

COURT FILE NUMBER KBG-PA-00182-2023

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE PRINCE ALBERT

PLAINTFFS LAC LA RONGE INDIAN BAND and  
PETER BALLANTYNE CREE NATION

DEFENDANT THE ATTORNEY GENERAL OF CANADA

Brought under *The Class Actions Act*

**STATEMENT OF CLAIM**

(October 6<sup>th</sup>, 2023)

**NOTICE TO DEFENDANT**

1. The Plaintiffs may enter judgment in accordance with this *Statement of Claim* or the judgment that may be granted pursuant to *The King's Bench Rules* unless, in accordance with paragraph 2, you:

- (a) serve a *Statement of Defence* on the Plaintiffs; and
- (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2. The *Statement of Defence* must be served and filed within the following period of days after you are served with the *Statement of Claim* (excluding the day of service):

- (a) 20 days if you were served in Saskatchewan;
- (b) 30 days if you were served elsewhere in Canada or in the United States of America;
- (c) 40 days if you were served outside Canada and the United States of America.

3. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the *Statement of Claim* is issued. Every defendant should consult a lawyer as to his or her rights.

4. This *Statement of Claim* is to be served within 6 months from the date on which it is issued.

5. This *Statement of Claim* is issued at the above-named judicial centre on the 6<sup>th</sup> day of October 2023.

Court Seal

DACIA LETKEMAN  
DEPUTY LOCAL  
REGISTRAR

"Seal"

Local Registrar

## I. PARTIES

1. Lac La Ronge Indian Band and Peter Ballantyne Cree Nation were formed under Canadian laws. Their reserves are located throughout Saskatchewan.
2. The Attorney General of Canada ("**Canada**") is designated by the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s 23 to represent His Majesty the King in right of Canada in proceedings taken against His Majesty.

## II. CLAIM

### A. Factual Cause

3. The Plaintiffs are "Indians" under *The Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91(24), "band[s]" under the *Indian Act*, RSC 1985, c I-5, s 2(1), and "aboriginal peoples" under *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35 ("**The Constitution Act, 1982**"). The Plaintiffs claim on behalf of all Indian bands who are beneficiaries of Treaty 6 ("**Treaty 6 Nations**").
4. In 1876, historical representatives of the Plaintiffs and the Defendant signed Treaty 6 at Fort Carlton and Fort Pitt. Treaty 6 created a formal alliance whereby Treaty 6 Nations agreed to cede portions of their land (subject to residual hunting and fishing rights) in exchange for various promises on the part of the Crown.
  - (a) With some variations, Treaty 6 contained standard written clauses from the earlier numbered treaties. These included clauses providing assistance in transitioning to an agricultural economy, establishing reserves, and paying annuities.
  - (b) Treaty 6 also contained two unique provisions regarding the health and welfare of Treaty 6 Nations. These provisions, referred to as the "Pestilence" and "Medicine Chest" clauses, were fundamental to Treaty 6 Nations and were necessary to secure their consent to Treaty 6.
5. As a "treaty" within the meaning of section 35 of *The Constitution Act, 1982*, Treaty 6 is governed by established principles of treaty interpretation and the honour of the Crown: treaties should be liberally construed; treaty rights are not frozen at the date of the treaty; and obligations must be implemented in a manner consistent with equivalent modern practices.

6. Canada is bound by Treaty 6 and is responsible for ensuring the Crown carries out and diligently and honourably implements the letter and the spirit of the express and implied oral and written terms of Treaty 6.

7. Canada has a fiduciary relationship, a duty to consult, and a general duty to act honourably in all its dealings with aboriginal peoples.

8. A diligent and honourable implementation of the Pestilence and Medicine Chest clauses requires Canada to consult with Treaty 6 Nations to create and implement an abatement program that is “necessary and sufficient” to relieve Treaty 6 Nations of the opioid epidemic.

**1. The opioid epidemic is a pestilence**

9. Leading up to Treaty 6, a small-pox epidemic swept through Treaty 6 Nations, killing many. Treaty 6 Nations sought assurance that they would be relieved from future epidemics.

This assurance is contained in the Pestilence clause, in which the Crown promised that:

in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.

10. “Pestilence” and “calamity” in Treaty 6 were meant to cover all future epidemics that befell Treaty 6 Nations, including epidemics of disease. Canada has recognized addiction, including opioid addiction, as a disease.

11. The opioid epidemic – a health and social epidemic of widespread over-prescribing of opioids and consequent opioid abuse, addiction, diversion, fatal and non-fatal overdoses, and associated conduct including poverty and increased crime – is both a “pestilence” and “calamity” within the meaning of Treaty 6.

12. This epidemic has particularly impacted Treaty 6 Nations. First Nations are more likely to receive opioid prescriptions, have higher rates of opioid addiction, and face a greater risk of dying from an opioid overdose compared to other Canadians.

13. The Plaintiffs have experienced, and continue to experience, devastating harms as a result of the opioid epidemic, including (but not limited to):

- (a) increased crime, including theft, robbery, break and enters, and gang violence;
- (b) cultural harms, including loss of culture, language, and traditions;
- (c) increased social problems, including child neglect, family conflict and devastation, increased un- and under-employment, and loss of family support; and
- (d) increased health problems, including emotional, mental, physical, and spiritual harm, malnutrition, overdoses, and death.

