



BETWEEN:

CHIEF TROY KNOWLTON ON HIS OWN BEHALF AND ON BEHALF OF  
ALL PIIKANI NATION BENEFICIARIES OF TREATY 7

Plaintiffs

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendant

### STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.  
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

COURT FILE NO.

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F I L E D	FEDERAL COURT COUR FÉDÉRALE  December 12, 2024 12 décembre 2024	D É P O S É
Ginette Lischenski (MM)		
CAL	1	

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date) December 12, 2024

Issued by:

Original signed by G. Lischenski  
(Registry Officer)

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## **CLAIM**

### **OVERVIEW OF THIS ACTION**

1. In 1877, Piikani Nation's ancestors entered into the Blackfoot Treaty (also known as Treaty 7 and referred to herein as the "Treaty") with Canada. As particularized below, the Blackfoot Treaty included a promise by Canada to pay an annuity to each individual member of Indigenous Nations that entered into the Treaty (a "Treaty Nation"), including Piikani, and a larger annuity to Chiefs and Councillors (collectively, the "Annuity Promises"). The Annuity Promises specify the value to be paid each year: \$5 for each member, \$15 for each councillor and \$25 for each chief (the "Nominal Annuity Amounts"). Canada makes payments pursuant to the Annuity Promises each year ("Annuity Payments").
2. In breach of the Treaty and its fiduciary duty, and contrary to the honour of the Crown, Canada continues to make Annuity Payments only in the Nominal Annuity Amounts, despite inflation causing those amounts to be worth only a fraction of their value at the formation of the Treaty in 1877.
3. The plaintiffs bring this action to compel Canada to honour the terms of the Treaty, fulfill its fiduciary duty and act in a manner consistent with the honour of the Crown, by making Annuity Payments in amounts each year that are equal to the purchasing power of the Nominal Annuity Amounts in 1877 ("Adjusted Annuity Amounts").
4. The plaintiffs also seek compensation for the unpaid portion of the Adjusted Annuity Amounts in the past, with interest.

### **RELIEF SOUGHT**

5. The plaintiffs seek the following relief:
  - a. A declaration that the Annuities Promises require the annual payment of monetary amounts equivalent to the value in 1877 of the Nominal Annuity Amounts;

- b. A declaration that Canada is under an ongoing fiduciary obligation to implement the Annuity Promises in a manner that ensures the values of the Annuity Payments are not eroded by inflation;
- c. A declaration that the honour of the Crown requires Canada to adjust its Annuity Payments to be equivalent to the value in 1877 of the Nominal Annuity Amounts, accounting for inflation;
- d. A declaration that, from 1877 to the present, the Crown has breached its obligations under the Treaty by failing to make Annuity Payments in amounts that are equivalent to the value in 1877 of the Nominal Annuity Amounts;
- e. A declaration that, from 1877 to the present, the Crown has breached its fiduciary duty to the plaintiffs by failing to make Annuity Payments in amounts that are equivalent to the value in 1877 of the Nominal Annuity Amounts;
- f. A declaration that, from 1877 to the present, the Crown failed to act honourably, by failing to make Annuity Payments in amounts that are equivalent to the value in 1877 of the Nominal Annuity Amounts;
- g. A declaration that the Crown has breached its obligations under the Treaty, failed to act honourably, and/or breached its fiduciary duty by failing to take steps to eliminate the negative impacts on the plaintiffs of any reduction in the purchasing power and comparative value of the Annuity Payments;
- h. A constructive trust, an accounting of profits and/or disgorgement in respect of the Crown's profits or savings arising from its breach of treaty, breach of fiduciary duty and/or breach of honour of the Crown, together with interest compounded annually at commercially reasonable rates;
- i. Equitable compensation for breach of treaty, breach of fiduciary duty, and/or breach of the honour of the Crown, together with interest compounded annually at commercially reasonable rates;

- j. Damages to compensate for losses suffered by Piikani Nation beneficiaries of the Treaty resulting from the Crown's breach of treaty, breach of honour of the Crown, and/or breach of fiduciary duty;
- k. Special damages in the nature of interest based on the improper or wrongful withholding of money due, or an allowance for the loss of opportunity to invest the amount of the damages;
- l. In the alternative, pre-judgment court ordered interest calculated in accordance with the **Judgment Interest Act**, RSA 2000, c J-1, and the **Crown Liability and Proceedings Act**, RSC 1985, c C-50;
- m. Post-judgment interest calculated in accordance with the **Federal Court of Act**, RSC, c F-7;
- n. Aggravated and punitive damages;
- o. Costs, including costs on a substantial indemnity basis, plus applicable taxes; and
- p. Such further and other relief as this Honourable Court may deem just.

