

IN THE COURT OF QUEEN'S  
BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF  
MONCTON  
BETWEEN :

ARREN SOCK and KENNETH  
FRANCIS, on their own behalf and  
on behalf of all members of  
Elsipogtog First Nation and all other  
members of the Mi'kmaq Nation,  
Plaintiffs

- and -

HER MAJESTY THE QUEEN IN  
RIGHT OF THE PROVINCE OF  
NEW BRUNSWICK and THE  
ATTORNEY GENERAL OF  
CANADA,  
Defendants

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

TO: THE DEFENDANTS

Cause No. *mc 745-2016*  
COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK  
DIVISION TRIAL  
CIRCONSCRIPTION JUDICIAIRE  
DE  
ENTRE :



Demandeur

- et -

**AVIS DE POURSUITE  
ACCOMPAGNE D'UN EXPOSE  
DE LA DEMAND**  
(Formule 16A)

DESTINATAIRE:

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

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 Plaintiffs or Plaintiffs' 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,

(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

PAR LE DEPOT DU PRESENT AVIS DE POURSUITE ACCOMPAGNE D'UN EXPOSE DE LA DEMANDE, UNE POURSUITE JUDICIAIRE A ETE ENGAGEE CONTRE VOUS.

Si vous desirez presenter une defense dans cette instance, vous-meme ou un avocat du Nouveau-Brunswick charge de vous presenter devrez rediger un expose de votre defense en la forme prescrite par les Regles de procedure, le signifier au demandeur ou a son avocat a l'adresse indiquee ci-dessous et le déposer au greffe de cette Cour avec un droit de depot de \$50.00 une preuve de sa signification:

(a) DANS LES 20 JOURS de la signification qui vous sera faite du present avis de poursuite accompagne d'un expose de la demande, si elle vous est faite 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

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

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.

You are advised that:

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

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

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

Si vous omettez de le faire, vous pourrez etre repute avoir admis toute demande formulee contre vous et sans autre avis, JUDGEMENT POURRA ETRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

(a) vous avez le droit dans la presente instance, d'emettre des documents et de presenter votre preuve en francais, en anglais ou dans les deux langues;

(b) the Plaintiffs intend to proceed in the English language; and

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

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Clerk of the Court at Moncton, New Brunswick, on the 10 day of November, 2016

  
CLERK OF THE COURT  
Clerk of the Court  
145 Assumption Boulevard  
Moncton, NB  
E1C 0R2



(b) le demandeur a l'intention d'utiliser la langue .....; et

(c) l'expose de votre defense doit indiquer la langue que vous avez l'intention d'utiliser.

CET AVIS est signe et scelle au nom de la Cour du Banc de la Reine par \_\_\_\_, greffier de la Cour a , ce \_\_\_\_\_ 201\_\_.

\_\_\_\_\_  
(greffier)  
Sceau de la Cour  
(adresse du greffe)

**STATEMENT OF CLAIM**  
(Form 16C)

**A. Parties**

(i) The Plaintiffs

1. The Mi'kmaq Nation is an Indigenous people and distinctive Aboriginal group with common territory, language, culture, values, customs, practices, traditions, spiritual beliefs and legal and political systems in respect of lands and waters known as Mi'kma'ki.
2. The Mi'kmaq Nation as it exists today is the continuation of and successor to the Mi'kmaq Nation as it existed prior to and at contact with Europeans at or around 1534 ("Contact") and the assertion of sovereignty by the British Crown at 1759 ("Sovereignty"). As such, the Mi'kmaq Nation continues to hold Aboriginal title and rights that were held by the Mi'kmaq Nation at the time of Contact and Sovereignty.
3. The Mi'kmaq Nation is comprised of several Mi'kmaq communities, including Elsipogtog First Nation ("Elsipogtog").
4. Elsipogtog is a body of "Indians" for whose use and benefit in common Crown lands have been set apart and who constitute a "band" within the meaning of the *Indian Act*, R.S.C. 1985, Chapter 1-5.

5. The Plaintiffs, the Mi'kmaq Nation and Elsipogtog, are Aboriginal peoples within section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c.11*.
6. The Plaintiffs, Arren Sock and Kenneth Francis, are each members of the Mi'kmaq Nation and Elsipogtog.
7. Arren Sock and Kenneth Francis bring this action as representative plaintiffs, each on their own behalf and on behalf of all members of the Mi'kmaq Nation and Elsipogtog.
8. The Plaintiffs' address for service is:

Bruce McIvor  
First Peoples Law Corporation  
300-111 Water St.  
Vancouver, B.C. V6B 1A7  
Email: [bmcivor@firstpeopleslaw.com](mailto:bmcivor@firstpeopleslaw.com)

(ii) The Defendants

9. The Defendant, her Majesty the Queen in Right of the Province of New Brunswick (the "Province"), is vested with the administration, control and beneficial interest in provincial Crown lands pursuant to section 109 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (the "*Constitution Act, 1867*"), subject to the rights and interests of the Plaintiffs.
10. The Province has legislative jurisdiction over lands, including foreshore land and riverbeds, in New Brunswick pursuant to subsections 92(5) and 92(13) of the *Constitution Act, 1867*, subject to the rights and interests of the Plaintiffs.

