

Cause No.:

IN THE COURT OF QUEEN'S BENCH OF NEW
BRUNSWICK

COUR DU BANC DE LA REINE DU
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIÈRE INSTANCE

JUDICIAL DISTRICT OF MIRAMICHI

CIRCONSCRIPTION JUDICIAIRE DE

B E T W E E N:

E N T R E:

CHIEF ANN MARY STEELE ON BEHALF OF
HERSELF AND THE MEMBERS OF THE
BUCTOUCHE FIRST NATION, **CHIEF**
GEORGE GINNISH ON BEHALF OF HIMSELF
AND THE MEMBERS OF THE **EEL GROUND**
FIRST NATION, **CHIEF LYNN LABILLOIS**
ON BEHALF OF HERSELF AND THE
MEMBERS OF THE **EEL RIVER BAR FIRST**
NATION, **CHIEF REBECCA KNOCKWOOD**
ON BEHALF OF HERSELF AND THE
MEMBERS OF THE **FORT FOLLY FIRST**
NATION, **CHIEF KENNETH BARLOW** ON
BEHALF OF HIMSELF AND THE MEMBERS
OF THE **INDIAN ISLAND FIRST NATION**,
CHIEF BILL WARD ON BEHALF OF
HIMSELF AND THE MEMBERS OF THE
METEPENAGIAG MI'KMAQ NATION,
CHIEF DAVID PETER-PAUL ON BEHALF OF
HIMSELF AND THE MEMBERS OF THE
PABINEAU FIRST NATION

Plaintiffs

-and-

THE PROVINCE OF NEW BRUNSWICK,

Defendant

Demandeur

- et -

Défendeur

**NOTICE OF ACTION WITH STATEMENT OF
CLAIM ATTACHED
(Form 16A)**

**AVIS DE POURSUITE ACCOMPAGNÉ
D'UN EXPOSÉ DE LA DEMANDE
(FORMULE 16A)**

TO: **The Defendant,**
Province of New Brunswick
673 King George Highway
Miramichi NB E1V 1N6

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED.

PAR LE DÉPÔT DU PRÉSENT AVIS DE POURSUITE ACCOMPAGNÉ D'UN EXPOSÉ DE LA DEMANDE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉ CONTRE VOUS.

If you wish to defend these proceedings, either you or a New Brunswick lawyer acting on your behalf must prepare your Statement of Defence in the form prescribed by the Rules of Court and serve it on the Plaintiff or the Plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court office, together with the filing fee of \$50.00,

Si vous désirez présenter une défense dans cette instance, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger un exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de \$50 et une preuve de sa signification:

(a) If you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or

(a) DANS LES 20 JOURS de la signification que vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est fait au Nouveau-Brunswick ou

(b) If you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou

(c) If you are served anywhere else, WITHIN 60 DAYS after such service.

(c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

If you fail to do so you may be deemed to have admitted any claim made against you and without further notice to you JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Si vous omettez de la faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

You are advised that:

Sachez que:

(a) You are entitled to issue documents and present evidence in the proceeding in English or French or both;

(a) Vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) The Plaintiff intends to proceed in the

(b) Le demandeur a l'intention d'utiliser la

English language; and

langue Anglais; et

(c) Your Statement of Defence must indicate the language in which you intend to proceed.

(c) L'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

If you pay to the Plaintiff or the Plaintiff's lawyer the amount of the Plaintiff's claim, together with the sum of \$100.00 for the Plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the Court to have the action dismissed.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100.00 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Matthew Cripps, Clerk of the Court at 673 King George Highway, Miramichi, New Brunswick, on the ____ day of _____, 2016.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par _____, greffier de la Cour à _____, ce _____, 20__.

Matthew Cripps
Clerk of the Court
Judicial District of Miramichi

Miramichi Law Courts
673 King George Highway
Miramichi, NB E1V 1N6

STATEMENT OF CLAIM

1. The First Nations Plaintiffs are seven Chiefs of Mi'gmaq First Nations in New Brunswick, and they bring this action on their own behalf and on behalf of the members of their respective First Nations. The First Nations Plaintiffs are all Indians and Aboriginal Peoples within the meaning of Section 91(24) of the *Constitution Act, 1867* and Section 35 of the *Constitution Act, 1982*.
2. The Plaintiffs reside at the residences listed in Appendix A and attached to this Notice of Action with Statement of Claim.
3. The Defendant is the Province of New Brunswick ("Province").

