

NEW BRUNSWICK  
COURT OF QUEEN'S BENCH

BETWEEN:

KEP'TIN STEPHEN J. AUGUSTINE,  
hereditary Chief Sigenigtog,  
EAST COAST FIRST PEOPLES ALLIANCE,  
JACKIE VAUTOUR and ROY VAUTOUR

Plaintiffs

-and-

HER MAJESTY THE QUEEN ELIZABETH II  
and THE ATTORNEY GENERAL OF CANADA

Defendants

---

STATEMENT OF CLAIM  
(Notice of Action issued on April 21, 2010)

---

**PARTIES TO THE PROCEEDING**

Plaintiffs:

1. Kep'tin Stephen J. Augustine is a hereditary chief of Sigenigtog district (North Shore New Brunswick), a direct descendant of Kep'tin Michael Augustine, a signatory to the Treaty of Peace and Friendship of March 10, 1760 and is a member of the traditional government, Santi Mawio'mi or Mi'kmaq Grand Council.

2. East Coast First Peoples Alliance acts as an official body for the preservation and advancement of the Métis Indigenous peoples of the territory known as New Brunswick and acts in a representative capacity to seek recognition, redress, compensation and reconciliation between the Crown and Indigenous Métis people of the territory.

3. Jackie Vautour and Roy Vautour are Métis people of the territory known as New Brunswick and both are representative of the dispossession, discrimination, and destruction of Métis people by Crown policy since 1710 to the present.

Defendants:

4. Her Majesty the Queen Elizabeth II is the Executive Government and Authority of and over Canada as expressed in Article 9 of the *British North America Act* of 1867 and the *Constitution Act* of 1982. Queen Elizabeth II has moral, fiduciary and legal responsibilities expressed in various treaties with the Indigenous peoples herein and has legal duties to redress wrongdoings implemented by British colonial policy in the territory known as New Brunswick.

5. The Crown in the Right of Canada, through the Attorney General of Canada has moral, legal and fiduciary duties toward the Indigenous peoples of the territory known as New Brunswick, particularly as it applies to land, resources, self-determination impacting on the cultural, social and economic base of the Indigenous peoples of the territory known as New Brunswick.

6. The representative Plaintiffs intend to file an amendment to this Statement of Claim in order to add the Queen in the Right of New Brunswick as a defendant to advance a claim for a declaration of trust as set out in Section 109 of the *Constitution Act* 1982 and to seek a moratorium on prosecutions for fishing, hunting and forestry violations.

**PLACE OF RESIDENCE OF PLAINTIFFS**

7. Plaintiff Kep'tin Stephen J. Augustine's address is 22 Ballpark St., Elsipogtog, N.B., E4W 2R9.

8. Plaintiff East Coast First Peoples Alliance's address is Box 2143 Lameque, N.B., E8T 3N7.

9. Plaintiff Jackie Vautour and Roy Vautour's address is 1494 Route 117, Kouchibouguac, N.B., E4X 2P2.

## DEFINITIONS

10. The following terms shall be applicable to this Statement of Claim and so defined as follows:

- (a) **Aboriginal peoples of Canada:** includes the Indian, Inuit and Métis peoples of Canada;
- (b) **Acadie:** derives from a Mi'kmaq word a'kati and a'katikewak, meaning "the people who derived their life from the land", in French, les Acadiens;
- (c) **Crown:** Queen Elizabeth II and her predecessors and includes the Queen in the Right of Canada and the Queen in the Right of New Brunswick;
- (d) **Diaspora:** the movement, migration, or scattering of a people away from an established or ancestral homeland;
- (e) **Genocide:** as per Article 2 of the *U.N. Convention on the Prevention and Punishment of the Crime of Genocide*, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
  - i. Killing members of the group;
  - ii. Causing serious bodily or mental harm to members of the group;
  - iii. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - iv. Imposing measures intended to prevent births within the group;
  - v. Forcibly transferring children of the group to another group.

- (f) **Métis:** aboriginal peoples of Canada in particular those Métis in the province of New Brunswick;
- (g) **Mi'kmaq Grand Council or Santi Mawio'mi:** means traditional government of seven clans, seven fires of seven territories, Onamakik (Cape Breton), Eskekiak (Canso), Epekuitk ag Piktuk (P.E.I. and Pictou), Sukapenakadik (Shubenacadie), Kespukwitk (southern Nova Scotia), Sigenigtog (North Shore of new Brunswick and Kespekewakik (Gaspé). The Mi'kmaq Nation are one of several aboriginal cultural groups in Atlantic Canada, the others being the Maliseet and Passamaquoddy in New Brunswick;
- (h) **Sigentigog:** our area of land encompasses half of the Acadian peninsula in New Brunswick, all the coast line along Northumberland Strait to Oxford, Nova Scotia and down into the isthmus of Chignecto and inland including all the watersheds to the Grand Lake and the mouth of the Saint John River, including the Kouchibouguac Clair Fontaine area.

