ACTION NO. 0103-03088

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

ROSE LAMEMAN, FRANCIS SAULTEAUX, NORA ALOOK, SAMUEL WASKEWITCH, and ELSIE GLADUE on their own behalf and on behalf of all descendants of the PAPASCHASE INDIAN BAND NO. 136

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

1. The named Plaintiffs in this action, Rose Lameman, Francis Saulteaux, Nora Alook, Samuel Waskewitch, and Elsie Gladue, are status Indians within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended. The named Plaintiffs were elected by descendants of the Papaschase Indian Band (hereafter "the Papaschase Band") as the Chief and Councillors of the Papaschase Descendants Council and authorized to commence this action on their own behalf and on behalf of all status and non-status Indians who are descendants of the Papaschase Band. The Papaschase Band, which is also referred to as the "Passpasschase Band" or "Pahpastayo's Band", formerly resided on the Papaschase Indian Reserve No. 136 ("IR 136") in the Province of Alberta.

2. The Defendant, the Attorney General of Canada, represents Her Majesty the Queen in Right of Canada. The Defendant is the successor to and subject to all of the obligations, duties and liabilities which His Majesty the King or Her Majesty the Queen in right of Great Britain had or owed to Indians

prior to 1867. Since 1867, the Defendant has exercised exclusive legislative authority over "Indians and lands reserved for Indians".

3. In 1876, various Tribes of Plains and Wood Cree Indians entered into Treaty No. 6 (hereafter "Treaty 6") with Treaty Commissioners appointed by the Defendant to represent Her Majesty the Queen in negotiations with the Indians to obtain the surrender of 121,000 square miles of fertile agricultural land in central Saskatchewan and Alberta to the Defendant. According to the written terms of Treaty 6 and the oral representations of the Treaty Commissioners, the Defendant agreed to, *inter alia*, set apart reserves for each Indian band, pay a "present" of $12.00 to each Indian once and for all, pay an annuity of $5.00 to each Indian annually in perpetuity, make annual payments for ammunition and twine, and provide "necessary and sufficient" relief to the Indians in the event of a general famine or pestilence. The Indians were also guaranteed the right to pursue their usual vocations of hunting, trapping and fishing throughout the territory.

4. With respect to the allocation of reserves, Treaty 6 expressly stated that "all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in manner following, that is to say: that the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each Band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them."

5. During the negotiation of Treaty 6, both the Defendant and the Indians were aware that the buffalo, upon which the Indians were heavily dependent for their survival, were rapidly declining in population and that starvation posed a serious threat to the survival of the Indians. In addition to the promise of relief if the Indians suffered from famine, the Defendant promised to provide farm implements, seed, and agricultural instruction to assist the Indians in developing an agricultural economy. The Indians were also solemnly assured by the Defendant's representatives that their freedom to leave the reserves and exercise their rights to hunt, fish and trap throughout the territory would not be restricted upon signing Treaty 6.

6. On August 21, 1877, Chief Papaschase (also known as Passpasschase, Papastew, Pahpastayo, and John Gladieu-Quinn) and Tahkoots, a Headman, signed an adhesion to Treaty 6 on behalf of the Papaschase Band at Fort Edmonton.

7. In 1877, the Hon. David Laird, Lieutenant Governor and Indian Superintendent for the North-West Territories, recommended to the Department of Indian Affairs that surveyors be sent to lay out Indian reserves for the Edmonton Bands, however, no action was taken by Defendant to survey a reserve for the Papaschase Band until 1880. The Defendant's failure to set apart a reserve for the Papaschase Band in a reasonably diligent manner hindered the band's transition to an agricultural economy and caused undue hardship among band members because of the lack of game in the area and the absence of an alternative means of livelihood during this time period.

8. By 1879, the buffalo had become virtually extinct on the Canadian prairies and the Indians in the Edmonton area were suffering from severe starvation. Although a general famine had descended upon the Indians of the North-West Territories, the Defendant did not provide necessary and sufficient relief to the Papaschase Band or other bands as promised under the terms of Treaty 6.