The Plaintiffs' Proven Aboriginal and Treaty Rights and Corresponding Governmental Obligations towards the Plaintiffs

4. The First Nations Plaintiffs and their ancestors have, from time immemorial or at least since well before European contact, used and occupied the lands and waters of what is now the Province of New Brunswick.
5. The First Nations Plaintiffs and their ancestors have, from time immemorial or at least since well before European contact, continuously had and exercised practices, customs, traditions and activities that involve and relate to the forestry resources over, in and under all of their traditional territory, that being the lands and waters situated in what is now known as the Province of New Brunswick, and elsewhere.
6. The First Nations Plaintiffs and their ancestors have, from time immemorial or at least since well before European contact, continuously hunted, fished and harvested in their traditional territory and have used and occupied the natural resources and all components of the natural resources, including the forest, trees, timber, wood, and by-products of these, and all of the undergrowth and vegetation. They have obtained their livelihood and subsistence from their territory and the natural resources thereof, and have continuously possessed, controlled and managed, and to the extent possible still possess, control and manage, the natural resources of their territory.
7. The First Nations Plaintiffs and their ancestors have, from time immemorial or at least since well before European contact, enjoyed a special relationship with the land and resources of what is now known as the Province of New Brunswick. They have used and respected this land and its resources, have lived in an equilibrium with the land and its resources and, until recently with respect to certain areas cut, have been able to satisfy their current needs, earn a livelihood from the land, ensure the preservation of the land and resources, ensure the sustenance of future generations, practise their spirituality, customs, traditions and values and carry on their unique traditional practices and activities.
8. The Plaintiffs are beneficiaries under various Peace and Friendship Treaties entered into between the British Crown and the Mi'gmaq between 1725 and 1779. The Defendant is the successor to the British Crown.
9. The Plaintiffs possess proven Aboriginal and Treaty rights to hunt, fish, harvest and gather in the territory of what is today known as the Province of New Brunswick for food, social and ceremonial purposes, as well as for the purposes of trade and earning a livelihood. Those Aboriginal and Treaty rights have been confirmed by the courts, including in the following decisions from the Supreme Court of Canada:

- a. *Simon v. The Queen*, [1985] 2 SCR 387, confirmed that the Treaty of 1752 constitutes a positive source of protection against infringements of Mi'kmaq hunting rights, and further confirmed that the right to hunt embodies activities reasonably incidental to the act of hunting itself;
- b. *R. v. Marshall*, [1999] 3 SCR 456, confirmed as a matter of law that the 1760-61 Treaties affirmed "the right of the Mi'kmaq people to continue to provide for their own sustenance by taking the products of their hunting, fishing and other gathering activities, and trading for what in 1760 was "necessities"";
- c. *R. v. Sappier*; *R. v. Gray*, 2006 SCC 54, upholding the decision of the New Brunswick Court of Appeal in *R. v. Sappier & Polchies*, 2004 NBCA 56, affirmed the Aboriginal right of the Mi'gmaq in New Brunswick to harvest wood for domestic uses on Crown lands traditionally used for that purpose by their First Nations;

And in the following decisions, *inter alia*, from the New Brunswick Court of Appeal:

- d. *R. v. Paul* (1980), 30 NBR (2d) 545 (NBCA), affirmed that the Treaty of 1779 contains a recognition of the pre-existing right of the Mi'gmaq to hunt and fish and such right applied unquestionably to the Mi'gmaq at Miramichi;
 - e. *R. v. Polches*, 2008 NBCA 1, affirmed that a right to engage in hunting emerges by implication from the trade clause in the 1760 Treaty.
10. The Plaintiffs repeat and rely on the decisions in the foregoing paragraph, and state that any issue raised in relation to the First Nations Plaintiffs' valid Aboriginal and Treaty rights to hunt, fish, harvest and gather in the territory of what is today known as the Province of New Brunswick is *res judicata* and barred on the basis of issue estoppel, or, alternatively, to hold otherwise would constitute an abuse of process in the circumstances.
 11. In addition, the Mi'gmaq of New Brunswick, including the First Nations Plaintiffs, have continually asserted and practiced other Aboriginal and Treaty rights, and have continually asserted their Aboriginal Title over the lands and waters of New Brunswick.
 12. The Crown has or ought to have knowledge of the First Nations Plaintiffs' proven and asserted Aboriginal and Treaty rights and asserted Aboriginal Title. The cases that have confirmed the First Nations Plaintiffs' rights are on the public record.

