis of his asserted Métis identity. Peter Descoteaux is also a conservation officer with the Ontario Ministry of Natural Resources and Forestry ("**MNRF**").

FACTS

Robinson Huron Treaty

17. The Robinson Huron Treaty is a "treaty" within the meaning of section 35 of the *Constitution Act, 1982*.

18. In 1991, the Supreme Court of Canada held in *Ontario (Attorney General) v Bear Island Foundation*, [1991] 2 SCR 570 ("***Bear Island***") that the Robinson Huron Treaty includes N'dakimenan, the TAA are beneficiaries of the Robinson Huron Treaty, and the Crown breached its fiduciary obligations by failing to fulfil the Treaty obligations owed to the TAA.

19. While the *Bear Island* decision does not reflect the TAA's understanding of the Robinson Huron Treaty or their rights and responsibilities within N'dakimenan under Teme-Augama Anishnabai law, they understand that as a matter of Canadian law, the Supreme Court of Canada held that they were adhered to the Robinson Huron Treaty.

20. The TAA hold and exercise constitutionally protected rights within the boundaries of the Robinson Huron Treaty, which includes N'dakimenan.

TAA Harvesting Rights

21. For thousands of years the TAA have relied on the harvesting of plants, fish, and wildlife in N'dakimenan for sustenance and for economic, social, cultural, and spiritual purposes ("**Harvesting Rights**").

22. The TAA's Harvesting Rights are recognized and protected under section 35 of the *Constitution Act, 1982*.

23. TAA citizens continue to exercise the Harvesting Rights in N'dakimenan today.

24. TAA citizens exercise the Harvesting Rights in accordance with Teme-Augama Anishnabai law to ensure a sustainable and responsible harvest. However, the cumulative impacts of development in N'dakimenan have depleted harvesting resources and made it more difficult for TAA citizens to exercise the Harvesting Rights.

25. The TAA continue to exercise their inherent jurisdiction to manage harvesting in N'dakimenan through granting Inter-Tribal Harvesting permissions to other Indigenous people who wish to harvest in N'dakimenan.

Purported Métis Community in N'dakimenan

26. In recent years, members of the MNO have asserted rights under section 35 of the *Constitution Act, 1982* within N'dakimenan.

27. There were no distinct Métis communities within N'dakimenan prior to the date on which Europeans established effective control of the area.

28. There were no distinct Métis communities that exercised harvesting rights within N'dakimenan prior to the date on which Europeans established effective control of the area.

29. Accordingly, there are no contemporary Métis communities within N'dakimenan which are the continuation of historic Métis communities in the area such that their members

could exercise rights within N'dakimenan under section 35 of the *Constitution Act, 1982*.

30. Despite this, Ontario entered the Métis Harvesting Agreement. According to the Métis Harvesting Agreement, the MNO may issue Harvesters Cards specific to the historic Métis communities, including the Abitibi Community and Mattawa Community. Each Métis community is associated with one or more Métis Harvesting Areas. The Abitibi Community and Mattawa Community's Métis Harvesting Areas include N'dakimenan.

31. There is no limit on the number of Harvesters Cards the MNO can issue under the Métis Harvesting Agreement.

The Pond Lake Cabin

32. In or around 2018, the Descoteaux began constructing a cabin within N'dakimenan with the permission of the MNRF.

33. The Descoteaux claim a section 35 right to harvest within N'dakimenan and built the Pond Lake Cabin to support the exercise of this purported right.

34. TAA citizens discovered the existence of the Pond Lake Cabin in 2020, after it was already under construction.

Communication regarding the Métis Harvesting Agreement and the Pond Lake Cabin

35. Ontario did not communicate with the TAA prior to entering the Métis Harvesting Agreement or authorizing the Pond Lake Cabin.

36. On August 19, 2020, the TAA wrote to Ontario informing it that that there are no Métis rights in N'dakimenan and the TAA was concerned that Ontario was approving Métis cabins in N'dakimenan.

37. On October 5, 2020, the TAA wrote to Ontario as it had not yet received a response to its August 19, 2020 correspondence, and reiterated that there are no Métis rights in N'dakimenan.

38. On October 23, 2020, Ontario wrote to the TAA informing the TAA of its general policy regarding requests for cabins on Crown lands and encouraging the TAA to communicate with the MNO to address concerns with the building of incidental cabins in "shared territories."