## THE PARTIES

### The Representative Plaintiffs

- 6. Chief Troy Knowlton is the Chief of Piikani Nation ("Piikani"). He is an Indigenous person who is registered as an "Indian" for the purpose of the **Indian Act**, RSC 1985, c I-5, an "Indian" within the meaning of the Treaty, and a registered member of Piikani Nation.
- 7. Piikani Nation is a member Nation of the Blackfoot Confederacy and an Indian Band under the *Indian Act*. It is the successor to one of the Indigenous groups that entered into the Treaty.

8. Chief Knowlton and Piikani bring this action on behalf of all Piikani beneficiaries of the Treaty.

### **The Defendant**

9. His Majesty the King in Right of Canada ("Canada" or "the Crown") is primarily responsible for carrying out and implementing the Crown's obligations under the Treaty. One of those obligations is the Annuity Payments.
10. This action is brought pursuant to s. 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, as amended.

## **HISTORY OF THE TREATY**

### **The Formation of the Treaty**

11. Piikani Nation's ancestors occupied Blackfoot Treaty territory long before the establishment of Canada as a nation state.
12. On June 23, 1870, Canada passed an Order in Council admitting Rupert's Land and the North-Western Territory – land that includes Blackfoot Treaty territory and what is now Alberta and Saskatchewan – into the union. In that same year, another Order-in-Council was approved with the preliminary instructions of entering into treaty with those who were identified by the Canadian government as "Indian Tribes" in the region.
13. Between 1871 and 1920 Canada entered into the "Numbered Treaties" with the Indigenous nations of the region. The Treaty was ultimately formed in 1877 with the Nations of the Blackfoot Confederacy. The Treaty covers roughly 130,000km<sup>2</sup> of land stretching from the Red Deer River in the north, to Alberta's southern border with the United States of America, along the border of British Columbia in the west to Medicine Hat in the east, and northeast to and just beyond the border of Saskatchewan.

14. Prior to commencing negotiations for the Treaty, Canada's understanding was that:
- a. The Indigenous Nations occupying the area (which included Piikani Nation's ancestors) had fierce, accomplished warriors and were staunch in preventing access to their territory to European people, Métis, and other Indigenous nations;
  - b. European settlement in the region was increasing, and the settlers European settlers in the region surrounding Fort McLeod and Fort Calgary desired that a treaty be made; and
  - c. The Indigenous Nations were dependent on buffalo, the population of which was declining.
15. On August 1, 1877, Lieutenant Governor David Laird and Lieutenant Colonel James F. McLeod (the "Treaty Commissioners") were directed to go to Fort McLeod to negotiate a treaty with the Blackfoot and other Indigenous nations of the unsundered parts of the North-West Territories adjoining the United States boundary.
16. On September 4, 1877, negotiations for the Treaty began at Fort McLeod.
17. In carrying out these negotiations Canada and its Treaty Commissioners knew, or ought to have known, that:
- a. Piikani had economic societies that were based on the barter system, and had limited experience with a currency system; and,
  - b. Piikani did not have the benefit of any financial advice or independent legal advice.
18. Piikani's representatives made clear to the Treaty Commissioners that they sought meaningful and enduring economic benefits for their people.

19. In order to secure their agreement, Canada's Treaty Commissioners assured Piikani's negotiators that the Treaty and Canada's ongoing obligations under it would last in perpetuity: as long as the sun shone and the waters ran. The Treaty Commissioners further assured Piikani's negotiators that the Crown would annually provide "money to purchase what you may see fit," and that, as their children increased, the money paid would likewise increase in the future as the Nations would be paid per head. These assurances were an important basis on which Piikani agreed to enter into the Treaty.