9. On August 2, 1880, George A. Simpson, Dominion Land Surveyor, acting at all times as an agent of the Defendant, ("Simpson") was instructed to survey the boundaries of Passpasschase Indian Reserve No. 136 (hereafter "IR 136") for the Papaschase Band. According to Simpson's information, 241 members of the Papaschase Band were paid annuities in 1879 so he promised Chief Papaschase that 48 square miles of land would be set apart as a reserve for the Band. The Defendant knew or ought to have known that in fact 249 members of the Papaschase Band were paid annuities in 1879 entitling the Band to at least 49.8 square miles of reserve land. Chief Papaschase selected an area approximately four miles south of the North Saskatchewan River and Simpson began to survey a reserve of 48 square miles at Two Hills, located within the present boundaries of the City of Edmonton.

10. On August 2, 1880, the same day that Simpson began to survey a reserve for the Papaschase Band, a dispute arose between Chief Papaschase and T. P. Wadsworth, Inspector of Indian Farms and Agencies for the Department of Indian Affairs ("Inspector Wadsworth"), over the latter's refusal to provide rations and relief to the Papaschase Band. Chief Papaschase withdrew his request when

Inspector Wadsworth refused to provide any relief and left without paying annuities to the Papaschase Band.

11. On or about August 3, 1880, Inspector Wadsworth maliciously and arbitrarily transferred 84 members of the Papaschase Band to a new treaty pay list he created for the "Edmonton Stragglers". Inspector Wadsworth then instructed Simpson to survey no more than 40 square miles of reserve land for the Papaschase Band and to not set apart any land whatsoever for the Edmonton Stragglers. On August 4, 1880, Inspector Wadsworth returned to Two Hills and paid annuities to only 188 members of the Papaschase Band.

12. Inspector Wadsworth's arbitrary decision to transfer 84 members to the Edmonton Stragglers was intended to fragment and reduce the size of the Papaschase Band, undermine the influence and authority of Chief Papaschase, and to reduce the amount of reserve land the Papaschase Band was entitled to under the terms of Treaty 6. The Plaintiffs allege that such actions constitute bad faith, equitable fraud, and a breach of the Defendant's treaty and fiduciary obligations to the Papaschase Band.

13. On or about September 13, 1880, Chief Papaschase instructed Simpson and his survey team to stop the survey of IR 136 when he realized that the area did not amount to 48 square miles as promised by the Defendant. In the absence of any express or implied authority, Inspector Wadsworth maliciously and arbitrarily suspended Papaschase as Chief. Shortly thereafter, Commissioner Dewdney reinstated Chief Papaschase but he would not support the Papaschase Band's claim to 8 additional square miles and he informed Chief Papaschase that the survey of IR 136 would not be completed in 1880, if ever, because settlers in the Edmonton area did not want the reserve to be located near Edmonton.

14. Commissioner Dewdney's decision to postpone the survey of IR 136 was supported by many residents of Edmonton and an Edmonton newspaper known as the Edmonton Bulletin which advocated that the Papaschase Band "be sent back to the country they originally came from." This marked the beginning of a concerted campaign by local settlers, residents, politicians, and the Edmonton Bulletin to pressure the Defendant to move the Papaschase Band to a more distant location so that IR 136 could be thrown open for settlement. Particulars are as follows:

(a) Following a "mass meeting" among Edmonton area settlers, politicians, and land speculators on January 13, 1881, a petition was forwarded to Sir John A. Macdonald, the Prime Minister and Minister of the Interior, requesting that the Defendant move the Papaschase Band and IR 136 twenty miles further south. This request was supported by the Edmonton Bulletin and the owner and editor, Frank Oliver ("Oliver"), who used the newspaper and his influence as a member of the North-West Territories Council to marshal public opinion and pressure the Defendant into moving the Papaschase Band and obtaining a surrender of IR 136 for sale to non-Indians;

(b) On January 17, 1881, the Edmonton Bulletin pressed the Defendant to move IR 136 to a more distant location and declare the land open in the interests of the settlers;