## **MATERIAL FACTS**

11. The representative Plaintiffs have a shared history of historic injustices as a result of their colonization and the dispossession of their lands, territories and resources. These historic injustices caused by the imposition of British Colonial law have prevented the representative Plaintiffs from exercising, in particular, their right to develop their political, economic and social structures in accordance with their own needs and interests. As a result, the representative Plaintiffs claim an entitlement to the recognition of

Indigenous laws, traditions and customs in the evaluation of the right to compensation and reconciliation for the harms caused by the imposition of British Colonial law.

12. The representative Plaintiffs have experienced discrimination by the imposition of British Colonial law, continued then by the federal and provincial Crowns, in adjudicating and developing public policy which is an anathema to the self-determination and inherent integrity of the Mi'kmaq and Métis people as regards to lands, territories and resources in the Province of New Brunswick and elsewhere.

13. The representative Plaintiffs will state their claim through the historical experience of the territory known as Sigenigtog, which includes Kouchibouguac territory (now known as Kouchibouguac National Park), which illustrates the story of the Mi'kmaq Nation in New Brunswick and the Métis peoples of New Brunswick.

14. The representative Plaintiffs claim the right to belong to an Indigenous community or nation, based on the traditions and customs of the community or nation, without discrimination. As a direct result of British colonial rule, inherited by the Crown in the Right of Canada and New Brunswick, Indigenous peoples were deprived of their means of subsistence and development and therefore are entitled to just and fair redress.

15. The representative Plaintiffs claim entitlement to an evaluation of the wrongdoings of the past by an impartial tribunal which gives due recognition to Indigenous laws, traditions, customs and oral traditions, which pertain to the loss of their lands, territories and resources.

16. The consciousness of genocide (United Nations Treaty definition) has permeated the relationship between the Indigenous peoples of New Brunswick and the various forms of the Crown, from the Treaty of Utrecht of 1713 to the present day, which has destroyed

normative values of Indigenous structures, imposing one which was designed to bring dominion and deprivation of Indigenous societal structures, culture, land and resources.

17. The representative Plaintiffs will rely on historical evidence to outline the dysfunctional relationship between the Indigenous peoples and the colonial newcomers. As a means to ensure successful colonization, the newcomers imposed a system on the Indigenous people designed to destroy traditional Indigenous political, social and cultural structures in order to fulfill an agenda of dominion over land, resources and territories.

18. The representative Mi'kmaq hereditary chief, Kep'tin Stephen J. Augustine, herein expresses solidarity with the representative Métis Plaintiffs and in the tradition of the Mi'kmaq law, offers protection and sharing with his Métis brothers and sisters in the pursuit of this claim. Mi'kmaq tradition includes the understanding that Indigenous people are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.

19. The representative Plaintiffs rely on Peace and Friendship Treaties concluded with the British Crown and the Mi'kmaq Nation such as those entered into in 1725/26, 1749, 1752, 1760, 1761, 1778 and 1788 evidencing the sovereignty of the Mi'kmaq Nation and the continuity of traditional Mawio'mi governance.

20. The representative Plaintiffs can establish the commencement of the Métis nation in the territory known as Canada, as beginning in 1610 in and around the province of New Brunswick. They can demonstrate that the word 'Acadie' is derived from the Mi'kmaq word "a'kati" and "a'katikewak"- "the people who derived their life from the land," thus entitling the Métis of New Brunswick to a declaration of their existence and the establishment of their Indigenous rights.

21. The diaspora of 1755 involved the British Crown physically displacing upwards of 15,000 thousand Métis from the territory of Acadie part of which is now known as New Brunswick. This event stands as a historical marker for the template of the consciousness of genocide which has faced the Métis people and continues to do so presently as was illustrated with the displacement of Métis people in Kouchibouguac, traditional Mi'kmaq and Métis territory, known also as Kouchibouguac National Park.

22. British Colonial policy and subsequent federal and provincial policy, has clearly discriminated against the Métis people in these major displacements leading to public policy which denies their existence and exposes them to endless prosecutions for hunting, fishing and forestry offences.

