

AUG 27 2021

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**



**MCLEOD LAKE INDIAN BAND and CHIEF HARLEY CHINGEE  
ON HIS OWN BEHALF AND ON BEHALF OF THE MEMBERS OF THE  
MCLEOD LAKE INDIAN BAND**

**PLAINTIFFS**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA  
and HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

**DEFENDANTS**

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this Court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this Court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the Court, within that time.

## **CLAIM OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

#### **Summary of the Claim**

1. The Plaintiffs herein seek this Honourable Court's intervention to require the Crown act in accordance with its constitutional and other duties to meaningfully and appropriately consult with McLeod Lake Indian Band ("**MLIB**") regarding the Crown's express intention to grant portions of MLIB's acknowledged traditional territory to a third-party First Nation that has no demonstrated pre-existing traditional or other claim to exclusive use or access to that land, and with the effect of preventing or otherwise interfering with MLIB's continuing use of such lands.

#### **The Parties**

##### ***The Plaintiffs***

2. The Plaintiff, MLIB, is a "band" within the meaning of the *Indian Act*, RSC 1985, c. I-5 (the "**Indian Act**"). Members of MLIB are of the *Tse'Khene* (or Sekani) people, one of the "Aboriginal people" of Canada within the meaning of section 35 of the *Constitution Act*, 1982 ("**Section 35**"), being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.
3. The main community of MLIB is located on MLIB Reserves #1 and #5 near the unincorporated village of McLeod Lake, British Columbia, approximately 150 kilometers north of Prince George, British Columbia. MLIB membership totals about 600 (as defined under the *Indian Act*).
4. McLeod Lake itself empties into the Pack River which joins the Parsnip River. The Parsnip River and the Finlay River are the main tributaries of the Peace River.
5. MLIB has, for countless generations, hunted, fished and carried on other traditional activities in the area drained by the Peace, Parsnip and Finlay Rivers and in other areas to the Arctic-Pacific Watershed in the west, the prairies in the east and toward the Liard River in the north. Members of MLIB continue to carry on these activities today. They are connected by the language and by marriage to other *Tse'Khene* at locations such as Ingenika, Hudson Hope and Halfway River.
6. The Plaintiff, Chief Harley Chingee ("**Chief Chingee**"), is the duly elected Chief of MLIB, a registered Indian within the meaning of the *Indian Act*, and a member of MLIB. He brings this action on his own behalf and as a representative on behalf of all other MLIB members.

### **The Defendants**

7. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia (the "**Province**") is named in this proceeding pursuant to section 7 of the *Crown Proceedings Act*, RSBC 1996, c. 89, and is that emanation of the Crown that holds the Crown lands material to the issues in this proceeding.
8. The Province has the power to manage and regulate the lands material to issues in this proceeding pursuant to section 92 of the *Constitution Act, 1867*, subject to section 35 of the *Constitution Act, 1982* and Treaty 8.
9. The Defendant, Her Majesty the Queen in Right of Canada, as Represented by the Attorney General of Canada ("**Canada**", together with the Province, the "**Defendants**" or the "**Crown**"), is named in this proceeding pursuant to section 21(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50. Canada has the power to manage and regulate the lands material to the issues in this proceeding pursuant to s. 91 of the *Constitution Act, 1867*, including its jurisdiction over "Indians, and Lands reserved for the Indians", subject to section 35 of the *Constitution Act, 1982* and Treaty 8.