20. The Treaty was entered into on September 22, 1877 by Canada and Piikani.

### **The Annuity Promises**

21. The Treaty contains a promise by Canada to make Annuity Payments to each individual member of Piikani, every year after the signing of the Treaty. Specifically, the Treaty requires Annuity Payments of \$25 to each Chief, \$15 to each minor Chief or Councillor (up to a maximum of 15 Councillors per Nation), and \$5 each to all other individual members (as defined above, the "**Nominal Treaty Amounts**").

22. The written text of the Treaty states:

Her Majesty also agrees that next year, and annually afterwards forever, she will cause to be paid to the said Indians, in cash, at suitable places and dates, of which the said Indians shall be duly notified, **to each Chief, twenty-five dollars, each minor Chief or Councillor** (not exceeding fifteen minor Chiefs to the Blackfeet and Blood Indians, and four to the Piegan and Sarcee Bands, and five Councillors to the Stony Indian Bands), **fifteen dollars**, and to **every other Indian of whatever age, five dollars; the same**, unless there be some exceptional reason, to be paid **to the heads of families** for those belonging thereto.

[emphasis added; the "**Annuity Promises**"]

23. At the time Piikani entered into the Treaty, the Nominal Treaty Amounts were sufficient to make a significant contribution to the welfare of individual members and their families. The common intention of Piikani and Canada was that the Annuity



Payments would provide meaningful, enduring and secure benefits for the Piikani's members.

24. By including in the Treaty the precise quantum, in dollars, for the Annuity Payments, the parties were expressing their common intention as to the quantum of purchasing power to be provided per person. The parties assumed and intended that the Annuity Payments would carry approximately the same amount of purchasing power each year, in perpetuity.

25. In the alternative, the Treaty is silent as to inflation. It does not assign the risk of inflation to Piikani, either explicitly or impliedly. Further in the alternative, as compared to the plaintiffs, Canada was in a better position to both understand and control for the possibility of future inflation. During the negotiations for the Treaty, and the later adhesions to it, Canada's Treaty Commissioners did not raise, nor did the parties discuss nor mutually contemplate:

- a. The possibility that inflation would erode the value of the Nominal Treaty Amounts over time, to the extent that actually resulted or at all; or
- b. That Canada would cause or allow the real value of the Canadian dollar to erode over time.

26. Further in the alternative, at the time of the original negotiations for the Treaty and the later adhesions to it, none of the parties understood that inflation would later emerge as a general, long-term trend of increasing prices over time. Had they contemplated that possibility, they would have specifically linked the Annuity Payments to the amount of purchasing power as of 1877, as such accorded with their common intention.

## **Events following the signing of the Treaty**

27. Since 1877, and particularly since the mid-20<sup>th</sup> century, significant levels of inflation in Canada have substantially eroded the real value of the Nominal Treaty Amounts in terms of the ability to purchase items of value for Piikani members.
28. In or about the mid-20th century, Canada knew or ought to have known that the effect of inflation would significantly decrease the value of the Annuity Payments if paid in the Nominal Treaty Amounts. Canada, and specifically the Minister of Indigenous Services, is responsible for implementing the terms of the Treaty in respect of the Annuity Payments, including by distributing Annuity Payments to Piikani members through Indigenous Services Canada's ("ISC") Indian Moneys Program.
29. Despite that knowledge, at no time has Canada increased the Annuity Payments to amounts that would reflect the purchasing power of the Nominal Annuity Amounts. Canada still pays only \$25 to Chiefs, \$15 to councillors, and \$5 to other Piikani members.
30. Today the values of the Annuity Payments are a small fraction of what they were worth in 1877. The Annuity Payments no longer make a significant contribution to the welfare of the individual Piikani members and their families.
31. Canada's conduct in failing to increase the Annuity Payments as described above is high-handed, malicious, arbitrary, highly reprehensible or otherwise in bad faith.

## **BREACH OF TREATY**

32. The Treaty is enforceable by the plaintiffs against Canada as a *sui generis* agreement embodying both Indigenous law and common law, which was solemnly entered into between the plaintiffs and the Crown with the intention of having legal effect. Post-1982, the Treaty has constitutional force and is part of the supreme law of the land pursuant to sections 35(1) and 52(1) of the *Constitution Act, 1982*.

Accordingly, the entitlement to perpetual Annuity Payments and their augmentation constitutes a Treaty right that is recognized and affirmed pursuant to section 35(1).