Justifying an Infringement on Aboriginal and Treaty Rights

13. The Province owes certain duties and fiduciary obligations to the First Nations Plaintiffs, based on the Honour of the Crown, including obligations in respect of decisions regarding the management, allocation, and use of Crown forests in the traditional territory of the First Nations Plaintiffs or areas over which the Plaintiffs exercise their proven Aboriginal and Treaty rights and assert Aboriginal Title.
14. Where First Nations have proven Aboriginal and Treaty rights and the government is contemplating or engaging in conduct that has or will infringe or limit those rights, it falls to government to either obtain the consent of the First Nations, or show that such infringement or limitation is justified.

15. The test for justified infringement of Aboriginal rights was articulated in *R. v. Sparrow*, [1990] 1 SCR 1075, and extended to treaty rights in *R. v. Badger*, [1996] 1 SCR 771 (reconfirmed in *R. v. Marshall*, [1999] 3 SCR 456 and [1999] 2 SCR 533). The test is the same whether the proven right in question is an Aboriginal right, Treaty right or Title.
16. The Plaintiffs plead and rely on *Sparrow* to establish an unjustified infringement of their proven Aboriginal and Treaty rights, and also to establish that the Province has ignored and continues to ignore its duty to give effect to the proper order of priorities in the allocation of natural resources.
17. Recently, the Supreme Court of Canada restated the test for the justification of infringement of proven Aboriginal rights in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, as a three-part test (at para 77). The government must show:
 - (1) that it discharged its procedural duty to consult and accommodate;
 - (2) that its actions were backed by a compelling and substantial objective; and
 - (3) that the governmental action is consistent with the Crown's fiduciary obligation to the group.
18. On the first requirement, where the Crown has real or constructive knowledge of the potential or existing right and contemplates conduct that might adversely affect it, the Crown is obliged to consult with the group asserting the right and, if appropriate, accommodate the Aboriginal right. The duty to consult must be discharged prior to carrying out the action that could adversely affect the right (*Tsilhqot'in* at para 78).
19. The Court also notes that the degree of consultation and accommodation required lies on a spectrum as discussed in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, and that the required level of consultation and accommodation is greatest where the right has been established (*Tsilhqot'in* at para 79). In this case, we are dealing with established, proven Aboriginal and Treaty rights as well as asserted Aboriginal and Treaty rights and Aboriginal Title.
20. The Crown not only must comply with its procedural duties of consultation and accommodation, but also must ensure the proposed government action is substantively consistent with the requirements of Section 35 of the *Constitution Act, 1982*. This requires both a compelling and substantial governmental objective and that the government action is consistent with the fiduciary duty owed by the Crown to the Aboriginal group (*Tsilhqot'in* at para 80).
21. To constitute a compelling and substantial objective, the broader public goal asserted by the Crown must further the goal of reconciliation, having regard to both the Aboriginal interest and the broader public objective (*Tsilhqot'in* at para 82).
22. If a compelling and substantial objective is established, the Crown must nonetheless go on to show that the proposed incursion on the Aboriginal right is consistent with the Crown's fiduciary duty to Aboriginal people (*Tsilhqot'in* at para 84).
23. Finally, the Court explains that the Crown's fiduciary duty infuses an obligation of proportionality into the justification process. Implicit in the Crown's fiduciary duty to the Aboriginal group is the requirement that the incursion is necessary to achieve the government's goal (rational connection); that the government go no further than necessary to achieve it (minimal impairment); and that the benefits that may be expected to flow from that goal are not outweighed by adverse effects on the Aboriginal interest (proportionality of impact) (*Tsilhqot'in* at para 87).

24. The Crown's obligations to Aboriginal Peoples are also informed by international law, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, UN GAOR, 61st Session.

