

Form 16  
[Rule 3.45]

Clerk's Stamp

COURT FILE NUMBER 1403 17729 ✓  
 COURT COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE EDMONTON  
 PLAINTIFF(S) BONNIE LEE BRUNO  
 DEFENDANT(S) CHIEF and COUNCIL of the SAMSON CREE NATION and the SAMSON CREE NATION  
 THIRD PARTY DEFENDANT(S) THE ATTORNEY GENERAL OF CANADA  
 DOCUMENT AMENDED THIRD PARTY CLAIM



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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 File No.: 4244

AMENDED THIS 1 DAY OF June A.D. 20 16  
 PURSUANT TO RULE 3.61 UNDER ORDER-CONSENT DATE  
 DAY OF A.D. 20

**TO THIRD PARTY DEFENDANT: THE ATTORNEY GENERAL OF CANADA**

**NOTICE FROM THE DEFENDANTS: CHIEF AND COUNCIL OF THE SAMSON CREE NATION AND THE SAMSON CREE NATION**

This third party claim is made against you. You are a third party defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6).**

**Statement of facts relied on:**

1. An Action has been brought by the Plaintiff, Bonnie Lee Bruno, against the Defendants, Chief and Council of the Samson Cree Nation and the Samson Cree Nation (collectively,

**"Samson Nation") as a representative of the members of a proposed group of Class Plaintiffs, as defined in paragraph 9 of the Plaintiff's Amended Statement of Claim (the "ASC"), a copy of which is annexed hereto.**

**2. The Plaintiff and the members of the proposed Class Plaintiffs claim relief and seek remedies against Samson Nation in the nature of, *inter alia*:**

**(a) A declaration that Samson Nation has breached its fiduciary relationship, unjustly enriched itself, committed equitable fraud, failed to disclose wrongdoing and failed to account to the Plaintiff and the members of the proposed Class Plaintiffs;**

**(b) A declaration that Membership Agreements entered into on or about June 1, 1995 be set aside;**

**(c) An accounting and tracing of all royalties and interest received by Samson Nation on account of the Plaintiff and the members of the proposed Class Plaintiffs;**

**(d) An award of damages or compensation in the amount of \$100,000,000;**

**(e) A declaration that all royalties and interest received by Samson Nation on account of the Plaintiff and the members of the proposed Class Plaintiffs and all funds, assets, benefits or other gains associated with them are subject to a constructive trust or equitable lien and subject to immediate disgorgement, or if they are held in the Kisoniyaminaw Heritage Trust then such funds are held in trust for the Plaintiff and the members of the proposed Class Plaintiffs;**

**(f) A constructive trust or equitable lien and Immediate disgorgement with respect to damages Samson Nation may receive in Federal Court Action No. T-2022-89; and,**

**(g) Punitive damages, interest and costs of the Action.**

**3. Samson Nation denies liability to the Plaintiff and the members of the proposed Class Plaintiffs on the grounds set out in Samson Nation's Statement of Defence, a copy of which is annexed hereto.**

**4. If Samson Nation is in any way liable to the Plaintiff, or any member of the proposed Class Plaintiffs, all of which is denied, then Samson Nation claims to be entitled to indemnity or**

contribution from the Third Party, Her Majesty the Queen in Right of Canada as represented by the Attorney General of Canada ("Her Majesty").

5. Further, if the Plaintiff or any member of the proposed Class Plaintiffs, sustained any of the wrongs alleged in the ASC, then Samson Nation states that any and all such wrongs, and any resulting loss, injury, deprivation, or damage were and remain entirely the result of Her Majesty's breaches of, *inter alia*, Her Majesty's constitutional duties, trust-like fiduciary duties and statutory duties.
6. Samson Nation herein repeats, adopts and relies upon paragraphs 1 to 126 and 135 to 136 of Samson Nation's Statement of Defence.

#### **Bill C-31 An Act to Amend the Indian Act**

7. Further and in addition to, *inter alia*, paragraphs 4 to 12 and 18 to 33 of the Statement of Defence, Samson Nation states:
  - (a) Enfranchisement, in which Aboriginal peoples were stripped of their Indian status under the *Indian Act*, was a key feature of Her Majesty's assimilation policies regarding Aboriginal peoples.
  - (b) Enfranchisement was discriminatory, unconscionable and became legally compulsory with the *Indian Act* of 1876.
  - (c) In particular, Her Majesty under the amendments to the *Indian Act* in 1951 discriminated against women and their children by forcibly enfranchising them and stripping away their Indian status. For example, section 12(1)(b) of the said amendments stripped away the Indian status of any woman who married a non-Indian or non-status Indian.
  - (d) Upon being stripped of their Indian status, the women and children would lose their rights to live on reserve lands and access band resources, such as housing, education, health care, and social services.
  - (e) There were numerous attempts challenging the legality of the discriminatory legislation under the *Indian Act*, even to the United Nations Human Rights Committee who found Canada in breach of the Covenant on Civil and Political rights. However,

Her Majesty was not persuaded to amend the discriminatory enfranchisement sections of the *Indian Act* until the enactment of the *Constitution Act, 1982*.

- (f) In or around April 1985, Her Majesty enacted Bill C-31 in an attempt to amend the discriminatory enfranchisement sections of the *Indian Act*.
- (g) Bill C-31 made significant changes to Indian status and band membership under the *Indian Act*. These changes in particular were to address gender discrimination by restoring Indian status to people who had been discriminated against and forcibly enfranchised by Her Majesty.
- (h) However, Her Majesty under Bill C-31 unlawfully imposed legislative changes regarding band membership in contravention of Samson Nation's Aboriginal and treaty rights, particularly Samson Nation's Aboriginal and treaty rights to self-determination and self-government.
- (i) Samson Nation states that Her Majesty does not have the constitutional, or any, authority to determine unilaterally, or at all, who is or is not a member of Samson Nation.
- (j) Samson Nation, in accordance with section 10 of the *Indian Act*, submitted a membership code to the Her Majesty for the purpose of ensuring, *inter alia*, that Samson Nation would not, through the unlawful interference by Bill C-31, or otherwise, be prevented from exercising Samson Nation's Aboriginal and treaty rights to self-determination and self-government.
- (k) Her Majesty, in contravention of Samson Nation's Aboriginal and treaty rights, refused to approve the aforementioned membership code. In contravention of section 35(1) of the *Constitution Act, 1982* and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*, Her Majesty unilaterally and unlawfully asserted that Her Majesty had full and exclusive control over Samson Nation's membership code.
- (l) Notwithstanding Bill C-31 and the actions of Her Majesty, it has been and remains the position of Samson Nation that Samson Nation has the Aboriginal and treaty rights to self-determination, self-government, particularly to determine its own membership in accordance with its customary laws and traditions.

- (m) Pursuant to Bill C-31, on April 17, 1985 thousands of enfranchised individuals across Canada became entitled to obtain Indian status and to have their names entered in a band list of their choosing maintained by the Minister of Indian Affairs and Northern Development (the "Minister"), as the department was then designated.
- (n) Upon obtaining Indian status and being added to a band list of their choosing, individuals would be entitled to the respective band's resources. This included such things as access to housing, education, health care, and social services.
- (o) However, Bill C-31 did not allow or provide for additional resources from Her Majesty to support reinstated individuals.
- (p) Her Majesty's discriminatory, unconscionable, and unconstitutional legislation forcibly enfranchising Aboriginal peoples and, then, under Bill C-31 forcibly requiring Samson Nation to take in and provide for such peoples in contravention of Samson Nation's Aboriginal and treaty rights has resulted in damages to Samson Nation and its members. Samson Nation states that if the Plaintiff and any members of the proposed Class Plaintiffs have suffered any loss, injury, deprivation or damages as alleged in the ASC, all of which is denied, then any such loss, injury, deprivation or damages has occurred as a result of Her Majesty's aforementioned actions.

#### **Fiduciary Obligations and the Honour of the Crown**

- (q) Her Majesty owes fiduciary obligations that are trust-like in nature with the common law duties of a trustee to Samson Nation, its members, the Plaintiff, and the members of the proposed Class Plaintiffs. Her Majesty is responsible for carrying out such trust-like fiduciary obligations that are set out in Treaty No. 6, the *Royal Proclamation of 1763*, the *Constitution Act, 1867*, the *Constitution Act, 1930*, and the *Constitution Act, 1982*.
- (r) In addition to Her Majesty's trust-like fiduciary obligations, when dealing with Aboriginal peoples the honour of the Crown requires Her Majesty to perform Her duties fairly and in good faith, as opposed to merely conducting Herself in a manner that can be technically justified under the law.
- (s) In implementing Bill C-31 Her Majesty did not comply with the honour of the Crown and breached Her trust-like fiduciary obligations by, *inter alia*:

- i. Purporting to add members to Samson Nation through a process that excluded Samson Nation and unlawfully infringed Samson Nation's Aboriginal and treaty rights;
  - ii. Failing to consult with Samson Nation in drafting and implementing Bill C-31;
  - iii. Failing to recognize or ignored the adverse impacts that resulted from implementing Bill C-31;
  - iv. Failing to properly assist Samson Nation or mitigate the adverse impacts resulting from Bill C-31;
  - v. Misrepresenting what the impact of Bill C-31 would be on Samson Nation and its members;
  - vi. Unilaterally and unlawfully, in contravention of section 35(1) of the *Constitution Act, 1982* and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*, asserting full and exclusive control over Samson Nation's membership code; and,
  - vii. Unjustifiably and unilaterally rejecting Samson Nation's proposed membership code.
- (t) The unlawful interference by Her Majesty with Samson Nation's Aboriginal and treaty rights to self-determination and self-governance is unjustified and inconsistent with the honour of the Crown and Her Majesty's trust-like fiduciary obligations. As a result, Samson Nation has suffered, continues to suffer, and will suffer damages, including:
- i. Undue hardship and greater interference and infringement of Samson Nation's Aboriginal and treaty rights than has been and is necessary to meet the proposed legislative objective;
  - ii. Actual and future interference that is damaging to Samson Nation's social, cultural, economic, and political structures; and,
  - iii. Interference with and a diminution of Samson Nation's Aboriginal and treaty rights of self-determination and self-governance.

### **Samson Nation's Alleged Breaches of Fiduciary Duties and Unjust Enrichment**

8. Further and in addition to, *inter alia*, paragraphs 34 to 88, 101 to 104 and 119 of the Statement of Defence, Samson Nation states:

- (a) Her Majesty, at all times, owed trust-like fiduciary obligations to Samson Nation and the members of Samson Nation in the administration and management of Samson Nation's Capital and Revenue Account. Samson Nation has relied upon the express and implied representations, conduct, actions and inactions of Her Majesty that all Royalties, bonuses and other payments derived from the production of oil and gas from Indian Reserve No. 138A that were credited to Samson Nation's Capital Account and Revenue Account and all moneys expended therefrom were correctly and lawfully collected, calculated, verified, distributed, credited and subsequently expended.
- (b) If Her Majesty during the material years, in or about 1988 to 1995, credited Royalties, bonuses or other payments derived from the production of oil and gas from Indian Reserve No. 138A to Samson Nation's Capital Account and Revenue Account in amounts greater than what Samson Nation was entitled to, all of which is denied, then any miscalculations resulting in any alleged overpayment, improper benefit or unjust enrichment and any associated loss, injury, deprivation or damage, as alleged by the Plaintiff and the members of the proposed Plaintiff Class in the ASC, all of which is denied, was and remains the sole responsibility and liability of Her Majesty.
- (c) Samson Nation's Capital Account and Revenue Account are under the exclusive power, authority, and control of Her Majesty to administer and manage. Particularly, Her Majesty has the exclusive power, authority, and control over the collection, calculation, verification and crediting into Samson Nation's Capital Account and Revenue Account of all Royalties, bonuses and other payments derived from the production of oil and gas from the Reserve Lands that her Majesty collects or receives on behalf of Samson Nation and the other Maskawcis Bands.
- (d) Samson Nation states that it is not liable insofar as Samson Nation had no power, authority, or control over the collection, calculation, verification, distribution and crediting of Royalties, bonuses and other payments derived from the production of oil and gas from Indian Reserve No. 138A to Samson Nation's Capital Account and

- Revenue Account and Samson Nation is not responsible for any loss, injury, deprivations, or damages in any manner alleged in the ASC, or at all, as a result therefrom.
- (e) Further, or in the alternative, Samson Nation has at all material times relied upon the express or implied authorizations, representations, actions and inactions of Her Majesty in the collection, calculation, verification and distribution of all Royalties, bonuses and other payments derived from the production of oil and gas from the Reserve Lands into Samson Nation's Capital Account and Revenue Account.
- (f) Her Majesty has the exclusive power and authority to exercise Her Majesty's discretion to authorize any and all expenditures of moneys from Samson Nation's Capital Account and Revenue Account. The exercise of Her Majesty's discretion must be in accordance with Her Majesty's trust-like fiduciary obligations owed to Samson Nation and the members of Samson Nation and Her Majesty must be satisfied that any and all expenditures are either for the use and benefit of Samson Nation and the members of Samson Nation, or will further the progress and welfare of Samson Nation and the members of Samson Nation.
- (g) Further, or in the alternative, Samson Nation has at all material times relied upon and materially changed its position based on the express or implied authorizations, representations, actions and inactions of Her Majesty with respect to Samson Nation's use and expenditure of moneys in Samson Nation's Capital Account and Revenue Account with respect to, *inter alia*, the development of education, housing, infrastructure, social services and any payments made to recognized members of Samson Nation.
- (h) Samson Nation states that any loss, injury, deprivation or damage suffered by the Plaintiff or any member of the proposed Class Plaintiffs as alleged in the ASC, all of which is denied, in relation to moneys credited to or moneys expended from Samson Nation's Capital Account and Revenue Account were entirely the result of Her Majesty's conduct, actions, and inactions and remain entirely the responsibility of Her Majesty.