23. The representative Plaintiffs rely on the Mi'kmaq Creation Story which stands as a pre-contact (Europeans) Indigenous legal system, informing the representative Plaintiffs in a legitimate traditional form of government equal to the British legal system and of equal weight in the evaluation of recognition, declaration of Indigenous title and the right to compensation and redress for land, territories and resources.

24. The representative Plaintiffs assert that the core treaty of Peace and Friendship was in 1725/26, with the other treaties ratifying or renewing this treaty. These treaties apply to all Mi'kmaq according to Mi'kmaq law. This demonstrates a continuity of relationship which must be evaluated in favour of the representative Plaintiffs as they were never intended to dispossess the Indigenous peoples of their lands, territories, resources, customs, or political and legal structures.

25. The representative Plaintiffs assert that constitutional Indigenous principles can be proven which need to be evaluated with British/Canadian constitutional principles. As

a result, a constitutional crisis exists between Indigenous peoples and the Crown (in its various forms) which needs to be resolved in order to provide proper compensation, redress and reconciliation in keeping with the Honour of the Crown.

26. The representative Plaintiffs assert the doctrine of the Honour of the Crown and principles of constitutional *sui generis* fiduciary obligations as examples of the recognition of obligations on the part of the Crown which, if properly fulfilled, would provide the recognition, redress, compensation and reconciliation required for the loss of lands, territories, resources, rights, political structures and culture.

27. The representative Plaintiffs assert that the use of oral traditions and languages assist in affirming and protecting the rights of Indigenous peoples in New Brunswick, derived from Mi'kmaq knowledge, language and legal traditions. It is asserted that this distinct philosophy of justice and legal traditions based on spiritual and ecological understanding can assist in the declared constitutional crisis which exists between Indigenous peoples and the Crown.

28. The representative Plaintiffs assert that the *Indian Act* of 1876, onward to this day, was the model for the policy of apartheid in South Africa and has had the continued effect of attempting to destroy traditional forms of government which amounts to the imposition of conditions of life designed to bring mental or physical harm to a group, contrary to the United Nations convention on genocide.

29. The representative Plaintiffs state that the imposition of the *Indian Act* since 1876 is a reflection of the consciousness of genocide which is embodied in the statement in the House of Commons by Sir John A. MacDonald when he said, "The great aim of our legislation has been to do away with the tribal system and assimilate the Indian

people in all respects with the inhabitants of the Dominion as speedily as they are fit for change.”

30. Crown policy has historically and systematically been designed to subjugate the Indigenous people by usurping the lands and imposing a governance foreign to Indigenous culture and legal tradition. The Indigenous peoples of the territory began a relationship of alliance and sharing with the newcomers which was replaced by one of subjugation in the imposition of British colonial policy.

31. Despite much advancement in the articulation of Indigenous peoples’ constitutional rights, the delayed constitutional implementation of those advancements operates to further alienate the constitutional relationship between the Indigenous peoples and the Crown, in its various forms.

32. The representative Plaintiffs of the Mi’kmaq Nation and the representative Plaintiffs of the Métis people of the territory known as New Brunswick seek to act on behalf of their people to bring redress, compensation, and reconciliation for the wrongdoings brought about by the imposition of the British colonial system.

33. The representative Plaintiffs state that the Crown has continued to discriminate systematically against treaty rights of the Mi’kmaq people relying on non-binding negotiations based on policy with its federally funded band and organizations. The Métis people are marginalized to such an extent that the Crown is consistently relying on discriminatory government funded reports to deny their very existence in the territory known as New Brunswick.

#### Declaration of Indigenous Title

34. The representative Plaintiffs state that the proper holder of rights, whether for Indigenous title or Indigenous rights, is the community of Mi'kmaq people, sharing with the Métis people of the territory known as New Brunswick. Mi'kmaq people are the historic community of people sharing language, customs, traditions, historical experience, legal traditions and resources at the time of first contact with the newcomers.

35. The Indigenous rights of individual Mi'kmaq people and the Métis people within the Mi'kmaq Nation are derived from the collective actions, shared language, legal traditions and shared historical experience of the members of the Mi'kmaq Nation and the Métis of the territory known as New Brunswick.

36. Indigenous title confers a *sui generis* interest in land, which is a right to the land itself. The representative Plaintiffs state that the interest in the land can compete on an equal footing with other proprietary interests.

37. The representative Plaintiffs state that Indigenous title confers a right to exclusive use, occupation and possession to use the land for the general welfare and present day needs of the Indigenous communities. Indigenous title also includes a proprietary-type right to choose what uses Indigenous title holders can make of Indigenous title lands.