(c) On March 19, 1881, the Deputy Superintendent General of Indian Affairs, Lawrence Vankoughnet ("DSGIA Vankoughnet"), informed the petitioners that the Papaschase Band could not be forced to select a different location because an agreement had been reached with the band, however, the surveyor would be instructed to survey IR 136 to interfere as little as possible with the settlers' claims and timber lands;

(d) On or about April 15, 1882, the Edmonton Bulletin suggested the Defendant use the "heavy hand of the law" and force, if necessary, to override the interests and treaty rights of the Papaschase Band when they conflict with the public interest;

(e) On or about April 22, 1882, a number of settlers were incited by the Edmonton Bulletin to squat and trespass upon IR 136;

(f) On or about September 30, 1882, the Edmonton Bulletin recommended that the Defendant induce the Papaschase Band to select a reserve at a more distant location in exchange for a reasonable consideration;

(g) Following a public meeting among Edmonton area settlers on or about January 27, 1883, a second petition was delivered to representatives of the Defendant in Ottawa requesting that IR 136 be moved away from Edmonton;

(h) On or before November 27, 1883, the Crown Timber Agent for Edmonton, an agent of the Defendant, allowed local settlers to trespass upon IR 136 by issuing permits to cut timber on IR 136. The Timber Agent eventually relented, but only after a lengthy appeal to the Deputy Minister to the Interior in which the Crown Timber Agent made false statements that most of the Papaschase Band had moved away and that only 6 families remained on IR 136.

15. In September 1884, John C. Nelson, the chief surveyor for the Department of Indian Affairs, an agent of the Defendant, completed the survey of IR 136 setting apart a total of 39.9 square miles of land as a reserve for the exclusive use and benefit of the Papaschase Band. IR 136 contained some of the best land in the district and was well supplied with timber and hay. IR 136 was traversed by the Calgary and Hay Lake trails and the construction of a railway line from Calgary to Edmonton would necessarily be constructed through IR 136.

16. From 1876 to 1886, the Papaschase Band made limited progress in farming, in part, because of the Defendant's failure to complete the survey of IR 136 in a reasonably diligent manner and to provide the Papaschase Band with a farm instructor and their full complement of farm implements as promised under the terms of Treaty 6 until 1885.

17. From 1879 to 1886, the Defendant did not provide necessary rations or relief to members of the Papaschase Band who were suffering from starvation, particulars of which are as follows:

(a) During the severe winter of 1880-1881, the Defendant denied rations to the Indians;

(b) On January 7, 1883, midway through another difficult winter, a letter was forwarded by Father Scollen to Sir John A. MacDonald on behalf of Chiefs Papaschase, Bobtail, Samson, Ermineskin, and other Indian leaders accusing the Defendant of attempting to exterminate the Indians slowly by starvation. The Chiefs warned the authorities that they would rather die

quickly by violence than slowly from lack of food. Rather than provide relief to the Indians to ameliorate their plight, Agent Anderson requested that the North-West Mounted Police ("NWMP") arrest Father Scollen for agitating the Indians;

(c) In July 1883, a number of Indians from Hobbema and the Papaschase Band confronted Agent Anderson and demanded food for the Edmonton Bands. When Agent Anderson refused, he was physically dragged to the Hudson's Bay Company where arrangements were made to purchase food on credit against the security of annuity payments to be paid to the Indians. Following an investigation by the NWMP, Captain Gagnon granted additional provisions to the Indians and stated that he would advise Commissioner Dewdney of the Indians' complaints;

(d) In November 1883, Commissioner Dewdney conceded that Indians from the Edmonton Agency were so destitute they had to be fed and clothed by settlers and that many Indians wanted to leave their reserves for this reason.

18. At the height of Indian discontent over the treaties and in the midst of the Riel Rebellion, the Half-Breed Scrip Commission arrived in Edmonton on June 3, 1885 offering scrip to people of mixed Indian and white ancestry (hereafter "Métis"), including any treaty Indians who could demonstrate they were of Métis ancestry. The scrip certificate entitled the holder to either 240 acres of land for homestead entry on any unoccupied sections or $160.00 (enough to buy 80 acres at a different location), minus the amount of any annuity payments previously received by a treaty Indian. Although some applicants could not prove they were of Métis ancestry, Agent Anderson issued scrip to 202 treaty Indians from June to July, 1885. This included 12 members of the Papaschase Band. All recipients of scrip were discharged from Treaty 6 resulting in the forfeiture of their Indian status, any interest they had in an Indian reserve, and their right to treaty annuities.

