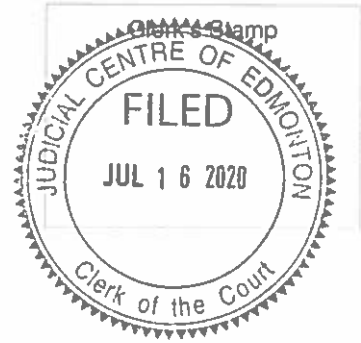


COURT FILE NUMBER 2023-11463  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF UNION LAKE CREE NATION  
DEFENDANT HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and the LIEUTENANT-GOVERNOR OF ALBERTA IN COUNCIL, as both represented by the MINISTER OF JUSTICE AND SOLICITOR-GENERAL OF ALBERTA



DOCUMENT **STATEMENT OF CLAIM**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT HLDUN AND COMPANY BARRISTERS AND SOLICITORS 300, 10711 102 ST. EDMONTON, ALBERTA, T5H 2T8 TEL: 780-423-1888 FAX: 780-424-0934 ATTN: R. W. HLDUN, Q.C. M. J. MARCHEN

**NOTICE TO DEFENDANT:**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**STATEMENT OF FACTS RELIED ON:**

**The Parties**

1. The Peoples of Onion Lake Cree Nation are the successors to their ancestors who made Treaty 6 with the Crown in 1876 at Waskahikanis (Fort Pitt). They are Aboriginal peoples within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*, and "Indians" under the rubric of Section 91(24) of the *Constitution Act, 1867 (UK), 30 & 31 Vict., c 3*, reprinted in RSC 1985, Appendix II, No. 5.

2. Onion Lake Cree Nation was formed in 1914 from the Makaoo and Seekaskootch bands; and is thus a “band” within the meaning of Section 2 of the *Indian Act* RSC 1985, c I-5. Onion Lake Cree Nation is representative of, and litigates for and on behalf of, its membership.
3. The lands reserved to the Plaintiff and its membership coincide with parts of the Province of Alberta as well as the Province of Saskatchewan.
4. The Crown, designated in section 12 of the *Proceedings Against the Crown Act* RSA 2000, c P-25 as Her Majesty the Queen in Right of Alberta, exercises executive power in Alberta through the agency of Her Majesty's Lieutenant Governor in Council. Both Her Majesty in Right of Alberta and the Lieutenant Governor in Council are properly represented in this proceeding by the Minister of Justice and Solicitor-General of Alberta.

#### **Treaty 6**

5. On or about 9<sup>th</sup> day September 1876 at Waskahikanis, the Ancestors, including Chiefs and Headmen, of the Makaoo and the Seekaskootch Peoples negotiated and entered into Treaty 6 (the “Treaty”) as invited and subscribed by the Honourable Alexander Morris, commissioned to act as representative of Her Late Majesty Queen Victoria.
6. The Treaty was viewed by the Crown as being essential to establishing peaceful and legal relations, nation-to-nation, with the Crown's subjects who lived on lands within the metes and bounds of Treaty 6; and, *inter alia*, to give proper effect to the *Royal Proclamation of 1763*.
7. The Treaty is understood by the Peoples of Makaoo and Seekaskootch as a Treaty that has been passed down to the present through the Cree Oral Tradition from generation to generation.
8. The Treaty created a formal alliance whereby the Crown was to provide, at all material times, protection and assistance to the Plaintiff as Peoples of Treaty, including, *inter alia*, guarantees of material and other benefits which would assist the Elders and Peoples of Makaoo and Seekaskootch, the Plaintiff, Onion Lake, in their daily lives which allowed them to remain free within the Treaty area and in the course of that, continue in their traditional way of life.
9. The Treaty is a Treaty within the meaning of Section 35 of the *Constitution Act, 1982*.

