

Federal Court File No:

FORM 301 Rule 301

Notice of Application

IN THE FEDERAL COURT OF CANADA

BETWEEN:

LORI SCOUT (Maatsiisapi an Indian of Blood Tribe)

Applicant

-and-

THE BLOOD TRIBE BAND COUNCIL and THE ATTORNEY GENERAL OF CANADA

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts 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.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 23, 2023



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AND TO: WALSH LLP
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Application

THIS IS AN APPLICATION IN RESPECT OF Sections 18.1 and 18(1) of the Federal Courts Act for a judicial review of the Council's Decision to hold a Ratification Vote of an Agricultural Benefits Settlement Agreement and Trust Agreement ("Decision" or "Ratification Vote") and the holding of same. The final decision was communicated to the Applicant on September 16, 2021.

THE APPLICANT MAKES THIS APPLICATION FOR THE FOLLOWING RELIEF:

- A. An Order of *certiorari* or Declaration quashing and setting aside the Decision and its implementation and remitting the Decision for re-determination in accordance with the Direction of this Court;
- B. An Order in the nature of *mandamus* compelling the Chief and Council to comply forthwith with their obligations to avoid conflicts of interest in the management of Settlement Trust monies
- C. A Declaration that:
 - a. The Chief and Council must consult with Members and provide full disclosure of the Agreement;
 - b. The Ratification Vote was procedurally unfair, biased and/or unreasonable and thus null and void because the members of the Blood Tribe, including the Applicant:
 - c. was not consulted or offered an opportunity to make input in connection with the mandate given to the negotiators of the Agreement;
 - i. was given no progress reports in connection with the negotiations
 - ii. was not shown the report of the negotiators;
 - iii. was not given an opportunity to see the text of the Agreement prior to the call for ratification or thereafter;
 - iv. was not given the benefit of full consultation prior to or during the ratification vote.
 - d. The Chief and Council must consult with Members and provide full disclosure of the Settlement and Trust Agreement;

- e. The Ratification Vote was procedurally unfair, bias and/or unreasonable and thus null and void;
- f. The Ratification Vote and/or the Trust Agreement violates section 2(3)(a) of the *Indian Act*;
- g. The Ratification Vote violates the Members rights to consultation protected in section 35 of the *Constitution Act, 1982* and/or under the *United Nations Declaration on the Rights of Indigenous Peoples Act* (“**UNDRIP**”);
- h. The Crown in right of Canada has a pecuniary interest in the Ratification Vote;
- i. The Members did not have the benefit of independent legal advice.
- j. The Ratification Vote does not allow the Chief and Council to enter into a Settlement Agreement or Trust Agreement;

D. Interim Order:

- i. Preserving the *status quo* and restraining the Respondents from executing, in whole or in part, the Settlement and or Trust Agreements until this application for judicial review is heard on the merits;
- ii. Allowing the Respondents to disburse the per capita distribution to Blood Tribe Members once proper settlement terms and acceptance of those terms are re-negotiated or decided by a trial of the action;
- iii. Appointing Lori Scout as Trustee to set up independent Trustee Board and to complete implementation of the Trustee Board’s mandate with full opportunity for Lori Scout to be included in any and all negotiations or decisions in advance of any being made relative to the Settlement Agreement.
- iv. Providing for expedited timelines.

E. An Order of:

- i. Advance costs from the Blood Tribe and/or the Attorney General of Canada;
- ii. Alternatively, costs from the Respondents on a solicitor-client basis and/or party and party costs in any event of the cause.

F. Such further and other relief that this Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

1. The Applicants, Roger Prairie Chicken, Eugene Fox and Lori Scout are all members of the Blood Tribe, a signatory to the Blackfoot Treaty of 1877 (Treaty 7). There are approximately 13,000 members with approximately 7758 eligible electors.
2. The Applicants bring this proceeding pursuant to Rule 114(1) of the *Federal Court Rules* and on behalf of the members of the Blood Tribe. The members' rights to have a fair, reasonable and lawful Ratification Vote are common issues justifying a representative proceeding.
3. Treaty 7 ceded roughly 130,000 km² of land from the Rocky Mountains to the west, the Cypress Hills to the east, the Red Deer River to the north, and the US border to the south. Treaty 7 promised the Blood Tribe members agricultural benefits, i.e. "cows & plows", stating:

And further, Her Majesty agrees that the said Indians shall be supplied as soon as convenient, after any Band shall make due application therefor, with the following cattle for raising stock, that is to say: for every family of live persons, and under, two cows; for every family of more than five persons, and less than ten persons, three cows, for every family of over ten persons, four cows; and every Head and Minor Chief, and every Stony Chief, for the use of their Bands, one bull; but if any Band desire to cultivate the soil as well as raise stock, each family of such Band shall receive one cow less than the above mentioned number, and in lieu thereof, when settled on their Reserves and prepared to break up the soil, two hoes, one spade, one scythe, and two hay forks, and for every three families, one plough and one harrow, and for each Band, enough potatoes, barley, oats, and wheat (if such seeds be suited for the locality of the Reserves) to plant the land actually broken up. All the aforesaid articles to be given, once and for all, for the encouragement of the practice of agriculture among the Indians.