### **The Treaty**

10. "Treaty 8" is a treaty within the meaning of Section 35. Treaty 8 was originally made and concluded in 1899 at Lesser Slave Lake between Her most Gracious Majesty the Queen of Great Britain and Ireland and the Chief and Headmen of the Indians of Lesser Slave Lake and adjacent country. The Treaty was ratified by Order in Council 363 on February 2, 1900.
11. In approximately 2000, MLIB adhered to Treaty 8 in by signing the McLeod Lake Indian Bank Treaty No. 8 Adhesion and Settlement Agreement with the Government of Canada and the Government of British Columbia (the "**MLIB Treaty Agreement**"). MLIB's identified traditional territory is set out at Schedule "A" to the MLIB Treaty Agreement (the "**Acknowledged MLIB Traditional Territory**").
12. Treaty 8 and the MLIB Treaty Agreement (together, the "**Treaty**") created reciprocal rights and obligations on the part of MLIB and the Crown.

### **MLIB's Treaty Rights**

13. The Crown's solemn promises (the "**Crown's Constitutional Promises**"), in the Treaty context in which they were provided, guarantee the Plaintiffs' rights to meaningfully, *inter alia*:
  - (a) Continue their mode of life, including patterns of activity and occupation, without forced interference;
  - (b) Maintain and access teaching, cultural, spiritual, and community gathering sites in order to pass on the plaintiffs' mode of life;
  - (c) Maintain access to resources and places which have a unique and central significance to their hunting, fishing, and trapping, or other aspects of their mode of life;

- (d) Hunt, fish, gather, and trap within their traditional territory, which includes travel on and access to the lands, habitat, ecosystems, trails, waters, and other infrastructure on MLIB's Claimed Traditional Territory;
- (e) Maintain their practical, cultural, and spiritual connection to MLIB's Claimed Traditional Territory; and
- (f) Conduct traditional, cultural, and spiritual activities in connection with MLIB's Claimed Traditional Territory

(the "Treaty Rights").

14. Pursuant to Treaty 8, the Crown is obliged, *inter alia*:

- (a) To act honourably, ensuring that the enactment of regulations and the taking up of land do not interfere with the Plaintiffs' continued meaningful exercise of Treaty Rights;
- (b) To manage and protect the lands designated under the Treaty, and adjacent lands, including the waters and ecosystems within those lands, in such a way as to:
  - (i) Minimize impacts on Treaty Rights; and
  - (ii) Ensure the continued meaningful exercise of Treaty Rights by the plaintiffs;
- (c) Not to displace the Plaintiffs, forcibly interfere with their mode of life, or permit the doing of these things;
- (d) Not to interfere with the Plaintiffs' traditional patterns and activities; and
- (e) Not to interfere, or allow others to interfere, with the Plaintiffs' meaningful exercise of Treaty Rights.

15. Pursuant to article 3.3 of the MLIB Treaty Agreement, the Province is obligated to consult MLIB on activities that may have an impact upon MLIB's rights under Section 35 within the Acknowledged MLIB Traditional Territory.

**The Crown Decision**

- 16. In or around December 2018, the Crown initiated communication with MLIB regarding the proposed transfer of certain lands (the "**Parcels**") for the benefit of West Moberly First Nation ("**WMFN**"), with a view to settling WMFN's outstanding Treaty 8 reserve land entitlement claim. This transfer would result in the Parcels ultimately forming part of WMFN's "reserve" lands (thereby granting them exclusive use within the meaning of that term).
- 17. The Parcels include: Stewart Lake North, 1<sup>st</sup> Cabin , 2<sup>nd</sup> Cabin, 3<sup>rd</sup> Cabin, Chetwynd Northeast, Chetwynd East, Chetwynd West, Chetwynd Southwest, Dokkie North, Dokkie South, George Weeksa, Hidden Lake, Jim's Triangle, Moberly Lake North Shore, Moberly Lake South Shore, Three Lakes, Cameron Lakes, Gething, Hole in the Wall, Stewart Lake East, Stewart Lake North, Tumbler Ridge 100-acre wood, Tumbler Ridge East, Tumbler

Ridge South, Moberly Lake Golf Course, Summit Lake 1, Summit Lake 2, Summit Lake 3, Summit Lake 4, Summit Lake 5. **See attached Schedule "A" for list of Parcels.**

