

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:



THE INUIT OF NUNAVUT AS REPRESENTED BY  
NUNAVUT TUNNGAVIK INCORPORATED

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

THE COMMISSIONER OF NUNAVUT AS REPRESENTED BY THE  
GOVERNMENT OF NUNAVUT and the GOVERNMENT OF NUNAVUT

Third Parties

FURTHER FURTHER AMENDED THIRD PARTY NOTICE

TAKE NOTICE that this action has been brought by the Plaintiff against the Defendant. In it the Plaintiff claims against the Defendant for declaratory relief, an Order requiring Her Majesty the Queen in Right of Canada ("Canada") to consent to arbitration and general and special damages, all such claims arising out of allegations relating to the implementation of the *Nunavut Land Claims Agreement* (the "NLCA"), as appears from the Further Amended Statement of Claim, a copy of which is served with this Third Party Notice.

Pursuant to Rule 142(1)(c) of the *Nunavut Rules of Court*, the Defendant claims against you for contribution and indemnity and apportionment of liability. The facts on which the Defendant relies in this third party claim are, firstly, the facts pleaded in the Amended Statement of Defence and, further, the following:

- 1) On May 25, 1993, Canada and the Tungavik Federation of Nunavut (the "TFN"), on behalf of the Inuit of the Nunavut Settlement Area (the "NSA"), entered into the NLCA. The Government of the Northwest

Territories (the "GNWT") was also a signatory.

- 2) The Inuit ratified the NLCA by vote and Canada ratified the NLCA by enacting the *Nunavut Land Claims Agreement Act* ("NLCAA"), S.C. 1993, c. 29.
- 3) In accordance with the provisions of the NLCA, the Inuit of the NSA surrendered their claim to aboriginal title in the NSA, in exchange for certain defined rights and benefits.
- 4) On April 1, 1999, the territory of Nunavut was established pursuant to the terms of the *Nunavut Act*, S.C. 1993, c. 28.
- 5) The *Nunavut Act* established a Legislature for Nunavut with the power to make laws in relation to various classes of subjects including:
  - a) Education in and for Nunavut;
  - b) Property and civil rights in Nunavut;
  - c) The expenditure of money for territorial purposes; and
  - d) Laws for the purpose of implementing the NLCA.
- 6) The GNWT was the Territorial Government with jurisdiction over the NSA from 1993 to 1999. The Government of Nunavut (the "GN") is the successor Territorial Government to the GNWT with jurisdiction over the NSA.
- 7) Pursuant to section 4 of the *NLCAA*, the GN is bound by the NLCA and subject to all duties and liabilities imposed therein.
- 8) The NLCA imposes various duties and obligations on "Government". Section 1.1.1 defines "Government" for the purposes of the NLCA as meaning either the Government of Canada or the Territorial Government or both, as the context requires, depending on jurisdiction and subject

matter referred to, or as determined pursuant to s 1.1.6. Section 1.1.1 further defines "Territorial Government" for the purposes of the NLCA as meaning the Government of the Northwest Territories, or any successor government or governments, having jurisdiction over all or part of the Nunavut Settlement Area.

9) On May 25, 1993, pursuant to Article 37 of the NLCA, Canada, the TFN and the GNWT also entered into "A Contract Relating to the Implementation of the Nunavut Final Agreement" (the "Implementation Contract").

10) The Implementation Contract identifies, *inter alia*:

- a) The obligations of Canada and the GNWT, or any successor territorial government with jurisdiction over the NSA, required to implement the NLCA; and
- b) The funding levels for implementation of the NLCA over the ten year period following ratification (1993-2003) (the "Initial Planning Period").

11) On July 9, 1992, Canada and the GNWT agreed to a Memorandum of Understanding between the Government of Canada and the Government of the Northwest Territories on Comprehensive Land Claim Implementation (the "MOU").

12) The MOU established the principles, *inter alia*, under which Canada would provide funding to the GNWT for the GNWT's incremental costs including those costs (i) arising as a result of the GNWT implementing obligations contained in comprehensive land claim final agreements which it agreed to implement, or as set out in Implementation Plans or (ii) which in the absence of a comprehensive land claim final agreement are costs that would not have been incurred by the GNWT; and that Canada

and the GNWT would negotiate a bilateral funding agreement which would include identification of the levels of funding that Canada would provide to the GNWT.