9. **Samson Nation further states that Her Majesty is estopped from passing off or attributing to Samson Nation Her Majesty's liability for any alleged loss, injury, deprivation, or damages as alleged and claimed by the Plaintiff and the proposed members of the Class Plaintiffs in the ASC.**
10. **Further, or in the alternative, Her Majesty has benefited, directly and indirectly, from Her Majesty's borrowing and use of the moneys credited to Samson Nation's Capital Account and Revenue Account, at the material times, while providing only nominal interest rates thereon.**
11. **Further, or in the alternative, any compensable loss, injury, deprivation or damage suffered by the Plaintiff or any members of the proposed Class Plaintiffs, all of which is denied, is the sole responsibility of Her Majesty, in that any such loss, injury, deprivation or damage is the result of historical acts of discrimination perpetrated by Her Majesty against Aboriginal peoples, including the Plaintiff and members of the proposed Class Plaintiffs.**
12. **Further, or in the alternative, any compensable loss, injury, deprivation or damage suffered by the Plaintiff or any members of the proposed Class Plaintiffs, all of which is denied, is the sole responsibility of Her Majesty, in that any such loss, injury, deprivation or damage is the result of the Her Majesty's attempt in Bill C-31 to remedy the said historical acts of discrimination.**
13. **Further, or in the alternative, any legal or beneficial rights conferred upon the Plaintiff or any member of the proposed Class Plaintiffs by this Honourable Court for money, benefits, or other valuable consideration with respect to any of the allegations or claims in the ASC are solely the product of the said historical acts of discrimination and unconstitutional legislation.**
14. **Further, or in the alternative, any legally enforceable obligations on the part of Samson Nation to provide money, benefits or other valuable consideration to the Plaintiff or any member of the proposed Class Plaintiffs would constitute an incontrovertible benefit to Her Majesty, in that such obligations on the part of Samson Nation would discharge Her Majesty's own liability to the Plaintiffs for Her Majesty's historical acts of discrimination, unconstitutional legislation and breaches of Her Majesty's trust-like fiduciary obligations or statutory obligations that may be owed to the Plaintiff or any member of the proposed Class Plaintiffs.**

**Remedy sought:**

15. A Declaration that the impugned provisions of the *Indian Act* respecting membership and *An Act to Amend the Indian Act*, SC 1985, c 27 are contrary to and in contravention of section 35(1) of the *Constitution Act, 1982* and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*;
16. A Declaration that the impugned provisions of the *Indian Act* respecting membership and *An Act to Amend the Indian Act*, SC 1985, c 27 are unconstitutional and of no force and effect by operation of section 52(1) of the *Constitution Act, 1982*;
17. An Order directing that Her Majesty indemnify or, in the alternative, contribute to any judgment that may be rendered against Samson Nation in the within Action, together with the costs of Samson Nation in the within Action;
18. Costs of these Third Party proceedings; and,
19. Such further and other relief as this Honourable Court deems just.

**Statement of claim:**

20. A copy of the Amended Statement of Claim filed in this action is attached.

**Statement of defence:**

21. A copy of the Statement of Defence of Samson Nation filed in this action is attached.

Dated at the City of Calgary, in the Province of Alberta, this 1<sup>st</sup> day of June, 2016.

**NOTICE TO THE THIRD PARTY DEFENDANT(S)**

You only have a short time to do something to respond to this third party claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the defendant's(s)/third party plaintiff's(s) address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the claim against you automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give judgment to the defendant(s)/third party plaintiff(s) against you.

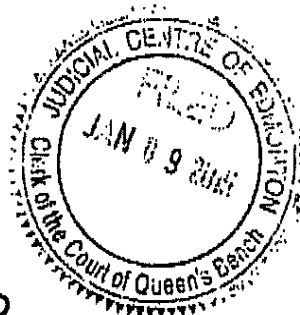
This third party claim must be tried with other claims in the action unless the Court otherwise orders.

If you do not file a statement of defence disputing liability of the defendant(s) to the plaintiff(s), you admit the validity of any judgment that the plaintiff(s) obtain(s) against the defendant(s), whether obtained by agreement or otherwise.

If you do not file a statement of defence disputing your own liability to the third party plaintiff(s) under the third party claim, you admit liability to the extent claimed in the third party claim.

AMENDED THIS 9 DAY OF Jan A.D. 2015 **Form 10**  
 PURSUANT TO RULE 56 ~~UNDER ORDER-CONSENT DATE~~ [Rule 3.25]  
~~DAY OF A.D. 20~~

Clerk's Stamp:



COURT FILE NUMBER 1403 17729  
 COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE EDMONTON  
 PLAINTIFF(S) BONNIE LEE BRUNO  
 DEFENDANT(S) CHIEF and COUNCIL of the SAMSON CREE NATION and the SAMSON CREE NATION  
 DOCUMENT AMENDED STATEMENT OF CLAIM

Brought under the *Class proceedings Act*,  
 S.A. 2003, c C-16.5

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**NOTICE TO DEFENDANT(S)**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

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**Statement of facts relied on:**

**PARTIES**

1. The Samson Cree Nation is an Indian "band" pursuant to the provisions of the *Indian Act*, RSC 1985, s. 1-5, as amended (the "*Indian Act*").
2. The Chief and Council of the Samson Cree Nation are the "council of the band" within the meaning of that term in the *Indian Act* and constitute the duly elected governing body of the Samson Cree Nation. (The Chief and Council of the Samson Cree Nation and the Samson Cree Nation, including the members thereof from time to time, are hereinafter collectively referred to as "Samson".)
3. The Plaintiff, Bonnie Lee Bruno, is a member of the Samson Cree Nation. At all times relevant to this action, the Minister of Indian Affairs and Northern Development (hereinafter referred to as the "Minister") maintained Samson's "Band List", as that term is defined by the *Indian Act*, pursuant to sections 8 and 9 of the *Indian Act*. The Plaintiff had her name entered onto Samson's Band List pursuant to the provisions of *An Act to Amend the Indian Act*, RSC 1985, c.32 (1st Suppl. ("Bill C-31")) on or about June 29, 1987.

**FACTUAL BACKGROUND**

4. Samson occupies reserve lands in the vicinity of Maskwacis (formerly known as Hobbema), Alberta, which lands are more particularly known as Indian Reserve Nos. 137 and 137A. Samson also has an undivided interest, together with the Louis Bull, Montana and Ermineskin bands (collectively, the "Hobbema Bands"), in Pigeon Lake Indian Reserve No. 138A. (Reserves 137, 137A and 138 are hereinafter collectively referred to as "Reserve Lands".)
5. By way of a Surrender of Minerals dated May 30, 1946, Samson surrendered its rights, title and interest in respect of certain minerals underlying the surface of the Reserve Lands to the Crown in trust for the use and benefit of Samson. On that same date the other Hobbema Bands also executed Surrenders of Minerals with identical terms with respect to their respective interests in Pigeon Lake Indian Reserve No. 138A.
6. From time to time, and in accordance with the *Indian Oil and Gas Act*, RSC 1985 Ch. 1-7 (the "*IOGA*") and the *Indian Oil and Gas Regulations*, 1995, SOR / 94-753 made thereunder, the Crown has negotiated leases and received royalties, bonuses, rents and surface use payments for oil and gas production from the Reserve Lands, has directed these Indian moneys to the capital account for

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Samson held and administered by the Crown in the Consolidated Revenue Fund in accordance with the requirements of subsection 4(1) of the *IOGA*, sections 2 and 61-69 of the *Indian Act*, and sections 2, 17(1) and 21(1) of the *Financial Administration Act*, RSC 1985, c. F-11) and has paid interest upon the said moneys, for the benefit of Samson.

7. At Samson's request made pursuant to a joint Band Council Resolution executed by the Hobbema Bands, the royalties, bonuses, rents and surface use payments derived from Pigeon Lake Indian Reserve No. 138A (hereinafter referred to collectively as the "Royalties") are divided among the four Hobbema Bands on a per capita basis, the allocation being proportional to their relative population counts. In the case of Samson, the per capita distributed and credited to Samson's capital account is based on the number of members recorded on Samson's Band List maintained by the Minister.
8. From the Royalties as well as funds related to them Samson paid, at all times relevant to this action, per capita distributions (hereinafter referred to as "PCDs") and Special Pays to members of Samson from time to time. PCDs are monthly or annual payments, authorized by Band Council Resolution, from the capital or revenue moneys of a band as defined in sections 61-69 of the *Indian Act*. Their name derives from the fact that the payments are made to all the members of a band on a per capita basis. Special Pays are amounts paid to all members of Samson from time to time in addition to PCDs, most notably at Christmas, but historically at other times of the year.

#### **THE CLASS**

9. This action is brought on behalf of all members of a class consisting of the Plaintiff, Bonnie Lee Bruno, and all persons whose names were recorded on Samson's Band List maintained by the Minister at any time on or after June 29, 1987 and from whom Samson withheld payment of PCDs and Special Pays at any point after the person's name was added to the Band List maintained by the Minister (hereinafter referred to as the "Class Plaintiffs").
10. At all material times relevant to this action Samson has had a fiduciary relationship with all members of Samson, including the Class Plaintiffs, and arising therefrom Samson has owed fiduciary obligations to all members of the Samson Cree Nation, including the Class Plaintiffs, in relation to the distribution of PCDs and Special Pays paid to members of Samson. In particular, Samson's fiduciary obligations include the duties

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- (a) of undivided loyalty toward them in the distribution of PCDs and Special Pays to members of Samson,
- (b) of good faith and full disclosure appropriate to the subject matter at issue between them,
- (c) to deal with them equitably and even-handedly as between different members of Samson, as well as
- (d) to act with due regard to their best interests and, in relation to PCDs and Special Pays paid to the members of Samson, to protect and preserve their interests from exploitation by third parties, including the Band itself through its Chief and Council.

### **THE CONDUCT AT ISSUE**

11. The Class Plaintiffs became members of Samson effective on or after June 29, 1987 as a result of the coming into force of what is commonly known as Bill C-31, *An Act to Amend the Indian Act*, S.C. 1985, c. 27.
12. After the Bill C-31 amendments came into force, Samson was of the view that the 1985 amendments to the *Indian Act* interfered with Samson's aboriginal and treaty rights of self-determination and self-government, as well as Samson's right to control its own membership. As a consequence, there were delays within Samson in recognizing the membership of the Class Plaintiffs.
13. At the time the Class Plaintiffs became members of Samson, Samson was paying, to members of Samson and to persons who became members of Samson in the relevant fiscal period, PCDs and Special Pays from Samson's capital account. The payments were authorized by the Minister in accordance with section 64(1) of the *Indian Act* with the consent of Samson's Band Council and expended by the Crown directly to the members of the band.
14. When Samson took issue with making payments of PCDs and Special Pays to the Class Plaintiffs, or some of them, the Minister transferred the amounts to be paid to a separate interest-bearing account (the "Suspense Account") to protect the financial interest of those individuals. The said PCDs and Special Pays were for the period June 29, 1987 to May 1, 1988. The claim of the Class Plaintiffs, or of some of them, to the said Suspense Account moneys was successfully concluded by order of the Federal Court of Canada. No further claim against the PCDs and Special Pays paid or payable for the period June 29, 1987 to May 1, 1988 is made in this action.

