

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

COPY

BETWEEN:

**DENNIS CALLIHOO and ROSALIND CALLIHOO,  
acting on their own behalf and on behalf of all Members of  
THE MICHEL FIRST NATION, and on behalf of all Members of  
the former MICHEL INDIAN BAND NO. 472  
and the Descendants of Members of the former  
MICHEL INDIAN BAND NO. 472**

PLAINTIFFS

- and -

**ATTORNEY GENERAL OF CANADA**

\_\_\_\_\_  
\_\_\_\_\_

DEFENDANT

**AMENDED AMENDED AMENDED STATEMENT OF CLAIM**

1. THE MICHEL FIRST NATION, the Members and Descendants of the former MICHEL INDIAN BAND NO. 472, DENNIS CALLIHOO and ROSALIND CALLIHOO are all of the Cree and Iroquois people and are all "Indians" within the meaning of Section 91(24) of the *Constitution Act, 1867*, the Imperial Order in Council of June 23, 1870, and the *Constitution Act, 1982*, within the meaning of Treaty No. 6 and within the meaning of the *Indian Act*, R.S.C. 1985, c.1-5, and are aboriginal peoples within the meaning of the *Constitution Act, 1982*.
2. The individual Plaintiffs act on their own behalf and as representatives of and on behalf of the other members of THE MICHEL FIRST NATION, all of whom have the same interest in these proceedings.

3. THE MICHEL FIRST NATION (" the First Nation") consists of the descendants of the group of Indians which entered into treaty with the Federal Crown under the leadership of Chief Michel and who were recognized as an "Indian Band" (and identified as Michel Band No. 472) by the Department of Indian and Northern Affairs until 1958, and who are registered or entitled to be registered under the *Indian Act* as "Indians". The Michel First Nation is a Band as defined under the *Indian Act* and/or a Band under the common law.
  
4. The Defendant, ATTORNEY GENERAL OF CANADA, is the head of the Government of Canada (hereinafter referred to as the "Federal Crown"), is seized with jurisdiction over Indians and lands reserved for Indians pursuant to section 91(24) of the *Constitution Act, 1867*, is subject to the Federal Crown's obligations under Treaty No. 6 and the *Royal Proclamation of 1763* and is charged with a fiduciary responsibility with respect to Indians and lands reserved for Indians. The Department of Indian Affairs and Northern Development is the department of the Federal Crown charged with the responsibility of administering the Federal Crown's obligations to Indian people, including protecting their interests in the reserve lands held in trust by Her Majesty for them.
  
5. The Plaintiffs are descended from Indians who were aboriginal occupants of land and territory within Rupert's land from time immemorial and as such the *Royal Proclamation of 1763* and the constitutional provisions referred to in this claim were enacted for their benefit.
  
6. The Imperial Crown, by the *Royal Proclamation of 1763*:
  - (a) confirmed the title of the Indian Nations to the area in and around Alberta,
  - (b) confirmed that Indian lands could not be surrendered except to the Federal Crown upon the consent of the Indians and

- (c) established a treaty process predicated upon
  - (i) nation to nation dealings between the Indian Nations and the Federal Crown and
  - (ii) the self-governing powers of those Nations.
  
- 7. In 1876 Treaty No. 6 was entered into between Her Majesty the Queen and the "Plains and Wood Crees and other tribes of Indians, inhabitants of the country within the limits hereinafter defined and described by their Chiefs...".
  
- 8. In 1878 the Michel First Nation entered into treaty with the Federal Crown by way of an adhesion to Treaty No. 6.
  
- 9. The bounty and benevolence which was promised to the Indians, including the Michel First Nation, for adherence to Treaty No. 6 included, *inter alia*:
  - a) reserve lands to be set aside for the use and benefit of each Band in the amount of one square mile for ~~each family of five which could not be alienated~~ except with the consent of the Band;
  - b) provision of education;
  - c) health care;
  - d) assistance for economic development in the form of agricultural implements and livestock and a yearly allowance for the purchase of ammunition and twine;
  - e) an annual payment of \$5.00 for each Indian person;
  - f) an annual salary of \$25.00 for each Chief and \$15.00 for each subordinate officer, as well as a ceremonial suit of clothing for each Chief and officer every three years; and
  - g) the provision of assistance for the relief of poverty or destitution.