- 13) On October 10, 1993, Canada and the GNWT entered into a "Bilateral Funding Agreement Respecting the Implementation of the Nunavut Final Agreement" (the "Bilateral Funding Agreement"). For the purposes of the Bilateral Funding Agreement, the GNWT is defined as including any successor government with jurisdiction over the NSA. The Bilateral Funding Agreement was in force until the end of the Initial Planning Period.
- 14) Pursuant to the terms of the Bilateral Funding Agreement, Canada entered into a series of Funding and Contribution Agreements (the "Funding Agreements") which provide for payments to the GNWT and, subsequently, the GN to assist the Territorial Government in fulfilling its responsibilities under the NLCA.
- 15) Certain of the Funding Agreements provide that the Territorial Government will indemnify Canada against all claims, liabilities and demands arising directly or indirectly from any act, omission or negligence of the Territorial Government, any breach of the Funding Agreements by the Territorial Government and performance or non-performance of the Territorial Government's obligations under the Funding Agreements.
- 16) In addition, pursuant to the terms of the *Federal-Provincial Fiscal Arrangements Act*, S.C. 1993, c. F-8, the Government of Canada provides funding to the GN in the form of Territorial Formula Financing payments.
- 17) On December 7, 2006, Nunavut Tungavik Incorporated ("NTI") [the successor to the TFN] filed a Statement of Claim naming Canada as the sole defendant and alleging breaches of, *inter alia*, specific terms of the

NLCA, fiduciary duties and funding obligations and claiming declaratory relief, court supervised specific performance, an Order that Canada consent to arbitration and damages.

18) On March 30, 2007, Canada filed a Statement of Defence to NTI's claim.

19) On April 27, 2007, NTI filed a Reply and Joinder of Issue.

20) On July 11, 2007, NTI amended its Statement of Claim.

21) On February 1, 2013, NTI filed a Further Amended Statement of Claim (the "FASOC").

22) On March 27, 2013, Canada filed an Amended Statement of Defence to the FASOC.

23) In the FASOC, NTI alleges that Canada breached a number of obligations and duties owed to NTI pursuant to the terms of the NLCA and the Implementation Contract.

24) Canada denies liability to NTI on the grounds set out in its Amended Statement of Defence.

25) Canada says that certain obligations that NTI has alleged Canada has breached are obligations which, if owed to NTI and have been breached, all of which is denied, are owed jointly by Canada and the GN as to some obligations and in severalty as to other obligations.

26) In particular as they apply to this Third Party Claim:

- a) At paragraphs 12(d)-(e), 49-51 and 55 of the FASOC, NTI alleges that Canada breached the obligation to take initiatives to increase Inuit participation in government employment and failed to

cooperate in the development and implementation of adequate employment and training. Pursuant to articles 23.2.1 and 23.2.2 of the NLCA, these obligations were owed to NTI by both Canada and the GN either jointly or severally; and

- b) At paragraphs 12(g)-(h) and 52-55 of the EASOC, NTI alleges that Canada breached the obligation to develop Inuit employment plans and pre-employment training plans to increase Inuit participation in government and that the specific measures required to be undertaken as part of the Inuit employment plans have not been carried out. Canada says that pursuant to Articles 23.4.1-23.4.4 of the NLCA, the obligation to prepare Inuit Employment Plans and pre-employment training plans was owed by Canada and the GN in severalty, not jointly, and Canada is not liable for breaches by the GN for any failure to develop Inuit Employment Plans and/or pre-employment training plans.

27) Canada denies any breach of the obligations referred to in the preceeding paragraph and, in the alternative, claims that either:

- a) Canada's liability to NTI is separate and severable from any liability of GN and Canada should only be liable for damages relating to its separate or several liability, if any, and Canada further claims indemnity or, alternatively, contribution from the GN for any damages it is found liable to NTI on account of breaches by the GN, or
- b) Alternatively, if Canada's liability for any breach is found to be joint with the GN, then Canada seeks an assessment of the liability apportioned between Canada and the GN and a declaration and judgment that Canada is entitled to recover from GN any damages collected by NTI from Canada in excess of Canada's apportioned share of such liability.