39. On December 10, 2020, the TAA wrote to Ontario repeating their concern that Ontario had authorized the building of the Pond Lake Cabin in N'dakimenan without consulting with the TAA. The TAA requested a copy of Ontario's policy regarding the assertion of Métis rights in N'dakimenan and asked Ontario to share its analysis regarding the existence of a historic Métis community in N'dakimenan.

40. On December 22, 2020, Ontario wrote to the TAA stating that it had been in touch with the North Bay District MNRF and they would be scheduling a meeting. This meeting did not occur.

41. On April 22, 2021, Ontario wrote to the TAA refusing to share its analysis which led to the recognition of Métis communities in N'dakimenan and stated that it did not owe the TAA a duty to consult regarding the Pond Lake Cabin.

42. On May 17, 2021, the TAA wrote to Ontario stating that the Pond Lake Cabin is built within the Bear Island Trapping Co-op and directly affects the TAA's rights. The TAA reiterated that Ontario has a duty to consult the TAA before making decisions that could affect the TAA's rights.

43. On May 31, 2021, counsel for the TAA wrote to Ontario stating that Ontario had failed to address the TAA's concerns regarding the exercise of asserted Métis rights within N'dakimenan or justify the *prima facie* infringement of the TAA's rights which flowed from the same. Counsel for the TAA repeated the TAA's request that Ontario provide the TAA with its strength of claim assessment for the relevant Métis communities.

44. In the May 31, 2021 correspondence, counsel for the TAA informed Ontario that contrary to Ontario's April 22, 2021 letter, the issue of asserted Métis rights within N'dakimenan is not a matter of "overlapping rights". Counsel for the TAA stated that the TAA holds established rights within N'dakimenan as confirmed by the Supreme

Court of Canada in the *Bear Island* decision while, in contrast, there are no Métis communities who hold established rights in N'dakimenan.

45. On September 3, 2021, Ontario wrote to counsel for the TAA providing a link to a large collection of historic reports compiled by the MNO in relation to purported Métis communities throughout Ontario. Ontario indicated that it considered "certain historic reports" in the collection when arriving at its "current understanding," but did not provide guidance regarding which specific historic reports it had considered.

46. On October 8, 2021, counsel for the TAA wrote to Ontario reiterating the TAA's frustration that Ontario continued to restate the position outlined in its April 22, 2021 letter despite the fact that that the TAA had clearly articulated the reasons Ontario's position was not supported by the law. Counsel for the TAA again requested a copy of Ontario's strength of claim assessment for the relevant Métis communities.

47. On December 13, 2021, Ontario wrote to counsel for the TAA claiming privilege over its analysis that led to the recognition of Métis communities in N'dakimenan and again suggested that the TAA review the historic reports provided by the MNO on September 3, 2021.

48. On January 18, 2022, counsel for the TAA wrote to Ontario reiterating the distinction between the TAA's recognized rights and the unsubstantiated assertion of Métis rights within N'dakimenan. Counsel for the TAA again requested that Ontario provide the historical information that Ontario relied on in a clear, accessible format.

49. On March 25, 2022, Ontario wrote to counsel for the TAA attaching the historic reports it considered when identifying the Abitibi Community, which were provided by the MNO.

50. On June 20, 2022, counsel for the TAA wrote to Ontario informing it that the reports shared by Ontario demonstrate no evidence of a Métis community with a distinctive collective identity within N'dakimenan at the relevant time period and demanded that Ontario cancel its approval of the Pond Lake Cabin.

51. On June 24, 2022, the TAA wrote to the MNO to: (1) inform the MNO that Ontario had issued a permit to an MNO member to build the Pond Lake Cabin; (2) remind the MNO that Indigenous people with historic ties to N'dakimenan are citizens of the Teme-Augama Anishnabai; and (3) request that the MNO refrain from engaging with Ontario in a way that undermines the TAA's sovereignty.

52. On July 18, 2022, Ontario wrote to counsel for the TAA but did not respond to the substantive issues raised in the June 20, 2022 letter.

53. On October 25, 2022, Ontario wrote to the TAA attaching a generic environmental assessment form Ontario uses to review requests for incidental cabins.