New Brunswick's 2014 Forest Strategy and Forestry Agreements with Crown Timber Licence Holders

25. The Minister of Natural Resources ("Minister") administers the Crown forest in New Brunswick pursuant to the *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1 (the "Act"). The Minister has broad discretion and powers under the Act.
26. Section 28 of the Act contemplates the Minister entering into Forest Management Agreements ("FMAs") with Crown Timber Licence Holders ("Licensees") which are to be reviewed every five years pursuant to s. 29(9). Sections 29(1) and 29(4) of the Act require the submission by Licensees of twenty-five year management plans ("Plans"), which are subject to approval by the Minister under s. 29(7).
27. The Act does not recognize or accommodate, nor has it ever been amended to recognize or accommodate, the First Nations Plaintiffs' Aboriginal and Treaty rights, despite their confirmation in those decisions cited in paragraph 9.
28. In 2012, the Province released a forest strategy that set out various objectives for the use of provincial Crown forests. Under the 2012 strategy, the Province committed to maintaining the annual allowable cut ("AAC") of softwood timber at the pre-existing level of 3.27 million cubic metres, and to maintaining conservation areas of at least 28 per cent of the Crown forest area.
29. The Province held three meetings with the Plaintiffs in 2011 and 2012 prior to the release of the 2012 strategy.
30. After those meetings, the Assembly of First Nations' Chiefs in New Brunswick Inc. ("Assembly"), a rights-based organization mandated to protect and advance the implementation of existing Aboriginal and Treaty rights for its member First Nations (which include all seven of the First Nations Plaintiffs) that has been delegated the authority to enter into negotiation and consultation discussions on behalf of the First Nations Plaintiffs, wrote to the Province citing a number of unresolved issues arising from those meetings. The Province has not meaningfully responded.
31. In March 2014, the Minister released the Province's most recent forest strategy document entitled *Putting our Resources to Work: A Strategy for Crown Lands Forest Management* ("2014 Strategy"). The 2014 Strategy differs significantly from the Province's prior strategies. The Province did not meaningfully consult with the Plaintiffs prior to the release of this Strategy.
32. In April 2014, the Minister made public that the Minister had already entered into a Memorandum of Agreement ("MOA") dated February 7, 2014, with JD Irving Ltd. ("Irving"). This MOA states that the parties will negotiate a new outcome-based FMA by July 1, 2014, covering Crown Timber Licences 6 and 7, and implement the FMA by September 1, 2014.
33. The MOA between the Province and Irving states that the FMA will include a term or condition binding the parties to an initial term of 25 years. This term is absent in previous versions of FMAs entered into between the Province and Licensees.
34. The Assembly was provided with a copy of the Irving MOA on May 5, 2014. The First Nations

Plaintiffs were not consulted or advised of the contents of the MOA prior to that date.

35. Between July 25, 2014, and August 2014, the Province completed further MOAs with Twin Rivers Paper Company Inc. and Chaleur Sawmills Associates.
36. On August 13, 2014, the Minister signed a completed FMA between the Province and Irving.
37. The Plaintiffs, along with Chief Brenda Perley on behalf of herself and the members of the Tobique First Nation, Chief Joe Sacobie on behalf of himself and the members of the Oromocto First Nation, Chief Aaron Sock on behalf of himself and the members of the Elsipogtog First Nation, Chief Alvery Paul on behalf of himself and the members of the Esgeenoopetitj First Nation, and the Assembly, brought a Preliminary Motion for an interim injunction before this Honourable Court on August 13, 2014, seeking to restrain the Province from entering into any FMAs with the Licensees in accordance with the terms of the 2014 Strategy.
38. The Honourable Justice Judy Clendening heard the motion on August 18, 2014, and in a decision dated August 22, 2014, denied the motion for injunctive relief. The applicants on the motion sought leave to appeal of that decision and appeared before the Honourable Justice Margaret Larlee on September 8, 2014. Justice Larlee denied the motion in a written decision dated October 9, 2014.
39. It was not until after the motion was decided that the Plaintiffs were provided with copies of the various MOAs and FMAs entered into by the Province.
40. Although the Crown was provided with notice of a main action underlying the preliminary motion in August 2014, that action was not filed immediately upon the expiration of the notice period under the *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18. On assurance from counsel for the Province that the Plaintiffs would not later on face arguments for delay, the Plaintiffs waited to bring their action in the interest of negotiating a resolution between the parties. Since that time, the Plaintiffs have made numerous attempts to engage the Province in discussions regarding the issues to be raised in the action the Crown was notified of, but have met with little success, and as such are bringing this proceeding.
41. Despite a promise from the Minister of a new forest strategy by December 2015, no new strategy has been released to date. When recently questioned in the House regarding forest strategies, the Minister responded that he is still reviewing the current strategy, without further promising a new strategy or providing a timeline for his review; that he will not change the existing FMAs and allocations; and that he does not have a specific budget in place to improve consultation with First Nations with respect to the management of Crown forests and accommodation measures.