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15. In or about April 1988 Samson submitted a Band Council Resolution to the Minister authorizing 12 monthly distributions of \$500.00 and 4 quarterly distributions of \$800.00 to be paid to each member of Samson from Samson's revenue account. In accordance with section 69 of the *Indian Act*, payments from that account were administered by Samson alone. To the knowledge of the Plaintiff, all PCDs and Special Pays Samson has paid to its band members since that time have been made from moneys released from Samson's revenue account.
16. One of the purposes in changing the source from which PCDs and Special Pays were paid from Samson's capital account to Samson's revenue account was to avoid making PCD payments and Special Pays to persons, including the Class Plaintiffs, who Samson did not recognize as members, notwithstanding the provisions of the *Indian Act*. To that end, and for a period known only to Samson, Samson maintained for its own purposes 2 band lists, referred to as band list "A" and band list "B". Band list "A" identified those persons whom the Minister listed as members, which included persons that Samson refused to recognize as members and from whom Samson withheld payment of PCDs and Special Pays. Band list "B" identified only those persons Samson recognized as members.
17. The Plaintiff's mother, Nancy Rowan, acting on behalf of the Plaintiff, Bonnie Lee Bruno, executed a written agreement with Samson on June 1, 1995 whereby Samson purported to recognize the Plaintiff, Bonnie Lee Bruno, as a member of Samson in exchange for her release of all liability on the part of Samson for any claims she may have against Samson in respect of any past PCDs. From that date forward the Plaintiff, Bonnie Lee Bruno, has received and continues to receive PCDs and Special Pays paid to members of Samson.
18. From time to time up to June 1, 1995 and from June 1, 1995 to the present others among the Class Plaintiffs, or persons authorized to act on their behalf, executed the same or similar types of agreements (hereinafter referred to as the "Membership Agreements").
19. The Plaintiff, Bonnie Lee Bruno, did not receive any PCDs or Special Pays paid to members of Samson during the period May 1, 1988 to June 1, 1995, and others among the Class Plaintiffs did not receive any PCDs or Special Pays paid to members of Samson for the same or a lesser or greater period.
20. During the period May 1, 1988 to June 1, 1995, and from June 1, 1995 to the present (collectively, the "Claim Period"), Samson has received and retained distributions of Royalties credited to Samson's capital account, together with interest paid thereon, knowing that the per capita share of the Royalties Samson



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received was calculated based on the number of members recorded on Samson's Band List maintained by the Minister, which included the Class Plaintiffs. The amounts credited to Samson's capital account during the Claim Period representing the proportion Samson received on account of the Class Plaintiffs' contribution as members of Samson, together with interest paid thereon, are hereinafter referred to as the "Capital Contributions".

21. From those same Royalties and interest as well as funds related to them Samson has, during the Claim Period, or parts thereof, paid PCDs and Special Pays to members of Samson but excluded the Class Plaintiffs from distributions of PCDs and Special Pays.
22. By reason of Samson's conduct as alleged in paragraphs 15 – 21 herein, Samson, through its Chief and Council, breached the fiduciary obligations set out in paragraph 10 herein that Samson owes to the Class Plaintiffs in relation to the distribution of PCDs and Special Pays paid from May 1, 1988 onwards to the members of Samson.
23. The Membership Agreements were illegal, void, should be set aside or are otherwise unenforceable, at least to the extent they provide for Samson's enrichment at the expense of the Class Plaintiffs.
24. Samson's conduct in entering into the Membership Agreements was an unconscionable thing for Samson to do to the Class Plaintiffs to whom the said agreements relate. The said agreements concealed from the said Class Plaintiffs the fact that Samson had wrongfully
  - (a) denied them their share of PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson, and
  - (b) enriched itself at their expense by reason of Samson's receipt and retention of the Capital Contributions and funds or assets related to them.
25. By reason of the fiduciary relationship Samson has with its members, including the Class Plaintiffs, and the fiduciary obligations arising therefrom that Samson has owed to the Class Plaintiffs in relation to PCDs and Special Pays paid to members of Samson as set out in paragraph 10 herein, from at least the time Samson entered into the Membership Agreements to the present date Samson was obliged to

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- (a) inform the Class Plaintiffs of Samson's wrongdoing in withholding payment of their share of PCDs and Special Pays distributed from May 1, 1988 onwards to the members of Samson, and to
- (b) account to the Class Plaintiffs for their entitlement to the PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson, together with accumulated interest, and / or for Samson's enrichment at their expense by reason of Samson's receipt and retention of the Capital Contributions and funds or assets related to them,

which obligation Samson has breached and continues to breach.

26. On December 11, 2002 the Federal Court of Canada ruled in *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)*, 2002 FCT 1299, an action in which Samson claimed the moneys held in the Suspense Account, that the Membership Agreements were ineffective and had been obtained in breach of the fiduciary obligations Samson owed to the persons to whom the said agreements relate, including the Class Plaintiffs or some of them. In Reasons for Order delivered from the bench on that date Hugessen J stated:

[8] Briefly, the agreement which I have before me, the one entered into by Andrew Mark Buffalo, is one in which he releases the Band from all claims that he may have in respect of per capita distributions, waives his right to claim per capita distributions from the Band and agrees to indemnify and hold the Band harmless from such claims. (...)

[10] (...) It is clear to me from the recitals in the agreement that at least one of the major important considerations recited in the agreement is the Band's contention that it had the control of its own membership and the clear implication that having such control, it was prepared to admit Mr. Buffalo into the membership in return for his entering into this agreement. But as we now know, the Band did not have the control of its own membership and that consideration, which is in fact the only consideration expressed in the agreement, has clearly failed.

[11] There is yet a third reason. The Band and the Band Council are under an obligation which has sometimes been characterized as being a fiduciary obligation towards Band members to deal with them fairly. In the matter of things like per capita distributions, the Band Council simply must deal equitably with each of the Band members. It could not, to take a simple silly example, direct that all members whose names began with the letters from A to L should receive per capita distributions and those whose names began with letters from M to Z should not. It must deal

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equally, fairly and in accordance with normal fiduciary principles with its members.

The Federal Court of Canada's decision became final when Samson abandoned its appeal from Hugessen J.'s Order on May 3, 2004.

27. Despite the Federal Court of Canada ruling in *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)*, 2002 FCT 1299 made some 12 years ago, which fixed Samson with the knowledge that its failure to pay to the Class Plaintiffs all PCDs and Special Pays distributed from May 1, 1988 onwards to the members of Samson was wrongful, Samson has failed to disclose to the Class Plaintiffs Sameon's said wrongdoing and has failed to account to them in relation to either
- (a) their entitlement to PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson, together with accumulated interest, or
  - (b) Samson's enrichment at their expense by reason of Samson's receipt and retention of the Capital Contributions and funds or assets related to them.
28. From the time Samson submitted a Band Council Resolution to the Minister in or about April 1988 authorizing the payment of PCDs to members of Samson from Samson's revenue account, Samson has accumulated royalty moneys, including the Royalties and the Capital Contributions, in its capital account.
29. The said royalty moneys can be traced. Section 33(3) of the *Indian Oil and Gas Regulations* requires compulsory reporting by the lessee of the royalty payments to the band council and the Executive Director of Indian Oil and Gas Canada, Department of Indian Affairs and Northern Development.
30. Further to a request of Samson, and pursuant to Orders of the Federal Court of Canada dated January 27, October 17, October 31 and December 22, 2005 in Federal Court Action T-2022-89, all moneys in Samson's capital account, including the Royalties, the Capital Contributions and funds or assets related to them, were transferred on February 1, 2006 to the Kisoniyaminaw Heritage Trust ("the Trust") for the benefit of the Samson Nation. The Trust is a private trust, established by a deed of trust made as of November 25, 2005 between Samson and the initial trustees of the Trust. The objects of the Trust are that the trustees manage and invest these moneys on behalf of Samson.
31. Since February 1, 2006, pursuant to the Orders referred to in paragraph 30, and pursuant to an Authorization and Direction to Pay provided by the Trust Board of Trustees, all moneys received into Samson's capital account, including Royalties,

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Capital Contributions, and funds related to them, have been transferred by direct deposit monthly to the Trust.

32. The trustees of the Trust have, since February 1, 2006, held the legal title to the said Royalties, the said Capital Contributions, and funds related to them and, in accordance with the Trust Deed, have managed them and have made various and ongoing income earning investments using them on behalf of and for the benefit of Samson and its members, including the Class Plaintiffs, or some of them.
33. ~~The current Trustees of the Trust are Allan Markin, Alan R. Marchmont, Heather Gere Hickman, J. Wilton Littlechild, Q.C. and Michael Mills (hereinafter referred to as the "Trustees").~~ The Trustees have power, possession or control over the Royalties, the Capital Contributions, and funds or assets related to them into which the Royalties, Capital Contributions and funds related to them have been converted. The Trustees have been made aware of the within claim.
34. The Royalties, Capital Contributions and funds or assets related to them referred to in paragraph 32 and 33 can be traced. The Trust Deed requires that the Trustees see that all necessary books and records of the Trust required by the Deed or by any applicable statute or law be regularly and properly kept, in Canada, as the Trustees direct, including proper books of account with respect to all sums of money received and expended by the Trust, all sales and purchases of securities and other property by the Trust, the assets and liabilities of the Trust, and distributions by the Trust. The Trustees must also publish or cause to be published annually a report of the activities of the Trust including an annual audited report.
35. In Federal Court of Canada Court File No. T-2022-89, Samson claims substitutional damages or other compensation from the Crown in respect of various alleged breaches of obligations the Crown owed Samson in respect of the Crown's control, administration, management of and discretion in regard to the royalties, bonuses, rents and surface use payments the Crown obtained from oil and gas production in relation to the Reserve Lands. Samson claims, *inter alia*, that the Crown breached Her duties in respect to
  - (a) the negotiation, establishment, imposition and prescription of the terms and conditions of oil and gas leases relating to the Reserve Lands, particularly in regard to the royalty rates;
  - (b) the administration, management and supervision of the oil and gas leases relating to the Reserve Lands;

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- (c) ensuring receipt of royalties to which Samson was entitled, monitoring oil and gas production, and properly applying the *Indian Act*, the *IOGA* and Regulations thereunder; and
- (d) protecting and preserving Samson's capital moneys by failing to obtain suitable returns for the trust moneys commensurate with an appropriate level of risk.

Samson claims a quantum of damages or compensation representing the difference between the amounts which the Crown credited to Samson's capital account, together with interest paid thereon, and the amounts which the Crown ought to have credited to Samson's capital account, including the amounts that ought to have been received on account of the Class Plaintiffs' contribution as members of Samson during the Claim Period, together with the returns on those capital moneys that ought to have been realized had the Crown properly discharged Her duties.

#### **CAUSES OF ACTION**

36. Samson has breached its fiduciary relationship with, and Samson's fiduciary, equitable or other obligations towards, the Class Plaintiffs, particulars of which breaches include:
- (a) failing to act toward the Class Plaintiffs with undivided loyalty in the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
  - (b) failing to deal with the Class Plaintiffs in good faith and with full disclosure appropriate to the matter of their entitlement to PCDs and Special Pays distributed from June 29, 1987 onwards to members of Samson;
  - (c) failing to deal with the Class Plaintiffs equitably and even-handedly in comparison to other members of Samson in relation to the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
  - (d) failing to act with due regard to the Class Plaintiffs' best interests in relation to the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson and exploiting the Class Plaintiffs;
  - (e) denying and depriving the Class Plaintiffs of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;

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- (f) unjustly enriching itself by receiving and retaining Royalties calculated on the basis of the per capita contributions of the Class Plaintiffs during the Claim Period while denying them the financial benefits, by way of PCDs and Special Pays, of Band membership during the same period;
  - (g) committing equitable fraud;
  - (h) entering into the Membership Agreements obtained from some or all of the Class Plaintiffs, or persons acting on their behalf;
  - (i) falling to disclose to the Class Plaintiffs, or some of them, Samson's wrongdoing in denying them their share of PCDs and Special Pays distributed from June 29, 1987 onwards to members of Samson; and
  - (j) falling to account to the Class Plaintiffs in relation to
    - (i) their entitlement to PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson together with accumulated interest, and
    - (ii) Samson's enrichment at their expense by reason of Samson's receipt and retention of their Capital Contributions and all funds, assets, benefits or other gains related to them.
37. In the alternative, the Class Plaintiffs waive the tort and plead that they are entitled to recover under restitutionary principles.
38. Samson and the Trustees, subject to the terms of the Trust Deed, are constituted as constructive trustees in favour of the Class Plaintiffs because, among other reasons,
- (a) Samson has been enriched by the receipt and the retention of the Capital Contributions, at least in an amount equal to the PCDs and Special Pays paid from May 1, 1988 onwards to members of Samson that Samson withheld from the Class Plaintiffs, and all funds, assets, benefits or other gains related to them.
  - (b) Samson's enrichment has been at the expense of the Class Plaintiffs who have suffered a corresponding deprivation of such Capital Contributions and funds, assets, benefits or other gains related to them.
  - (c) There is no reason in law or justice for the retention of these benefits by Samson.

