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Federal Court Action No. T-39-08

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**IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION**

FEDERAL COURT COUR FÉDÉRALE	
FILED	JAN 14 2008
PATRICIA GAUTHIER	
WINNIPEG, MB	2

BETWEEN:

**CHIEF JOSEPH DANTOUZE, JOE HYSLOP, NAPOLEAN DENECHÉZHE,
PASCAL DENECHÉZHE, MATILDA DETTANIKKEASE, LENA SHA'OULLIE
AND MARTIN VIEULLOT, on their own behalf and on behalf of all members of the
NORTHLANDS DÈNESŪLINÉ FIRST NATION,**

Plaintiffs,

and

HER MAJESTY THE QUEEN,

Defendant.

AMENDED STATEMENT OF CLAIM

SERVICE OF A TRUE COPY HEREOF
ADMITTED THIS 14th DAY OF

January A.D. 2008

SOLICITORS FOR: [Signature]

GANGE GOODMAN & FRENCH

Barristers & Solicitors
760 Centra Gas Building
444 St. Mary Avenue
Winnipeg MB R3C 3T1

(File No. 12646 JGC)
(Jacqueline G. Collins - 953-5406)

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TRIAL DIVISION**

BETWEEN:

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Defendant.

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

CLAIM

1. The plaintiff Chief Joseph Dantouze is Chief of the Northlands Dënesųłiné First Nation (“Northlands”).
2. The plaintiffs Joe Hyslop, Napoleon Denechezhe, Pascal Denechezhe, Matilda Dettanikkease, Lena Sha’oullie and Martin Vieullot are councillors of Northlands.
3. The Northlands Dënesųłiné First Nation is an Indian Band that constitute a “band” within the meaning of the *Indian Act*, R.S.C. 1985, Chapter I-5 and has reserve property in the Province of Manitoba.
4. The defendant Her Majesty the Queen in Right of Canada (“Canada”) is the Federal Crown.
5. Canada, through Indian and Northern Affairs Canada (“INAC”) provides funding, which funding includes funding for operations and maintenance of electrical costs for assets located on Indian reserves (the “funding contribution”), including the reserve of the Northlands Dënesųłiné First Nation, located at the Northlands Reserve, Lac Brochet, Manitoba. The funding for these assets includes the funding for assets used for First Nation Education assets.
6. Northlands is a party to Treaty No. 10 (the “Treaty”), entered into between Northlands and Canada. Under the Treaty, Canada is obligated to provide for the education of members of Northlands.

7. The Northlands reserve is provided with electrical service by Manitoba Hydro by diesel generation facilities and is not provided with electrical service from the Manitoba Hydro Electric Grid (“Hydro’s grid”). As a result thereof, the cost of electrical service to the plaintiffs is considerably higher than the cost of electrical service to reserves connected to Hydro’s grid.
8. The plaintiffs say that the defendant has a fiduciary obligation and duty to assist the plaintiffs and to provide the funding contribution and administer the funding contribution for electrical costs in a non-discriminatory manner that treats the plaintiffs on a basis equivalent to bands connected to Hydro’s grid, and in a manner which takes into account the difference between the electrical costs for the bands serviced by diesel generation and those bands serviced from Hydro’s grid and in a manner that results in the funding contribution for electrical costs taking into account the actual electrical consumption for an asset.
9. As a result of the fiduciary duty owed by Canada to the plaintiffs, the plaintiffs have a reasonable expectation that Canada will act in the best interests of the plaintiffs, and will treat the plaintiffs equally with other bands, and will not act in a way to favour Canada’s own interest.
10. The plaintiffs say that Canada has breached its fiduciary obligation owed to the plaintiffs, particulars of which are:

- a. Canada failed to apply the operating and maintenance contribution mechanism in a manner that treated the plaintiffs on a basis equivalent to bands connected to Hydro's grid; and
 - b. Canada failed to take into account the difference between the electrical costs for the bands serviced by diesel generation and those bands serviced from Hydro's grid in its funding contribution; and
 - c. Canada failed to apply the operating and maintenance contribution mechanism in a manner that resulted in the funding contribution for electrical costs having taken into account the actual electrical consumption for an asset.
11. Section 15 of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K), 1982, c. 11* (the "Charter") guarantees to every individual the right to be equal before and under the law, and to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.
 12. The plaintiffs have a special connection to the reserve which is their place of residence.
 13. By virtue of their place of residence, the plaintiffs have been discriminated against by conduct of Canada in failing to apply the operating and maintenance funding contribution in a manner that would treat the plaintiffs on a basis equivalent to less

remote bands connected to Hydro's grid, and which would take into account the difference between the electrical costs to the bands serviced by diesel generation and those bands serviced from Hydro's grid in its funding contribution.

14. Section 35(1) of the *Constitution Act, 1982* recognized and affirms the existing aboriginal and treaty rights of the Aboriginal peoples of Canada.
15. Pursuant to its Treaty obligations, Canada is under a duty to provide full funding to Northlands educational facilities, including funding 100% of INAC's operation and maintenance formula to support instructional services for members of Northlands for schools, teacherages, and student residences.
16. Canada has breached its duty under the Treaty and section 35 of the *Constitution Act, 1982*, to provide full funding to Northlands educational facilities, including funding 100% of INAC's operation and maintenance formula to support instructional services for members of Northlands for schools, teacherages, and student residences.
17. The plaintiffs have suffered loss and damage as a result of the breach of fiduciary obligations, as a result of the breach of section 15 of the *Charter*, and as a result of the breach of the Treaty obligations. From April 1, 1994 until April 1, 2004, Canada failed to provide appropriate funding to the plaintiffs for electrical costs to assets, including First Nation Education facilities (the "funding contribution"). In particular, the funding contribution:

- a. Failed to contribute funding to Northlands at a level that reflected 100% of INAC's operation and maintenance formula to support instructional services for members of Northlands for schools, teacherages, and student residences; and
- b. Failed to apply the operating and maintenance contribution mechanism in a manner that treated the plaintiffs on a basis equivalent to First Nations connected to Hydro's grid, and which would take into account the difference between the electrical costs in the communities serviced by diesel generation and those communities serviced from Hydro's grid, and in a manner that resulted in the funding contribution for electrical costs having taken into account the actual electrical consumption for an asset.

The plaintiffs have suffered further loss and damage as monies have been required to be expended towards electrical costs which should have be available for other expenditures, resulting in worsened financial circumstances to Northlands overall.

WHEREFORE THE PLAINTIFFS CLAIM AGAINST THE DEFENDANT:

18. A Declaration that the defendant breached its fiduciary, constitutional, and treaty duties to the plaintiffs;
19. An accounting regarding the breach of fiduciary duty;

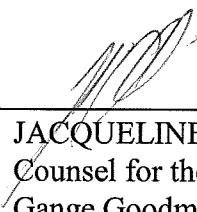
20. Damages for breach of fiduciary, constitutional and treaty duties;
21. Damages pursuant to section 24 of the Charter for breach of section 15 of the Charter;
22. Pre-judgment and post-judgment interest;
23. Costs; and
24. Such further and other relief as this Honourable Court shall deem just.

The plaintiffs propose that this action be tried at Winnipeg, Manitoba.

DATED at the City of Winnipeg, in the Province of Manitoba, AND DELIVERED by Gange, Goodman & French, Barristers and Solicitors, 760-444 St. Mary Avenue, Winnipeg, Manitoba, R3J 1K3, Solicitors for the Plaintiffs, whose address for service is in care of the said solicitors.

GANGE GOODMAN & FRENCH

Per: _____


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