54. On December 8, 2022, the TAA wrote to Peter Descoteaux informing him that the Teme-Augama Anishnabai are the sole Indigenous nation and bearer of inherent rights in N'dakimenan and asking him to confirm that he is a citizen of the Teme-Augama Anishnabai, otherwise the TAA would consider the Pond Lake Cabin to be abandoned.

55. On January 23, 2023, Ontario wrote to the TAA acknowledging receipt of the December 8, 2022 letter to Peter Descoteaux and stating that the Pond Lake Cabin "is considered to be a non-enforcement issue by MNRF."

56. On April 17, 2023, the TAA wrote to Ontario requesting a meeting regarding the Pond Lake Cabin and other assertions of Indigenous rights within N'dakimenan.

57. On August 1, 2023, Ontario wrote to the TAA stating that it could not discuss the issue of Métis Aboriginal rights because the issue is before the courts.

58. On September 14, 2023, the TAA sent an eviction notice to the Descoteaux (the "**Eviction Notice**"). The Eviction Notice states that MNO members have no section 35 rights within N'dakimenan and thus no right to occupy the Pond Lake Cabin.

59. On November 9, 2023, Ontario wrote to the TAA inviting the TAA to discuss incidental harvesting cabins "in general" but stated that it could not discuss the issue of Métis Aboriginal rights because the issue is before the courts.

Ontario's Obligations to the TAA

60. The TAA holds and exercises inherent and constitutionally protected rights, including the Harvesting Rights, within N'dakimenan.

61. Ontario holds constitutional obligations in respect of the TAA pursuant to section 35 of the *Constitution Act, 1982*, including the duty to consult and accommodate the TAA in respect of any decision which has the potential to impact the TAA's rights and to attempt to justify any infringement of those rights.

Ontario Breached its Obligations to the TAA

62. The Métis Harvesting Agreement and the Pond Lake Cabin will have significant adverse impacts on the exercise of the TAA's Harvesting Rights. In particular, the Métis Harvesting Agreement and the Pond Lake Cabin increase competition for limited resources in N'dakimenan and in turn, result in *prima facie* infringements of the TAA's Harvesting Rights.

63. The Métis Harvesting Agreement and the Pond Lake Cabin undermine the TAA's inherent jurisdiction over N'dakimenan.

64. Ontario breached the Crown's constitutional obligations by failing to justify the infringements of the TAA's Harvesting Rights prior to entering the Métis Harvesting Agreement and authorizing the Pond Lake Cabin.

65. Ontario breached the Crown's constitutional obligations by failing to consult and accommodate the TAA in respect of the potential impacts of the Métis Harvesting Agreement and the Pond Lake Cabin prior to entering into the Métis Harvesting Agreement and authorizing the Pond Lake Cabin.

66. Ontario has further failed to act with diligence, or at all, to address the TAA's concerns and protect the TAA's Harvesting Rights.

67. Ontario has engaged in a pattern of persistent error and indifference which substantially frustrates the Crown's obligations.

The Descoteaux have Unreasonably Interfered with the TAA's Harvesting Rights

68. The Descoteaux' construction and use of the Pond Lake Cabin substantially and unreasonably interferes with the TAA's use and enjoyment of N'dakimenan and TAA citizens' ability to exercise the TAA's Harvesting Rights.

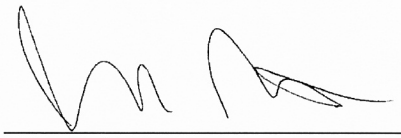
69. The Descoteaux' construction and use of the Pond Lake Cabin increases competition for the limited harvesting resources in N'dakimenan, which in turn substantially interferes with TAA citizens' ability to exercise the TAA's Harvesting Rights.

70. This interference is unreasonable because there are no contemporary Métis communities within N'dakimenan whose members could exercise rights within N'dakimenan under section 35 of the *Constitution Act, 1982*.

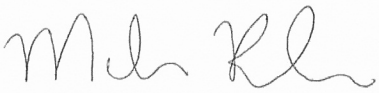
71. The Plaintiffs plead and rely on the *Constitution Act, 1867*, the *Constitution Act, 1982*, and *Bear Island*.

72. The Plaintiffs propose the action be tried in North Bay, Ontario.

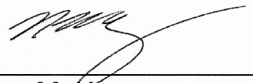
November 17, 2023



Bruce McIvor



Melissa Rumbles



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PROCEEDING COMMENCED AT NORTH BAY

STATEMENT OF CLAIM

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