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- (d) **Samson engaged in the wrongful acts as described in this claim and since Samson's enrichment resulted from Samson's wrongful acts, there is and there can be no juridical reason justifying Samson's retention of any part of the enrichment.**
- (e) **Samson could not in good conscience retain the Capital Contributions it received while at the same time depriving the Class Plaintiffs of PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson out of the revenues generated from the same capital moneys.**
- (f) **Justice and good conscience requires the imposition of a constructive trust in the Class Plaintiffs' favour on the Capital Contributions, at least in an amount equal to the PCDs and Special Pays distributed from May 1, 1988 onwards to members of Samson that Samson withheld from the Class Plaintiffs, and all funds, assets, benefits or other gains related to them.**
- (g) **The integrity of similar relationships would be undermined if the court did not impose a constructive trust. A constructive trust will:**
  - (i) **serve the prophylactic purpose of appropriating for the benefit of the Class Plaintiffs, to whom Samson owed the fiduciary duties, any benefit or gain obtained or received by Samson in circumstances where there existed a conflict between Samson's fiduciary duty to the Class Plaintiffs and Samson's personal interest in the receipt and retention of the Capital Contributions and funds, assets, benefits or other gains related to them;**
  - (ii) **fulfill the objective of precluding Samson, and or other fiduciaries in other cases, from being swayed by considerations of personal interest, advancing equity's policy to deter fiduciary faithlessness and preserve the integrity of the fiduciary relationship; and also**
  - (iii) **serve the necessary restitutionary purpose of ensuring that Samson does not benefit from its wrongdoing.**
- (h) **A constructive trust should be imposed because it is just to grant the Class Plaintiffs the benefits which flow from the recognition of a right of property, including the fact that no distribution made by the Trustees to beneficiaries of the Trust shall be subject to taxation in the hands of the recipients. The imposition of a constructive trust on the Capital Contributions and funds, assets, benefits or other gains related to them will recognize the Class Plaintiffs' right as the property holders to have changes in the value of the**

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Capital Contributions and funds, assets or benefits related to them accrue to their account rather than to the account of Samson, whose unjust, or unjustified, enrichment would otherwise remain unredressed.

- (i) Samson, through the Trustees, has the capability of tracing the Capital Contributions and funds, assets, benefits or other gains related to them.
  - (ii) There are no factors that would, in respect of the Capital Contributions and funds, assets, benefits or other gains related to them, render the imposition of a constructive trust unjust.
39. The plaintiff pleads that equity and good conscience requires the Defendants to hold the Capital Contributions and funds, assets or property related to them in trust for the Class Plaintiffs and to disgorge same to the Class Plaintiffs.

#### **VENUE**

40. The plaintiff proposes that this action be tried at the Law Courts in the city of Edmonton in the Province of Alberta and estimates that the trial will take less than twenty-five (25) days.

#### **REMEDY SOUGHT**

41. The Plaintiff claims the following relief:
- (a) An Order pursuant to the *Class Proceedings Act*, S.A. 2003, c C-16.5 certifying this action as a class proceeding and appointing her as the representative plaintiff of the Class;
  - (b) A Declaration that Samson breached its fiduciary, equitable or other obligations to the Class Plaintiffs by:
    - (i) failing to act toward the Class Plaintiffs with undivided loyalty in the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
    - (ii) failing to deal with the Class Plaintiffs in good faith and with full disclosure appropriate to the matter of their entitlement to PCDs and Special Pays distributed from June 29, 1987 onwards to members of Samson;
    - (iii) failing to deal with the Class Plaintiffs equitably and even-handedly in comparison to other members of Samson in relation to the



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- distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson;
- (iv) failing to act with due regard to the Class Plaintiffs' best interests in relation to the distribution of PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson and exploiting the Class Plaintiffs;
  - (v) denying and depriving the Class Plaintiffs of PCDs and Special Pays paid to other members of Samson from June 29, 1987 onwards together with accumulated interest thereon;
  - (vi) unjustly enriching itself by receiving and retaining Royalties calculated on the basis of the per capita contributions of the Class Plaintiffs during the Claim Period while denying them the financial benefits, by way of PCDs and Special Pays, of Band membership during the same period;
  - (vii) committing equitable fraud;
  - (viii) entering into the Membership Agreements obtained from some or all of the Class Plaintiffs, or persons acting on their behalf;
  - (ix) failing to disclose to the Class Plaintiffs, or some of them, Samson's wrongdoing towards them in relation to the distribution of PCDs and Special Pays from June 29, 1987 onwards; and
  - (x) failing to account to the Class Plaintiffs in relation to
    - A. their entitlement to PCDs and Special Pays paid from June 29, 1987 onwards to members of Samson together with accumulated interest, and
    - B. Samson's enrichment at their expense by reason of Samson's receipt and retention of their Capital Contributions and all funds, assets, benefits or other gains related to them.
- (c) A declaration that, insofar as a Membership Agreement purports to release and / or indemnify and save harmless the defendants from any liability by them, or either of them, relating to a claim by a Class Plaintiff to whom the Membership Agreement relates in respect of PCDs or Special Pays paid from June 29, 1987 onwards to members of Samson, the Membership Agreement is illegal, void, set aside or is otherwise

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unenforceable, at least to the extent the agreement provides for Samson's enrichment at the expense of the Class Plaintiff to whom the Membership Agreement relates;

- (d) An accounting for all Royalties credited and interest paid to Samson on account of the Class Plaintiffs' membership in Samson during the Claim Period as well as all funds, assets, benefits or other gains Samson obtained that are related to them and an accounting of the extent of Samson's unjust enrichment related to the Capital Contributions;
- (e) An award of damages or compensation in the amount of \$100,000,000.00 or such further or other amount which may be disclosed by an accounting at trial or which responds to the breach of fiduciary, equitable or other obligations of Samson;
- (f) A tracing of all Royalties credited and interest paid to Samson or to any third party for Samson's benefit, or by Samson to any third party, including the Trustees in accordance with the Trust Deed, on account of the Class Plaintiffs' membership in Sameon during the Claim Period;
- (g) Further, or in the alternative, a Declaration that all Royalties credited and interest paid to Samson's capital account attributable to the membership of the Class Plaintiffs in Samson during the Claim Period as well as all funds, assets, benefits or other gains Samson obtained that are related to them, are subject to and held on a constructive trust and / or equitable lien for the benefit of the Class Plaintiffs and are subject to immediate disgorgement by Samson and restitution to the Class Plaintiffs;
- (h) Further, a Declaration that the said Royalties and interest paid thereon, and any funds, assets, benefits and other gains Samson obtained that are related to them held by the Trustees of the Kisoniyaminaw Heritage Trust are held in trust by the Trustees of the Kisoniyaminaw Heritage Trust for the Class Plaintiffs' benefit and use;
- (i) Punitive damages against Samson for breach of its trust, fiduciary, equitable and other obligations, particularly its equitable fraud;
- (j) Compound interest at the rate of return applied by the Minister to Samson Minors' Trust accounts on all of the Royalties credited and interest paid to Samson's capital account attributable to the membership of the Class Plaintiffs in Samson during the Claim Period or, in the alternative, if a

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higher rate, that obtained by Samson on its investments of the said Royalties and interest paid thereon;

- (k) A declaration that, subject to the terms of the Trust Deed, all funds, assets, benefits and other gains Samson receives or that any third party receives for Samson's benefit in consideration of Samson's claims in Federal Court of Canada Court File No. T-2022-89 alleging impairment of the value of the Capital Contributions are subject to and held on a constructive trust and / or equitable lien for the benefit of the Class Plaintiffs and are subject to immediate disgorgement by Samson and restitution to the Class Plaintiffs;
- (l) An order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (m) Costs of this action on as substantial indemnity basis or in an amount that provides full indemnity plus the costs of distribution of an award under s. 33(6) of the *Class Proceedings Act*, S.A. 2003, c C-16.5 including the costs of notice associated with the distribution and the fees payable to a person administering the distribution, plus applicable taxes; and
- (n) Such further and other relief as may be requested and as this Honourable Court deems to be just.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s)' address for service.

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**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

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Inv. 3225

Form 11  
(Rule 3.31)

**COURT FILE NUMBER** 1403 17729 ✓

**COURT** COURT OF QUEEN'S BENCH OF ALBERTA

**JUDICIAL CENTRE** EDMONTON

**PLAINTIFF(S)** BONNIE LEE BRUNO

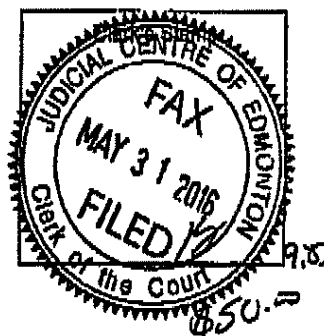
**DEFENDANT(S)** CHIEF and COUNCIL of the SAMSON CREE NATION and the SAMSON CREE NATION

**DOCUMENT** STATEMENT OF DEFENCE

**PARTY FILING THIS DOCUMENT** CHIEF and COUNCIL of the SAMSON CREE NATION and the SAMSON CREE NATION

**ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT** Rae and Company  
900, 1000 5 Ave SW  
Calgary, AB T2P 4V1  
Ph: (403) 264-8389  
Fx: (403) 264-8389

ATTN: W. Tibor Osvath  
File No.: 4244



**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

**Samson Cree Nation and the Reserve Lands of Samson Cree Nation**

1. Except where hereinafter expressly admitted, the Defendants, Chief and Council of the Samson Cree Nation and the Samson Cree Nation (collectively, "Samson Nation"), deny each and every allegation made against them in the Amended Statement of Claim ("ASC") and put the Plaintiff and each member of the proposed Class Plaintiffs to the strict proof thereof.
2. Samson Nation denies that this action should be certified as a class action pursuant to the *Class Proceedings Act*, SA 2003, c G-16.5.

3. Samson Nation has no knowledge of the Plaintiff's capacity or authority to act as the representative of and on behalf of the members of the proposed Class Plaintiffs.
4. The Samson Nation is located within the borders of the Province of Alberta and had and continues to have ownership, Aboriginal title and Aboriginal rights to a large part of the area, including the natural resources, contemplated by Treaty No. 6 of 1876 ("Treaty No. 6") and is a "band" within the meaning of section 2 of the *Indian Act*, RSC 1985, c 1-5, as amended (the "*Indian Act*").
5. The ancestors of the Samson Nation members and Samson Nation adhered to Treaty No. 6 on or about 1876. Samson Nation is a "band" and the members of the Samson Nation are "Indians" within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended.
6. The Chief and Council of Samson Nation are the duly elected governing body of Samson Nation.
7. Samson Nation and its members, as determined by Samson Nation or the Chief and Council of Samson Nation, or either of them, are "Indians" within the meaning of section 91 (24) of the *Constitution Act*, 1867, the Imperial Order-in-Council of June 23, 1870, the *Constitution Act*, 1930 and the *Constitution Act*, 1982 and, further, are Aboriginal peoples of Canada within the meaning of section 35 of the *Constitution Act*, 1982 and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*.
8. Pursuant to the Aboriginal rights of Samson Nation and pursuant to Treaty No. 6, Indian Reserve Nos. 137 and 137A, also part of the traditional lands of Samson Nation, were set apart by Her Majesty the Queen in Right of Canada ("Her Majesty") in trust for the benefit of Samson Nation members, and, Indian Reserve No. 138A, also part of the traditional lands of Samson Nation, was set apart by Her Majesty in trust for the benefit of Samson Nation members and other "Indians of the Hobbema Agency" (collectively the "Reserve Lands"). At all relevant times Indian Reserve Nos. 137 and 137A has been held by Her Majesty for the exclusive use and benefit of and in trust for Samson Nation and Indian Reserve No. 138A has been held by Her Majesty for the exclusive use and benefit of and in trust for Samson Nation and the other "Indians of the Hobbema Agency".
9. Under reserve of their other Aboriginal and treaty rights, Samson Nation has Aboriginal and treaty rights to at least the lands and natural resources of the Reserve Lands. Further,

Samson Nation has an undivided interest to Indian Reserve No. 138A, including the natural resources thereof, with the Louis Bull and Ermineau Bands and perhaps also with the Montana Band, which Bands are the other "Indians of the Hobbema Agency" (collectively the "Hobbema Bands" or the "Maskwacis Bands").

10. The Reserve Lands are "Lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867*.
11. At all relevant times, Samson Nation has been and is the beneficial owner of the Reserve Lands, or in the alternative, has a *sui generis* interest in the Reserve Lands. Further, Samson Nation's interest in the Reserve Lands is a communal interest that may not be alienated except by Her Majesty, with Samson Nation's consent. Neither the Plaintiff nor any member of the proposed Class Plaintiffs has or is entitled to any right or interest to any portion of the Reserve Lands, including the natural resources thereof or any royalties, moneys or payments derived from the production of the natural resources, that is superior to that of any other member of Samson Nation.
12. At all relevant times, there exists a fiduciary relationship that is trust-like in nature with the common law duties of a trustee between Samson Nation and Her Majesty in respect to the Reserve Lands and any royalties, moneys or payments therefrom, with Samson Nation as the beneficiary and Her Majesty as trustee or fiduciary. Her Majesty owes the Samson Nation duties pursuant to the *Constitution Act, 1867*, including section 91(24) and section 132, the *Constitution Act, 1930*, including section 1, the *Constitution Act, 1982*, including section 25 and the *Canadian Charter of Rights and Freedoms*, including section 35 (the "*Constitution*").