10. In addition, the Treaty guaranteed certain rights and benefits, including the right of the signatories to continue to pursue their avocations of hunting and fishing throughout their traditional lands and a right to continued self-determination and self-government.
11. After adhering to Treaty, the Michel First Nation was designated a "Band" within the meaning of the *Indian Act* and given number 472 in accordance with the Federal Crown's administrative procedures.
12. In 1880 certain lands located north and west of Edmonton near the present-day village of Calahoo were set aside by the Federal Crown in trust for the use and benefit of the Michel First Nation. This reserve was designated Michel Indian Reserve No. 132 (the "Michel Reserve").
13. The interest of the Michel First Nation in their reserve lands included the beneficial ownership of the surface rights, the beds and shores of water bodies, riparian and littorial rights and mines and minerals, including precious metals.
14. The Michel reserve lands could not be alienated, except by the First Nation's consent and by surrender in trust to the Federal Crown in accordance with certain procedures set out in the *Royal Proclamation of 1763* and the *Indian Act* of 1876 and its subsequent amendments. These requirements include consent of the majority members of the band obtained at a meeting called for the purpose of voting on a proposed surrender.
15. The Defendants at all material times owed trust, trust like and fiduciary obligations to the Plaintiffs arising from:

- a) the historical relationship between the Federal Crown and First Nations in Canada;
  - b) the undertakings of the Federal Crown to First Nations as confirmed by the Royal Proclamation of 1763;
  - c) the undertakings of the Federal Crown in Treaty No. 6;
  - d) the setting aside of reserve lands in trust for the Plaintiffs;
  - e) the provisions of the Indian Act;
  - f) the vulnerability of the Plaintiffs to the unilateral discretion, authority and control which the Federal Crown has exercised, and continues to exercise, over the legal and practical interests of the Plaintiffs, including their lands.
16. These fiduciary, trust and trust-like obligations are enshrined in section 35 of the *Constitution of Canada, 1982*.
17. As set out below, the Federal Crown has repeatedly exercised its discretion to the detriment of the Plaintiffs and has wrongfully deprived them of their reserve lands, refused and failed to honour the terms of its treaty with the Plaintiffs, and violated the Plaintiff's common law, statutory and constitutional rights, including the right to equal protection and benefit of the law.
18. On September 12, 1903 the Governor-in-Council approved by O.C. #1545 the surrender of 7,800 acres of the Michel Reserve covering Townships 53, 54 and 55, in Ranges 26 and 27, west of the 4th Meridian (the "1903 Surrender Lands").
19. A surrender of approximately 8,278 acres on the eastern boundary of the Michel Reserve was confirmed by Order-in-Council #1413 on July 19, 1906 (the "1906 Surrender Lands").

20. On December 10th, 1911 the Defendant Federal Crown approved the alienation of 40.92 acres of the Michel Reserve in section of 24, Township 53, Range 27, west of the 4th Meridian without the consent of the Michel First Nation. No surrender as required by the *Royal Proclamation of 1763* and the *Indian Act* was purported to be taken. No compensation was paid by the Federal Crown for the taking of these lands, except for \$9.00 which the Federal Crown deemed to be the value of certain improvements made to the land by the Michel First Nation.
21. In 1928 the Federal Crown purported to "enfranchise" 10 members of the Michel First Nation and their families.
22. Pursuant to P.C. 35/811 on May 15, 1928, each of the enfranchisees was given a share of the Michel First Nation's funds and were given six sections of land, being Sections 25, 26, 27, 34, 35 and 36 in Township 53, Range 27, west of the 4th Meridian, which were lands belonging to the Michel First Nation.
23. In 1956 the Federal Crown appointed a Committee of Inquiry pursuant to section 112 of the *Indian Act*, S.C. 1952 which was comprised of an employee of the department of Indian affairs, a local judge, and one member of the Michel First Nation.
24. This committee conducted an inquiry into the advisability of enfranchising all of the members of the Michel Band on July 10 and 11, 1956. At the time of the inquiry the *Indian Act* was silent on the effect of an order of enfranchisement of all members of a band pursuant to sections 111 and 112 thereof.
25. In August of 1956 the *Indian Act* was amended to include section 109, which provided that a person who was subject to an order of enfranchisement would