4. To date and in breach of Treaty 7, the Blood Tribe members have never received their "cows & plows" or compensation for the same.
5. The right, entitlement and/or promise under Treaty 7 is owed to the Blood Tribe as a collective. However, each member has an individual right to exercise the "cows & plows" clause, and, as such, the corresponding right to meaningful consultation when such right is being finally settled and or resolved.

Cows and Plows Settlement Agreement:

6. The Respondents purportedly reached a settlement agreement of \$150 million in the summer of 2021. This compensation results in approximately \$11,500 per Blood Tribe member. However, Treaty 8 First Nations have received settlements resulting in the equivalent of \$40,000 per member.
7. The Settlement Agreement has never been provided to members, despite the, asking the same before September 16, 2021 and demanding the same from the Respondents on or about October 5, 2021.
8. The members have only received summaries of the Settlement and Trust Agreements ("**Summaries**"). It is general practice for members to receive the entire Settlement Agreement before a Ratification Vote. However, the Blood Tribe Council ("**Council**") deliberately withheld copies of the Agreements.
9. Neither the Summaries nor the Notice of Vote outline an internal appeal procedure and, as such, there is no adequate alternative remedy to challenge the Ratification Vote.
10. The Settlement Agreement would provide full and final settlement of the cows and plows Treaty right/promise for past, current and future generations of Blood Tribe members. However, Council asserted, without justification:

There is another rumor circulating that the Blood Tribe Members will lose their Treaty Rights if they vote "YES" to the Blood Tribe Treaty Entitlement to Cattle Claim. THIS IS ABSOLUTELY NOT TRUE. THERE IS NO RELINQUISHMENT OR LOSING OF TREATY RIGHTS, RATHER IT IS ABOUT A CLAIM FOR A TREATY RIGHT THAT WAS NOT FULFILLED BY CANADA.

Cows and Plows Trust Agreement

11. Council was also proposing a Trust Agreement for some of the Settlement Agreement monies. Members, including the Applicants, were not all provided a copy of the Trust Agreement. They have only seen an executive summary of the agreement.
12. From the summary, the Trustees include 7 individuals. Of these Trustees, 4 will be members of Council. This means Council will control the Trust.
13. This conflict of interest between Trustees, acting in two roles, is like another Blood Tribe Trust Agreement, the Management of Assets Trust Agreement from 2019, which also included Council members as a majority

of Trustees. Since 2019, the members, as beneficiaries have not received proper accounting or financial statements relating to the 2019 Trust Monies.

14. Upon receiving Independent Legal Advice, the Applicants now know that it is improper if not illegal to have the Councilors act as Trustees. They also have well-founded concerns about disclosure and use of Settlement Trust monies when the Council is also responsible for these funds.
15. The members were also not offered proper independent financial advice about the safeguards in place to ensure the prudent, accountable expenditure and/or investing of their Trust/Settlement monies.

Decision Under Review: Ratification Vote

16. Before pursuing the Ratification Vote, Council was required to consult with and/or receive approval from members in accordance with Blood Tribe's customary law, section 2(3)(a) of the *Indian Act*, RSC 1985, cl-5, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, including Article 18, and/or the Applicant's Treaty rights under section 35 of the *Constitution Act, 1982*.
17. The Ratification Vote did not have the required majority approval of Blood Tribe electors. The Ratification Vote was purportedly passed with the participation of barely 25 percent of members (2187 or 7758 eligible voters). Of those who participated, approximately 1734 voted in favour.
18. The number of YES votes was far short of the majority approval needed under section 2(3)(a) of the *Indian Act* to transfer the Blood Tribe's property into trust or authorize capital expenditures as the Trust Agreement purports to do. The Trust Agreement cannot be used to circumvent the statutory requirements for Band expenses in sections 2(3)(a) or 83 of the *Indian Act*, or the requirements in any applicable Blood Tribe bylaws.
19. Neither can approximately 22 percent of electors extinguish a Treaty right or finally settle a constitutionally protected Treaty promise.
20. Further, to the extent the Minister of Crown-Indigenous Relations and Northern Affairs ("**CIRNA**") is involved in determining the validity of this Ratification Vote, there is a reasonable apprehension of bias. The Minister has a direct pecuniary interest in the outcome. This is especially considering that Blood Tribe members are receiving a cows and plows settlement that is, per member, up to 10 times less than some of the same settlements from Treaty 8 First Nations.

21. The Ratification Vote question was not sufficiently clear to be valid. The question included a blanket authorization for Council and, in turn, their majority Trustees to do as they deem necessary. The question also improperly included approval for a per capita distribution of \$3,000 which ought to have been excluded from questions relation to the Trust Agreement. The question stated:

As a Voter of the Blood Tribe do you:

Do you approve or agree to the terms and conditions of the Blood Tribe Treaty Entitlement Cattle Specific Claim, Settlement Agreement and Trust Agreement and authorize a quorum of Blood Tribe Council to sign all documents necessary to give effect to the Agreements? [emphasis in original].

