

T-1224-09

**IN THE FEDERAL COURT**

**BETWEEN:**

**THE GOVERNMENTS AND COUNCILS OF SIOUX VALLEY DAKOTA  
NATION, CANUPAWAKPA DAKOTA NATION AND DAKOTA PLAINS  
WAHPETON NATION representing the citizens of the Dakota Nations,**

**PLAINTIFFS**

**~ and ~**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
as represented by ATTORNEY GENERAL**

**DEFENDANTS**

**STATEMENT OF DEFENCE**

Her Majesty's Deputy Attorney General of Canada, on behalf of Her Majesty, in answer to the Statement of Claim herein, says as follows:

1. Except as hereinafter specifically admitted, he denies each and every allegation in the Statement of Claim and puts the plaintiffs to the strict proof thereof.
2. In reply to the Statement of Claim as whole, he says that the plaintiffs do not have aboriginal title, rights, entitlement or legal interests in the lands situated in Canada that they claim to be part of the "territories of the Dakota Nation", nor were they the beneficiaries of a trust relationship in the said lands.

3. In response to paragraph 1 of the Statement of Claim he admits that the Dakota Nations named therein are Bands recognised pursuant to the *Indian Act*, R.S.C. 1985, c. I-5.
4. He admits the allegations in paragraph 2 of the Statement of Claim.
5. He denies the allegations contained in paragraphs 3 and 4 of the Statement of Claim.
6. In answer to the allegations of alliances and treaties between the ancestors of the plaintiffs and the British Crown stated in paragraphs 5, 7, 8, 9, 10, 11, and 12 of the Statement of Claim, he says that the British Crown entered into military alliances with several Dakota Sioux bands, tribes or nations for specific military and political purposes before the cessation of hostilities between the United States of America and the United Kingdom of Great Britain and Ireland in accordance with the *Treaty of Ghent* signed on December 24, 1814, but not after that date.
7. He denies the allegations in paragraph 6 of the Statement of Claim, and further says that any relationship between the ancestors of the plaintiffs and other First Nations is not a basis for establishing aboriginal title.
8. He denies the allegations in paragraph 8 of the Statement of Claim.
9. In answer to paragraph 10 of the Statement of Claim he says that by its terms, the *Royal Proclamation of 1763* did not bind the British Crown or the Crown in right of Canada to enter into treaty with the plaintiffs or those of their ancestors who resided east of the Mississippi River after 1783. He says that the *Royal Proclamation of 1763* did not apply to any ancestors of the plaintiffs who resided west of the Mississippi River as the area which they inhabited was under the sovereign control of the Kingdom of Spain and later the French Republic until it was ceded to the United States of America by the Louisiana Purchase of 1803.
10. In further answer to paragraph 10 of the Statement of Claim, he says that in any event, the ancestors of the plaintiffs ceased to be residents of territory under the control of the British Crown by the terms of the *Treaty*

of *Paris* signed on September 3, 1783, between the Congress of the Confederation (then the governing body of the United States of America) and the United Kingdom of Great Britain and Ireland and further by the terms of the *Treaty of Ghent* signed on December 24, 1814. Furthermore, he says that the *Treaty of 1818* between the United States of America and the United Kingdom of Great Britain and Ireland established a permanent boundary between the United States and British Territory in North America and that the ancestors of the plaintiffs habitually lived in and inhabited the United States of America until they entered British territory between 1862 and 1875, as set out in paragraphs 13 and 14 below.

11. In further answer to paragraph 10 of the Statement of Claim, he says that the ancestors of the plaintiffs removed themselves from the protection of the British Crown and the application of the *Royal Proclamation of 1763* by signing a number of treaties with the United States of America in 1815 by which the ancestors of the plaintiffs agreed to be "under the protection of the United States, and of no other nation, power, or sovereign, whatsoever." He further says that the ancestors of the plaintiffs confirmed the sovereignty of the United States of America in 1825 by the first *Treaty of Prairie du Chien* between the United States of America and various Dakota bands, tribes or nations. By the terms of article 10 of the *Treaty of Prairie du Chien* the ancestors of the plaintiffs acknowledged "the general controlling power of the United States, and disclaim all dependence upon, and connection with, any other power."
12. In further answer to paragraph 10 of the Statement of Claim, he says that the *Royal Charter of the Hudson's Bay Company* did not authorize or oblige the Hudson's Bay Company or the Government of the District of Assiniboia to enter into treaties with the inhabitants of the lands described in the Charter. Further or in the alternative, he says that all powers, duties, and obligations of the Hudson's Bay Company were transferred to the Dominion of Canada pursuant to the *Rupert's Land Act, 1868* (U.K), 31 &

32 Vict., c.105 and the *Rupert's Land and North-Western Territory Order* of 1870.

13. He says that the ancestors of the plaintiffs were habitually resident in the United States of America in the Territory of Minnesota and later the Dakota Territory until 1862, 1863, 1864, and 1865, when various bands left the United States of America and entered British territory. He says that the ancestors of the plaintiffs sought asylum in British territory as the direct result of a war fought between them and the United States of America in 1862 in the Territory of Minnesota and the Dakota Territory, both located within the sovereign territory of the United States of America.
14. He says that when the ancestors of the plaintiffs entered British territory between 1862 and 1865 that the land upon which they entered was occupied and inhabited by bands of First Nations known as Cree and Ojibwa and not by the ancestors of the plaintiffs.
15. He says that while from time to time during the 19<sup>th</sup> century, bands of First Nations habitually resident in the United States on occasion crossed into British territory, such occasional incursions were not sufficient to create aboriginal title, rights, entitlement, legal interests or a beneficial or fiduciary relationship with the British Crown.
16. He says that the ancestors of the plaintiffs were allowed to enter British territory and were not molested or forced to return to the United States of America despite repeated requests made to the Crown by the government of the United States to return the ancestors of the plaintiffs or to allow the United States Army to enter British territory and forcibly return the plaintiffs' ancestors to the United States of America.
17. He says that although the Crown was under no legal obligation to do so, the Crown in right of Canada established reserves for the use and benefit of the plaintiff Sioux Valley Dakota Nation in 1874; for the plaintiff