thereafter be deemed not to be an Indian within the meaning of the Act or any other statute or law.

26. In 1958, upon the recommendation of the Committee of Inquiry, the majority of the members of the Michel Band were declared enfranchised by Order-in-Council No. 1958-375.
27. Order-in-Council No. 1958-375 also approved a plan (the "Enfranchisement Plan") for the transfer of certain reserve lands to some members of the Michel First Nation, the transfer of some mineral rights of lands to a corporation and the distribution of the Band's funds to the enfranchising members.
28. No surrender has ever been taken by the Federal Crown of the lands and interests that were included in the Enfranchisement Plan.
29. ~~The road allowances, precious metals and beds and shores of water bodies located within the reserve were not included in the Enfranchisement Plan and were not surrendered.~~
30. The Federal or Provincial Crown continue to hold title to various interests in the former Michel Indian Reserve, including the road allowances, precious metals and beds and shores of water bodies. These interests, including royalties from the sale of some of the precious metals are held in trust for the use and benefit of the Plaintiffs.
31. After the 1958 "enfranchisement", the Federal Crown transferred the un-enfranchised members of the Michel Band from the Michel Band List to the "General List" maintained by the Indian Register. Certain members who had

been erroneously omitted from the Michel Band list prior to 1958 were reinstated to Indian status and also placed on the General List of the Indian Register.

32. All of the individuals listed in O.C. 1958-375 were removed from the Indian Register and thereafter the Federal Crown refused to recognize the Michel First Nation as a First Nation or Indian Band and refused to honour its treaty obligations to the Michel First Nation and its members.

33. In or around 1985, the Federal Crown amended the Indian Act to allow various enfranchised persons removed from Indian status and band membership to be placed on the Indian Register and restored to membership in their original bands. The Plaintiffs rely on the *Indian Act* 1985 R.S.C. c. I-5, and in particular on sections 6 and 11 of that Act.

34. Since the 1985 amendments to the *Indian Act*, most of the members of the Michel First Nation have been reinstated to Indian status.

35. However, the Federal Crown has refused to restore the members of the First Nation to the Michel \_\_\_\_\_ Band List and membership in the Michel Band and has refused to recognize their membership in the Michel First Nation.

36. Alternatively, the Plaintiffs state that the amendments to the *Indian Act* failed to allow for the reinstatement of the Plaintiffs to their original band, namely, the Michel Indian Band.

37. Section 11 of the *Indian Act 1985*, by failing to allow for the reinstatement of the Plaintiffs to the Michel Indian Band denies the Plaintiffs equal protection and benefit of the law, violates section 15 of the *Charter of Rights and Freedoms*, and cannot be justified under section 1. It is also inconsistent with section 35 of the



Constitution Act 1982 and the Federal Crown's fiduciary obligations to the Plaintiffs.