19. In April 1886, DSGIA Vankoughnet reported to Prime Minister John A. Macdonald that the "most dissolute and improvident" treaty Indians of Métis ancestry (hereafter "Treaty Métis") had been induced to accept scrip by the lure of cash and lies spread by speculators that the recipient would not be compelled to leave their reserves if they took scrip. To prevent such abuses, DSGIA Vankoughnet recommended that scrip should be non-transferable for a term of five years but this course was rejected

by the new Minister of the Interior, the Hon. Thomas White. Instead of implementing this or any other measures to prevent such abuses, the Defendant acted contrary to its fiduciary obligations toward the Indians by abandoning the policy of deducting treaty annuities from the face value of scrip to provide an even greater inducement to Treaty Métis to accept scrip and withdraw from Treaty.

20. On July 3, 1886, the Half-Breed Scrip Commission returned to Edmonton. Motivated by starvation, poverty, and general discord over the Defendant's failure to honour the terms of Treaty 6, the entire Papaschase Band requested scrip so that they could homestead lands within IR 136. Inspector Wadsworth rejected this proposal because the majority of the Papaschase Band was made up of widows, old people, and children who would not be able to earn their own livelihood if they accepted scrip.

21. On July 7, 1886, Commissioner Dewdney reported to the Superintendent General of Indian Affairs that practically every treaty Indian in the Saskatchewan valley qualified for scrip and that a large number of Treaty Indians were induced by their immediate needs and the misrepresentations of speculators into forfeiting their Treaty rights and any improvements made on their reserves without the benefit of "prudential forethought, or provident consideration."

22. On July 19, 1886, the Defendant issued instructions to Indian Agents that any Treaty Métis who could clearly show they were of mixed ancestry and who do not lead the "same mode of life as Indians" should be allowed to withdraw from Treaty. Commissioner Dewdney then instructed Inspector Wadsworth to grant discharges to Chief Papaschase and his brothers, constituting a family of 58 members. This triggered a mass exodus from the Papaschase and Enoch Bands. A total of 102 members of the Papaschase Band, who were in a starving condition and of poor health, were induced without the benefit of independent advice into accepting scrip by the misrepresentations of speculators and discontent over the Defendant's failure to honour the terms of Treaty 6. The Papaschase Band was reduced to only 82 members, most of whom were elders, women and children.

23. The Defendant's actions in offering scrip to treaty Indians and allowing the discharge of 102 members of the Papaschase Band from Treaty 6 constituted bad faith, equitable fraud and a breach of its treaty and fiduciary obligations to the Papaschase Band, particulars of which are as follows:

(a) The Defendant withheld necessary and sufficient relief to ameliorate starvation among members of the Papaschase Band and failed to take any steps to prevent the Papaschase Band from being induced by speculators and other interested parties into accepting scrip on foolish and improvident terms;

(b) In 1885, Commissioner Dewdney described Chief Papaschase and his Band as more Indian in action and appearance than any he had seen in some time and he had actual knowledge that most of the Papaschase Band lived a predominantly Indian mode of life;

(c) Inspector Wadsworth had actual knowledge that almost all of the Papaschase Band members who were discharged from Treaty spoke Cree and could not read, write or speak English;

(d) Chief Papaschase and other members of the Papaschase Band who received scrip did not understand the legal implications of the declarations they signed, did not have the benefit of independent legal counsel or advice, and did not make a full and informed decision to relinquish their treaty rights and all their interests in IR 136;

(e) Inspector Wadsworth allowed some applicants to withdraw from treaty even though he knew they were pure Indians who were not eligible for scrip;

(f) Inspector Wadsworth yielded to pressure from the Edmonton Bulletin which criticized him for refusing to grant discharges to any Treaty Métis because it would be in the best interests of the country to terminate the Defendant's treaty obligations to provide rations to the Indians and reserves could be decreased in size or broken up and sold to non-Indians;

(g) By the winter of 1887-1888, many of those who had withdrawn from Treaty had to be given rations by the North-West Mounted Police to prevent their starvation and additional rations had to be provided the following winter;

(h) The issuing of scrip to Treaty Métis served no legitimate public purpose and was intended to facilitate the discharge of several hundred treaty Indians and reduce the Defendant's treaty obligations and public expenditures for such purposes.