38. The representative Plaintiffs state that Indigenous title brings with it a right to the exclusive use and possession of land, including the natural resources. As a result of crown action and policy, this Indigenous title has been infringed, entitling the Indigenous rights holder to compensation and redress.

39. The *Royal Proclamation* of 1763, enshrined as article 25 of the *Constitution Act* 1982, protects Indigenous title as against frauds, abuses and pretences and continues as

the seminal document in an evaluation of the existence of Indigenous title throughout the traditional Mi'kmaq territory of Sigenitog. This traditional territory of the Mi'kmaq Nation was shared with the Métis people before the diaspora of 1755 and after the *Royal Proclamation* of 1763 to the present day.

40. The representative Plaintiffs state that there has never been a proper surrender of Indigenous title in the traditional Mi'kmaq territory of Sigenitog, either through treaty nor other instrument which would disturb the on-going existence of Indigenous title. All of the treaties between the Mi'kmaq Nation and the Crown were treaties of Peace and Friendship and did not operate as a surrender of Indigenous title.

41. The representative Plaintiffs state that the combined effect of the *Royal Proclamation* of 1763, Article 25 and Article 35(1) of the *Constitution Act* 1982 confirm that the Indigenous title in the outlined territory is recognized and affirmed.

42. Since the imposition of British Colonial rule, from the Treaty of Utrecht of 1713, in the territory of Acadie and now known as New Brunswick, there have occurred many frauds, abuses and pretences which were designed to dispossess and displace the Indigenous right holders and adversely impact the Indigenous title. The representative Plaintiffs claim on behalf of all Mi'Kmaq and Métis peoples in the territory of New Brunswick a right to a declaration of Indigenous title in the territory known as Sigenitgog.

43. The representative Plaintiffs state that many infringements of Indigenous title have occurred since 1713 to the present day and the parties claim entitlement to compensation for these infringements. The infringements will be more particularly listed and defined at the trial of this matter.

44. The representative Plaintiffs state that the Crown has never obtained a proper surrender of Indigenous title in the territory known as Sigenitigog thus entitling the Plaintiffs to a declaration of Indigenous title. Moreover, at Confederation, the *British North America Act*, Article 109 gave lands and resources to New Brunswick, subject to any trusts existing therein and to any interest other than that of the Province.

45. The representative Plaintiffs, on behalf of all Mi'kmaq and Métis peoples in the territory known as New Brunswick claim entitlement to a declaration of Indigenous title as contemplated by all of the instruments mentioned above. This declaration of Indigenous title would then engage the Honour of the Crown to consult and accommodate the Indigenous title holders on redress, compensation and reconciliation.

46. The representative Plaintiffs claim entitlement to the existing Indigenous right of Nationhood pursuant to tribal custom and tradition through the prism of s. 35(1) of the *Constitution* allowing for redress on the deprivation of land through trespass and damages for acts of genocide, resulting in the death of the person, the culture, the spirituality and the eradication of self-government of the people.

47. The numerous outstanding disputes over Indigenous lands and territories reflect the extensive systemic barriers found by Indigenous peoples in the assertion of these rights, including the adversarial role the federal and provincial governments play in the negotiation of treaties and the resolution of land and treaty disputes and the continued failure of federal and provincial authorities to adequately integrate critical international standards for the protection of Indigenous rights into domestic law and policy. The representative Plaintiffs state that there is an obligation on authority to compensate and redress the wrongdoing experienced by them since the newcomers arrival until the

present time and the wrongdoings that continue to be expressed in the trespass on Indigenous land and the continuation of wrongdoing defined as genocide in the imposition of the *Indian Act*, the stealing of resources through the Ministry of Natural Resources of New Brunswick, and the disconnection of the Indigenous peoples from the use of the land thereby imposing acts of cultural genocide on the Indigenous peoples.

48. The representative Plaintiffs state that they have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and disposition of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests. There is an urgent need to respect and promote the inherent rights and characteristics of Indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies. This deprivation and dispossession is imposing conditions of life designed to cause mental and physical harm.

49. The representative Plaintiffs state that through trespass and acts of genocide they have been systematically deprived of the right of nationhood that would have included the right to self-government and had it not been for the wrongdoings against them, would have entitled them to a relationship with their land thus preserving their culture, but also would have promoted the resolution of disputes on a nation to nation basis and not left them at the mercy of the imposed British colonial system, with its Judeo-Christian ethic, which writes laws designed to deny the Indigenous peoples of any legal remedy or redress. The representative Plaintiffs claim entitlement to the Indigenous right of

nationhood and self-government which would allow for compensation and redress of these on-going wrongdoings.