#### **Bonnie Lee Bruno and the Proposed Class Plaintiffs**

13. Samson Nation admits that on or about June 29, 1987, Her Majesty unilaterally, without prior consultation and without Samson Nation's consent or approval, purported to enter the Plaintiff's name, Bonnie Lee Bruno, onto the Samson Nation "Band List", as that term is defined by the *Indian Act*, which Band List was maintained by the Minister of Indian Affairs and Northern Development (the "Minister"), as the department was then designated. The Plaintiff's name was purported to be entered onto the Samson Nation Band List pursuant to the provisions of *An Act to Amend the Indian Act*, RSC 1985, c.32 (1st Suppl. ("Bill C-31").

14. Samson Nation admits that Samson Nation has, from time to time, through the exercise of their inherent right of self-determination and self-government and their constitutionally protected Aboriginal and treaty rights, which include Samson Nation's right to determine its own membership, maintained its own membership lists that are independent of the Samson Nation Band List created by and maintained by the Minister.
15. Pursuant to Samson Nation's inherent right to determine its own membership, citizenship and institutions and to govern itself in accordance with Samson Nation's customary laws and traditions, Samson Nation, on or about June 1, 1995, recognized and accepted the Plaintiff as a member of Samson Nation. The Plaintiff, since that time has been entitled to and continues to be entitled to exercise and receive all rights, privileges and benefits, both direct and indirect, that all members of Samson Nation may be entitled to.
16. Similar to the Plaintiff, between the period of time from June 1987 to June 1995, other individuals were also purported to have been unilaterally, and without consultation with Samson Nation or the consent of Samson Nation, added to the Samson Nation Band List maintained by the Minister.
17. Pursuant to Samson Nation's inherent right to determine its own membership, citizenship and institutions and to govern itself in accordance with Samson Nation's customary laws and traditions, Samson Nation, on or about June 1, 1995, recognized and accepted these other individuals as members of Samson Nation. All of these individuals, since that time, have been entitled to and continue to be entitled to exercise and receive all rights, privileges and benefits, both direct and indirect, that all members of Samson Nation may be entitled to.

#### **Aboriginal and Treaty Rights**

18. In answer to the ASC as a whole, Samson Nation states:
  - (a) Prior to and at the time that Samson Nation adhered to Treaty No. 6, Samson Nation existed as an organized, independent, and self-governing society and Nation.
  - (b) Samson Nation, *inter alia*, governed its membership by its own laws, within its own territory and in accordance with its own distinct social organization, cultures, customs, languages, practices and traditions, the existence of which was recognized and



affirmed by Her Majesty when Samson Nation adhered to Treaty No. 6 and in the subsequent setting aside of the Reserve Lands for Samson Nation.

- (c) Treaty No.6 was and is a sacred pact between Samson Nation and Her Majesty, with the Creator as a participant. The treaty relationship with Her Majesty was established in a particular historical context, including relationships prior to 1876 between the ancestors of Samson Nation and non-Aboriginal society. Treaty No.6 is one of the sources of Her Majesty's trust-like fiduciary obligations to Samson Nation.
- (d) In addition to the formalized written terms of Treaty No. 6, it was preceded by various negotiations, representations, commitments, and promises (the "Oral Promises") by Her Majesty's representatives. In addition to the written text of Treaty No. 6, the Oral Promises were relied upon by Samson Nation's ancestors and have been relied upon by Samson Nation to the present.
- (e) Pursuant to the Oral Promises and written terms of Treaty No. 6, Her Majesty promised, *inter alia*, to Samson Nation that its traditional way of life would not be interfered with and that it would retain its rights as a Nation, including its right to self-determination and self-government, which includes the right to determine its own membership.
- (f) Along with the written terms, the Oral Promises are legally binding and form part of the legal obligations owed by Her Majesty to Samson Nation.
- (g) In addition to the foregoing, Samson Nation's right to self-determination and self-government includes the right to determine its own membership, which is a custom, practice, or tradition that is central and integral to their distinctive culture and Samson Nation's right to self-determination or self-government. As such, it is an Aboriginal right recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- (h) Prior to and since Samson Nation adhered to Treaty No. 6, Samson Nation has retained legal jurisdiction and sovereignty over matters of concern to the life, welfare, culture and identity of Samson Nation. Samson Nation's Aboriginal and treaty right to self-determination and self-government, including the right to determine its own membership, has never been extinguished, but rather has been recognized and

affirmed by section 35(1) of the *Constitution Act, 1982* and Article 33 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

- (i) Any law, statute, or regulation, including the *Indian Act*, which unjustifiably infringes upon Samson Nation's Aboriginal and treaty rights is of no force or effect.

### **Bill C-31**

18. In response to paragraphs 11 to 12 of the ASC, paragraphs 14(a), (b) and (c) of the Response to the Demand for Particulars and in response to the ASC as a whole, Samson Nation states that Her Majesty under Bill C-31 unilaterally and in contravention of Samson Nation's Aboriginal and treaty rights imposed legislative changes regarding band membership on Aboriginal peoples, including Samson Nation.

20. Bill C-31 provided, *inter alia*, for the following:

- (a) A band list was to contain the name of every person who was a member of that band and was to be maintained by Her Majesty, as represented by the Minister;
- (b) The Minister was to have exclusive authority to determine who was and was not a member of a band;
- (c) Commencing on April 17, 1985, certain additional persons became entitled to obtain Indian status and to have their names entered in a band list maintained by the Minister who were not, prior to that date, entitled to be registered on the band list;
- (d) Commencing on June 28, 1987, further additional persons also became entitled to obtain Indian status who were not entitled to have their names entered onto band lists, prior to April 17, 1985;
- (e) Subject to the operation of the other provisions of Bill C-31, a band could assume control of its own membership, if a majority of the electors of the band consented to its so doing and consented to the band membership rules; and,
- (f) Membership rules established by a band could not disqualify for membership in a band any person who had the right to have their name entered in a band list immediately prior to the time the rules were established by reason only of a situation that existed or an action that was taken before the rules came into force.

**21. Samson Nation states that Her Majesty breached Her Majesty's trust-like fiduciary obligations to Aboriginal peoples, including Samson Nation, and, *inter alia*:**

- (a) Did not study and properly consider the impact of Bill C-31;**
- (b) Failed to recognize or ignored the negative impacts, chaos and turmoil that would result and did result;**
- (c) Failed to properly assist Samson Nation with the proposed transition;**
- (d) Failed to provide sufficient information, additional lands, additional housing, additional funding and additional programs and services to Samson Nation to accommodate any additional persons that the Minister unilaterally wished to add to Samson Nation's Band List;**
- (e) Failed to consider or ignored the submissions and views of First Nations, including Samson Nation;**
- (f) Misrepresented the impact of Bill C-31; and,**
- (g) Purported to add members to Samson Nation through a process that: ignored Samson Nation's customary laws, traditions, practices and culture; excluded Samson Nation from participating in or providing input into membership decisions; and, allowed the Minister to add members without the consent of Samson Nation.**

**22. Bill C-31 was unilaterally imposed without consulting the first nations to which the legislation would apply, ignored the adverse impacts that would result, and unjustifiably interfered with and infringed Samson Nation's Aboriginal and treaty rights to self-determination, self-government, and particularly the right to determine its own membership in accordance with its customary laws and traditions.**

**23. Samson Nation, in accordance with section 10 of the *Indian Act*, submitted a membership code to the Minister for the purpose of ensuring, *inter alia*, that Samson Nation would not, through the unlawful interference by Bill C-31, or otherwise, be prevented from exercising their Aboriginal and treaty rights to self-determination and self-government and otherwise to govern Samson Nation in accordance with its customary laws and practices.**

24. The Minister, however, in contravention of Samson Nation's Aboriginal and treaty rights, refused to approve the aforementioned membership code.
25. In contravention of section 35(1) of the *Constitution Act, 1982* and Article 39 of the *United Nations Declaration on the Rights of Indigenous Peoples*, the Minister unilaterally and unlawfully asserted that it had full and exclusive control over Samson Nation's Band List.
26. Notwithstanding the impugned provisions of Bill C-31 and the actions by the Minister, it has been and remains the position of Samson Nation that it has the Aboriginal and treaty rights to self-determination and self-government, and that Samson Nation has exercised and continues to exercise its authority and inherent right to determine its own membership and to govern in accordance with Samson Nation's customary laws and traditions.
27. Her Majesty, has no authority or entitlement to make unilateral, or any, decisions regarding the membership, governance, laws, customs and traditions of Samson Nation or to otherwise interfere unlawfully with the Aboriginal and treaty rights of Samson Nation, especially Samson Nation's rights to determine its own membership, which is one of the most central of First Nation rights protected by section 35 of the *Constitution Act, 1982*.
28. Samson Nation pleads and relies upon Sections 25 of the *Charter* and Section 35 of the *Constitution Act, 1982* and states that their rights pursuant to those sections exist and are guaranteed notwithstanding the operation of any other provision within the *Charter*.
29. Samson Nation states that the provisions of Bill C-31 are of no force or effect by operation of section 52(1) of the *Constitution Act, 1982* to the extent that they unjustifiably infringe upon Samson Nation's Aboriginal and treaty right to self-determination and self-government.
30. Samson Nation was and is not obligated to consider or adhere to the impugned terms of Bill C-31.
31. In further response to paragraphs 14 (a), (b) and (c) of the Response to the Demand for Particulars, Samson Nation states that the resolution of the constitutional validity and applicability of Bill C-31 remains an extant and live issue and that the Courts in Canada, including in the decisions cited in the Response to the Demand for Particulars, have not yet had the opportunity to properly address the merits of Samson Nation's constitutional position.

32. In response to paragraphs 3 and 11 of the ASC, neither the Plaintiff nor any of the members of the proposed Class Plaintiffs may become members of Samson Nation in accordance with Samson Nation's customs and traditions solely by virtue of being added to the Minister's Band List via the impugned provisions of Bill C-31.
33. Samson Nation states and asserts that the Plaintiff and the members of the proposed Class Plaintiffs only became members of Samson Nation on or about June 1, 1995 when, in accordance with Samson Nation's inherent right to self-determination and self-government, and its customary laws and practices, Samson Nation recognized and admitted these individuals as members of Samson Nation.

#### **Royalties Reserved for the Benefit of Samson Nation on Oil and Gas Produced From the Reserve Lands**

34. Her Majesty obtained from Samson Nation and other Indians of the Hobbema Agency a surrender to Her Majesty of their rights, title and interest in respect to certain minerals located on the Reserve Lands (the "Surrenders") "in trust to grant in respect of such land the right to prospect for, mine, recover and take away any or all minerals contained therein, to such person or persons, and upon such terms and conditions as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people".
35. Her Majesty accepted the Surrenders on or about June 28, 1948 by Order in Council P.C. 2862-1948 pursuant to Treaty No. 8, the *Indian Act*, R.S.C. 1927, c. 98 s. 51 (the "*Indian Act*") and the *Regulations for the Prospecting for and the Disposal of Petroleum and Natural Gas on Indian Reserves and Indian Lands*, P.C. 5315.
36. At all relevant times, pursuant to Her Majesty's fiduciary duties and obligations that are trust-like in nature and include the common law duties of a trustee and Her Majesty's duties and obligations as agreed to in Treaty No. 8 and pursuant to the Surrenders and as legislated by the *Indian Act*, as amended, and the regulations thereunder, as amended, and the *Indian Oil and Gas Act*, R.S.C. 1985, c. 1-7, as amended, (the "*Indian Oil and Gas Act*") and the regulations thereunder, as amended, the natural resources of the Reserve Lands were under the exclusive power, authority and control of Her Majesty to administer and manage.

