

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HENVEY INLET FIRST NATION
as represented by its duly elected Chief and Council

Plaintiff

- and -

STACY MCQUABBIE and JACKIE PEARCE

Defendants

A N D B E T W E E N:

STACY MCQUABBIE, JACKIE PEARCE,
VERNA FRIDAY and WOODY BECKER

Plaintiffs by
Counterclaim

-and-

HENVEY INLET FIRST NATION, HER MAJESTY THE QUEEN
ELIZABETH II, HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA,
HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO,
POPE BENEDICT XVI and THE VATICAN STATE

Defendants to
the Counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

Proceedings under the Class Proceedings Act 1992, S.O. 1992, C6

TO THE DEFENDANTS TO THE COUNTERCLAIM:

A **LEGAL PROCEEDING** has been commenced against you by way of a counterclaim in an action in this court. The claim against you is set out in the following pages:

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a

lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served upon you.

If you are not party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.

Date:

Issued by _____
Local Registrar

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KIM OE3,

DEFENCE

1. The Defendants admit that the Plaintiff is an Indian Band pursuant to the Indian Act, however, the Defendants deny that the description of where they are located is accurate. The Defendants state that the Plaintiffs are trespassing on aboriginal land and should be more properly described as land traced to the Amikwa Nation of French River, a Nation associated with the Algonquin Nation. This territory has never been properly ceded to any authority properly constituted. The Defendants state that the Chief and Band Council are agents of the Crown, variously defined as Her Majesty the Queen Elizabeth II and Her Majesty the Queen in the Right of Canada, through the Ministry of Indian and Native Affairs.
2. As to paragraph 3, the Defendants deny the assertion of membership in the fictitious Henvey Inlet First Nation and assert they are lawfully occupying aboriginal land of the Amikwa Nation of the French River.
3. The Defendants admit paragraph 4 of the statement of claim.
4. The Defendants deny the authority of the Plaintiff to enter into agreements outlined in paragraph 5, 6, and 7 of the statement of claim. Furthermore, the Defendants state that the *Indian Act* of Canada is an act of genocide as defined in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, December. 9, 1948 in that it is imposing conditions of life designed to cause mental or physical harm.
5. The Defendants deny the allegation contained in paragraph 8 of the statement of claim and put the Plaintiff to strict proof thereof. The Defendant McQuabbie (Amikwabi) asserts an aboriginal right to lawful possession of the land mentioned pursuant to Section 35(1) of the *Constitution Act*, 1982 and pleads and relies on this section as defining his past and existing right.

6. The Defendants deny paragraph 9 (a) through and including (e) and specifically assert aboriginal right to the land in question and assert that the Plaintiff is engaged in trespass on aboriginal land.
7. The Defendants deny paragraph 10 and state that the Plaintiff has no proper authority to enter into this agreement.
8. The Defendants deny the allegation in paragraph 11 of the statement of claim and state that the Plaintiff does not properly understand the history of the Amikwa Nation and only can act as an agent of the Crown. A proper historical context will reveal that aboriginal title will prevail over the assumption of Crown sovereignty.
9. The Defendants deny the allegations in paragraph 12 of the statement of claim and state that the imposition of the *Indian Act* on the Amikwa Nation of the French River is an act of genocide, compensable in damages and much more toxic to the mental and physical health of the people than any contamination of the water supply.
10. The Amikwa people inhabited the French River area at first contact in the seventeenth century. The Amikwa Nation, its placement at French River and its uninterrupted continuance of occupation by its descendants have resulted in the Amikwa Nation never having ceded its territory.
11. As a member of the Amikwa Nation, the Defendant McQuabbie (Amikwabi) has an existing right to Aboriginal title in the lands in issue.
12. Any transference of rights, land or assets that might have occurred prior to this time was illegal and without authority or consultation. The Defendants put in dispute the legitimacy of the Robinson Huron Treaty of 1850 and allege fraud and misrepresentation in those negotiations.

13. Based on historical record, the Defendant McQuabbie (Amikwabi) maintains a legitimate claim to co-ownership, if not independent ownership, of Reserve #13 and the lands attached. The Defendants put the Plaintiff to the strict proof of the title to the land that they claim.

14. It is on that basis that the Defendants are justified in protecting McQuabbie (Amikwabi)'s ancestral title to the land through quiet protest in hope of reconciliation.