11. The Defendant, the Attorney General of Canada (“Canada”), is the representative of her Majesty the Queen in right of Canada and is named in these proceedings pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.50, amended.
12. Canada has legislative jurisdiction over “Navigation and Shipping,” “Sea Coast and Inland Fisheries,” and “Indians and lands reserved for the Indians” pursuant to subsections 91(10), 91(12) and 91(24) of the *Constitution Act, 1867*, subject to the rights and interests of the Plaintiffs.

## **B. Material Facts**

### (i) The Claim Area

13. Mi’kma’ki is a geographic region composed of seven distinct districts including all or portions of what is now known as Prince Edward Island, Nova Scotia, New Brunswick and Quebec.
14. Prior to and at Contact and Sovereignty, the Mi’kmaq Nation used, occupied and maintained a substantial connection to Mi’kma’ki, and continues to do so today. At all material times the connection of the Mi’kmaq Nation to Mi’kma’ki has been of central significance to and the source of the distinctive culture of the Mi’kmaq Nation.
15. This claim applies to the portion of Mi’kma’ki known as Sikniktuk or District 6, including the land, airspace, land covered by water, offshore and inshore water bodies, foreshore, rivers, lakes and streams situated within its bounds (the “Claim Area”). A map of the Claim Area is attached to this Statement of Claim as Appendix “A” for illustrative purposes.

16. The Plaintiffs reserve the right to claim Aboriginal title and rights in respect of the whole or any portions of Mi'kma'ki in the future.

(ii) Aboriginal Title

17. Prior to and at Sovereignty, the Mi'kmaq Nation exclusively used, occupied and exercised effective control over the Claim Area.

18. Prior to and at Sovereignty, the Mi'kmaq Nation used the Claim Area for a variety of purposes including hunting, fishing, gathering and other resource-harvesting activities, trade, and cultural and spiritual practices, and continues to do so today.

19. Prior to and at Sovereignty, the Mi'kmaq Nation exercised jurisdiction over the Claim Area pursuant to Mi'kmaq legal and political regimes governing the use and occupation of land, and continues to do so today.

20. In 1761, representatives of the Mi'kmaq Nation, including ancestors of Elsipogtog, entered into a treaty of peace and friendship (the "Treaty") with representatives of the British Crown.

21. By entering into the Treaty, the Mi'kmaq Nation and the British Crown confirmed and recognized the existence of the Mi'kmaq Nation's Aboriginal title.

22. Aboriginal title to the Claim Area has never been surrendered or lawfully extinguished.

23. As such, the Mi'kmaq Nation holds Aboriginal title to the Claim Area.

(iii) Aboriginal Rights

24. Prior to and since Contact, the Mi'kmaq Nation has continuously carried out activities in the Claim Area, including without limitation:

- a. fishing for sustenance, social, cultural, ceremonial use and trade, or sale, or any of these practices;
- b. hunting and trapping for sustenance, social, cultural, ceremonial use and trade, or sale, or any of these practices;
- c. harvesting/ gathering timber and related materials for sustenance, social, cultural, ceremonial use and trade, or sale, or any of these practices;
- d. gathering plants for foods and traditional medicines for sustenance, social, cultural, ceremonial use and trade, or sale, or any of these practices;
- e. conducting spiritual and cultural ceremonies and maintaining and honouring sites of spiritual significance; and
- f. such other customs, practices and traditions as counsel may advise.

25. The activities described herein are elements of practices, customs or traditions which have and continue to be integral to the distinctive culture of the Mi'kmaq Nation prior to and since Contact, and as such each constitutes an Aboriginal right of the Mi'kmaq Nation.

