

COPY

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

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 STATEMENT OF DEFENCE OF  
THE ATTORNEY GENERAL OF CANADA

Part A: **GENERAL AVERMENTS:** The Deputy Attorney General of Canada on behalf of the Defendant, Attorney General of Canada, (hereinafter the "Federal Crown"), in answer to the Plaintiffs' Amended Amended Amended Statement of Claim, states as follows:

1. Except as otherwise expressly admitted herein, all of the allegations in the Amended Amended Amended Statement of Claim are denied.
2. In the alternative, and in any event, all of the Plaintiffs' claims are either barred by statutory limitation periods or in the further alternative, all of the Plaintiffs' claims are barred by estoppel.
3. The Federal Crown denies:
  - a. the existence of the alleged "Michel First Nation"; and

AMENDED THIS 7 DAY OF May A.D. 2008  
PURSUANT TO RULE 1.30 UNDER ORDER-CONSENT DATE  
A.D. 2008  
SEAL  
CLERK OF THE COURT

b. the Plaintiffs' arbitrary use of the term "Michel First Nation" and the interchangeability of that phrase with the "Michel Indian Band No. 472".

4. All references throughout this Amended Amended Statement of Defence to the *Indian Act* refer to the *Indian Act* then in force at the relevant time.

5. It is agreed that the trial of this action will take longer than 21 days of Court time and that it be held at the Law Courts, Edmonton, Alberta.

**Part B: SPECIFIC AVERMENTS/DENIALS:** Without restricting the generality of the denial in Part A above, in full and complete answer to the allegations made against the Federal Crown in the Amended Amended Amended Statement of Claim, the Federal Crown says that:

#### **RELATIONSHIP BETWEEN PLAINTIFFS AND THE FEDERAL CROWN**

6. In response to paragraph 1 of the Amended Amended Amended Statement of Claim;

a. the Federal Crown has no knowledge and denies that the Plaintiffs, or any or all of them:

i) are Cree and Iroquois people;

ii) are "Indians" or "aboriginal peoples" within the meaning of Section 91(24) of the *Constitution Act, 1867*, the Imperial Order in Council of June 23, 1870, the *Constitution Act, 1982*, Treaty No. 6 or the *Indian Act*, R.S.C. 1985, c. I-5, as amended

as alleged or at all, and puts the Plaintiffs to the strict proof thereof;

b. the Federal Crown denies that the Plaintiffs have standing to act in a representative capacity because:

i. the Plaintiffs do not meet the legal tests imposed by law to act as representatives;

- ii. the Plaintiffs may be directly related to persons who took personal benefit from Enfranchisement;
- iii. in the further alternative, the Plaintiffs took personal benefit or still hold property as a result of Enfranchisement; and
- iv. are otherwise not common in interest.

7. In response to paragraph 2 of the Amended Amended Amended Statement of Claim, the Federal Crown:

- a. has no knowledge of and denies the named Plaintiffs' authority to act:
  - i. as the representatives of or on behalf of the other members of the alleged "Michel First Nation"; or
  - ii. on behalf of all members of the former Michel Indian Band No. 472 (hereinafter the "Michel Band"); or
  - iii. on behalf of the descendants of former members of the former Michel Band; and
- b. further denies that the individual Plaintiffs in particular and the other alleged members of the alleged "Michel First Nation" all have the same or common interest in these proceedings.

8. In response to paragraphs 1, 2 and 3 of the Amended Amended Amended Statement of Claim, the Federal Crown:

- a. specifically denies the existence of the alleged "Michel First Nation", including the allegation contained in paragraph 3 of the Amended Amended Amended Statement of Claim that the "Michel First Nation" is a Band as defined

under the *Indian Act*. Further, the Federal Crown denies that bands exist at common law;

b. states that the alleged “Michel First Nation” is not a legal entity and does not have the capacity to bring the within legal proceedings;

c. admits that a body of aboriginals subsequently designated as the Michel Band adhered to Treaty No. 6 through an adhesion dated September 18, 1878 and was recognized as an Indian Band under the *Indian Act* from the date of its adhering to Treaty No. 6 until March 31, 1958 when it was dissolved by enfranchisement of its members by Order in Council 1958-375 (“the 1958 Enfranchisement”) and thereafter ceased to exist as a legal entity; and

d. denies that the Plaintiffs are descendants of the former Michel Band within the meaning of the *Indian Act* and puts the Plaintiffs to the strict proof thereof.