Violations of the Province's Duty to Consult and Accommodate the Plaintiffs regarding the Forest Strategy and Forestry Agreements

42. The Plaintiffs challenge the entry of the Crown and the Licensees into MOAs, FMAs, and detailed Plans (altogether the "Forestry Agreements"), all without meaningful or adequate consultation or accommodation of the First Nations Plaintiffs' asserted and proven Aboriginal and Treaty rights, and in a manner that will unjustifiably infringe those rights when implemented.
43. Where Aboriginal or Treaty rights have been established, the required level of Crown consultation and accommodation is greatest. In light of the First Nations Plaintiffs' proven Aboriginal and Treaty rights, the Province owed the Plaintiffs a high duty of consultation and accommodation, and failed to discharge that duty.

44. The Plaintiffs were not consulted regarding the 2014 Strategy, including several of the changes that are now part of the 2014 Strategy. These changes, *inter alia*, include:
- a. An increase in the AAC of softwood timber on Crown lands by 20 per cent, or 660,000 cubic metres, to a total objective of 3.9 million cubic metres;
 - b. The decrease in the amount of Crown forest protected as conservation forest; and
 - c. The shift to a “results-based framework” between the Minister and the Licensees for managing Crown lands.
45. The Plaintiffs submit that the Province failed to meaningfully and adequately consult with the Plaintiffs prior to releasing the 2014 Strategy and prior to negotiating and releasing the Forestry Agreements.
46. The Plaintiffs submit that the Province failed, and continues to fail, in its duty to meaningfully and adequately consult with the Plaintiffs with respect to the implementation of the 2014 Strategy and Forestry Agreements.

Actual and Prospective Violations of the Plaintiffs’ Proven Aboriginal and Treaty Rights by the New Brunswick 2014 Strategy

47. The Plaintiffs challenge several aspects of the 2014 Strategy that have or will have the effect of violating the First Nations Plaintiffs’ proven Aboriginal and Treaty rights, including but not limited to:
- a. The increase in the AAC of softwood timber on Crown lands by 20 per cent, or 660,000 cubic metres to a total objective of 3.9 million cubic metres;
 - b. The decrease in the amount of Crown forest protected as conservation forest; and
 - c. The shift to a “results-based framework” between the Minister and the Licensees for managing Crown lands, which does not adequately address Aboriginal and Treaty rights and will limit the Minister’s discretion to reduce the AAC in the future.
48. The 2014 Strategy and the Forestry Agreements will infringe the proven, constitutionally protected Aboriginal and Treaty rights of the First Nations Plaintiffs by increasing logging operations and consequently limiting the lands and resources upon which they exercise their traditional rights to hunt, fish, harvest and gather.
49. The implementation of the 2014 Strategy through the contemplated Forestry Agreements will also result in serious and irreversible harm to the environment in the Province of New Brunswick, including its plants and wildlife species, in ways that will unjustifiably infringe the First Nations Plaintiffs’ traditional rights to hunt, fish, harvest and gather. These harms include, *inter alia*, the following:
- a. The deer population of New Brunswick will be drastically affected by the 2014 Strategy, as it will allow Licensees to eliminate all deer yards currently unoccupied by deer in the winter. The elimination of such deer yards will result in an inadequate deer habitat required to support large deer populations during the winter months, and if these deer

yards are eliminated, the deer population will be negatively impacted. The First Nations Plaintiffs hunt deer and are concerned that the species will be depleted;