37. From time to time Her Majesty has purported to have granted various petroleum and natural gas leases, renewals and continuances, in the name of Her Majesty as lessor, in relation to the Reserve Lands pursuant to Treaty No. 6, the Surrenders, the *Indian Act*, as amended, the *Indian Oil and Gas Act*, as amended, and the regulations passed thereunder, as amended. Samson Nation has, *inter alia*, denied the validity and enforceability of the said leases, renewals and continuances, which claims are the subject matter of other legal proceedings. Such proceedings include Federal Court Action No. T-2022-89 and Alberta Court of Queen's Bench Action No. 9701-07434.
38. Pursuant to the terms of Treaty No. 6, the purported leases, the *Indian Act*, the *Indian Oil and Gas Act* and the regulations passed thereunder, as amended from time to time, there is reserved to Her Majesty, in trust for the benefit of Samson Nation, a royalty on all oil and gas obtained from or produced from the Reserve Lands (the "Royalties"). Samson Nation has alleged that Her Majesty has breached Her Majesty's trust-like fiduciary or equitable and other obligations and duties to Samson Nation, or in the alternative, that Her Majesty was negligent in respect to the administration, management and control of the production of oil and gas and the calculation, verification and collection of the Royalties reserved to Her Majesty on behalf of Samson Nation, which claims are the subject matter of other legal proceedings. Such proceedings include Federal Court Action No. T-2022-89 and Alberta Court of Queen's Bench Action No. 9701-07434.
39. One of the producers of oil and gas on Indian Reserve No. 138A, Chevron Canada Resources ("Chevron"), has also alleged that during the years 1991 to 1995, which years are material to this Action, Chevron overpaid the Royalties due and owing to Her Majesty on behalf of Samson Nation and the other three Maskwacis Bands. Chevron has alleged that it has overpaid Royalties by approximately \$9,700,000 during these years and seeks damages against the Maskwacis Bands and Her Majesty. Through Third Party Notices Her Majesty has also sought to be indemnified by the Maskwacis Bands for any amounts payable to Chevron by Her Majesty in relation to this claim. These proceedings are Alberta Court of Queen's Bench Action No. 9701-07434.

#### **Samson Nation's Capital and Revenue Accounts in the Consolidated Revenue Fund**

40. Pursuant to the terms of the *Indian Oil and Gas Act*, the *Indian Act*, the *Financial Administration Act*, R.S.C. 1985, c. F-11 and the regulations thereunder ("Financial

- Administration Act*), any Royalties, bonuses or other payments derived from the production of oil and gas resources from the Reserve Lands that are collected or received by Her Majesty are under the exclusive power, authority and control of Her Majesty to administer and manage.
41. Any Royalties, bonuses or other payments derived from the production of the oil and gas resources from the Reserve Lands are "Indian moneys" by virtue of sections 2 and 62 of the *Indian Act*.
  42. Pursuant to the terms of the *Indian Oil and Gas Act*, the *Indian Act* and the *Financial Administration Act* these Royalties, bonuses or other payments are deposited by Her Majesty into the Consolidated Revenue Fund for the benefit of Samson Nation. However, these Royalties, bonuses or other payments are co-mingled with Her Majesty's own funds within the Consolidated Revenue Fund and are neither segregated nor deposited into separate accounts. Further, Her Majesty, borrows, uses and expends these Royalties, bonuses or other payments for Her Majesty's own use and benefit until such time that these Royalties, bonuses and other payments are transferred or paid to Samson Nation by Her Majesty.
  43. Her Majesty keeps notional accounts for those first nations for whom moneys have been deposited into the Consolidated Revenue Fund, such as Samson Nation, which notional accounts identify and track amounts collected or received by Her Majesty on behalf of a specific first nation, as well as those amounts that Her Majesty has authorized to be paid or released to a first nation.
  44. Her Majesty maintains a notional Capital Account and Revenue Account on behalf of the Maskwacis Bands as well as a notional Capital Account and Revenue Account on behalf of Samson Nation. Her Majesty also purports to keep a notional "suspense account" on behalf of each of the Maskwacis Bands and Samson Nation, together with any third party claimant to such account.
  45. Royalties, bonuses or other payments derived from oil and gas production from Indian Reserve No. 138A that are collected and received by Her Majesty are credited, by Her Majesty, to the Maskwacis Bands Capital Account.

46. In response to paragraph 7 of the ASC, each of the four Maskwacis Bands is a separate and independent Indian band and each such band is responsible for and obliged to provide funding to its members for, including but not limited to, matters such as the provision of housing, education, health and other such programs and services. As a result, Her Majesty has historically apportioned the Royalties, bonuses and other payments collected or received from Indian Reserve No. 138A to each of the four Maskwacis Bands proportionally based on the respective population of the four Maskwacis Bands.
47. Samson Nation denies that it requested that these funds be distributed based on population. Samson Nation admits that Samson Nation and the other three Maskwacis Bands formally consented to a population based distribution, which was already the ongoing practice of Her Majesty, by a Band Council Resolution dated July 23, 1976.
48. Samson Nation also states that at all material times it was Her Majesty that was responsible for the proper determination and calculation of the populations of each of the Maskwacis Bands and for calculating and crediting the correct amount of Royalties, bonuses and other payments to Samson Nation's Capital Account. Further, Samson Nation has relied on Her Majesty's calculation of the Royalties, bonuses and other payments credited to Samson Nation's Capital Account and has made Samson Nation's financial decisions, and altered its position, in reliance of and based on Her Majesty's calculations and representation that all amounts credited to Samson Nation's Capital Accounts were not only accurate, but were also available for Samson Nation's use pursuant to the requirements of the *Indian Act* and the *Financial Administration Act*.
49. Further, Samson Nation states that the methodology used by Her Majesty to distribute funds from the Maskwacis Capital Account to Samson Nation's Capital Account was information that was generally known to all, or most, members of the Maskwacis Bands and was information that was readily available from either Her Majesty or Samson Nation if the Plaintiff, or any member of the proposed Class Plaintiffs, by exercising reasonable diligence, were to have made inquiries of either Samson Nation or Her Majesty.
50. Samson Nation specifically denies that Samson Nation concealed, let alone fraudulently concealed, the manner in which Royalties, bonuses and other payments derived from the production of oil and gas from Indian Reserve No. 138A were calculated by Her Majesty



and credited to Samson Nation's Capital Account and Samson Nation put the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.

51. Any inability on the part of the Plaintiff, or any member of the proposed Class Plaintiffs, to obtain this information arises from their own failure to make reasonable inquiries.
52. Further, two of the Maskwacis Bands, the Louis Bull First Nation and the Montana First Nation, have commenced legal proceedings against Her Majesty with respect to the manner in which Her Majesty credited the Royalties, bonuses and other payments derived from the production of oil and gas from Indian Reserve No. 138A to each of the Maskwacis Bands. In Federal Court Action Nos. T-2953-93 and T-2954-93 each of the Louis Bull First Nation and Montana First Nation allege, which allegations Samson Nation specifically deny, that the Royalties, bonuses and other payments derived from Indian Reserve No. 138A should have been apportioned and split equally between each of the four Maskwacis Bands and not proportionally on the basis of population. In those actions, Her Majesty is seeking to be indemnified by Samson Nation for any alleged errors or overpayments of Royalties, bonuses and other payments that Louis Bull First Nation and Montana Nation allege were incorrectly credited to Samson Nation's Capital Account.
53. Pursuant to the terms of the *Indian Act* and the *Financial Administration Act*, interest earned on Indian moneys held in Samson Nation's Capital Account is credited to Samson Nation's Revenue Account.
54. Samson Nation's, and the members of Samson Nation, interest in the Indian moneys credited to Samson Nation's Capital Account and Revenue Account is a communal interest.

#### **Expenditures of Capital and Revenue Moneys**

55. Pursuant to the requirements of the *Indian Act* and the *Financial Administration Act*, and the regulations passed under each of these acts, Samson Nation is entitled to access, expend and use Indian moneys credited to Samson Nation's Capital Account and Revenue Account.
56. Pursuant to section 64(1) of the *Indian Act*, Her Majesty, with the consent of Samson Nation may authorize and direct the expenditure of money credited to Samson Nation's Capital Account for those purposes enumerated in section 64(1).

57. Her Majesty had and has the exclusive authority and discretion to determine whether any such expenditure of money credited to Samson Nation's Capital Account was for the use and benefit of Samson Nation and the members of Samson Nation.
58. Any requests by Samson Nation to expend money from the Capital Account had to be authorized by a Band Council Resolution and Samson Nation was also required to provide any further and additional supporting documents, such as proposed budgets, which Her Majesty may request or demand from time to time. Her Majesty assessed the requests and if Her Majesty determined that the expenditures were for the use and benefit of Samson Nation and the members of Samson Nation, then Her Majesty would exercise Her Majesty's discretion and approve the expenditures.
59. Samson Nation had a continuing obligation to expend such Indian money's only for those purposes approved by Her Majesty and to further provide to Her Majesty and to the members of Samson Nation audited financial statements, which financial statements Her Majesty reviewed and approved.
60. Samson Nation states that during the material times, Her Majesty approved and exercised Her Majesty's discretion to consent to all expenditures from Samson Nation's Capital Account. Samson Nation has relied and altered its position based on such consents and approvals with respect to all money's that Samson Nation has expended from Samson Nation's Capital Account.
61. Consequently, and in answer to the whole of the ASC, any expenditures of moneys credited to Samson Nation's Capital Account, during the material times, were lawfully authorized expenditures.
62. Further, Her Majesty's review of whether any such expenditures was for the use and benefit of Samson Nation and the members of Samson Nation would have included those members of Samson Nation that Her Majesty unilaterally added to the Samson Band List. Consequently, any loss, injury, deprivation or damage, all of which is expressly denied, that may have resulted to the Plaintiff, and members of the proposed Class Plaintiffs, through Samson Nation's expenditure of money credited to the Capital Account is a result of Her Majesty's breach of any obligations owed by Her Majesty to the Plaintiff, and members of the proposed Class Plaintiffs, and not a result of any breach of Samson Nation's obligations.

63. Pursuant to section 69 of the *Indian Act*, in recognition of Samson Nation's inherent Aboriginal and treaty right to self-determination and self-government, Her Majesty authorized Samson Nation to control, manage and expend money credited to Samson Nation's Revenue Account.
64. Pursuant to section 69, Samson Nation had a greater discretion to determine how and for what purposes money credited to the Revenue Account would be expended and whether such expenditures would further the progress and welfare of Samson Nation and the members of Samson Nation.
65. However, during the material times, Her Majesty retained and continued to exercise Her Majesty's discretion to approve and authorize all proposed expenditures from Samson Nation's Revenue Account under section 69 of the *Indian Act*.
66. Any requests by Samson Nation to expend money from the Revenue Account had to be authorized by a Band Council Resolution and any further and additional supporting documents, including proposed budgets, which Her Majesty may request or demand. Her Majesty assessed the request, and if it was determined that the proposed expenditure would further the progress and welfare of Samson Nation and the members of Samson Nation, then Her Majesty would exercise Her Majesty's discretion to approve the expenditure.
67. Further, Her Majesty retained the discretion to require that any expenditure under section 69 be approved by way of a referendum of the members of Samson Nation.
68. If Her Majesty determined that Samson Nation was not exercising its authority properly and for the progress and welfare of Samson Nation and the members of Samson Nation, then Her Majesty had the authority to revoke Samson Nation's section 69 authority.
69. Samson Nation had a continuing obligation to expend such Indian money's only for those purposes approved by Her Majesty and to provide Her Majesty, and to the members of Samson Nation, audited financial statements, which financial statements Her Majesty reviewed and approved.
70. Samson Nation states that during the material times, Her Majesty approved and exercised Her Majesty's discretion to consent to all expenditures from Samson Nation's Revenue Account. Samson Nation has relied and altered its position based on such consents and

approvals with respect to all money's that Samson Nation has expended from Samson Nation's Revenue Account.

71. Consequently, and in answer to the whole of the ASC, any expenditures of moneys credited to Samson Nation's Revenue Account during the material times were all lawfully authorized expenditures.
72. Further, Her Majesty's assessment of whether any such expenditures would further the progress and welfare of Samson Nation and the members of Samson Nation, would have included those members of Samson Nation that Her Majesty unilaterally added to the Samson Band List. As a result, any loss, injury, deprivation or damage, all of which is expressly denied, that may have resulted to the Plaintiff, and members of the proposed Class Plaintiffs, through Samson Nation's expenditure of money credited to the Revenue Account is a result of Her Majesty's breach of any obligations owed by Her Majesty to the Plaintiff, and members of the proposed Class Plaintiffs, and not the result of any breach of Samson Nation's obligations.

#### **Samson Nation's Expenditure of Capital and Revenue Moneys During the Material Times**

73. Samson Nation denies the allegations in paragraph 16 of the ASC and states that on or about 1988 Samson Nation determined that it was prudent and in the best interests of the then current members of Samson Nation and all future generations and members of Samson Nation, which subsequently included the Plaintiff and members of the proposed Class Plaintiffs who were recognized as members of Samson Nation on or about June 1, 1995, to preserve the moneys that were then credited to Samson Nation's Capital Account, and, if possible, to increase the value of the moneys credited to Samson Nation's Capital Account.
74. Since that time Samson Nation attempted to restrict its annual expenditures to the value of the money credited to Samson Nation's Revenue Account for that particular year. Further, any expenditure of money credited to Samson Nation's Capital Account, if such expenditure became necessary or desirable, would be limited to any additions to the Capital Account without encroaching on the existing moneys already credited to Samson Nation's Capital Account.