9. In response to paragraph 4 of the Amended Amended Amended Statement of Claim, the Federal Crown:

a. admits that:

i. it acts on behalf of the Attorney General of Canada; and

ii. the Federal Crown exercises exclusive legislative authority over “Indians and lands reserved for Indians”; and

iii. the Department of Indian Affairs and Northern Development is the department of the Federal Crown charged with the responsibility of administering the *Indian Act*; but

b. denies that:

i. it is charged with a fiduciary responsibility with respect to Indians and lands reserved for Indians as alleged, except in limited circumstances prescribed by law; and

ii. that the *Royal Proclamation of 1763* has any application to the Plaintiffs or to the allegations pled within the Amended Amended Amended Statement of Claim and, in any event by its terms did not apply to the former Rupert's Land within which the Reserve of the former Michel Band was located.

10. In response to paragraphs 5 and 6 of the Amended Amended Amended Statement of Claim the Federal Crown:

a. denies that the Plaintiffs or any of them are the holders of any aboriginal or treaty rights and puts the Plaintiffs to the strict proof thereof;

b. denies that the Plaintiffs are descendants of aboriginal peoples originally occupying lands within the Treaty No. 6 area;

c. in the alternative, if it is found that the Plaintiffs, or any of them, are entitled to treaty rights pursuant to Treaty No. 6, denies that it has breached any such rights; and

d. repeats the non-applicability of the *Royal Proclamation of 1763* for the reasons set forth in paragraph 9(b)(ii) of this Amended Amended Statement of Defence.

11. The Federal Crown admits paragraph 7 of the Amended Amended Amended Statement of Claim but states that various bands adhered to Treaty No. 6 at different dates.

12. In response to paragraph 8 of the Amended Amended Amended Statement of Claim the Federal Crown denies that the alleged "Michel First Nation" entered into treaty with the Crown by adhesion to Treaty No. 6. The Federal Crown states that the Michel Band adhered to Treaty No. 6 as set forth in paragraph 8 (c) of this Amended Amended Statement of Defence.

13. In response to paragraphs 9 and 10 of the Amended Amended Amended Statement of Claim the Federal Crown:

a. states that:

i. the text of Treaty No. 6 reflects the understanding and agreement of the parties thereto;

ii. Treaty No. 6 together with the *Indian Act*, established the nature and terms of the legal relationship between the Indian signatories or adherents to Treaty No. 6 and the Federal Crown;

iii. the rights claimed by the Plaintiffs are rights which were held collectively by the former Michel Band prior to its enfranchisement to which the Plaintiffs are not entitled;

iv. any and all Treaty rights to which the former Michel Band were entitled were extinguished by the enfranchisement process and by operation of law;

v. the alleged "Michel First Nation" does not hold treaty or aboriginal rights; and further or in the alternative;

vi. if the Plaintiffs, or any of them are the holders of treaty rights pursuant to Treaty No. 6, which is not admitted but denied, the Federal Crown specifically denies a breach of any such alleged treaty rights; and further

b. denies that:

i. by entering into Treaty No. 6, the Federal Crown acknowledged aboriginal title or occupation of land or any other rights including the alleged

right to continued self-determination and self-government by the Plaintiffs, or the alleged “Michel First Nation”; and

ii. the Plaintiffs can assert any of the collective rights they claim in the Amended Amended Amended Statement of Claim on an individual basis or at all given that the former Michel Band no longer exists.

## RESERVE CREATION

14. In response to paragraph 11 of the Amended Amended Amended Statement of Claim, the Federal Crown specifically denies that the alleged “Michel First Nation” was designated a “Band” with the designation No. 472 as alleged or at all.

15. In response to paragraph 12 of the Amended Amended Amended Statement of Claim the Federal Crown:

a. admits that a reserve was created on the date and near the location set forth in paragraph 12 of the Amended Amended Amended Statement of Claim and was designated Michel Indian Reserve No. 132 (hereinafter the “Michel Reserve”); but

b. denies that the Michel Reserve was set aside for the alleged “Michel First Nation” but states that it was set aside for the Michel Band.