- b. The increase in the AAC will result in increased spraying of herbicides and pesticides, which will in turn kill increased amounts of deer browse (feed) and detrimentally affect the deer population;
- c. The moose population will be affected by the 2014 Strategy as a result of the increase in the AAC and the decrease in conservation forest. The First Nations Plaintiffs hunt moose and are concerned that it will become impractical to hunt moose within a reasonable distance of their communities. Some of the First Nations Plaintiffs are on social assistance and rely on the provision of meat from moose and deer hunts for subsistence;
- d. The fish populations in the rivers and streams upon which the First Nations Plaintiffs rely may be impacted by the reduction in the conservation forest and increased logging in riparian buffer areas. Some of the First Nations Plaintiffs operate food fishery traps and fish with gill nets; others fresh water fish with rod and reel for salmon and trout. The First Nations Plaintiffs' salmon fishery operations on the Miramichi, in particular, are under pressure and any further negative impacts on the salmon population could result in the total closure of the fishery;
- e. The 2014 Strategy goes against principles of ecologically sustainable development and falls below the ecological thresholds that are necessary to maintain a healthy forest, endangering the health of the entire ecosystem and all animals and plants that rely on it. Such harm would not only be irreparable, but likely irreversible. The First Nations Plaintiffs depend on sustainable forest management and a healthy forest in order to continue exercising their Aboriginal and Treaty rights, and preserve and pass on those rights to future generations.

50. The Province of New Brunswick has failed to fulfil its constitutional and international obligations to adequately and meaningfully consult with and accommodate the Plaintiffs prior to making decisions that might adversely affect the First Nations Plaintiffs' Aboriginal and Treaty rights and asserted Aboriginal Title, including the decision to enter into the 2014 Strategy and subsequent Forestry Agreements to implement that Strategy.

51. The Province of New Brunswick has failed to justify these infringements, as is required under Section 35 of the *Constitution Act, 1982*, and in particular, has failed to minimize the impacts on the First Nations Plaintiffs' proven Aboriginal and Treaty rights, and to ensure that the benefits of their conduct outweigh the harms to the Aboriginal interests at stake.

52. The Plaintiffs also plead and rely on the Supreme Court of Canada's decision in *R. v. Adams*, [1996] 3 SCR 101 and submit that the provisions of the *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1 that govern the issuance of Forestry Agreements constitute an unstructured administrative regime that risks infringing Aboriginal and Treaty rights, and furthermore, that the entrance into defined-term agreements of either 5 or 25 years fetters the Minister's discretion and limits the Minister's ability to accommodate Aboriginal and Treaty rights, both of which constitute significant unjustified infringements of the First Nations Plaintiffs' Aboriginal and Treaty rights.

Relief Sought

53. The Plaintiffs seek the following relief:

- a. A declaration that the Province has failed to discharge its constitutional and fiduciary obligations towards the First Nations Plaintiffs by failing to adequately consult with and accommodate them on the creation and implementation of the 2014 Strategy;
- b. A declaration that the 2014 Strategy and the Forestry Agreements implementing the 2014 Strategy infringe the First Nations Plaintiffs' proven Aboriginal and Treaty rights, and that the Province has not justified such infringement, and that the Forestry Agreements made pursuant to the 2014 Strategy are therefore void *ab initio*;
- c. A declaration that the Province has breached its fiduciary duties towards the First Nations Plaintiffs and has failed to act in accordance with the Honour of the Crown;
- d. A declaration that the *Crown Lands and Forests Act*, S.N.B. 1990, c. C-38.1 unjustifiably infringes the Aboriginal and Treaty rights of the First Nations Plaintiffs;
- e. A declaration that the *Crown Lands and Forests Act*, S.N.B. 1990, c. C-38.1 fails to adequately accommodate the Aboriginal and Treaty rights of the First Nations Plaintiffs;
- f. An Order for an interlocutory injunction to prohibit the Province from taking further steps to implement the 2014 Strategy, including the terms of any Forestry Agreements with the Licensees to the extent that they infringe the exercise of the First Nations Plaintiffs' proven Aboriginal and Treaty rights;
- g. In the alternative, an Order declaratory of the rights of the parties in lieu of an interlocutory injunction, pursuant to Rule 40.01 of the *Rules of Court*, N.B. Reg. 82-73 and ss. 14(2) and 14(4) of the *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18, stating that the Province cannot take further steps to implement the 2014 Strategy, including the terms of any Forestry Agreements with the Licensees to the extent that they infringe the exercise of the First Nations Plaintiffs' proven Aboriginal and Treaty rights;
- h. An Order for a permanent injunction to prohibit the Province from taking further steps to implement the 2014 Strategy, including the terms of any Forestry Agreements with the Licensees to the extent that they infringe the exercise of the Plaintiffs' proven Aboriginal and Treaty rights;
- i. In the alternative, an Order declaratory of the rights of the parties in lieu of a permanent injunction, pursuant to ss. 14(2) and 14(4) of the *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18, stating that the Province cannot take further steps to implement the 2014 Strategy, including the terms of any Forestry Agreements with the Licensees to the extent that they infringe the exercise of the First Nations Plaintiffs' proven Aboriginal and Treaty rights;
- j. An Order requiring the Province to pay general, pecuniary and aggravated damages to the Plaintiffs for (a) the Province's failure to consult with the Plaintiffs on the 2014 Strategy and Forestry Agreements implementing the 2014 Strategy, and (b) the lost present and future value of the First Nations Plaintiffs' affected Aboriginal and Treaty Rights, and (c) the Province's breach of its trust or fiduciary obligations towards the First Nations Plaintiffs;