33. Properly interpreted, the Annuity Promises are intended to provide Piikani members with the right to receive Annuity Payments in amounts equivalent to the purchasing power represented by the Nominal Annuity Amounts (\$5, \$15 and \$25) in 1877, when the Treaty was originally made – i.e. the Adjusted Annuity Amounts.

34. Canada has unjustifiably breached the Annuity Promises of the Treaty (the “Treaty Breach”) by, *inter alia*:

- a. Continuing to make Annuity Payments in the Nominal Annuity Amounts, despite inflation that has drastically reduced the purchasing power of those nominal amounts;
- b. Failing to act liberally and justly to increase the Annuity Payments to the Adjusted Annuity Amounts; and
- c. Failing to take steps to eliminate the negative impacts on the plaintiffs of any reduction in the purchasing power and comparative value of the Annuity Payments.

35. Canada’s Treaty Breach occurs each year that the Annuity Payments are not adjusted to account for inflation and changes in purchasing power.

36. The Treaty Breach adversely affects each Piikani member, as well as the Piikani Nation as a whole.

#### **BREACH OF FIDUCIARY DUTY**

37. The honour of the Crown gives rise to a fiduciary duty when the Crown assumes discretionary control over a specific or cognizable Aboriginal interest. The right to the Annuity Payments is a specific, cognizable, communal Aboriginal interest of Piikani members, arising out of the commitments made in the Treaty. Canada has undertaken discretionary control over that interest, and correspondingly Piikani

members are particularly vulnerable to Canada's control over the amount and timing of the payment of the Annuity Payments. Canada has a fiduciary duty to the plaintiffs with respect to the Annuity Payments.

38. When inflation began to erode the purchasing power of the Canadian dollar as it was in 1877, Canada's fiduciary duty obliged it to adjust the Annuity Payments in order to maintain Piikani members' original purchasing power.

39. Canada has breached its fiduciary obligations to Piikani members by, *inter alia*:

- a. Failing to increase the Annuity Payments to reflect the values of the Nominal Annuity Amounts at the time of signing the Treaty in 1877, or to otherwise directly address the impact of inflation on the Annuity Payments;
- b. Failing to fulfill the purpose of the Annuity Promises, being to provide the plaintiffs with a meaningful annual economic benefit;
- c. Failing to interpret and apply the Annuity Promises in accordance with the Indigenous perspective and Indigenous laws or in a manner respectful and considerate of its Indigenous Treaty partner;
- d. Putting its own interests ahead of the interests of the plaintiffs, the Treaty beneficiaries; and
- e. Failing to take steps to eliminate the negative impacts on the plaintiffs of any reduction in the purchasing power and comparative value of the Nominal Annuity Amounts.

40. Canada breaches its fiduciary duty to Piikani and Piikani members every year it pays Piikani members the Nominal Annuity Amounts instead of the Adjusted Annuity Amounts.

41. Canada's failure to increase the Annuity Payments has adversely affected the wellbeing of Piikani members and the Piikani Nation as a whole.

## BREACH OF THE HONOUR OF THE CROWN

42. The honour of the Crown requires that Canada take a broad, purposive approach to the interpretation of the promises made in the Treaty, and to act diligently and effectively to fulfill those promises. The Crown must seek to perform the obligation in a way that advances the purpose behind the promise and ensures that the letter and spirit of the promise are fulfilled.

43. The purpose of the Annuity Promises is obstructed by Canada continuing to make the Annuity Payments in the Nominal Treaty Amounts and not the Adjusted Annuity Amounts, despite the erosion of purchasing power by inflation.

44. Canada has breached the honour of the Crown by failing to act diligently to effectively implement the Annuity Promises.

45. Canada has also breached the honour of the Crown by failing to take steps to eliminate the negative impacts on Piikani members of any reduction in the purchasing power and comparative value of the monetary amounts set out in the Treaty.

The plaintiff proposes that this action be tried at Calgary, Alberta.

DATED at Vancouver, British Columbia, Canada, this 12 day of December, 2024.

I HERBY CERTIFY that the above document  
Is a true copy of the original *issued out of*

the Court on December 12, 2024

Dated December 16, 2024

Ginette Lischenski



**Tim Dickson**  
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TO: The Administrator of the Federal Court  
AND TO: The Defendant

SOR/2021-150, s. 12