16. In response to paragraph 13 of the Amended Amended Amended Statement of Claim, the Federal Crown specifically denies that any reserve lands were set aside for the alleged “Michel First Nation” or that the alleged “Michel First Nation” has any interest in the Michel Reserve as alleged or at all. The Federal Crown states that the interests of the Michel Band in the Michel Reserve consisted of the interests granted by the *Indian Act* and other valid federal legislation. The Federal Crown specifically denies that the interests of the Michel Band in the Michel Reserve included the rights to precious metals.

17. In response to paragraph 14 of the Amended Amended Amended Statement of Claim, the Federal Crown:

- a. states that the alienation of reserve lands is, and always has been, governed by valid federal legislation existing from time to time;
- b. denies that the alleged “Michel First Nation” had to consent to any alienation of the Michel Reserve as alleged or at all;
- c. denies that the alleged “Michel First Nation” is a legal entity or has ever possessed any interest in the Michel Reserve.

18. In response to paragraph 15 of the Amended Amended Amended Statement of Claim, the Federal Crown denies that it owed trust, trust-like, or fiduciary obligations to the Plaintiffs as alleged, or at all, and puts the Plaintiffs to the strict proof thereof.

19. In response to paragraph 16 of the Amended Amended Amended Statement of Claim, the Federal Crown states that the text of section 35 of the *Constitution Act, 1982* speaks for itself.

20. In response to paragraph 17 of the Amended Amended Amended Statement of Claim, the Federal Crown specifically denies all of the allegations contained therein and puts the Plaintiffs to the strict proof thereof.

#### **SURRENDER OF 1903 & 1906 AND ALIENATION OF 1911**

21. In specific response to paragraphs 18 and 19 of the Amended Amended Amended Statement of Claim the Federal Crown admits that surrenders of the Michel Reserve were made from time to time and in every case, the surrenders were made at the request of the Michel Band, with the consent of the Michel Band, and in full compliance with all applicable legislation in force at the time of the surrenders.

22. In further response to paragraphs 18 and 19, the surrenders are immaterial and irrelevant to the claims advanced by the Plaintiffs in their Amended Amended Amended Statement of Claim.

23. In response to the allegations made in paragraph 20 of the Amended Amended Amended Statement of Claim, the Federal Crown:



a. states that 40.92 acres of the Michel Reserve were alienated on December 10<sup>th</sup>, 1911 (“the 1911 Alienation”) with the knowledge of the Michel Band.. The 1911 Alienation was a free grant of land to Janvier L’Hirondelle, a “settler”, made by Order in Council pursuant to the terms of Treaty No. 6 which reserves to Her Majesty “the right to deal with any settlers within the bounds of any lands reserved for any Band as She shall deem fit.”; but

b. denies:

i. the applicability of the *Royal Proclamation of 1763* for the reasons set out in paragraph 9(b)(ii) above;

ii. that any improvements to the land were made by the alleged “Michel First Nation”, but admits that improvements to the land may have been made by the Michel Band for which compensation was paid; and

iii. that consent from the Michel Band to the 1911 Alienation was required.

## ENFRANCHISEMENT

24. In response to paragraphs 21 and 22 of the Amended Amended Amended Statement of Claim, the Federal Crown states that:

a. the individual enfranchisements of 1928 were initiated at the informed request of the individuals seeking to be enfranchised who did so with the benefit of their own independent legal advice;

b. the individual enfranchisements of 1928 were validly conducted, in full compliance with the statutory provisions of the *Indian Act*;

c. the individuals upon becoming enfranchised, received their *pro rata* share of Michel Band assets and the Federal Crown denies that the alleged “Michel First Nation” had any interest in or ownership of these assets or lands as alleged; and

d. there was no requirement under the *Indian Act* to obtain a surrender of the Michel Reserve nor to provide compensation as alleged.

25. In further response to paragraphs 21 and 22, the individual enfranchisements of 1928 are immaterial and irrelevant to the claims advanced by the Plaintiffs in their Amended Amended Amended Statement of Claim.

26. In response to paragraphs 23 through 25 of the Amended Amended Amended Statement of Claim, the Federal Crown:

a. admits that a Committee of Inquiry was established in 1956 to consider the enfranchisement of the entire Michel Band; but

b. with respect to paragraphs 24 and 25 of the Amended Amended Amended Statement of Claim, denies that the *Indian Act* was silent on the effect of an order of enfranchisement, and says that the enfranchisement provisions in the *Indian Act* existed at all relevant times and at all times were known to the Michel Band and its members and its legal counsel; and

c. with respect to paragraph 25 of the Amended Amended Amended Statement of Claim, says that the provisions of section 109 of the *Indian Act, 1952* were amended in 1956 (S.C. C-40, s.27) and were in force at all relevant times.