38. The reinstated members of the Michel Band have had some of their Treaty rights restored, including their annual annuity payments. However, they continue to be denied their collective treaty rights such as community schools, community health care, economic development and recognition by the Federal Crown of their Chiefs and Councillors and right to self government. The Federal Crown also refuses to provide to the First Nation's Chief and Councillors the annual salaries and the biannual suits of clothes to which they are entitled under the Treaty.
39. The Plaintiffs continue to be denied the rights and benefits of band membership provided to other First Nations pursuant to government policy and pursuant to the Indian Act, such as the powers of self government under the Indian Act, financial assistance for band governance (band support funding), funding for infrastructure such as housing and administration offices, support for cultural programs, training and funding for the development of community education, health programs and community economic development.
40. The Federal Crown's refusal to recognize the rights of the Michel First Nation, including its right to self-determination and self-government, and its refusal to provide the programs and services available to other First Nations with whom Canada has treaty relations, is discriminatory and in violation of the Federal Crown's treaty, constitutional, common law and equitable obligations to the Plaintiffs.

41. Since approximately 1973, the Federal Crown has had a policy of recognizing its lawful obligations to Indian peoples and providing a process for the submission, validation and negotiation of Indian claims, called the Specifics Claim Policy.
42. Since 1985, the Plaintiffs have repeatedly requested that the Federal Crown address their claims under the Specific Claims Policy, to no avail.
43. The Federal Crown's refusal to allow the Plaintiffs access Specific Claims Policy is due to the terms of the Policy itself, or the exercise of discretion under the Policy, or some other reason which is in the knowledge of the Defendant Federal Crown.
44. In 1992 the Privy Council issued a Royal Commission establishing the Indian Claims Commission (the "I.C.C.") to inquire into whether Indian claimants had valid claims for negotiation pursuant to the Specific Claims Policy which had been rejected by the Minister of Indian Affairs.

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45. In 1995 the Plaintiffs requested the I.C.C. inquire into the failure of the Minister to accept their claims under the Specific Claims Policy.
46. On March 27th, 1998 the I.C.C. released the results of its inquiry: a recommendation that the Federal Crown grant standing to the Plaintiffs to submit specific claims in relation to alleged invalid surrenders of reserve land for consideration on their merits under the Specific Claims Policy.
47. Despite the Plaintiffs' repeated requests for a response to the I.C.C.'s recommendation and the passage of three years, the Minister of Indian Affairs has failed to respond.

48. The Plaintiffs state that the refusal of the Federal Crown to allow the Plaintiffs access to the Specific Claims Policy denies the Plaintiffs equal protection and benefit of the law, violates section 15 of the *Charter*, and cannot be justified under section 1. It also violates s. 35 of the *Constitution Act*, 1982 and is inconsistent with the Honour of the Federal Crown.
49. The Federal Crown has breached its fiduciary, trust and constitutional obligations to the Plaintiffs by, *inter alia*:
- (a) alienating portions of the Michel reserve lands in 1911 without obtaining the First Nation's consent, a valid surrender, or any surrender of the lands;
  - (b) failing to honour the terms of Treaty No. 6 and honouring its constitutional obligations to the Nation and its members ;
  - (c) failing to recognize the Michel First Nation as a self governing entity consisting of original inhabitants of Canada with whom Canada has treaty and fiduciary obligations;
  - (d) withholding and failing to accord the Plaintiffs' the rights and benefits, including programs, services and funding to which the Plaintiffs are entitled under Treaty No. 6, the Indian Act and government policy;
  - (e) refusing to provide the members of the Michel First Nation the same rights and benefits as other enfranchised Indians who have been reinstated to Indian status under the *Indian Act*; and
  - (f) denying the Plaintiffs access to the benefit of a negotiated settlement of their historical claims under the Specific Claims Policy.
50. Treaty No. 6 has never been terminated and the Federal Crown remains bound, as a matter of law and honour, to fulfil the promises made to the Michel First Nation.