15. The Defendants asks that action be dismissed with costs.

COUNTERCLAIM

16. The Plaintiffs claim on behalf of themselves and all Class Members:

- (a) an order declaring that the land in question is aboriginal land and not reserve land;
- (b) a declaration of the right to sovereignty and self-determination of the Plaintiffs and Class Members pursuant to Section 35(1) of the *Constitution Act, 1982*;
- (c) a declaration that indigenous sacred sites in the territory known as the Province of Ontario be returned to the stewardship of the indigenous elders;
- (d) a declaration that an Algonquin/Nipissing Nation land claim includes both sides of the Ottawa River basin comprising the territories known as Ontario and Quebec;
- (e) damages for trespass on aboriginal land in the amount of 2 billion dollars;
- (f) damages for the tort of genocide in the amount of 4 billion dollars;
- (g) class wide punitive, aggravated and exemplary damages in the amount of 7 billion dollars;
- (h) pre-judgement interest pursuant to the provisions of the *Court of Justice Act, R.S.O. 1980 C43* and amendments thereto;

- (i) costs on a substantial indemnity basis; and
- (j) such further and other relief as this Honourable Court shall deem just.

The Parties

17. The Plaintiffs are indigenous sovereign people who reside in the territory known as Ontario and who claim entitlement to aboriginal land, resources, sovereignty and self-determination as members of indigenous nations.

18. The Defendant, Queen Elizabeth II (Queen Elizabeth) is identified as a royal person, and by virtue of Section 9 of the *Constitution Act, 1982*, has "... the authority over the executive and Parliament of Canada is hereby continued and vested in the Queen" and is represented by the Governor General of Canada. The Defendant, Her Majesty in the Right of Canada, is in essence the federal government and purports to derive its authority over "Indians and lands reserved for Indians" by virtue of Section 91(24) of the *Constitution Act, 1982* and is located in the territory known as Ottawa. The Defendant, Her Majesty in the Right of Ontario, is in essence the provincial government and similarly purports to derive authority over lands and resources from the *Constitution Act, 1982* and is located in the territory of Toronto. The Defendant, Henvey Inlet First Nation, as represented by the Chief and Band Council are agents of the federal government and are created by the provisions of the *Indian Act*. The Defendant Pope Benedict XVI is the titular head of the Holy Roman Catholic Church and the head of the state of the Vatican located within Rome, Italy and having many representatives in the territory known as Ontario and Canada.

19. The Class Members are all indigenous people in the territory known as the Province of Ontario who have either been fraudulently deprived of their aboriginal land or have had their sovereignty and self-

determination illegally displaced or have sustained elevated damages by the tort of genocide, as defined in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide December 9, 1948. The fraudulent deprivation of aboriginal land now amounts to trespass by the Defendants.

The Facts

20. The Plaintiffs and the Class Members can prove through expert testimony the pre-existence of sovereign indigenous nations throughout the territory known as Canada and demonstrate the existence of organized communities which possessed sovereign customs, traditions, laws and spirituality equal to or superior to the Judeo-Christian values of the royalty of Europe exemplified in the Treaty of Paris, 1763 which purports to divide up North/South America into the sovereign hands of European kings and queens with no consultation held with sovereign nations of the continent. The chief negotiator of that treaty was the Knight of the Royal Order of the Garter, an association now headed by the Defendant Queen Elizabeth II, its motto being “honi soit qui mal y pense” - “evil to him who thinks evil of me” and its symbol and motto are present in all superior courts in the territory known as Canada.

21. Since the Treaty of Paris of 1763, all transactions, treaties, legislative undertakings affecting sovereign indigenous people in the territory known as Ontario and Canada are done in the name of the Defendant Queen Elizabeth II but never with her signature. The Plaintiffs and the Class Members state that this failure alone invalidates the purported treaties entered into in the territory known as the Province of Ontario and lists these treaties at Appendix “A” of this claim.

22. Furthermore, the Plaintiffs and the Class Members state that representatives of the Defendant Queen Elizabeth II owed a duty of good faith in its dealings with them and can prove that this duty of good faith was breached in treaty negotiations and furthermore that the treatment of the Plaintiffs and Class Members and their ancestors was informed by a consciousness of genocide as defined in the principles outlined in the United Nations treaty on genocide attached as Appendix “B” to this claim. The death of Louis Riel, the massacre at Frog Lake, Saskatchewan, the death of Dudley George at Ipperwash, Ontario, the imposition of the *Indian Act* of Canada, the history of the residential school system, the systemic sterilization of native women, the abolition of traditional native government, the oppression of native spirituality and language are some the examples of the consciousness of genocide.