50. The representative Plaintiffs state that the present political system in Canada and New Brunswick has been designed since inception to deprive them of any representation in government and this continues today. Accordingly, with a government imposed on them, in a system that allows them no representation, the representative Plaintiffs are governed but not represented. Furthermore, when the representative Plaintiffs turn to the courts for redress they are turned away by legal devices embedded in legislation written to deny them redress for past wrongdoings and on-going harmful practices. The cycle is never broken as all the places of redress are rife with discrimination, racial prejudice and religious intolerance.

51. The Indigenous peoples of Turtle Island throughout the territory of North and South America are the victims of a consciousness of genocide which began in 1493 with swords and spears, graduated to guns and bullets through the 1700's to 1867 and then developed into the most deadly weapon of mass destruction, the pen and the paper used to write laws from 1857 to the present which deny the representative Plaintiffs the proper elements of nationhood placing them in the unenviable position of wards of the Crown having no forum to address the wrongdoings perpetrated upon them.

52. The representative Plaintiffs state that the Indian reserves were created between 1783 and 1838 in New Brunswick culminating in *an Act for the Sale and Management of Indian Lands* in 1841. Impositions of federal legislation after the *British North America Act* of 1867 resulted in the imposition of conditions designed to cause mental or physical harm to members of a group. This is defined as an act of genocide in the United Nations

*Convention on the Prevention and Punishment of the Crime of Genocide* and in the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, C 24. as well as the *Criminal Code of Canada*.

53. The representative Plaintiffs state that it was stated government intention to assimilate Indigenous people into the newcomers society and to eradicate the traditional Indigenous ways through education, religion, new economic and political systems, and a new concept of property. All of this was designed to eventually eradicate the Indigenous people and culture and the instrument chosen was the *Indian Act*. Indigenous people had imposed on them a completely new existence, which amounts to the imposition of mental harm which is an act of genocide. A thorough review of legislative undertaking in this regard will reveal the intention to deprive the Indigenous people of their own culture, spirituality, self-government and ultimately their human dignity.

54. The representative Plaintiffs state that the *Indian Act* of Canada was the model for the creation of the apartheid system in South Africa. Accordingly, since 1867 the Indigenous peoples have been condemned to a place called “reserves” and initially not allowed to leave without permission. Although this form of imprisonment was relaxed over time, the placement on specific tracts of land has never stopped and the supervision by agents of the government continues, initially by the Indian agent and today by chief and band council who are agents of the Crown under the *Indian Act*.

55. The representative Plaintiffs intend to prove that there are 633 examples of the apartheid system throughout the territory known as Canada, all supervised by either direct agents of the Crown or bureaucrats employed by the Crown. This system began in 1857 in Upper Canada and in 1876 in the Maritimes and although restrictive and

repressive rules were relaxed over time, the system remains in place today. The representative Plaintiffs state that this is the imposition of circumstances designed to cause mental harm and therefore an act of genocide for which they are entitled to compensation. This act of genocide is on-going, as chief and band council have been and are used as federal agents to destroy traditional Indigenous governments.

56. The representative Plaintiffs further state that the mental harm is on-going as the lack of recognition of traditional self-government, the writing of laws which suppress redress and remedy for Indigenous people and the plethora of judicial decisions against Indigenous peoples' interests are all contributing to the degradation of the Indigenous people. Political isolation, poverty, highest rates of alcoholism, suicides, physical and social abuse and imprisonment on a per capita basis and destruction of ceremony, ritual and spirituality provides the evidentiary basis for the mental harm suffered by the people, as to past events and which continues unabated today.

57. The representative Plaintiffs state that apartheid is defined in the dictionary as an official policy of racial segregation formerly practiced in the Republic of South Africa involving political, legal and economic discrimination against non-whites or - a policy or practice of separating and segregating groups. The representative Plaintiffs plead that the Indigenous peoples in the territory known as Canada and New Brunswick had this system imposed on them before the Republic of South Africa and plead that they have in the past suffered from political, legal and economic discrimination and continue to suffer from this discrimination not only on the reserves but throughout the territory known as Canada and New Brunswick.