- k. A declaration recognizing that any financial compensation paid pursuant to paragraph (j) is inadequate to fully compensate the First Nations Plaintiffs for the loss to their culture and way of life;
- l. An Order for an accounting of the environmental impacts, including the impacts on biodiversity, on or near the First Nations Plaintiffs' traditional territories caused or expected to be caused by the implementation of the 2014 Strategy and Forestry Agreements;
- m. An Order directing the Minister to meaningfully and adequately consult with the Plaintiffs and accommodate the First Nations Plaintiffs' proven and asserted Aboriginal and Treaty rights and Aboriginal Title prior to taking any further actions pursuant to the 2014 Strategy or any future forest strategy; and
- n. An Order that this Honourable Court retain a continuing supervisory jurisdiction over this case, including the jurisdiction to take evidence, make rulings, and issue such further orders as may be just and appropriate to ensure a proper implementation of these Orders.

54. The Plaintiffs intend to proceed in the English language.

DATED at Halifax, Nova Scotia, this ____ day of _____ FAIT à _____ le _____ 20__.
_____, 2016.

Derek A. Simon
BURCHELLS LLP
Solicitors for the Plaintiffs

Avocat du demandeur

BURCHELLS LLP
Barristers and Solicitors
1800-1801 Hollis Street
Halifax, NS B3J 3N4
Telephone: (902) 423-6361
Telecopier: (902) 420-9326

Local Agent for service:

Nadia M. MacPhee
BRENTON KEAN
Lawyers-Avocats
75 Prince William Street, 4th Floor
PO Box 6907
Saint John NB E2L 4S3
Telephone: (506) 633-2556
Telecopier: (506) 633-5902

APPENDIX A
Residences of the Plaintiffs

Chief Ann Mary Steele on behalf of herself and the members of the Buctouche First Nation
9 Reserve Road
Buctouche Reserve, NB E4S 4G2

Chief George Ginnish on behalf of himself and the members of the Eel Ground First Nation
47 Church Road
Eel Ground, NB E1V 4E6

Chief Lynn Labillois on behalf of herself and the members of the Eel River Bar First Nation
#8 – 11 Main Street, Unit 201
Eel River Bar, NB E8C 1A1

Chief Rebecca Knockwood on behalf of herself and the members of the Fort Folly First Nation;
PO Box 1007
Dorchester, NB E4K 3V5

Chief Kenneth Barlow on behalf of himself and the members of the Indian Island First Nation;
61 Indian Island Drive
Indian Island, NB E4W 1S9

Chief Bill Ward on behalf of himself and the members of the Metepenagiag Mi'kmaq Nation;
PO Box 293
Metepenagiag Mi'kmaq Nation, NB E9E 2P2

Chief David Peter-Paul on behalf of himself and the members of the Pabineau First Nation
1290 Pabineau Falls Road
Pabineau First Nation, NB E2A 7M3