10. The Plaintiff has sovereign control over its area of reserved lands by exercising its own system of customs and laws governing the First Nation people of the Plaintiff, Onion Lake, consistent with their Treaty.
11. The Defendant Crown owes Treaty Peoples a fiduciary duty to honour and follow the written, oral and implied terms of the Treaty – both the letter and the spirit of the Treaty.
12. In the Treaty the Crown guaranteed that the Plaintiff’s rights of passage and rights of avocation would be maintained and not unreasonably infringed, to wit:

“[the Plaintiff’s People]..shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered...subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts of land as may from time to time be required or taken up for settlement, mining, lumbering, or other purposes.”
13. The Treaty also includes the promise of the ancestral Peoples of the Plaintiff not to unjustifiably:

“molest the person or property of any inhabitant...or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tracts or any part thereof.”
14. The Plaintiff states that in the decades since the making of the Treaty, the Crown and certain of its servants have approached its Treaty obligations in a manner that was directed at advancing an agenda, particulars of which are known to the Defendant, contrary to the spirit and intent of the Treaty and without any particular regard to the reciprocal rights and obligations between the Crown and Plaintiff.

**Enactment of the *Critical Infrastructure Defence Act***

15. On February 25<sup>th</sup>, 2020, the *Critical Infrastructure Defence Act*, SA 2020, c. C-32.7 (“*CIDA*”) was introduced by the Premier the Honourable Jason Kenney, as Bill 1 of the Second Session of the 30<sup>th</sup> Legislature of Alberta (“Bill 1”; “the Bill”). The Bill passed Second Reading on May 27<sup>th</sup>, 2020, and following referral from the Committee as a Whole, the Bill passed Third Reading on May 28<sup>th</sup>, 2020.
16. In the course of legislative debate upon Bill 1, it was noted, *inter alia*, by several Honourable Members that:

- a. There were already laws that prohibited conduct such as trespass and causing a disturbance;
  - b. No consultation had apparently been done with any First Nations in respect of the Bill;
  - c. Bill 1 was essentially “criminal law”;
  - d. Bill 1 enacted “new criminal offences”;
  - e. Bill 1 gave the Lieutenant Governor in Council the power - *carte blanche* - to designate anything, anywhere in the province, as “essential infrastructure.”
  - f. Bill 1 effectively criminalized walking along the side of a highway.
  - g. Bill 1 had the potential to criminalize any protest anywhere in the Province.
  - h. Bill 1 reversed the presumption of innocence.
  - i. Bill 1 removed the requirement of reasonable and probable grounds for arrest.
17. Bill 1 received Royal Assent and came into force on June 17<sup>th</sup>, 2020.
  18. As enacted, Section 1(1)(a) of the *CIDA* defines “essential infrastructure” to include 15 types of buildings and installations such as highways, dams, utilities, and such. Section 1(2) further deems any of the land on which this ‘essential infrastructure’ is situated or used “in connection with” the ‘essential infrastructure’ to also be “essential infrastructure.”
  19. Additionally, Section 1(b) of the *CIDA* also includes in the definition of essential infrastructure any “building, structure, device, or other thing prescribed by the regulations.”
  20. Section 5 of the *CIDA* states that the Lieutenant Governor in Council may make regulations prescribing buildings, structures, devices, or other things as being essential infrastructure.”
  21. Section 2(1) of the *CIDA* prohibits, *inter alia*, any person without lawful right, justification, or excuse, from wilfully enter[ing] on any essential infrastructure.”
  22. Sections 2(2) and (3) of the *CIDA* prohibit the damage, destruction, or interference with essential infrastructure.

23. Section 2(4) of the *CIDA* prohibits any person from “aiding, directing, or counselling” a person to breach sections 2(1)-(3) as aforesaid.
24. Section 3(1)(a) of the *CIDA* creates an offence of breaching Section 2 of the *CIDA*, punishable by fines up to \$25,000 and imprisonment up to 6 months for individuals; and fines up to \$200,000 for corporations.
25. Section 3(2) of the *CIDA* deems any director, officer, or agent of a corporation that has committed an offence under the *CIDA* to be guilty *in personam*, and liable to the same punishment as persons who actually commit an offence under Section 2.
26. Section 3(3) of the *CIDA* deems each day that a contravention of Section 2 continues to be a separate offence.
27. Section 4 of the *CIDA* states that a Peace Officer may arrest without warrant any person the Peace Officer finds contravening Section 2.