51. As a result of the Federal Crown's wrongful taking and disposition of the property of the Plaintiffs, including their reserve lands, the wrongful withholding and denial of the Plaintiffs' treaty rights and benefits and the refusal to provide the same programs and services to the Michel First Nation as are provided to other First Nations in Canada, the Plaintiffs have suffered severe hardship and deprivation, including the loss of their ability to live and work together as a community, and their ability to govern themselves and to practice and preserve their language and culture has been severely compromised.
52. By failing to honour the obligations undertaken pursuant to Treaty No. 6, the Federal Crown has breached and continues to breach the terms of Treaty No. 6 and its statutory, common law, equitable and constitutional obligations to the Plaintiffs.
53. In addition to the equitable obligations of the Federal Crown, the Plaintiffs' ~~corresponding right to be dealt with in a fair and even-handed manner and in~~ addition to the constitutional responsibility of Her Majesty pursuant to s. 94(24) of the *Constitution Act*, 1867, the Plaintiffs rely upon their rights of equality before and under the law and guaranteed by section 15(1) of the Canadian Charter of Rights and Freedoms and upon sections 25, 35 and 36 of the *Constitution Act*, 1982 and the common law.
54. The Plaintiff proposes that the trial of this action be held at the Law Courts, in the City of Edmonton, in the Province of Alberta.
55. Trial of this action will require more than 21 days of court time.

WHEREFORE THE PLAINTIFFS PRAY FOR THE FOLLOWING RELIEF AGAINST THE DEFENDANT:

1. A declaration that the Specific Claims Policy and/or the Federal Crown's exercise of discretion under the Specific Claims Policy violates section 15 of the Charter in a manner that cannot be justified under section 1 and is inconsistent with s. 35 of the *Constitution Act, 1982*;
2. A declaration that section 11 of the Indian Act violates section 15 of the Charter in a manner that cannot be justified under section 1 and is inconsistent with section 35 of the *Constitution*.
3. An accounting by the Federal \_\_\_\_\_ Crown of all lands, interest in lands and property retained by the Defendants from the former Michel Reserve and a declaration that this property is held for the use and benefit or in trust for the Plaintiffs;
4. A declaration that the Michel First Nation is an "Indian Band" within the meaning of the *Indian Act* and/or under the common law;
5. A declaration that the Federal Crown's treaty obligations to the First Nation and its members are protected by s. 35 of the *Constitution* and have never been terminated;
6. An accounting of all members and former members of the Michel First Nation who were enfranchised and the annuity and other treaty benefits due to each of them;

7. A declaration that the 1911 Surrender Lands were wrongfully taken from the Michel First Nation without its consent and contrary to the terms of Treaty 6 and the Federal Crown's fiduciary obligations;
8. Subject to any limitations of actions defenses, a declaration that the Plaintiffs are entitled to compensation for the wrongful taking of their lands in 1911;
9. Subject to any limitations of actions defenses, a declaration that the Plaintiffs are entitled to compensation for the Federal Crown's failure to recognize and fulfill its treaty obligations to the Plaintiffs;
10. Subject to any limitations of actions defenses, a declaration that the Plaintiffs are entitled, on a prospective basis from the date of judgment, to the same program services as other First Nations in Canada;
11. A declaration that the honour of the Crown and *Constitution of Canada* obligates the Federal Crown to reinstate the rights of the Plaintiffs to Band membership and their collective treaty and statutory rights as a Band and First Nation;
12. Such further and other relief as this Honourable Court may deem just and fit; and
13. Costs of this action on a solicitor and client basis.

DATED at the City of Edmonton, in the Province of Alberta this \_\_\_ day of February, 2001, AND DELIVERED by Ackroyd, Piasta, Roth & Day, Barristers and Solicitors, Solicitors for the Plaintiff, whose address for service is in care of said solicitors at 1500, 10665 Jasper Avenue, Edmonton, Alberta T5J 3S9.

ISSUED out of the Court of Queen's Bench of Alberta, Judicial District of  
Edmonton, this 27 day of February, 2001.

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CLERK OF THE COURT

Amended this 30 day of May, 2005 under Order dated 22 day of March, 2005.

Amended Amended this \_\_\_\_\_ day of September, 2005 under Order dated \_\_\_\_\_ day  
of September, 2005.

Amended Amended Amended this \_\_\_\_\_ day of April, 2008 under Order dated the 16<sup>th</sup>  
day of April, 2008.

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