58. The representative Plaintiffs state that the eradication of traditional governments of the Indigenous peoples had been a government policy embarked upon in direct contravention of the *Royal Proclamation* of 1763, and amounts to a direct abdication of responsibility by Her Majesty the Queen, the Chief Executive Officer of the territory known as Canada. The policy implemented pursuant to the *Indian Act* contravenes Article 2(b) of the *Convention on the Prevention and Punishment of the Crime of Genocide* - “causing serious bodily or mental harm to members of the group” and is contrary to the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, C 24.

59. The representative Plaintiffs claim an entitlement to the Indigenous right of nationhood and compensation for the on-going tort of genocide as defined in the above international and domestic instruments. The representative Plaintiffs plead and rely upon the United Nations *Declaration on the Rights of Indigenous Peoples*, the Royal Commission on Aboriginal People [1996], the International Covenant on Civil and Political Rights and the principle of “jus cogens” defined as “a peremptory norm of general international law [which] is a norm accepted and recognized by the international community of states as a whole as a norm for which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

60. The representative Plaintiffs state that the imposition of the *Indian Act* without their consent has deprived them of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests. The representative Plaintiffs state that

there is an urgent need to respect and promote the inherent rights and characteristics of Indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies.

61. As a consequence of the negligence and/or breach of duty and/or fiduciary duty and/or intentional infliction of harm by Her Majesty the Queen and Her Majesty in the Right of Canada and/or its agents for whom it is in law responsible, the representative Plaintiffs suffered injury and damages including:

- (a) loss of nationhood and denial of the existence of sovereignty;
- (b) loss of traditional territory and connection to the land;
- (c) destruction of ceremony and ritual and loss of spirituality;
- (d) imposition of a system of apartheid, initially resembling arbitrary confinement to a place restricting freedom of movement developing into an economic prison for all inhabitants;
- (e) loss of traditional self-government and the imposition of an elected system promoting nepotism and division of class and clans and family members;
- (f) imposing chief and band councils who act as agents for the federal government in return for the administration of significant budgets;
- (g) imposing chief and band councils who cannot fairly represent the needs of the people as they are agents of the Queen and the federal government;

- (h) depriving the people of proper representation in the court system in Canada and New Brunswick as chief and band councils control the agenda and instruct the lawyers, thereby harming the people;
- (i) infliction of mental harm due to the hopelessness engendered by the apartheid system;
- (j) infliction of mental harm due to the denial that any problems exist because of the imposition of the *Indian Act*;
- (k) an inability to function in a traditional way of life and doomed to operate in an environment dictated by the agents of the Queen and the federal government through a chief and band council;
- (l) a theft of identity by making an Indigenous person no more than a ward of the Crown and inflicting economic penalty as a result;
- (m) depriving the representative Plaintiffs of an ability to develop a meaningful relationship with authority through imposed legislation reflecting the consciousness of genocide from early encounter and taking hold in those tasked to administer the imposed legislation resulting in deep psychological harm and the development of racist policies;
- (n) depriving the representative Plaintiffs of the ability to settle disputes on land and social relationships by imposing legislation designed to address these issues contrary to the Indigenous way of life;
- (o) dividing and conquering the representative Plaintiffs through written laws and policies forcing family members to separate and break-up to seek

opportunity outside of their traditional territory due to the impact of the *Indian Act*;

- (p) setting family members against other family members due to the effects of the imposition of legislation which changed the governance system in the Indigenous communities and destroyed the traditional influence on governance;
- (q) the loss of dignity and self-respect of the representative Plaintiffs forced to accept the newcomers idea of the proper way of life for human beings;
- (r) the imposition of a materialistic way of life to the detriment of the development of the spiritually informed Indigenous culture

#### Métis existence in New Brunswick

62. The Defendant the Attorney General of Canada has commissioned reports and subsequently relied upon them in court of law which stands for the proposition that Métis people do not exist in the Province of New Brunswick. The official position is not supported by the material facts demonstrating the existence of 18,000 self-identified Métis people (census Canada 2006) and having existed since at least 1610 in the territory known as New Brunswick.

63. Between the years 1610 to 1690, almost 60 years of inter-marriage occurred between the Mi'kmaq Nation and the newcomers from France. These inter-marriages over such an extended period of time produced the use of the term “les Acadiens” to identify its people - les Acadiens derives from the term “Acadie”, a French word for the Mi'Kmaq term “a'kati” and “a'katikewak” meaning “the people who derived their livelihood from

the land”. This historical fact is the beginning of the existence of the Métis people in the territory known as Acadie which New Brunswick forms a part..