24. After receiving scrip, Chief Papaschase and other members of the Band continued to operate under the honest belief that they were entitled to use and occupy IR 136. The Defendant contributed to this belief and understanding by allowing the Papaschase Band to remain on IR 136 and to harvest their crops in the fall of 1886.

25. On or about August 7, 1886, local politicians, residents, and the Edmonton Bulletin renewed their campaign to remove IR 136 and throw open the reserve to settlement. Agents of the Defendant yielded to this pressure and took steps to move the remaining members of the Papaschase Band off IR 136 and sell the lands to third parties. Particulars are as follows:

(a) In August, 1886, the Department of the Interior advanced a proposal made by the Edmonton Bulletin that the remaining members of the Papaschase Band be amalgamated with another band so that IR 136 could be thrown open to settlement. When the Department of Indian Affairs did not respond to the proposal, the Deputy Minister of the Interior, A. M. Burgess threatened that if IR 136 were not soon disposed of it would likely be occupied by squatters;

(b) On or about December 30, 1886, Agent Anderson acted in bad faith and contrary to the Defendant's fiduciary obligations to the Papaschase Band by falsely and deliberately misstating that the Papaschase Band requested that they be amalgamated with the Enoch Band on the Stony Plain Reserve. Particulars of this averment are as follows:

(i) Agent Anderson claimed that the Papaschase Band made this proposal when he paid treaty annuities to the Band in September, 1886 but yet he failed to report such an important development until December, 1886;

(ii) Specific elements of the proposal, namely that IR 136 should be thrown open for settlement and the discharged members be allowed to homestead their former farms, were essentially identical to the proposal advanced by the Edmonton Bulletin and embraced by the Department of the Interior in August of 1886;

(iii) Agent Anderson feared Chief Papaschase and Tahkoots and his proposal, if adopted, would have allowed the discharged members of the Papaschase Band to homestead IR 136 and Agent Anderson would not be required to evict them;

(iv) If the Papaschase Band truly intended to join the Enoch Band they simply would have left IR 136 and joined the band on the Stony Plain Reserve without seeking permission from the Indian Agent;

(v) The Papaschase Band's reluctance to move to the Stony Plain Reserve in the spring of 1887 is inconsistent with Agent Anderson's assertion that they wished to voluntarily join the Enoch Band;

(vi) In the spring of 1887, Agent Anderson encouraged a member of the Papaschase Band to move to the Enoch Reserve and to draw others with him so that he could be elected Chief of the amalgamated Bands even though Agent Anderson and Assistant Indian Commissioner Hayter Reed ("Assistant Commissioner Reed") had previously recommended that the vacant position of Chief for the Enoch Band should not be filled;

(c) On or about January 24, 1887, DSGIA Vankoughnet explicitly directed Commissioner Dewdney to ensure that the Papaschase Band was not removed from IR 136 except with their consent and to obtain a formal surrender of IR 136 before the Papaschase Band left so that the land could be sold for their benefit;

(d) On August 12, 1887, Assistant Commissioner Reed persuaded the remainder of the Papaschase Band to move to the Enoch Band's Stony Plain Reserve, located approximately 5

miles west of IR 136. Assistant Commissioner Reed, however, made no attempt to comply with DSGIA Vankoughnet's express instructions to obtain a surrender of IR 136 from the Papaschase Band before they moved;

(e) Assistant Commissioner Reed then evicted Chief Papaschase and other discharged members of the Papaschase Band who denied relinquishing their rights to live on IR 136 when they accepted scrip and they also informed Assistant Commissioner Reed through a Cree translator that they did not understand the meaning of the language contained in the declarations they purportedly signed.