Canupawakpa Dakota Nation in 1877; and for the plaintiff Dakota Plains Wahpeton Nation in 1945.

18. He denies the allegations in paragraphs 11, 12, 16, 17 and 23 of the Statement of Claim and denies the existence of any treaty, fiduciary, trust, statutory, contractual or moral duty owed by the Government of Canada to the plaintiffs. In the alternative, if any such duty is found to exist, he denies that the Government of Canada has breached any such duty.
19. He denies that the plaintiffs have suffered the damages alleged at paragraphs 13, 14, 23, and 25 of the Statement of Claim or any damages.
20. In answer to paragraph 15 of the Statement of Claim, he says that although negotiations have been held between the Government of Canada (or the British Crown) and the plaintiffs' ancestors (or the plaintiffs) concerning a number of issues between the parties from the time the plaintiffs' ancestors entered British territory to the present day, any such discussions or negotiations did not establish or impose upon Canada any fiduciary, trust, statutory, contractual or moral duty.
21. He denies the allegations in paragraph 17 of the Statement of Claim and specifically denies that the Government of Canada acted beyond its constitutional jurisdiction.
22. In answer to paragraph 19 of the Statement of Claim, he denies the existence of any aboriginal title, rights, entitlement, legal interests, or trust relationship that could act as an encumbrance upon Canada and its treatment of the land alleged to constitute "territories of the Dakota Nation." In the alternative, he says that if the plaintiffs or their ancestors ever held any aboriginal title, rights, entitlement, legal interests or were the beneficiary of a trust relationship, that such rights were extinguished by the passage of laws by the Parliament of Canada and the Legislative Assembly of Manitoba or by regulations enacted by the Governor in Council or by the Lieutenant Governor of Manitoba in Council which

were incompatible with the exercise and existence of the those alleged rights.

23. In answer to paragraphs 20, 21 and 22 of the Statement of Claim he says that any action taken by the Government of Canada in relation to the operation of government programs, policies or enactments in the alleged "territories of the Dakota Nation" was wholly within its constitutional jurisdiction and in accordance with validly enacted legislation and regulations and that no claim can arise therefrom.
24. In answer to paragraphs 23 and 24 of the Statement of Claim, he denies any negligent or intentional misrepresentation, deception, or breach of trust or any wrongdoing and says that the Government of Canada was under no obligation or duty to negotiate or treat or consult with the plaintiffs' ancestors or with the plaintiffs concerning the alleged "territories of the Dakota Nation." He further says that in the event that the Crown or its servants, agents, or employees owed any fiduciary or other duty to the plaintiffs, which is not admitted but is expressly denied, the Crown or its servants, agents or employees were exercising their discretionary powers in making policy decisions involving financial, economic, social, and political considerations and constraints and they did so at all material times in good faith and in a reasonable manner.
25. He says that to the extent that the matters complained of in the Statement of Claim consist of alleged acts or omissions of servants or agents of Her Majesty occurring before the coming into force of section 3 of the *Crown Liability Act*, S.C. 1952-53, c. 30 on May 14, 1953, no action lies against Her Majesty in respect of them.
26. He further says the causes of action alleged in the Statement of Claim accrued to the plaintiffs more than 6 years before the commencement of this action, and that the plaintiffs' claim is therefore barred by the *Limitation of Actions Act*, R.S.M. 1987, c. L150, as amended or its preceding legislation, and by section 32 of the *Crown Liability and Proceedings Act*,

R.S.C. 1985, c. C-50, as amended and section 19 of the *Crown Liability Act*, S.C. 1952-53, c.30.

27. He further says that the plaintiffs have for so long delayed taking legal action on their alleged claims that it is no longer possible or reasonably practicable to procure evidence to answer or defend against them. He says that the plaintiffs have had knowledge of the matters complained of in the Statement of Claim for many years, but have failed to act and that the plaintiffs are therefore barred from proceeding with this action by their own laches and acquiescence.
28. He pleads and relies on section 24 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended, and section 11 of the *Crown Liability Act*, S.C. 1952-53, c. 30.
29. He denies that the plaintiffs are entitled to the relief claimed in paragraph 26 of the Statement of Claim or to any relief.
30. The Deputy Attorney General of Canada, on behalf of Her Majesty, therefore asks that the plaintiffs' claim be dismissed with costs.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 4th day of December, 2009.



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<b>Comments / Commentaires:</b>  Please find attached Statement of Defence for service upon you as solicitors for the plaintiffs, The Governments and Councils of Sioux Valley Dakota Nation, Canupawakpa Dakota Nation and Dakota Plains Wahpeton Nation, representing the citizens of the Dakota Nations, according to Rule 140 of the Federal Court Rules, 1998.  Sioux Valley Dakota Nation - 2-37516			
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