27. In response to paragraphs 26 through 32 of the Amended Amended Amended Statement of Claim, the Federal Crown admits that the Michel Band in its entirety was enfranchised on March 31, 1958 pursuant to O.I.C.P.C. 1958-375 and that the Enfranchisement occurred after the Michel Band:

a. made repeated requests to the Federal Crown for Band Enfranchisement; and

b. obtained independent legal advice.

28. In further response to paragraphs 26 through 32 of the Amended Amended Amended Statement of Claim, the Federal Crown:

a. states that:

i. the 1958 Enfranchisement occurred only after full inquiry was undertaken by the Federal Crown with respect to the desirability of the Band enfranchising; and further

ii. the Michel Band initiated and actively participated in the 1958 Enfranchisement and had legal counsel throughout the process;

iii. the Michel Band received the distribution of the Band's assets in accordance with the terms of the 1958 Enfranchisement Plan;

iv. the 1958 Enfranchisement was conducted in full compliance with relevant federal legislation and statutory requirements that existed at the time;

v. the 1958 Enfranchisement was motivated in part by the desires of the members of the Michel Band for *individual* as opposed to *collective* rights to the lands which they occupied on the Michel Reserve;

vi. the terms of the 1958 Enfranchisement Plan were approved by Michel Band by Band Council Resolution dated July 26, 1957;

vii. in accordance with the 1958 Enfranchisement Plan:

1. the Michel Reserve lands were distributed among the individual members of the Michel Band;

2. cash was distributed to members of the Michel Band;

3. other rights were transferred to Michel Investments Ltd., a body incorporated at the instruction of the Michel Band

Council for the purposes of administering the mines and minerals underlying the Michel Reserve lands and waters, certain gravel bearing portions of the Michel Reserve and such other interests as specified in the 1958 Enfranchisement Plan; and

4. each member of the Michel Band received an equal allotment of the shares issued in Michel Investments Ltd.;

viii. pursuant to the 1958 Enfranchisement Plan, individual members of the Michel Band received a *pro rata* share of the benefits enumerated in the Enfranchisement Plan and they and their descendants have enjoyed individual benefits, including lands and monies, since 1958.

b. specifically denies:

i. that the Michel Band had, at any time, any entitlement to precious metals lying on or beneath the Michel Reserve pursuant to the common law or the *Constitution Act, 1867* or its predecessor the *British North America Act, 1867*; and

ii. that a surrender of the Michel Reserve or the lands and interests that were included in the 1958 Enfranchisement Plan was required by the *Indian Act*, as alleged or at all.

29. In response to paragraphs 29 and 30 of the Amended Amended Amended Statement of Claim, the Federal Crown:

a. states that the 1958 Enfranchisement Plan transferred the road allowances within the Michel Reserve to the Province of Alberta;

b. states that the mineral rights underlying the road allowances were transferred to Michel Investments Ltd. pursuant to O.C. 1958-1229;

c. denies that the alleged “Michel First Nation” had any interest in the road allowances and was entitled to compensation as alleged; and

d. denies that the Federal Crown holds any interest in the former Michel Reserve, or any royalties as alleged, in trust for the use and benefit of the Plaintiffs, or any of them.

30. In further response to paragraphs 23 to 32, the challenge to the 1958 enfranchisement has been withdrawn and therefore, the validity of the enfranchisement is immaterial and irrelevant to the claims advanced by the Plaintiffs in their Amended Amended Amended Statement of Claim.

31. Upon its members being enfranchised and the Michel Band's assets being distributed to its members and to Michel Investments Ltd. in accordance with the 1958 Enfranchisement Plan, the Michel Band ceased to exist as a separate entity, by operation of law, and the former Band members ceased to be Indians as defined by the *Indian Act*. Treaty rights are by definition collective in nature and accrue only to the band which is the modern manifestation of the Treaty signatory band. Once the Michel Band ceased to exist, any rights conferred upon the former Michel Band by Treaty No. 6 ceased to apply to them.