26. The Aboriginal rights have never been surrendered or lawfully extinguished.

27. As such, the Mi'kmaq Nation holds Aboriginal rights in the Claim Area.

(v) Wrongful Conduct of the Defendants

28. The Defendants have unjustifiably infringed or otherwise breached their constitutional duties in respect of the Mi'kmaq Nation's Aboriginal title and rights in the Claim Area. Such infringements and breaches include but are not limited to:

- a. issuing, replacing and renewing licences, leases, permits, authorizations and other tenures (collectively, the "Tenures") to third parties or otherwise occupying, managing and allocating lands, waters and resources in a manner which interferes with the Mi'kmaq Nation's Aboriginal title and rights;
- b. conveying land to themselves and to third parties without regard to the Mi'kmaq Nation's Aboriginal title and rights;
- c. passing laws which purport to enable or authorize the Defendants to alienate lands and resources to third parties or to use those resources for the Defendants' own use and benefit;

- d. purporting to exercise management, ownership and control over lands and resources without regard to the Mi'kmaq Nation's Aboriginal title and rights;
- e. committing or authorizing nuisances, trespass or other interferences which restrict or interfere with the ability of the Mi'kmaq Nation's Aboriginal title and rights;
- f. deriving royalties, taxes and other benefits (the "Benefits") from the lands and resources and denying the Mi'kmaq Nation the right to receive Benefits therefrom;
- g. failing to protect and sustainably manage the lands and resources;
- h. failing to adequately consult and/ or accommodate the Mi'kmaq Nation or otherwise discharge the Crown's fiduciary duties or the honour of the Crown in respect of the above-named activities (the "Constitutional Duties"); and
- i. such other infringements as counsel may advise.

### **C. Plaintiffs' Claim**

#### **(i) Legal Basis**

29. The Mi'kmaq Nation holds Aboriginal title to the Claim Area by virtue of its exclusive use, occupation and exercise of effective control of the Claim Area at Sovereignty.

30. The Mi'kmaq Nation holds Aboriginal rights in respect of the Claim Area by virtue of the fact that the activities described herein are elements of practices, customs or traditions integral to the distinctive culture of the Mi'kmaq Nation and which were continuously exercised by the Mi'kmaq Nation prior to and since Contact.
31. The Defendants owe the Mi'kmaq Nation fiduciary duties respecting the management and preservation of the Mi'kmaq Nation's Aboriginal title and rights in respect of the Claim Area.
32. The act and omissions of the Defendants described herein constitute unjustified infringements of the Mi'kmaq Nation's Aboriginal title and rights in the Claim Area.
33. The acts and omissions of the Defendants described herein constitute breaches of the Defendants' Constitutional Duties to the Mi'kmaq Nation.
34. The Mi'kmaq Nation has suffered damages and loss as a result of the acts and omissions of the Defendants, including with respect to the unjustified infringements of the Mi'kmaq Nation's Aboriginal title and rights and breaches of the Defendants' Constitutional Duties described herein.
35. An interim and permanent injunction is warranted to prevent further or new interference with the Mi'kmaq Nation's Aboriginal title and rights in and to the Claim Area.

(ii) Relief Sought

36. The Plaintiffs therefore claim the following relief:

- a. a declaration that the Mi'kmaq Nation holds existing Aboriginal title to the Claim Area;
- b. a declaration that the Mi'kmaq Nation holds Aboriginal rights in respect of the Claim Area;
- c. a declaration that the Defendants, or either of them, unjustifiably infringed the Mi'kmaq Nation's Aboriginal title and/ or Aboriginal rights in the Claim Area;
- d. a declaration that the Defendants, or either of them, breached their Constitutional Duties to the Mi'kmaq Nation;
- e. damages or compensation from the Defendants, jointly and severally, for infringements of the Mi'kmaq Nation's Aboriginal title and/ or Aboriginal rights in the Claim Area;
- f. compensation from the Defendants, jointly and severally, for breaches of the Constitutional Duties;
- g. interlocutory and permanent injunctive relief, including but not limited to:
  - (i) an interlocutory and permanent injunction prohibiting the appropriation by the Defendants of any part of the Claim Area without the consent of the Mi'kmaq Nation; and

- (ii) an interlocutory and permanent injunction prohibiting the issuance, renewal or granting of Tenures to third parties in any manner which may infringe on the Mi'kmaq Nation's Aboriginal title and/ or Aboriginal rights without the consent of the Mi'kmaq Nation;
  
- h. pre- and post-judgment interest;
  
- i. costs; and
  
- j. such other and further relief as this Honourable Court deems just.

Dated at Vancouver, BC  
this 3 day of  
Nov, 2016.

  
BRUCE MCIVOR, PH.D.  
FIRST PEOPLES LAW  
CORPORATION  
Solicitors for the Plaintiffs

First Peoples Law Corporation  
300 – 111 Water Street  
Vancouver, BC  
V6B 1A7

Telephone: (604) 685 4240  
E-mail:  
[bmcivor@firstpeopleslaw.com](mailto:bmcivor@firstpeopleslaw.com)

FAIT a le 2016.

\_\_\_\_\_  
Avocat du demandeur  
Raison sociale:

Adresse professionnelle:

# Appendix "A"