18. The Parcels are located in and form part of the Acknowledged MLIB Traditional Territories.
19. WMFN has not made an historical or other claim to exclusive right of access to and use of the Parcels, despite being aware of the Acknowledged MLIB Traditional Territories since at least 1999.
20. Despite initiating consultation in December 2018, having had several requests from MLIB to provide funding, since at least April 2019:
  - (a) Canada did not offer capacity funding to MLIB until January 29, 2021 to "continue to consult on the proposed settlement of Treaty Land Entitlement Claims of the West Moberly First Nation..."; and
  - (b) The Province did not offer capacity funding to MLIB until February 9, 2021 to "engage and consult with the Province on Treaty 8 First Nations' Treaty Land Entitlement (TLE) and Tripartite Lands Agreement (TLA) land parcels".
21. Canada and the Province failed to adequately consult with MLIB, failed to adequately accommodate MLIB, and failed to act honourably in their dealings with MLIB.
22. On August 14, 2021, the Province and Canada advised MLIB that they made the decision it will proceed with an agreement with WMFN that the Parcels will form part of WMFN's reserve lands (the "**Decision**").

#### **Impacts of the Decision and Infringement of Treaty Rights**

23. Following the Decision, Canada and the Province expect to enter into a settlement agreement with WMFN pursuant to which the Province will undertake to settle some or all of the Parcels to WMFN once the agreement is ratified (the "**Proposed WMFN Agreement**").
24. If the Province and Canada enter into the Proposed WMFN Agreement it will cause irreparable harm to MLIB, particularly:
  - (a) No meaningful ability for MLIB to exercise some or all Treaty Rights;
  - (b) Loss of MLIB's use and enjoyment of the Parcels, which are of central significance to the Acknowledged MLIB Traditional Territory;
  - (c) Displacement of MLIB hunters, trappers and fishers;
  - (d) Disruption and curtailment of the continuity of MLIB's patterns of activities;
  - (e) Loss of MLIB's preferred means of exercising their Treaty Rights; and
  - (f) Forcible interference with MLIB's mode of life.
25. If the Crown enters into the Proposed WMFN Agreement, it will be all but impossible going forward to unravel any associated Crown obligations to WMFN in respect of the Parcels.

26. Although entering into the Proposed WMFN Agreement will not immediately result in the transfer of some or all of the Parcels to WMFN, such conduct will impose legal and constitutional duties on the Crown, including the duty to act honourably in respect of the WMFN and the Parcels, and it will be very difficult, if not impossible, for the Crown to unwind the Proposed WMFN Agreement to accommodate MLIB should MLIB be successful in the within Action at trial.

## **Part 2: RELIEF SOUGHT**

1. A declaration that, in making the Decision, the Defendants have:
  - (a) Failed to satisfy the Crown's duty to consult;
  - (b) Failed to uphold the Honour of the Crown;
  - (c) Breached their obligations to MLIB under the Treaty; and
  - (d) Unjustifiably infringed MLIB's Treaty Rights.
2. A declaration that any Crown action in entering into the Proposed WMFN Settlement Agreement without adequate consultation and accommodation for MLIB:
  - (a) Fails to uphold the Honour of the Crown;
  - (b) Breaches the defendants' obligations to MLIB under the Treaty; and
  - (c) Unjustifiably infringes MLIB's Treaty Rights.
3. An interim, interlocutory and/or permanent injunction prohibiting Canada and the Province from entering into the Proposed WMFN Settlement Agreement.
4. Special costs.
5. Such further and other relief as this Honourable Court may deem appropriate.