26. Most members of the Papaschase Band who moved to the Stony Plain Reserve remained with the Enoch Band but a few joined other Bands. Most of the discharged Papaschase Band members relocated to various locations such as Elinor Lake, Lac la Biche, Beaver Lake and Kikino. and, to the best knowledge of the Plaintiffs, none were re-admitted into Treaty by the Defendant.

27. As a result of the Defendant's actions in unilaterally transferring members of the Papaschase Band to the Edmonton Straggler's list in 1880, discharging a majority of the Papaschase Band from Treaty 6 in 1885-1886 through the issuance of scrip, and inducing the remainder of the Papaschase Band to vacate IR 136, the Plaintiffs have suffered significant damages to their culture, language, and collective identity, including the loss of Indian status and band membership.

28. On August 29, 1887, DSGIA Vankoughnet authorized Commissioner Dewdney to obtain a surrender of IR 136 from the Papaschase Band. Commissioner Dewdney delegated this task to the new Indian Agent, Major William de Balinhard ("Agent de Balinhard") but this was not permitted by the *Indian Act*, so Vankoughnet issued separate instructions on September 30, 1887 authorizing Agent de Balinhard to call a meeting of the voting members of the Papaschase Band in accordance with their usual custom for calling such meetings, at such time and place considered most convenient for the Band to consider the question of surrendering IR 136 so the lands could be disposed of for benefit of the Papaschase Band.

29. The Defendant failed to act in a timely manner and take reasonable steps to ensure that all eligible voters of the Papaschase Band were given adequate notice of the meeting called to discuss the proposed surrender of IR 136. As a result of errors, omissions, and fraudulent misrepresentations made by the Defendant's agents, the integrity of the entire surrender process was tainted and does not reflect the Papaschase Band's true understanding and intention with respect to the purported surrender and sale of IR 136. Particulars of this averment are as follows:

(a) Agent de Balinhard failed to act on his instructions for over one year without any valid justification;

(b) On November 15, 1887, Agent de Balinhard misrepresented that he was unable to obtain a surrender of IR 136 because there were only two adult males of the Papaschase Band on the Enoch Reserve and one was away on a hunt. However, in August, 1887, Agent de Balinhard paid treaty annuities to at least 10 men from the Papaschase Band who were with the Enoch Band but he made no attempt to convene a surrender meeting at that time. Further, Agent de Balinhard knew or ought to have known that there were other men from the Papaschase Band who were living with the Alexander and Samson Bands, located approximately 50 miles south of Edmonton;

(c) On March 30, 1888, Agent de Balinhard reported that it was impossible to arrange a proper meeting of the voting members of the Papaschase Band since there were only 3 eligible voters living on the Enoch Band's reserve with a greater number located in the Bear's Hills Indian Agency or at other unknown locations. This statement proved to be false because Agent de Balinhard personally paid treaty annuities to the Enoch Band and 8 men from the Papaschase Band on October 1 and 2, 1888 but Agent de Balinhard made no attempt to convene a surrender meeting at that time;

(d) On November 15, 1888, Inspector Wadsworth arrived in Edmonton and pressed Agent de Balinhard to call a surrender meeting with the Papaschase Band on a maximum of 4 days notice. On November 19, 1888, Agent de Balinhard and Inspector Wadsworth purported to obtain a

surrender of 39.9 square miles of land within IR 136 from only 3 adult male members of the Papaschase Band living on the Enoch Reserve;

(e) Members of the Papaschase Band who did participate in the surrender meeting did not have the benefit of independent legal advice or any advice or information from the Defendant as to their options and the foreseeable consequences of those options to assist the Papaschase Band in making a full and informed decision on whether to surrender IR 136 and, if so, on what terms;

(f) The Defendant exerted undue influence, coercion and duress on the 3 men that participated in the surrender meeting to assent to the surrender;

(g) On May 22, 1889, Agent de Balinhard and Napasis purportedly signed a sworn affidavit before Justice Rouleau of the Supreme Court of the North-West Territories certifying the surrender had been taken in accordance with provisions of the *Indian Act*;

(h) On October 12, 1889, the Governor in Council accepted the surrender of IR 136 pursuant to O.C.P.C. 2329/1889.