14. The harmful effects of the opioid epidemic on Treaty 6 Nations have been exacerbated in recent years. Treaty 6 Nations communicated to the Defendant the state of emergency on their reserves due to the opioid epidemic. Canada has failed to provide necessary and sufficient relief to Treaty 6 Nations from the opioid epidemic that has befallen them.

**2. Canada must provide necessary and sufficient assistance**

15. An honourable implementation of the intent, spirit, and text of the Pestilence clause requires Canada to provide necessary and sufficient assistance to relieve Treaty 6 Nations of the opioid epidemic.

16. Canada has additional obligations under the Medicine Chest clause, which contains a promise on the part of the Crown that:

a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent.

17. The Pestilence and Medicine Chest clauses obligate Canada to consult with Treaty 6 Nations in the creation and implementation of an opioid abatement program.

18. To discharge its relief obligations under Treaty 6, Canada is obligated to fund and implement an opioid abatement program that relieves Treaty 6 Nations from the burden of at least the following opioid-related costs:

- (a) police, safety officers, emergency, fire, health, rehabilitation, court, and other services related to crime, social disturbances, domestic violence, and opioid overdoses;

- (b) emergency paramedic services, including pre-hospital care and hospital transportation to and from reserves on behalf of Treaty 6 members suffering from opioid addiction and overdoses;
- (c) public health programs and services established to respond to the opioid epidemic, including the delivery of traditional healing services and other medical treatment, hospitalization, and health services;
- (d) methadone, naloxone, and opioids to provide to opioid addicts as a medically appropriate emergency response;
- (e) opioid agonist treatment services;
- (f) cleanup, destruction, repair, sanitization, and surveillance of: roads, parks, places of amusement, commercial and industrial undertakings, and public places; and dwellings, houses, and private premises;
- (g) emergency shelter and low income housing for the homeless;
- (h) child, family, and other social services for families impacted by opioid addiction and abuse;
- (i) community outreach and education workshops;
- (j) opioid addict behaviour modification services, including opioid abuse therapy, harm reduction, and overdose prevention services; and
- (k) salaries for personnel to staff opioid response departments, including the staffing and training of traditional Indigenous healers to respond to the opioid epidemic and its effects on mental, physical, and spiritual health.

## **B. Nominate Cause**

### **1. Canada breached its obligations under Treaty 6**

19. By failing to provide “necessary and sufficient” assistance to Treaty 6 Nations suffering from the opioid epidemic, Canada unjustifiably breached, and continues to breach, its obligations under the Pestilence and Medicine Chest clauses.

20. The opioid epidemic caused, and continues to cause, Treaty 6 Nations to suffer harm including (but not limited to) increased opioid-related crime, cultural loss, adverse health outcomes, and social problems.

21. Treaty 6 Nations have incurred, and continue to incur, significant costs to abate the effects of the opioid epidemic on their reserves and in their communities for which Canada is liable.

**2. Canada is liable for punitive damages**

22. On May 17<sup>th</sup>, 2022, Canada entered into a settlement agreement with Purdue Pharma, Purdue Pharma Inc., and Purdue Frederick Inc. (collectively “**Purdue Canada**”), the companies that marketed OxyContin®, the opioid narcotic responsible for giving rise to the opioid epidemic on Canadian Indian reserves.

23. The settlement agreement granted Canada a security interest over all of Purdue Canada’s remaining property. Canada was aware that Treaty 6 Nations had similar claims against Purdue Canada arising from the opioid epidemic, yet preferred its own interests over the constitutionally protected rights of Treaty 6 Nations.

24. In preferring its own interests over those of Treaty 6 Nations without notice or consultation, Canada breached the honour of the Crown, disregarded its duty to consult with Treaty 6 Nations in matters impacting their treaty rights, and acted in a manner that was contrary to its fiduciary relationship with Treaty 6 Nations.

**III. RELIEF**

25. On behalf of Treaty 6 Nations, the Plaintiffs therefore claim against the Defendant:

- (a) a declaration that Canada has a duty to consult with Treaty 6 Nations to create, fund, and implement an opioid abatement program;
- (b) compensatory and punitive damages;
- (c) such further and other relief as may be obtained under sections 35 and 52 of *The Constitution Act, 1982*;
- (d) interest under *The Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2;
- (e) costs; and
- (f) such further and other relief as this Honourable Court deems just.

DATED at Prince Albert, Saskatchewan, this 6<sup>th</sup> day of October 2023.



Name of Firm:



Lawyer in charge of file:

Casey R. Churko

Address of legal firm:

21 King Street West, Suite 905  
Hamilton, Ontario  
L8P 4W7

Telephone number:

(306) 540-2284

Fax number:

(639) 739-2223

E-mail Address:

[cchurko@napolilaw.com](mailto:cchurko@napolilaw.com)

#### **CONTACT INFORMATION AND ADDRESS FOR SERVICE**

Name of Firm:



KIRKBY FOURIE LAW OFFICE

Lawyer in charge of file:

Philip Fourie

Address of legal firm:

#1, 1235 Central Ave.  
Prince Albert, Saskatchewan  
S6V 4V9

Telephone number:

(306) 764-4673

Fax number:

(306) 922-0434

E-mail Address:

[philip@kfclaw.ca](mailto:philip@kfclaw.ca)