75. Samson Nation further states that this was also the policy of Her Majesty with respect to approvals of expenditures from the capital and revenue accounts of Samson Nation and other oil and gas producing First Nations located within the province of Alberta.
76. During the material years in question, 1988 to 1995, Samson Nation's budgetary decisions and budgetary expenditures, including any payments made by Samson Cree Nation to any recognized members of Samson Nation, were based on and dependent upon actual or estimated amounts that were credited or were anticipated to be credited to Samson Nation's Revenue Account and were neither dependent upon nor related to any additions to Samson Nation's Capital Account
77. Any loss, injury, deprivation or damage, all of which is expressly denied, that may have resulted to the Plaintiff, or any member of the proposed Class Plaintiffs, as a consequence of payments made by Samson Cree Nation to any recognized members of Samson Nation, were neither related, connected nor dependent upon any additional Royalties, bonuses or other payments credited to Samson Nation's Capital Account, and, the Plaintiff, and members of the proposed Class Plaintiffs, have suffered no losses, injuries, deprivation or damages as a result of any such amounts having been credited to Samson Nation's Capital Account.
78. In answer to the ASC as a whole, Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has any claim, whether in law or in equity, to any portion or amount of Samson Nation's Capital Account, or any portion or amount of the funds held in trust on behalf of Samson Nation in the Kiasonyaminaw Heritage Trust, that is either superior to or in priority to the communal property interest of all other members of Samson Nation.
79. Further, or in the alternative, pursuant to section 64 of the *Indian Act*, during the material time in question, through the exercise of Her Majesty's discretion, Samson Nation was specifically authorized to, and did, expend all or almost all of the Royalties, bonuses and other payments derived from oil and gas production from Indian Reserve No. 138A that was credited to Samson Nation's Capital Account, by Her Majesty, during the years 1988 to 1995.
80. Her Majesty approved all such expenditures on the basis that such expenditures were for the use and benefit of Samson Nation and the members of Samson Nation.

81. Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has suffered any alleged loss, injury, deprivation or damage, all of which is expressly denied, with respect to approved expenditures by Samson Nation pursuant to section 64 of the *Indian Act* during the material times.
82. Samson Nation states that the Plaintiff, and other members of the proposed Class Plaintiffs, have benefited, since at least June 1, 1995, if not earlier, and up to the present, whether such benefits are direct or indirect, from the expenditure of moneys from Samson Nation's Capital Account during the years 1988 to 1995.
83. Examples of expenditures made pursuant to section 64(1) of the *Indian Act*, include but are not limited to:
- (a) In or about 1990, \$3,500,000 was contributed to Samson Nation's Education Trust Fund, which trust fund has grown and continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
  - (b) In or about 1991, \$2,700,000 was contributed to the Maskwachee Cultural College Trust Fund, which trust fund has grown and continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
  - (c) In or about 1992, \$2,510,275.38 was expended to construct housing for members of Samson Cree Nation which housing continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
  - (d) In or about 1992, \$5,000,000 was contributed to Samson Nation's Education Trust Fund, which trust fund has grown and continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs;
  - (e) In or about 1992, \$5,784,500 was expended on the construction of a school for members of Samson Nation which school continues to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs; and,

- (f) In or about 1994, \$4,350,483 was expended on the Fire Department, housing, public works, the Cultural Centre, the Trades Centre and community buildings, which assets and programs continue to directly or indirectly assist and benefit all members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs.
84. In answer to the whole of the ASC, Samson Nation states that the Plaintiff, and members of the proposed Class Plaintiffs, have either directly or indirectly, benefited, and continue to benefit, from expenditures in relation to Royalties, bonuses and other payments derived from oil and gas production from Indian Reserve No. 138A during the years 1988 to 1995 and Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has any claim, whether in law or in equity, to any portion or amount of Samson Nation's Capital Account, or any portion or amount of the funds held in trust on behalf of Samson Nation in the Kisoniyaminaw Heritage Trust, that is either superior to or in priority to the communal property interest of all other members of Samson Nation.
85. Further, or in the further alternative, if Samson Nation's Capital Account or the Kisoniyaminaw Heritage Trust has increased in value as a consequence of Her Majesty including the Plaintiff, or any members of the proposed Class Plaintiffs, in Her Majesty's calculation of the Royalties, bonuses and other payments derived from oil and gas production from Indian Reserve No. 138A during the years 1988 to 1995, then the Plaintiff, and members of the proposed Class Plaintiffs, have benefited and continue to benefit, directly or indirectly, from any such increase in value and Samson Nation states that neither the Plaintiff, nor any member of the proposed Class Plaintiffs, has any claim, whether in law or in equity, to any portion or amount of Samson Nation's Capital Account, or any portion or amount of the funds held in trust on behalf of Samson Nation in the Kisoniyaminaw Heritage Trust, that is either superior to or in priority to the communal property interest of all other members of Samson Nation.
86. The amounts and nature of any expenditures by Samson Nation of money's credited to Samson Nation's Capital Account or Revenue Account was information that was readily available in the audited financial statements of Samson Nation, that were available from either Samson Nation or Her Majesty if the Plaintiff, or any member of the proposed Class Plaintiffs, by exercising reasonable diligence, made inquiries of either Samson Nation or Her Majesty

- 87. Samson Nation specifically denies that Samson Nation at any time concealed, let alone fraudulently concealed, the amounts, nature and purpose of any expenditures by Samson Nation of moneys credited to Samson Nation's Capital Account or Revenue Account and Samson Nation put the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.**
- 88. Further, Samson Nation specifically denies that it was unjustly enriched as alleged, or in any other manner, and states that:**
- (a) The Plaintiff and the members of the proposed Class Plaintiffs have not been deprived of any benefits, either direct or indirect, or suffered any loss, injury or damage as a result of any Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995;**
  - (b) The Plaintiff and the members of the proposed Class Plaintiffs have benefitted, either directly or indirectly, since at least June 1, 1995 up to and including the present, as a result of expenditures from Samson Nation's Capital Account during the years 1988 to 1995;**
  - (c) Samson Nation has not been enriched at the expense of the Plaintiff and the members of the proposed Class Plaintiffs, as a result of any Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995;**
  - (d) All such Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995 have been expended for the use and benefit of Samson Nation and the members of Samson Nation, including the Plaintiff and the members of the proposed Class Plaintiffs;**
  - (e) Or, if any such Royalty, bonus or other payments derived from oil and gas produced from Indian Reserve No. 138A having been credited to Samson Nation's Capital Account during the years 1988 to 1995 that have increased the value of Samson Nation's Capital Account and Samson Nation, then the members of Samson Nation, including the Plaintiff and the members of the proposed Class Plaintiffs have**



benefitted, either directly or indirectly, as a result of the increase in value of Samson Nation's Capital Account; and,

- (f) All amounts credited to Samson Nation's Capital Account during the years 1988 to 1995 were lawfully credited by Her Majesty pursuant to the applicable statutory provisions and the exercise of Her Majesty's discretionary powers and all amounts expended by Samson Nation from Samson Nation's Capital Account during the years 1988 to 1995 were lawfully expended and consented to by Her Majesty pursuant to the applicable statutory provisions and the exercise of Her Majesty's discretionary powers;

and with respect to any allegations in relation to any unjust enrichment of Samson Nation, Samson Nation put the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.

#### **Fiduciary Obligations**

89. In addition, or in the alternative, Samson Nation denies that it has breached any fiduciary obligations owed to the Plaintiff or any member of the proposed Class Plaintiffs as alleged, or at all and puts the Plaintiff and the members of the proposed Class Plaintiffs to the strict proof thereof.
90. In response to paragraphs 10, 22, 25, and 38 of the ASC, and the whole of the ASC, Samson Nation admits that the Chief and Council of Samson Nation owe fiduciary obligations to the members of Samson Nation in specific contexts and circumstances, however, Samson Nation disagrees with and disputes that the fiduciary obligations owed are as characterized in paragraph 10 of the ASC.
91. Further, Samson Nation owes fiduciary obligations only to members of Samson Nation as recognized in accordance with Samson Nation's Aboriginal and treaty rights to self-determination, self-government and, in particular, the right to determine its own membership in accordance with its customary laws and traditions.
92. Samson Nation did not owe any fiduciary obligations whatsoever to the Plaintiff, or any member of the proposed Class Plaintiffs, until they were recognized as members of Samson Nation in accordance with Samson Nation's customary laws and traditions.

93. Likewise, the Plaintiff, or any member of the proposed Class Plaintiffs, were not entitled to any benefits accruing to members of Samson Nation, including but not limited to any payments made to members of Samson Nation by Samson Nation such as *per capita* distributions pursuant to section 64(1)(a) of the *Indian Act* or other payments made to members of Samson Nation until such time as they were recognized as members of Samson Nation in accordance with Samson Nation's customary laws and traditions.
94. Samson Nation's fiduciary obligations include an ongoing obligation to continue to assert and to protect Samson Nation's Aboriginal and treaty rights to self-determination, self-government and, in particular, the right to determine its own membership in accordance with its customary laws and traditions.
95. The assertion and protection of these Aboriginal and treaty rights from any unjustified infringement is of critical importance to the current members of Samson Nation and future members of Samson Nation.
96. Any steps taken by Samson Nation to assert and protect Samson Nation's Aboriginal and treaty rights to self-determination, self-government and, in particular, the right to determine its own membership in accordance with its customary laws and traditions was in accordance with Samson Nation's fiduciary obligations and was done honestly and in good faith.
97. Further, Samson Nation has an ongoing fiduciary obligation to protect and preserve Samson Nation's property, funds and resources from exploitation by third parties, which includes individuals that are not recognized members of Samson Nation. Consequently, Samson Nation was fulfilling its fiduciary obligations by not distributing payments from Samson Nation's Revenue Account, to the Plaintiff, and members of the proposed Plaintiff Class, until June 1, 1995 when such individuals were recognized as members of Samson Nation in accordance with Samson Nation's customary laws and traditions.
98. The protection and preservation of Samson Nation's property, funds and resources from exploitation by third parties is of critical importance to the current members of Samson Nation and future members of Samson Nation.
99. Any steps taken by Samson Nation to protect and preserve Samson Nation's property, funds and resources from exploitation by individuals that were not recognized members of

Samson Nation was in accordance with Samson Nation's fiduciary obligations and were done honestly and in good faith.

100. In the alternative, if Samson Nation did owe the Plaintiff, or any member of the proposed Class Plaintiffs, fiduciary obligations, Samson Nation fulfilled all fiduciary obligations owed to the Plaintiffs, or any members of the proposed Class Plaintiffs.
101. A fiduciary that acts in accordance with legislation cannot be said to be breaching its fiduciary duty.
102. As the Plaintiff admits in paragraphs 8 and 13 in the ABC, moneys credited to either of Samson Nation's Capital Account or Revenue Account could only be expended by Samson Nation when Her Majesty exercised Her Majesty's discretion to authorize the expenditure in accordance with the provisions of the *Indian Act* and the *Financial Administration Act*. Her Majesty reviewed all proposed expenditures of Samson Nation and concluded that such expenditures were for the benefit of Samson Nation and the members of Samson Nation, and promoted the general progress and welfare of Samson Nation and the members of Samson Nation, including those individuals that the Minister unilaterally added to Samson's Band List pursuant to the impugned provisions of Bill C-31.
103. Samson Nation states that during the material times it lawfully, in accordance with the authorizations of Her Majesty, expended moneys credited to Samson Nation's Capital Account and Revenue Account. Further, Samson Nation relied and altered its financial position based on Her Majesty's authorizations with respect to expenditures during the material times. If Her Majesty, failed to properly exercise Her Majesty's discretion to authorize the expenditures, then any claim that the Plaintiff, or member of the proposed Class Plaintiffs, may have lies against Her Majesty and not Samson Nation.
104. Any steps taken by Samson Nation, pursuant to Her Majesty's authorization to expend any moneys from Samson Nation's Capital Account and Revenue Account at the material times was done lawfully, honestly and in good faith.
105. Further, or in the alternative, all discretionary decisions respecting the use, expenditure, and distribution of property, monies, lands, and other resources are matters falling within the sole and exclusive jurisdiction of Samson Nation. The said jurisdiction is protected by section 35(1) of the *Constitution Act, 1982* and is exercised in accordance with Samson

**Nation's customary laws and traditions, including customary laws and traditions respecting membership. Decisions rendered in accordance with Samson Nation's customary laws and traditions are not arbitrary, unfair, or unlawful, and are not in violation of a fiduciary duty.**