## **Part 3: LEGAL BASIS**

1. The *Constitution Act, 1982*, recognizes and affirms the existing treaty rights of the Aboriginal peoples of Canada.
2. The Defendants have both committed to implement the *United Nations Declaration on the Rights of Indigenous Peoples (Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act, Royal Assent June 21, 2021)*, which specifically recognizes the rights of Indigenous peoples such as MLIB to (a) their traditionally owed occupied or used lands territories and resources; and (b) just and fair and equitable compensation for traditional lands, territories and resources that have taken without MLIB's free, prior and informed consent.
3. The Crown is bound by Treaty 8, as both levels of government are responsible for fulfilling the promises in the Treaty, in accordance with the division of powers under the *Constitution Act, 1867*.

4. The Crown has obligations to the Plaintiffs under the Treaty, the Constitution and the Honour of the Crown. The Defendants must act in a way that seeks to preserve and accomplish the intended purposes of the Treaty and to ensure the continuing meaningful exercise of the Treaty Rights by the Plaintiffs.
5. The Crown has a duty to consult where its conduct may adversely impact an Aboriginal or treaty rights.
6. Aboriginal and treaty rightsholders have a right to exercise their rights in accordance with their preferred means.
7. The Decision and the intention to enter into the Proposed WMFN Settlement Agreement is in breach of the Crown's duty to consult and accommodate MLIB, infringes the Treaty and the Plaintiffs' treaty rights, contrary to the Defendants' constitutional obligation of the Honour of the Crown.

Plaintiff's address for service:

c/o Tamara Prince and Danielle DiPardo  
Cassels Brock & Blackwell LLP  
Lawyers  
2200 - 885 West Georgia Street  
Vancouver BC V6E 3C8

Fax number address for service (if any):

778.372.7852

E-mail address for service (if any):

N/A


Place of trial:

Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC V6Z 2E1

Date: August 27, 2021

  
\_\_\_\_\_  
Signature of Lawyer for plaintiff  
Tamara Prince / Danielle DiPardo

## APPENDIX

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The Plaintiff seek the Honourable Court's intervention to require the Crown act in accordance with its constitutional and other duties to meaningfully and appropriately consult with McLeod Lake Indian Band regarding the Crown's express intention to grant portions of MLIB's acknowledged traditional territory to a third-party First Nation that has no demonstrated pre-existing traditional or other claim to exclusive use or access to that land, and with the effect of preventing or otherwise interfering with MLIB's continuing use of such lands.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

- |  |                          |  |
|--|--------------------------|--|
| A personal injury arising out of:                    | <input type="checkbox"/> | the provision of goods or services or other general commercial matters |
| <input type="checkbox"/> a motor vehicle accident    | <input type="checkbox"/> | investment losses  |
| <input type="checkbox"/> medical malpractice         | <input type="checkbox"/> | the lending of money   |
| <input type="checkbox"/> another cause               | <input type="checkbox"/> | an employment relationship   |
|  | <input type="checkbox"/> | a will or other issues concerning the probate of an estate             |
| A dispute concerning:                                | X                        | a matter not listed here   |
| <input type="checkbox"/> contaminated sites          |                          |  |
| <input type="checkbox"/> construction defects        |                          |  |
| <input type="checkbox"/> real property (real estate) |                          |  |
| <input type="checkbox"/> personal property           |                          |  |

### **Part 3: THIS CLAIM INVOLVES:**

- |  |  |
|--|--|
| <input type="checkbox"/> a class action              | <input type="checkbox"/> conflict of laws  |
| <input type="checkbox"/> maritime law                | <input type="checkbox"/> none of the above |
| X <input checked="" type="checkbox"/> aboriginal law | <input type="checkbox"/> do not know       |
| <input type="checkbox"/> constitutional law          |  |

### **Part 4: ENACTMENTS:**

- |  |  |
|--|--|
| <input type="checkbox"/> Builders Lien Act             | <input type="checkbox"/> Motor Vehicle Act                 |
| <input type="checkbox"/> Divorce Act                   | <input type="checkbox"/> Occupiers Liability Act           |
| <input type="checkbox"/> Family Relations Act          | <input type="checkbox"/> Supreme Court Act                 |
| <input type="checkbox"/> Insurance (Motor Vehicle) Act | <input type="checkbox"/> Wills Variation Act               |
| <input type="checkbox"/> Insurance (Vehicle) Act       | X Other: Constitution Act, 1982;<br>Constitution Act, 1867 |