30. The Plaintiff pleads that the purported surrender of IR 136 was invalid and void *ab initio* because it did not comply with the strict procedures governing the surrender of Indian reserves as set out in section 39 of the *Indian Act*, R.S.C. 1886, c. 43 (49 Vict.), particulars of which are as follows:

(a) The meeting or council summoned to specifically consider the surrender vote was not called according to the rules of the Papaschase Band and the eligible voters of the Papaschase Band;

(b) There were at least 8 male members of the Papaschase Band over the age of 21 years of age who were paid annuities at the Enoch Band in 1888 and were eligible to vote in the surrender because they habitually resided near and were interested in IR 136. Since only 3 eligible voters attended the surrender meeting, the surrender of IR 136 was not assented to by a majority of the eligible voters of the Papaschase Band.

31. According to the express terms of the surrender instrument, all lands within IR 136 were surrendered in trust to the Defendant to be disposed of "upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people." The Defendant also undertook to collect all monies received from the sale or lease of IR 136 lands and to deposit the net proceeds after deducting management expenses into an interest bearing account to be held in trust by the Defendant. The surrender instrument expressly states that only the interest accruing from such monies shall be paid annually or semi-annually to the Papaschase Band and "our descendants forever." In particular, the Plaintiffs allege that the Defendant acted contrary to the express terms of the surrender and its trust and fiduciary obligations to the Papaschase Band by:

(a) failing to hold the principal amount collected on account of the sale of IR 136 lands in trust for the exclusive benefit of the Papaschase Band and their descendants forever;

(b) failing to distribute the interest generated from the sale of the IR 136 lands to the Papaschase Band and their descendants on an annual or semi-annual basis; and

(c) distributing any portion of the proceeds of sale, whether it be principal or interest, to any person who was not a member of the Papaschase Band or a direct descendant.

32. From 1890 to 1930, the Defendant sold all of the IR 136 lands to third parties and received monies as a trustee and fiduciary on behalf of the Papaschase Band and their descendants as per the terms of the surrender instrument. Particulars with respect to the total amount of monies collected by the Defendant for the sale of IR 136 lands, the amounts paid out, and to whom such payments were made, are within the knowledge of the Defendant and cannot be provided by the Plaintiffs until after discovery herein.

33. The Defendant further breached its treaty, statutory, and fiduciary obligations to the Papaschase Band by:

(a) failing to obtain a specific surrender relating to mines and minerals;

(b) by disposing of mines and minerals within IR 136 without obtaining valuable consideration for same from the third party purchasers;

(c) by retaining such mines and minerals for the Defendant's own use and benefit, particulars of which are within the knowledge of the Defendant and cannot be provided by the Plaintiffs until after discovery herein.

34. As a result of the actions of the Defendant herein complained of, the Plaintiffs have suffered special damages, particulars of which are as follows:

(a) Loss of the exclusive use and benefit of the lands and resources within IR 136;

(b) Loss of income and revenue that could have been generated from the sale and disposition of natural resources such as agricultural produce, timber, oil and gas, minerals, aggregate, and any other such resources that were extracted form IR 136; and

(c) Loss of economic opportunities for the commercial and residential development of lands within IR 136.

35. The Plaintiffs propose that the trial of this action, which in the opinion of Counsel for the Plaintiffs will take more than 25 days, be held at the Court House in Edmonton, Alberta.