#### **Membership Agreements**

- 106. In response to paragraphs 17 to 19 and 23 to 26 of the ASC, and the entirety of the ASC, the Plaintiff, and members of the proposed Class of Plaintiffs, or individuals authorized to do so on their behalf, executed agreements with Samson Nation whereby the Plaintiff, and members of the proposed Class of Plaintiffs, fully and finally released Samson Nation of any and all liability for any possible claims with respect to any distribution of money to members of Samson Nation during the material times. The Plaintiff, and members of the proposed Class Plaintiffs, in return received a payment of \$1,000 and were added to Samson Nation's membership in accordance with Samson Nation's customary laws and practices (the "Membership Agreements"). Samson Nation pleads and relies on these Membership Agreements.**
- 107. Samson Nation executed the Membership Agreements honestly and in good faith and pursuant to its Aboriginal and treaty rights to self-determination and self-government and Samson Nation specifically denies that it concealed, let alone fraudulently concealed any information from the Plaintiff or members of the proposed Class Plaintiffs at the time of execution of the Membership Agreements and the Plaintiff and members of the proposed Class Plaintiffs are put to the strict proof thereof.**
- 108. The Membership Agreements provide, *inter alia*:**
- (a) The applicant recognizes that Samson Nation has the right to determine its membership;**
  - (b) The applicant has waived any claim against Samson Nation for any past distributions of moneys payable to members of Samson Nation;**
  - (c) The applicant acknowledged that they have been fully advised and informed of their legal rights; and,**
  - (d) The applicant has agreed to maintain or change to a surname that is a traditional Samson Cree Nation surname in which he or she is a descendant of.**

109. Samson Nation has relied on the Membership Agreements and continues to recognize the Plaintiff, and members of the proposed Class Plaintiffs, as members of Samson Nation, in accordance with Samson Nation's customary laws and practices, since the time they entered into the Membership Agreements in or around June 1, 1995. Since that time the Plaintiff, and members of the proposed Class Plaintiffs have received distributions of moneys from Samson Nation and have enjoyed all other rights and benefits, both direct and indirect, associated with being a member of Samson Nation.
110. Samson Nation states that pursuant to the Membership Agreements, the Plaintiff, and the other members of the proposed Class Plaintiffs, do not have standing or are barred from bringing the claims alleged in the ASC.
111. In response to paragraphs 26 and 27 of the ASC, the Federal Court in *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)*, 2002 FCT 1299 held that the Plaintiff, and other members of the proposed Class Plaintiffs, were entitled to specific funds held by Her Majesty in a purported Suspense Account because:
- (a) Her Majesty was not a party to the Membership Agreements;
  - (b) The moneys held in suspense were set aside by Her Majesty on behalf of the Plaintiff, and other members of the proposed Class Plaintiffs; and,
  - (c) The money's held in suspense were in relation to per capita distributions pursuant to section 84(1)(a) of the *Indian Act*, as opposed to distributions of moneys from Samson Nation's Revenue Account.
112. The reasons by Hugessen J. quoted in the ASC at paragraph 26 are *obiter dictum*, and did not consider or address the merits of Samson Nation's constitutional arguments with respect to the validity and applicability of Bill C-31.
113. Samson Nation, however, has and always had control of its own membership pursuant to its unextinguished Aboriginal and treaty rights to self-determination and self-government.
114. Further, the Plaintiff, and the members of the proposed Class Plaintiffs, have been aware of, or were reasonably able to inform themselves of Hugessen J.'s comments with respect to the Membership Agreements since on or about December 11, 2002.

### **Kisoniyaminaw Heritage Trust**

115. On or about February 1, 2006, all moneys that were then credited to Samson Nation's Capital Account and Revenue Account were transferred by Her Majesty to the Kisoniyaminaw Heritage Trust which is a private trust and whose Trustee's are independent of the Chief and Council of Samson Nation.
116. Since February 1, 2008 Her Majesty has also transferred any additional moneys that have been credited to Samson Nation's Capital Account and Revenue Account to the Kisoniyaminaw Heritage Trust.
117. By way of a referendum, the members of Samson Nation, including the Plaintiff and members of the proposed Class Plaintiffs, had the opportunity to vote for and did in fact approve the transfer of moneys credited to Samson Nation's Capital Account and Revenue Account to the Kisoniyaminaw Heritage Trust.
118. The Federal Court, in Federal Court Action No. T-2022-89, considered whether the proposed transfer to the Kisoniyaminaw Heritage Trust was in the best interests for Samson Nation and the members of Samson Nation, which included the Plaintiff and members of the proposed Class Plaintiffs, and approved the proposed transfer of moneys credited to Samson Nation's Capital Account and Revenue Account to the Kisoniyaminaw Heritage Trust.
119. Finally, Her Majesty also reviewed the proposed transfer to the Kisoniyaminaw Heritage Trust and pursuant to section 64(1)(k) of the *Indian Act*. Her Majesty assessed whether the said expenditure from Samson Nation's Capital Account and Revenue Account to establish the Kisoniyaminaw Heritage Trust was for the use and benefit of Samson Nation and the members of Samson Nation, which members included the Plaintiff and the members of the proposed Class Plaintiffs, and Her Majesty exercised Her Majesty's discretion and approved the expenditure and the establishment of the Kisoniyaminaw Heritage Trust.
120. The Plaintiff and the members of the proposed Class Plaintiffs acquiesced to the creation and establishment of the Kisoniyaminaw Heritage Trust and did not object to the creation and establishment of the Kisoniyaminaw Heritage Trust before either the Federal Court or Her Majesty.

121. The provisions of the Trust Deed that govern the Kisoniyaminaw Heritage Trust are conservative and are intended to preserve and grow the Trust with very limited powers of encroachment on the capital held in the Trust. Further the Trust Deed requires that the Trustees consider only the best interests of Samson Nation and the members of Samson Nation as a whole and does not provide the Trustees any discretion to treat any sub group of members of the Samson Nation in preference to any other member of Samson Nation.
122. Further, the Trust Deed does not provide for or allow for any distributions to individual members of Samson Nation.

#### **Constructive Trust and Federal Court Proceeding T-2022-89**

123. Based on all of the foregoing, Samson Nation denies that the Plaintiff and the members of the proposed Class Plaintiffs have established any basis on which they may be entitled to a constructive trust with respect to any portion of the Kisoniyaminaw Heritage Trust, whether capital or revenue.
124. The Plaintiff and the members of the proposed Class Plaintiffs have a communal interest in the assets of the Kisoniyaminaw Heritage Trust which interest can be no greater or superior to the communal interests of any other member of Samson Nation.
125. Further, the creation of a constructive trust in favour of the Plaintiff and members of the proposed Class Plaintiffs as demanded would be inequitable, unjust and unfair to all other members of Samson Nation and would cause undue hardship and irreparable harm to Samson Nation and the remaining members of Samson Nation.
126. Samson Nation further denies that the Plaintiff and the members of the proposed Class Plaintiffs have any claim in law or in equity to any damages that may be recovered by Samson Nation in Federal Court Action No. T-2022-89.
127. The recovery of any damages by Samson Nation, on behalf of Samson Nation and the members of Samson Nation, with respect to any underpaid royalties that may be due and owing to Samson Nation are unrelated to the Plaintiff and the members of the proposed Class Plaintiffs alleged injuries, loss, deprivation or damages, all of which are expressly denied, and upon recovery of any damages the Plaintiff and the members of the proposed Class Plaintiffs will benefit, either directly or indirectly, from the recovery of such damages along in step with all other members of Samson Nation.

### **Suitability as a Class Proceeding**

128. Samson Nations states that this ASC is not suitable for a class proceedings as:

- (a) The Plaintiff and the members of the proposed Class Plaintiffs do not disclose any valid claims or causes of action whether in law or in equity;
- (b) It is unknown to Samson Nation whether the Plaintiff is an appropriate representative;
- (c) There are no common issues that are material ingredients of the claim; and,
- (d) A class proceeding is not the preferable procedure as any claims will inevitably break down into complex individual assessments turning on, *inter alia*:
  - i. Whether or not Samson Nation has immunity from the alleged claims with respect to all or some of the members of the proposed Class Plaintiffs; and,
  - ii. The specific knowledge of the individual members of the proposed Class Plaintiffs with respect to the matters plead in the ASC.

### **Limitations/Laches and Estoppel**

129. In response to the ASC as a whole, Samson Nation states that all claims pled in the ASC are remedial and statute barred. Samson Nation pleads and relies on, *inter alia*, the following:

- (a) *Limitations of Actions Act*, RSA 1980, c L-15, including sections 4, 5 and 51;
- (b) *Limitations Act*, SA 1999, c L.15.1, including sections 2 and 3; and
- (c) *Limitations Act*, RSA 2000, c L-12, including section 3 and 10,

all as amended from time to time, and any such predecessor legislation as may have been in force from time to time.

130. The Plaintiff, and members of the proposed Class Plaintiffs, knew at all material times or ought too have known of the facts relating to the allegations contained in the ASC and the Injuries, deprivation, losses or damages claimed in the ASC. To the extent that remedial relief is claimed in respect of events and injuries, deprivation, losses or damages which occurred more than two years prior to the filing of the ASC, any cause of action which the



Plaintiff, or members of the proposed Class Plaintiffs may have had against Samson Nation is statute barred pursuant to the *Limitations Act*, including section 3(1)(a).

131. To the extent that remedial relief is claimed in respect of events and injuries, deprivation, losses or damages which occurred more than ten years prior to the filing of the ASC, any cause of action which the Plaintiff, or members of the proposed Class Plaintiffs may have had against Samson Nation is statute barred pursuant to the *Limitations Act*, including section 3(1)(b).

132. Further, and in response to the ASC as a whole, Samson Nation states that the Plaintiff and members of the proposed Class Plaintiffs or at least some of them have had legal counsel and received legal advice from time to time with respect to the matters plead in this ASC or, at a minimum, the Plaintiff and members of the proposed Class Plaintiffs have also been plaintiffs or members of classes of plaintiffs that have advanced claims in the courts in relation to the subject matters pled in this ASC and the Plaintiff and members of the proposed Class Plaintiffs are estopped from bringing this claim based on *res judicata*, issue estoppel, waiver and acquiescence. The Plaintiff and the members of the proposed Class Plaintiffs knew at all material times that:

- (a) Samson Nation did not recognize the Plaintiff and members of the proposed Class Plaintiffs as members of Samson Nation until June 1, 1995;
- (b) Samson Nation did not distribute to the Plaintiff and members of the Class Plaintiffs any payments from Samson Nation's Revenue Account between 1988 and June 1, 1995;
- (c) The Plaintiff and members of the proposed Class Plaintiffs were members of the class of plaintiffs in Federal Court Action No. T-430-01, which dealt with funds held in the Suspense Account by Her Majesty on behalf of the Plaintiff and the members of the proposed Class of Plaintiffs; and,
- (d) The Plaintiff and members of the proposed Class of Plaintiffs were members of the proposed class of plaintiffs, in Federal Court Action No. T-880-06 in which action the plaintiff raised the same or similar allegations as in the present ASC. The Federal Court and Federal Court of Appeal refused to certify the proposed class of plaintiffs

and that claim was abandoned and the same claim has now been resurrected in these proceedings.

133. In further, response to the ASC as a whole, Samson Nation pleads and relies on the equitable doctrines of laches, acquiescence, delay, waiver, and equitable estoppel and state that the Plaintiff and the members of the proposed Class Plaintiffs were aware of or were reasonably able to inform themselves of the facts in relation to the allegations and claims contained in the ASC and there has been a prolonged, inordinate and inexcusable delay in bringing this ASC and seeking the relief claimed therein, which has resulted in significant prejudice to Samson Nation and it would be unjust and inequitable to grant the Plaintiff and the members of the proposed Class Plaintiffs the requested relief or any relief.
134. Further, or in the alternative, the Plaintiff and the members of the proposed Class Plaintiffs, or some of them, by accepting, entering and benefiting from the Membership Agreements caused or permitted Samson Nation to believe that the Plaintiff and the members of the proposed Class Plaintiffs waived any further claims with respect to the matters raised in this ASC against Samson Nation. As a result, Samson Nation materially changed its position, acted to its prejudice, and has otherwise been prejudiced.
135. Further, any declarations sought in the ASC that are not in substance remedial will have no practical utility and should not be granted.
136. Further, Samson Nation states that any claims raised in this ASC, by the Plaintiff and the members of the proposed Class Plaintiffs, are claims that should have properly been raised against Her Majesty and not Samson Nation.
137. Further, Samson Nation states that in the event that Samson Nation is held to be liable for any alleged claims or damages within these proceedings then Samson Nation is entitled to be indemnified, in whole or in part, by Her Majesty.

**Remedy sought:**

138. Samson Nation requests that the action of the Plaintiff and the proposed members of the Class Plaintiffs be dismissed with costs.
139. Such further and other relief as this Honourable Court deems just.

**Dated at the City of Calgary, in the Province of Alberta, this 30<sup>th</sup> day of May, 2016.**