64. The Métis people established communities among the Mi'kmaq communities and shared in the traditions, customs and ceremony of the Mi'kmaq people. After the Treaty of Utrecht of 1713, the British military exercised influence over the territory and the seeds of the diaspora of the Métis people were generated by these events.

65. By 1755, the British colonial government introduced a policy of dispossession of Acadians, of all land, communities and resources by forcible removal and relocation. This vast displacement of at least 15,000 people greatly contributed to the destruction of the normative value of community and is a major reason the Métis people were disrupted in the continuity of their existence.

66. After this vast displacement of 1755, many Métis people returned to the territory, however their ability to establish permanent communities or to make use of traditional lands had been compromised by the arrival of vast numbers of newcomers overwhelming the Métis people. In addition, the British colonial policy was not conducive to the protection of the Métis people. As evidence by events in Caraquet in 1783.

67. This same dispossession and displacement occurred in the Kouchibouguac territory on November 5<sup>th</sup> 1976 with the removal and destruction of homes of the representative plaintiffs Jackie and Roy Vautour. This was another example of the consciousness of the diaspora of 1755 and a blatant discrimination of the Métis people in the territory.

68. In addition to this type of discrimination, Métis people are also precluded from inherent rights of hunting, fishing and forestry activity by virtue of official government policy that no Métis exist in the Province of New Brunswick. Not only are they denied the recognition and affirmation of inherent Indigenous rights guaranteed by Section 35(1), the Defendants deny their very existence.

69. The representative Plaintiffs claim entitlement to redress, compensation and reconciliation for the past wrongdoings of the Crown as against Métis people in the territory known as New Brunswick and entitlement to a declaration that Métis people exist in the territory.

70. The representative Plaintiffs state that constant prosecution for violations of fishing, hunting and forestry activity as against Métis people is an on-going act of genocide for which they are entitled to compensable damages. The representative Plaintiffs intend to seek a moratorium on these prosecutions as against Mi'kmaq and Métis people within the parameters of this litigation.

71. The representative Plaintiffs claim entitlement to damages for the diaspora of 1755 and the subsequent displacement and dispossession of Métis people from their communities in the Kouchibouguac territory in 1976.

72. The representative Plaintiffs state that the Province of New Brunswick had no authority to expropriate the Kouchibouguac territory then transfer it to the federal government, who subsequently made it a national park, as this territory was subject to a trust, pursuant to Section 109 of the *Constitution Act* of 1982 and was and still is Indigenous title subject to the provisions of the *Royal Proclamation* of 1763.

73. The representative Plaintiffs claim entitlement to compensation, redress and reconciliation for all the wrongdoings of the Defendants as against all the Métis people in the territory known as New Brunswick.

Constitutionality of Section 91 (24) of the B.N.A. Act

74. The representative Plaintiffs plead that Section 91(24) is *ultra vires* the British House of Commons. Accordingly, there is no authority to pass the *Indian Act* of Canada and it should also be declared *ultra vires* the federal government. Queen Elizabeth II should have exercised her constitutional duty in Section 56 of the *British North America Act 1867* and disallowed the first *Indian Act* passed pursuant to Section 91(24) and acknowledged her responsibilities under the *Royal Proclamation of 1763*.

Jus Cogens

75. The representative Plaintiffs plead that any inquiry into the principles of fundamental justice is informed not only by Canadian experience and jurisprudence, but also by international law, including “jus cogens.” This takes into account Canada’s international obligations and values as expressed in the various sources of international human rights law - declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals and customary norms. The representative Plaintiffs and state that “jus cogens” is defined as a norm accepted and recognized by the international community of states as a whole as a norm for which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. There is compelling evidence to indicate that genocide is a peremptory norm, such as:

- (a) Nuremberg trials - for Holocaust in Germany;
- (b) Convention on Genocide - United Nations;

- (c) U.N. declaration on Indigenous Peoples;
- (d) Crimes Against Humanity and War Crimes Act, S.C. 2000 c.24; and,
- (e) Criminal Code of Canada, Section 317.

### Funding

76. The representative Plaintiffs claim entitlement to have funding provided for the purpose of pursuing legal redress in this matter.

### Reconciliation

77. The representative Plaintiffs plead that they are desirous of developing a mechanism through which healing and reconciliation could be developed between the parties and would explore any discussions and negotiations which would promote healing and reconciliation on a long term basis and provide for fair and reasonable compensation for wrongdoings of the Defendants.