#### **The *CIDA* infringes upon Treaty Rights and derogates the Treaty relationship**

28. The Plaintiff states that the *CIDA* as a whole infringes upon the rights of the Plaintiffs as guaranteed by the Treaty, the particulars of which include but are not limited to:
  - a. The *CIDA* infringes upon the rights of the Plaintiff’s peoples to pursue their traditional ceremonies, associations, and avocations (such as hunting, fishing, trapping, etc.), through the effective criminalization of entry on or passage across *any* land in Alberta that may be deemed ‘essential infrastructure,’ as determined by the Lieutenant Governor in Council arbitrarily and unilaterally without notice.
  - b. The *CIDA* derogates from the reciprocal promises made in the Treaty as aforesaid, by effectively substituting those reciprocal promises with the fiat of the Lieutenant Governor in Council;
  - c. The *CIDA* negates the guarantees of livelihood and freedom that the Treaty was made to protect, by wresting control of all movement and activity over whatever land *or thing* the Lieutenant Governor in Council deems fit;
  - d. The *CIDA* was enacted wholly without input, consultation, or consideration of Plaintiff’s concerns, contrary to the spirit of the Treaty and in derogation the Honour of the Crown;

29. The Plaintiff states that the *CIDA* as a whole has both the purpose and effect of negating the guarantees in the Treaty of freedom and agency appertaining to the Plaintiff's lands as well the freedom and agency appertaining to conduct on *any* lands in Alberta.
30. The *CIDA* is utterly repugnant to the letter and spirit of the Treaty.

**The *CIDA* unjustifiably infringes upon the Applicant's members *Charter* rights**

31. The Applicant states that the *CIDA* as a whole unjustifiably infringes upon the rights of the Plaintiffs as guaranteed by the *Canadian Charter of Rights and Freedoms* (Part 1 of the *Constitution Act, 1982*; the "*Charter*"), the particulars of which include but are not limited to:
32. The *CIDA* unjustifiably infringes upon the freedoms of expression, peaceful assembly, and association, all as guaranteed by Section 2 of the *Charter*, as well as the guarantee of life, liberty, and security of the person under Section 7 of the *Charter*, by:
  - a. prohibiting the entry upon unsigned land;
  - b. prohibiting peaceful assembly, including protests;
  - c. essentially criminalizing protest and, *a fortiori* mere movement, on anything deemed "essential infrastructure,"
  - d. making such offences punishable by imprisonment, and
  - e. deeming persons such as directors, officers, and agents of corporations to have committed offences essentially by association; and
  - f. such further and other ways as may be found or Counsel may advise.
33. The *CIDA* unjustifiably infringes upon the right not to be arbitrarily detained or imprisoned pursuant to Section 9 of the *Charter*, and to be presumed innocent pursuant to Section 11(d), of the *Charter*, by:
  - a. deeming individuals guilty by association under Section 3(2) of the *CIDA*, and
  - b. by removing restrictions upon the powers of arrest that are otherwise applicable to both criminal and regulatory offences under Section 495 of the *Criminal Code of Canada*, RSC 1985, c C-46 and Section 3 of the *Provincial Offences Procedures Act*, RSA 2000, c P-34; and

- c. such further and other ways as may be found or Counsel may advise.
- 34. The *CIDA* unjustifiably infringes upon the equality rights guaranteed by Section 15 of the *Charter* through the demonstrated legislative intent to quash protest by Aboriginal Peoples raised in fundamental defence of their Treaty and Aboriginal rights. The effect of the *CIDA* is hardly ameliorative of the conditions of any other disadvantaged group.
- 35. The *CIDA* cannot, under Section 1 of the *Charter*, be demonstrably justified in a free and democratic society. It is irrational, overbroad, and patently unbalanced. The intent and effect of the *CIDA* is repugnant to the principles of fundamental justice as aforesaid. The *CIDA*, read on its face and *in pari materia* with existing Provincial regulatory and Federal criminal statutes, the *CIDA* simply permits the outlawing by fiat of any protest, movement, or mere presence that the Lieutenant Governor in Council wishes to prohibit.