WHEREFORE THE PLAINTIFFS CLAIM AGAINST THE DEFENDANT:

(a) A declaration that the surrender of IR 136 is invalid and void *ab initio* because the Defendant failed to comply with the mandatory requirements of the *Indian Act*, R.S.C. 1886, c. 43 (49 Vict.);

(b) A declaration that the Defendant breached its treaty and fiduciary obligations to the Papaschase Band and tainted the entire surrender process making it unsafe to rely on the surrender of IR 136 as a reliable expression of the Papaschase Band's understanding and intention;

(c) Further, or in the alternative, a declaration that the Defendant and its agents acted contrary to the express terms of the surrender and its trust and fiduciary obligations to the Plaintiffs with respect to the management and administration of monies received on account of the sale of IR 136 lands;

(d) A declaration that the Defendant's conduct as alleged herein constitutes actual, constructive or equitable fraud;

(e) A declaration that the direct descendants of any person who would have been a member of the Papaschase Band at the time of the impugned surrender on November 19, 1888 but for the misconduct of the Defendant, is entitled to be recognized as a lawful descendant of the Papaschase Band and shall be entitled to the benefit of any relief granted by this Honourable Court. For greater certainty, this shall include the *bona fide* descendants of any person who was unilaterally transferred by the Defendant to a different Indian band without their consent or discharged from treaty through the issuance of Métis scrip regardless of whether such descendants are presently registered Indians, non-status, or Métis;

(f) A declaration that the Papaschase Band has never ceased to exist as an Indian band or, alternatively, a declaration that the Defendant is obligated to pass an Order in Council declaring all lawful descendants of the Papaschase Band to be a "band" pursuant to section 17 of the *Indian Act*, R.S.C. 1985, c. I-5;

(g) A declaration of title and an order of immediate possession of all lands and/or mines and minerals within IR 136 to the extent that title to such lands and/or mines and minerals remain vested in the Defendant;

(h) A declaration that, in lieu of an order for possession of lands and/or mines and minerals that have been sold by the Defendant to bona fide purchasers for value without notice, the Defendant is obligated to set apart reserve lands in the amount of one square mile per family of five or 128 acres for each bona fide descendant of the Papaschase Band or provide the replacement value of the IR 136 lands as of the date of the judgment of this Honourable Court;

(i) An order for an accounting of:

(i) the sale of all lands and/or mines and minerals within IR 136 and of the monies received by the Defendant;

(ii) the amounts paid out by the Defendant, to whom such payments were made, and the current balances and status of any accounts which the Defendant continues to hold in trust pursuant to the terms of the surrender instrument;

(iii) any monies, royalties, dues, or other payments received by the Defendant for the extraction of mines, minerals, oil and gas, timber, and other natural resources within IR 136;

(j) General and special damages in such amounts and insofar as they can be determined at the trial of the action;

(k) Punitive or exemplary damages in such amount that this Honourable Court deems appropriate;

(l) Pre-judgment interest;

(m) Costs; and

(n) Such further and other relief as this Honourable Court deems just.

DATED at the City of Calgary, in the Province of Alberta, this 9h day of February, 2001; **AND DELIVERED** by Messrs. Rooney Prentice, Barristers, Suite 501, 407 - 8th Avenue S.W., Calgary, Alberta, T2P 1E5, counsel for the Plaintiffs whose address for service is in care of their said counsel.

ISSUED out of the Office of the Clerk of Queen's Bench of Alberta, Judicial Centre of Edmonton, this ____ day of _____, 2001.

Clerk of the Court

NOTICE

TO: **ATTORNEY GENERAL OF CANADA**

You have been sued. You are the Defendant. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Edmonton, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiffs named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiffs may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiffs, or do either thing late.

This Statement of Claim is issued by:

ROONEY PRENTICE
Barristers

Solicitors for the Plaintiffs who reside in Alberta and the Plaintiffs' address for service is in care of:

Suite 501, 407 – 8th Avenue S.W.
Calgary, Alberta
T2P 1E5

Action No. **0103-03088**

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

BETWEEN:

ROSE LAMEM AN, FRANCIS SAULTEAUX, NORA ALOOK, SAMUEL WASKEWITCH, and ELSIE GLADUE on their own behalf and on behalf of all descendants of the PAPASCHASE INDIAN BAND NO. 136

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

ROONEY PRENTICE
Barristers

Suite 501, 407 – 8th Avenue S.W.
Calgary, Alberta
T2P 1E5

Ron S. Maurice
(403) 266-6105

File No. 8-002