22. By including the per capita amount in the Ratification Vote question, the Council warned Members that they would “not receive any funds” if there was a “NO” vote. This was a misleading statement that affected the manner of voting. CIRNA has been settling cows and lows promises systematically since 2015 and, therefore, it is incorrect to say that NO would result in no funds. A NO vote would foreseeably require further negotiations and/or amendments to the Agreements.

23. The Ratification Vote took place without proper notice and/or necessary disclosure. The question was asked without providing any or equal access to all or some of the necessary disclosure for an informed voter to agree to the terms and conditions. Members needed to know to ask and, when they did ask for information, they only received the Summaries. The Applicants did not know that they should specifically ask for full disclosure or that the Summaries were deficient prior to the Ratification Vote.

24. For their part, the Applicants asked Council and CIRNA to see these Agreements, including through legal counsel on October 5, 2021. Neither even replied to these requests.

25. The Ratification Vote also included an illegal and/or fundamentally flawed Trust Agreement. The Members were not informed of these issues. The question failed to disclose the conflict of interest created by the Trust Agreement, which allows, among other things, Trustees (4 of 7 being members of Council) to pay their own expenses with the approval of themselves (i.e. Council). Further, the Trust Agreement, considering the final relinquishment of a Treaty right, allows for undefined expenses ranging from Soccer fields to anything similar. There is no consideration of the fact, which Council denies, that this Settlement Agreement is a final relinquishment of the Blood Tribe’s Treaty entitlements under the cows and plows clause.

26. Importantly, the Members were not provided with Independent Legal Advice in advance of and in relation to the Ratification Vote. Legal counsel who negotiated the Settlement Agreement and/or Trust Agreement have a pecuniary and vested interest in the Ratification Vote and are thus not qualified to give Independent Legal Advice. Independent Legal Advice, had it been provided, could have informed voters of the deficiencies with the Trust Agreement and the importance of obtaining further disclosure.

The Decision should be set aside:

27. The Decision ought to be set aside and a new Ratification Vote ordered. The requested Declarations should issue.

28. The Decision was made without jurisdiction. The Ratification Vote was pursued and accepted without lawful authority to do so. A majority of electors was required to approve the transfer of Blood Tribe/Treaty monies, capital expenditures, and/or the extinguishment/final settlement of Treaty rights.

29. Further and/or in the alternative, the Ratification Vote was conducted in a procedurally unfair manner. Members received no constructive notice, no disclosure and no meaningful opportunity to respond to the Agreements. Council and the Minister or CIRNA were biased, acted in a conflict of interest and/or breached their fiduciary duties. The process was similarly unfair in failing to provide Members with Independent Legal Advice.

30. Further and/or in the alternative, the Decision was unreasonable or unlawful in a number of manners, including but not limited to its:

- a. Creation of a structural conflict of interest in the Trust "Agreement;
- b. Use of a blanket and uncertain question, which improperly included an express or implied ultimatum in relation to the per capita distribution;
- c. Irregularities which affected the outcome of the Ratification Vote;
- d. Breach of section 2(3)(a) of the *Indian Act*;
- e. Contravention of UNDRIP; and/or
- f. Inconsistency with the Council's duty to consult and/or the member's rights to consultation in settling or resolving rights protected under Treaty 7.

31. The applicants will be requesting that this matter be expedited in order that the relief sought is capable of being effective.

32. The Applicants may also seek interim injunctive relief.

33. *Federal Courts Act*, RSC 1985 c F-7, ss. 18(1), 18.1, 18.2

34. Such further grounds as counsel may request and this Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

35. The affidavit evidence to be filed by the Applicants and such further and other material as counsel may advise and this Court may permit.

36. The Applicant requests, pursuant to Rule 317 of the *Federal Courts Rules*, that the Respondents disclose all records before Council and/or the Minister of CIRNA in pursuing the Ratification Vote, including but not limited to:

- a. Any Band Council Resolution outlining the Decision and/or affecting the Decision;
- b. All records regarding the Ratification Vote and notice of the Ratification Vote;
- c. A list of all Members who received the complete copy of the Agreements;
- d. All minutes of meetings regarding the Decision or in response to the demand of October 5, 2021;
- e. All record of consultation regarding the Ratification Vote;
- f. All records or audio/visual recording of meetings concerning the Ratification Vote, including but not limited to the agenda, the meeting minutes, any correspondence or advice related to the meeting;
- g. All advice or recommendations provided to the Council regarding the Ratification Vote or the Agreements;
- h. All documents, records and evidence relied on or considered by the Council in making the Decision;
- i. All member correspondence with the Ratification Officer, Robyn Little Bear, regarding the Ratification Vote;
- j. Any reasons for the Decision.

February 23, 2023



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