23. The Plaintiffs and the Class Members state that the Defendant Pope Benedict XVI and the State of the Vatican have actively participated in the past in assisting various representatives of European royalty to implement acts of genocide through the pronouncement of Papal Bulls and subsequently directing missionaries, such as the Jesuits, to conduct projects designed to destroy native spirituality or customs and language and assimilate indigenous people to Christian values leading to the eventual extinction of all native values and customs causing untold harm and degradation to the Plaintiffs and Class Members.

24. The Plaintiffs and the Class Members claim that history has not been properly recorded as regards to the relationship between the Crown (variously defined at certain times in history, 1492 to 2007) and indigenous people in the territory known as Ontario and the territory known as Canada and if properly understood in terms of actual events and claims of sovereignty, then the allegations of trespass and interference with economic activity raised in the statement of claim herein can only be answered by a true understanding of the relationship between the Plaintiffs and the various Defendants leading to eligibility for compensation for trespass, genocide and exemplary and punitive damages which will be revealed through expert testimony regarding this relationship.

25. The Plaintiffs and the Class Members state that usurpation of natural resources by all the Defendants herein to the detriment of the sovereign indigenous nations is an egregious interference in economic activity leading to impoverishment of the indigenous nations and a dependency on the federal government for survival directly caused by trespass and acts of genocide.

26. The Plaintiffs and the Class Members state that in all treaty negotiations in the territory known as the Province of Ontario an unfair advantage existed between the parties and was taken advantage of by the representatives of the Defendant Queen Elizabeth II to the detriment of the sovereign indigenous nations who did not fully understand the consequences of talking to these negotiators.

27. The Plaintiffs and the Class Members state that there are many indigenous sacred sites in the territory known as Ontario which should be returned to the stewardship of the indigenous Elders. Such sites include, but are not limited to, the Petroglyphs at Peterborough, Ontario and the Chaudiere Falls and Victoria Island in Ottawa, Ontario.

28. The Plaintiffs and the Class Members assert that the Algonquin/Nipissing land claim should involve all Nations which include all of the indigenous communities on both sides of the Ottawa River in the territory known as Ontario and Quebec.

29. The Plaintiffs and the Class Members state that the imposition of the *Indian Act* of Canada since 1857 is the same as imposing conditions of life on a group designed to cause mental or physical harm, thus an act of genocide, and the consciousness of the Defendants is revealed in the statement in the House of Commons by Sir John A. MacDonald, when he said, “The great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the dominion as speedily as they are fit for change.”

30. The Plaintiffs and the Class Members plead and rely on Section 35(1) of the *Constitution Act, 1982* and claim entitlement to a declaration of sovereignty and self-government for their nations of which each is a member thereof.

31. The Plaintiffs and the Class Members plead and rely on the *Canadian Bill of Rights* and Sections 2(a), 7, and 25 of the *Canadian Charter of Rights and Freedoms*.

32. The Defendants breached fiduciary and contractual duties and obligations and its duties of care to the Plaintiffs and Class Members by implementing agreements, legislative undertakings, papal bulls and policies all designed to assimilate and then eventually eliminate the existence of sovereign indigenous nations on this soil.

33. Due to the intentional and wrongful conduct of the Defendants, the Plaintiffs and the Class Members are entitled to recover punitive, aggravated and exemplary damages.

34. The Plaintiffs plead that the Amikwa Nation is entitled to a declaration of Aboriginal title to the French River Territory and that the claim is superior to the *Indian Act* claimed by the Defendants.

35. The Plaintiffs plead and rely upon the *Class Proceedings Act* 1992, S.O. 1992, C6.

36. The Plaintiffs propose that this action be tried in the city of Parry Sound, Province of Ontario.

DATED: August 3, 2007

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APPENDIX A

Aboriginal Treaties and Purchases in the Province Ontario**Treaties**

Williams Treaties, 1923

Post-Confederation Treaties Nos. 3, 5, and 9

Robinson Superior, 1850

Robinson Huron, 1850

Numerous pre-confederation Treaties

APPENDIX B

Convention on the Prevention and Punishment of the Crime of Genocide

Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 3

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 4

Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article 5

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3.

Article 6

Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7

Genocide and the other acts enumerated in Article 3 shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3.

Article 9

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article 10

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article 11

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 12

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article 13

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article 14

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article 15

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article 16

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article 17

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article 11 of the following:

- (a) Signatures, ratifications and accessions received in accordance with Article 11;
- (b) Notifications received in accordance with Article 12;
- (c) The date upon which the present Convention comes into force in accordance with Article 13;
- (d) Denunciations received in accordance with Article 14;
- (e) The abrogation of the Convention in accordance with Article 15;
- (f) Notifications received in accordance with Article 16.

Article 18

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in Article 11.

Article 19

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.