78. In January of 1998, the Crown issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential School system. Moreover, the Crown admitted that the Residential School system was wrongly and inappropriately designed to assimilate Indigenous persons. The representative Plaintiffs plead that the Statement of Reconciliation by the Crown is an admission of the Crown of the facts and duties set out in the above paragraphs and is relevant to the representative Plaintiffs' claim for damages, particularly punitive damages. The Statement of Reconciliation stated in part, as follows:

Sadly, our history with respect to the treatment of Aboriginal people is not something to which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were desegregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of

Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.

Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.

The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced is not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of the sad era of our history...

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognized that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community..."

## **PLAINTIFFS' CLAIM**

79. The representative Plaintiffs seek the following relief:
- (a) DECLARATION of Indigenous title in the Province of New Brunswick in favour of the Mi'kmaq and Métis people;
  - (b) DECLARATION that the Plaintiffs, on behalf of the Mi'kmaq and Métis peoples are entitled to compensation for lands and dispossession of lands required for settlement purposes pursuant to the *Royal Proclamation of 1763*;
  - (c) DECLARATION that the Plaintiffs, in their representative capacity, are entitled to damages in the amount of 13 Billion Dollars for the tort of genocide committed since 1610 and continuing and on-going to this day, against Her Majesty the Queen Elizabeth II and the Federal government;
  - (d) DECLARATION that Métis people exist in the Province of New Brunswick;
  - (e) DECLARATION that the Federal and Provincial governments have no jurisdiction in unceded, unsurrendered Indigenous territory in the Province of New Brunswick over Mi'kmaq or Métis people in the Province of New Brunswick;
  - (f) DECLARATION that the Plaintiffs in their representative capacities are entitled to a stay of proceedings for all prosecutions for hunting, fishing and forestry contraventions, be they Federal or Provincial, in the Province of New Brunswick until the determination of jurisdictional issues between the Crown and Mi'kmaq and Métis peoples in the Province of New Brunswick;

- (g) An AMENDMENT to these proceedings to permit an action against the Province of New Brunswick; after the expiry of the notice provision of Section 15 of the *Proceedings Against the Crown Act*, to add the Attorney General of New Brunswick seeking a DECLARATION of trust pursuant to Section 109 of the *Constitution Act 1982*, U.K. C. 11, on “all lands mines, minerals and resources” in favour of the Mi’kmaq and Métis people of the Province of New Brunswick;
- (h) A REPRESENTATION ORDER pursuant to Rule 11 of the *Rules of Court* appointing the named Plaintiffs as representatives of all unborn persons, unascertained persons, or persons who cannot readily be ascertained, found or served, who have a present, future, contingent or unascertained interest in, or may be affected by, the proceeding.
- (i) An ORDER for interim funding based on the principles of *Okanagan* premised on a s. 35 right of the *Constitution Act, 1982* to self-assertion that cannot be compromised by an act of genocide;
- (j) Costs for the action on a solicitor-and-client basis; and
- (k) Such further and other relief as counsel may advise and this Honourable Court permit.

## STATUTES

- 80. The representative Plaintiffs plead and rely upon the following:
  - (a) British North America Act 1867
  - (b) Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50
  - (c) Canadian Charter of Rights and Freedoms

- (d) Constitution Act, 1982
- (e) Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24
- (f) International Treaties
- (g) Peace and Friendship Treaties
- (h) Proceedings Against the Crown Act, R.S.N.B. 1973, c. P-18
- (i) Royal Proclamation of 1763
- (j) State Immunity Act
- (k) The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble
- (l) The Indian Act, R.S.C. 1985

81. The representative Plaintiffs plead and rely upon the following United Nations documents:

- (a) *Convention on the Prevention and Punishment of the Crime of Genocide*, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 *entry into force* 12 January 1951, in accordance with Article XIII;
- (b) *Convention on the Rights of the Child*, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 *entry into force* 2 September 1990, in accordance with Article 49;
- (c) *International Covenant on Civil and Political Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976, in accordance with Article 49; and

(d) *United Nations Declaration on the Rights of Indigenous Peoples*, Approved on 13 September 2007, after 143 Member States voted in favour, 11 abstained and four – Australia, Canada, New Zealand and the United States – voted against the text. Australia and New Zealand have since changed their vote in favour of the Declaration leaving Canada and the United States voting against.

DATED at Ottawa, Ontario, this 19<sup>th</sup> day of May, 2010.

---

Michael Swinwood  
Lawyer for the plaintiffs

ELDERS WITHOUT BORDERS  
237 Argyle Avenue  
Ottawa, Ontario  
K2P 1B8  
T: 613-563-7474  
F: 613-563-9179