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### **Bill C-31 AND ADDITION OF NAMES TO THE INDIAN REGISTER**

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32. In response to paragraphs 33 through 38 of the Amended Amended Amended Statement of Claim the Federal Crown:

a. admits that:

i. amendments to the *Indian Act* were made in 1985 and these amendments were contained in Bill C-31;

ii. Bill C-31 made provisions, *inter alia*, for the reinstatement of various enfranchised persons; and

iii. some individuals that meet the criteria set out in the *Indian Act* have been reinstated to Indian status and have been placed on the Indian Register but not on any band list.

33. In specific response to paragraphs 38 and 39 of the Amended Amended Amended Statement of Claim, the Federal Crown states that since the Michel Band ceased to exist as a result of the 1958 Enfranchisement, any collective band or treaty rights or entitlements that the Michel Band had prior to the 1958 Enfranchisement no longer exist. The Federal Crown specifically denies that it is required to provide band benefits or entitlements or the collective rights and benefits alleged in paragraphs 38 and 39 of the Amended Amended Amended Statement of Claim to the Plaintiffs, or any of them, including, *inter alia*, community schools, community health care, economic development, financial assistance for band governance, and others as alleged.

34. In response to paragraph 40 of the Amended Amended Amended Statement of Claim, the Federal Crown denies that it owes the Plaintiffs any treaty, common law, or equitable obligations as alleged or at all. Further, the Federal Crown denies that the Plaintiffs have established any treaty or aboriginal rights. In the alternative, the Federal Crown denies that it has violated any treaty, common law or equitable obligations, which are not admitted but denied. Further, the Federal Crown denies that there has been any violation of the Plaintiffs' constitutional rights as alleged and specifically denies any allegation of discrimination.

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## **SPECIFIC CLAIMS**

35. In response to paragraphs 41 through 48 of the Amended Amended Amended Statement of Claim, the Federal Crown states that Specifics Claim Policy and the Indian Specific Claims Commission ("I.S.C.C.") are alternative dispute resolution mechanisms for the Federal Crown and Indian band claimants to resolve historic grievances. The Federal Crown admits that the I.S.C.C. conducted an inquiry into a claim made by the Friends of Michel Society and the I.S.C.C. issued a report and made a recommendation to the Federal Crown. The I.S.C.C.'s report recommendations are not relevant to these proceedings and the allegations contained in paragraphs 41 through 47 of the Amended Amended Amended Statement of Claim are immaterial and irrelevant to this litigation.

36. In further response to paragraph 48 of the Amended Amended Amended Statement of Claim, the Federal Crown specifically denies:

a. that a refusal of access to the Specific Claims Policy violates section 15 of the *Constitution Act, 1982* as alleged or at all, and puts the Plaintiffs to the strict proof thereof;

b. that access to the Specific Claims Policy is an aboriginal or treaty right pursuant to section 35 of the *Constitution Act, 1982*, as alleged or at all, and puts the Plaintiffs to the strict proof thereof; and

c. in the alternative, that the Specific Claims Policy violates section 35 of the *Constitution Act, 1982*, and is inconsistent with the Honour of the Federal Crown as alleged or at all, and puts the Plaintiff to the strict proof thereof.

37. In the alternative

a. if refusal of access to the Specific Claims Policy violates section 15 of the *Constitution Act, 1982* as alleged, or at all, any such breach can be justified under section 1 of the *Constitution Act, 1982*; and

b. if refusal of access to the Specific Claims Policy is an aboriginal or treaty right pursuant to section 35 of the *Constitution Act, 1982*, which is denied, the Federal Crown acted pursuant to valid legislative objectives and in accordance with law.

## CONSTITUTIONAL ISSUES

38. In response to paragraphs 37, 48 and 53 of the Amended Amended Amended Statement of Claim, the Federal Crown states that these paragraphs of the Amended Amended Amended Statement of Claim do not contain sufficient particulars of the alleged breach of the *Charter of Rights and Freedoms* or the alleged breaches of sections 25, 35, and 36 of the *Constitution Act, 1982* (collectively referred to as the "*Constitution Act, 1982*") and the common law, to allow the Federal Crown to properly plead its defence. The Federal Crown reserves the right to seek further particulars of these alleged breaches and further amend its defence accordingly. Further, the Federal Crown denies that the Plaintiffs' rights under 15(1), 25, 35 and 36 of the *Constitution Act, 1982* have been breached in any way by the Federal Crown.