**The *CIDA* is *Ultra Vires* Her Majesty in Right of Alberta**

- 36. Section 91 of the *Constitution Act, 1867*, lists specific powers to be solely within the law-making power or competence of (the Federal) Parliament, including:
  - a. Subsection 27: the Criminal Law; and
  - b. Subsection 24: Indians, and land reserved for Indians
- 37. The Applicant states that the *CIDA* is in pith and substance criminal legislation, and as such is *ultra vires* the Crown in Right of Alberta. The *CIDA* also directly concerns lands reserved to Indians, as there are several types of 'essential infrastructure' on the lands reserved to the Plaintiff and its People.
- 38. The *CIDA* was described in legislative debate by Members *supporting* Bill 1 as "creating new criminal offences."
- 39. The offences created under the *CIDA* are conformable to crimes already codified within the *Criminal Code of Canada* that may be prosecuted as summary conviction offences under Part XXVII thereof:

<p><i>CIDA</i>, s. 2(a)</p> <p>No person shall, without lawful right, justification or excuse, wilfully enter on any essential infrastructure.</p>	<p><i>Criminal Code</i>, s. 72(1)</p> <p>A person commits forcible entry when that person enters real property that is in the actual and peaceable possession of another in a manner that is likely to cause</p>
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	a breach of the peace or reasonable apprehension of a breach of the peace.
<i>CIDA</i> , s. 2(b) No person shall, without lawful right, justification or excuse, wilfully damage or destroy any essential infrastructure.	<i>Criminal Code</i> , s. 430(a) Every one commits mischief who wilfully destroys or damages property.
<i>CIDA</i> , s. 2(c) No person shall, without lawful right, justification or excuse, wilfully obstruct, interrupt or interfere with the construction, maintenance, use or operation of any essential infrastructure in a manner that renders the essential infrastructure dangerous, useless, inoperative or ineffective.	<i>Criminal Code</i> , s. 430(b)-(d) Every one commits mischief who wilfully obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

40. There is no double-aspect to the *CIDA*. Its patent intent and effect is not to regulate property and/or to address a merely local concern. Rather, the patent intent and effect of the *CIDA* is to regulate conduct – such as protests - that raise issues that, in the case of the Plaintiff, literally transcend provincial boundaries.

**The *CIDA* was enacted without Consultation**

41. The *United Nations Declaration of the Rights of Indigenous Peoples*, as adopted by resolution of the General Assembly of the United Nations (61/295), states in Article 19 that:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

42. Further, the letter and spirit of Treaty 6, as recognized and affirmed by Section 35 of the *Constitution Act, 1982* requires the consent of the Plaintiff, “first had and obtained” in Crown conduct that affects, or potentially affects, the Plaintiffs Treaty and Aboriginal rights - in particular the Plaintiff’s rights pertaining to land.



43. The *CIDA* was both introduced by Premier Kenney and enacted by the Lieutenant Governor without any consultation with the Plaintiff's leadership or People. There is no evidence in the debates of consultation with any other Aboriginal peoples.
44. The Plaintiff states that this complete lack of consultation with respect to *CIDA* constitutes a breach of its Treaty and Constitutional rights independent of the aforementioned breaches and infringements.

#### **REMEDY SOUGHT**

45. A Declaration that the *CIDA* unjustifiably infringes upon and derogates Treaty 6, as recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
46. Declarations that the *CIDA*, or parts thereof, infringes
  - a. Sections 2(b), 2(c), and 2(d);
  - b. Section 7;
  - c. Section 9;
  - d. Section 11(d); and
  - e. Section 15of the *Canadian Charter of Rights and Freedoms*, and cannot be demonstrably justified in a free and democratic society.
47. A Declaration that the *CIDA*, or parts thereof, is *ultra vires* the Crown in Right of Alberta;
48. A Declaration that the *CIDA*, or parts thereof, is of no force and effect;
49. Temporary and permanent injunctions declaring the *CIDA*, or parts thereof, inoperative as against the Plaintiff and its People;
50. Such further and other relief as may obtain under Section 24 of the *Canadian Charter of Rights and Freedoms*;
51. Such further and other relief as may obtain under Sections 35 and 52 of the *Constitution Act, 1982*;
52. Indemnity costs and interest; and
53. Such further and other consequential relief as the Honourable Court finds just.

## **NOTICE TO THE DEFENDANTS**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at **Edmonton, Alberta**, AND serving your statement of defence or a demand for notice on the Plaintiff's address for service.

### **WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.