## **Schedule "A"**

### **The Parcels**

1. 1<sup>st</sup> Cabin – West of Moberly Lake along the Moberly River (LAT 54.4266 Long: -121.9261)
2. 2<sup>nd</sup> Cabin – West of Moberly Lake along the Moberly River (LAT 55.7635 Long: -122.2636)
3. 3<sup>rd</sup> Cabin – West of Moberly Lake along the Moberly River (LAT 55.7560 Long: -122.3353)
4. Cameron Lakes – North of Moberly River along highway 29 (LAT 55.8669 Long: -121.9016)
5. Chetwynd Northeast – Northeast Chetwynd, along Highway 29 (LAT 55.7091 Long: -121.6063)
6. Chetwynd East – East Chetwynd, north of Highway 7 (LAT 55.6954 Long: -121.5788)
7. Chetwynd West – West Chetwynd, north of Highway 97S (LAT 55.6974 Long: -121.6551)
8. Chetwynd Southwest – West Chetwynd, adjacent north of Highway 97S (LAT 55.6899 Long: -121.6659)
9. Dokie North – West of Chetwynd, adjacent to Highway 97S (LAT 55.6700 Long: -121.7261)
10. Dokie South – South of Dokie Siding, southeast of the Pine River and Highway 97S (LAT 55.6324 Long: -121.7342)
11. George Weeksa – North of West Moberly Reserve, north of Highway 29 (LAT 55.8424 Long: -121.8219)
12. Gething – West of Hudson Hope, south of Williston Reserve (LAT 55.9817 Long: -121.3066)
13. Hidden Lake – North of Moberly Lake along highway 29 (LAT 55.8663 Long: -121.9151)
14. Jim's Triangle – North of Moberly Reserve, south of highway 29 (LAT 55.8345 Long: -121.8639)

15. Moberly Lake North Shore – North of Moberly Lake, adjacent to Moberly Lake Reserve, south of Highway 29 (LAT 55.8307 Long: -121.8228)
16. Moberly Lake South Shore – Southwest of Fort St. John, adjacent to the Pine River (LAT 56.0406 Long: -121.1519)
17. Three Lakes – North of Moberly Lake along Highway 9 (LAT 55.9033 Long: -121.9228)
18. Hole in the Wall – West of Tumbler Ridge, adjacent Sukunka River, East of Hole in the Wall Park (LAT 55.1557 Long: -121.8292)
19. Stewart Lake East – Approximately halfway between Fort St. John and Dawson Creek, west of Alaska Highway (LAT: 55.9449 Long: -120.7474)
20. Stewart Lake North – Southwest of Fort St. John, adjacent to the Pine River (LAT 56.0406 Long: -121.1519)
21. Tumbler Ridge 100 Acre Wood - North Tumbler Ridge (LAT 55.1372 Long: -121.0044)
22. Tumbler Ridge East – East of Tumbler Ridge (LAT 55.1249 Long: -121.9826)
23. Tumbler Ridge South – South Tumbler Ridge (LAT 55.1157 Long: -121.9936)
24. Moberly Lake Golf Course – North of Moberly Reserve, adjacent to Highway 29 (LAT 55.8384 Long: -121.7932)
25. Summit Lake 1 – Summit Lake (LAT 54.2803 Long: -121.6392)
26. Summit Lake 2 – Summit Lake (LAT 54.2808 Long: -121.6241)
27. Summit Lake 3 – Summit Lake (LAT 54.2811 Long: -121.6333)
28. Summit Lake 4 – Summit Lake (LAT 54.2783 Long: -122.6250)
29. Summit Lake 5 – Summit Lake (LAT 54.2643 Long: -121.6248)