

**THE KING'S BENCH
Winnipeg Centre**

BETWEEN:

**ZONGIDAYA NELSON, on his own behalf, on behalf of the Roseau River
Anishinabe First Nation, and as representing a group of persons who are entitled
to receive an annuity payment from the Crown pursuant to Treaty One**

Plaintiff,

-and-

THE ATTORNEY GENERAL OF CANADA

Defendant.

REPLY

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BETWEEN:

**ZONGIDAYA NELSON, on his own behalf, on
behalf of the Roseau River Anishinabe First Nation, and as representing a group
of persons who are entitled to receive an annuity payment from the Crown
pursuant to Treaty One**

Plaintiff,

-and-

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Defendant.

REPLY

1. The Plaintiff repeats and relies upon all assertions and allegations contained in the Fresh as Re-Amended Statement of Claim.
2. The Plaintiff denies each and every new assertion and allegation contained in the Statement of Defence, except those admissions and concessions made by the Defendant in paragraphs 8, 13, 14, 15, 17, 19, 20, 21, 22, 23, 25, 26, 31, 33, 37, 38, 39, 41, 42, 45, 47, 49, 50, 51, 53, and 54 of the Statement of Defence, or as otherwise expressly stated herein.
3. The Plaintiff admits the correction made by the Defendant in paragraph 28 of the Statement of Defence.

I. The Representation Order

4. To the extent that the Defendant's unexplained denial of the assertions contained in

paragraphs 5 and 96 of the Fresh as Re-Amended Statement of Claim indicates that it objects to any aspect of the Representation Order, which it consented to, the Defendant is estopped from raising such objections.

II. Limitation Period

5. In response to paragraphs 58 and 59 of the Statement of Defence, the Plaintiff denies that any of the claims set out in the Fresh as Re-Amended Statement of Claim are time-barred.
6. The Defendant relies on provisions of the *Limitation of Actions Act*, C.C.S.M. c. L150 (the "***Limitation Act***") that make no reference whatsoever to treaty rights, despite cataloguing a comprehensive list of causes of action to which specific limitation periods are assigned. Had the legislature intended to designate a limitation period for proceedings relating to treaty rights, it would have done so explicitly, as indeed it purported to do in later versions of the *Limitation Act*.
7. Moreover, and in any event, the claim relates to the Defendant's obligations under a nation-to-nation agreement which the Defendant has not renounced. The Defendant is not entitled to unilaterally withdraw from obligations arising from its nation-to-nation relationship with the Treaty 1 signatories, or the annuitants who benefit from Treaty 1, as represented by the Plaintiff. This applies with equal or greater force to His Majesty the King in Right of the Province of Manitoba in enacting the *Limitation Act*.
8. Furthermore, to the extent that the Defendant relies on legislation that purports to derogate from the Plaintiff's treaty rights, that legislation is ineffective on the basis that it is contrary to s. 35 of the *Constitution Act, 1982*, which expressly preserves "[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada".
9. The Defendant's reliance on the *Limitation Act* is also expressly contrary to the Truth and

Reconciliation Commission of Canada's Call to Action #26, which provides:

We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.

10. Lastly, the Defendant's reliance on the *Limitation Act* is contrary to the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 (the "**United Nations Declarations Act**"), the Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples (the "**Litigation Directive**"), and the Litigation Guideline #14.
11. *The Limitation Act* does not bar any part of the Plaintiff's claim.

III. Doctrine of laches

12. In response to paragraph 58 of the Statement of Defence, the Plaintiff denies that the claim was brought with excessive delay. The Plaintiff further denies that the Treaty 1 annuitants' acceptance of the \$5.00 annuity payment since 1875 constitutes acquiescence to the Defendant's breach of its obligations under Treaty 1. The Treaty 1 annuitants have never waived their right to the indexation or augmentation of the annuity owed to them by the Defendant under Treaty 1, and for many years the Defendant took systematic steps to bar the Treaty 1 annuitants from effectively asserting their rights.
13. In further response to paragraph 58 of the Statement of Defence, the Plaintiff states that the Defendant's reliance on the doctrine of laches is contrary to the *United Nations Declarations Act*, the Litigation Directive, and the Litigation Guideline #14.

IV. Injunctive Relief, Specific Performance, and Prejudgment Interest

14. In response to paragraph 11 of the Statement of Defence, the Plaintiff denies that any provisions of the *Crown Liability and Proceedings Act*, R.S. 1985, c. C-50 (the "**Crown**

Liability and Proceedings Act”) restrict the Plaintiff’s right to obtain injunctive relief or specific performance. The Defendant is not entitled to legislate so as to unilaterally limit or withdraw from its obligations under a nation-to-nation agreement, and in any event, the Defendant did not purport to affect treaty rights with the requisite degree of specificity. The statute relied on by the Defendant has no application to the Plaintiff’s claim for injunctive relief or specific performance, which arises out of the Defendant’s breach of its obligations under Treaty 1.

15. In response to paragraph 12 of the Statement of Defence, the Plaintiff denies that any provisions of the *Crown Liability and Proceedings Act*, and *The Court of King’s Bench Act*, C.C.S.M., c. C280 restrict the Plaintiff’s right to pre-judgment interest. Neither the Defendant, nor His Majesty the King in Right of the Province of Manitoba, is entitled to legislate so as to unilaterally limit or withdraw from the Defendant’s obligations under a nation-to-nation agreement, and in any event, neither purported to affect treaty rights with the requisite degree of specificity. The statutes relied on by the Defendant have no application to the Plaintiff’s claim for prejudgment interest, which arises out of the Defendant’s breach of its obligations under Treaty 1.

V. United Nations Declaration Act

16. In response to paragraph 48 of the Statement of Defence, the plaintiff states that the *United Nations Declaration Act* does create a stand-alone cause of action which is directly enforceable in the Canadian courts and in this honourable court.

VI. Relief Sought

17. The Plaintiff respectfully requests the relief set out in paragraph 1 of the Fresh as Re-Amended Statement of Claim.

November 9, 2023

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