- 28) Canada denies that the objective set out in Article 23 of the NLCA to increase Inuit participation in government employment imposes legal obligations on Canada or government generally. Alternatively, if it imposes legal obligations, which is denied, such obligations were owed to NTI by both Canada and the GN, either jointly or severally.
- 29) In particular, the GN is responsible for education within the NSA pursuant to the *Nunavut Act*, and if, as alleged in the FASOC, Canada has not reached the objective of a representative level of Inuit employment within its public service, which allegation Canada denies, it is because the GN has failed or neglected to allocate sufficient resources and/or funds for education and training of Inuit to create a pool of potential employees qualified to assume positions in the federal and territorial public services.
- 30) Further in particular, the GN is responsible for hiring in the territorial public service and if, as alleged in the FASOC, the stated objective of a representative level of Inuit employment within the territorial public service has not been reached, which allegation Canada denies, it is because the GN has failed or neglected to allocate sufficient resources and/or funds, or otherwise failed to take steps or develop and implement programs, for education and training of Inuit to create a pool of potential employees qualified to assume positions in the territorial public service and hire from that pool.
- 31) NTI further alleges at paragraphs 12(m), 12(p) and 91 of the FASOC that Canada has disclaimed any responsibility for providing GN with funds to carry out measures required under the NLCA and refused to discuss and provide the funding necessary for the GN to carry out measures allegedly required under Article 23 of the NLCA to increase Inuit employment in the territorial public service to a representative level. Canada denies these allegations and states that the funding provided by Canada to the GN in the form of the Territorial Formula Financing payments, payments made

pursuant to the Implementation Contract, and otherwise, is sufficient to enable the GN to fulfill its obligations under Article 23 of the NLCA. Canada further says that the GN is solely liable for any failure to meet its obligations under Article 23 and is liable to indemnify or, alternatively, contribute to Canada for any damages NTI recovers from Canada relative to GN's obligations under Article 23.

32) NTI further alleges at paragraphs 12(o) and 80 of the FASOC that Canada has failed to provide adequate funding to allow implementation of the Umbrella Inuit Impact and Benefit Agreement for Territorial Parks in Nunavut (the "Territorial Parks IIBA"). Canada denies this allegation and states that it has made available and continues to make available funding for implementing the Territorial Parks IIBA. The GN is therefore solely liable for any failure(s) in implementation of the Territorial Parks IIBA and liable to indemnify or, alternatively, contribute to Canada for any damages NTI recovers from Canada:

- a) Under the Implementation Contract, Canada also agreed to fund and did fund the negotiation and renegotiation of the Territorial Parks IIBA in the Initial Planning Period;
- b) Canada specifically denies that the NLCA or the Implementation Contract created any obligation on the part of Canada to fund the Territorial Government for the implementation of the Territorial Parks IIBA. Canada states that Schedule 1 of the Implementation Contract (pp. 8-10 and 8-11) allowed the Territorial Government to reallocate unexpended amounts for the negotiation and renegotiation of the Territorial Parks IIBA for the implementation of same;
- c) In the Bilateral Funding Agreement between the GNWT and Canada, Canada agreed to reimburse the GNWT and its successor for costs of implementing an IIBA that in the absence of the IIBA

would not have been incurred by the GNWT in the operation of the parks, up to an annual amount equal to 5% of the sum of the parks' annual operating costs for territorial parks in existence on July 9, 1993, and the sum of the parks' annual operating and capital costs for territorial parks created after July 9, 1993, up to a total maximum amount of \$900,000 for the initial Planning Period, notwithstanding it had no obligation under the NLCA or the Implementation Contract to provide such funding;

- d) The Territorial Government did not seek reimbursement from Canada for any Territorial Parks IIBA implementation costs for the Initial Planning Period;
- e) Since the expiry of the Bilateral Funding Agreement in July 2003 there has been no agreement by the Implementation Panel on renewal of the Implementation Plan for the Second Planning Period (2003-2013). Nonetheless, Canada has made available to the GN funding for Territorial Parks IIBA implementation activities on a non-reimbursement basis, notwithstanding it has no obligation under the NLCA or the Implementation Contract to provide such funding;

33) To the extent that the GN has committed resources and or funds for the implementation of the Territorial Parks IIBA beyond the funding provided under the Bilateral Funding Agreement and the Implementation Contract it is solely responsible to fund the difference and is therefore solely and severally liable for any such failure and liable to indemnify Canada or, alternatively, contribute for any damages NTI recovers from Canada.

34) If the Territorial Parks IIBA was not properly implemented, Canada denies that it was due to any lack of funding by Canada, but instead says that it resulted from a failure or omission by the GN to properly utilize the

funding provided and or allocate funding from its own resources and it is therefore solely liable for any failure(s) in implementation.

WHEREFORE CANADA CLAIMS against the GN:

- (a) Any relief granted to the Plaintiff for breach of any duties or obligations found to be owed by both Canada and the GN, or by the GN alone, under the NLCA, be apportioned as between Canada and the GN to reflect their joint and/or several responsibility, if any, for the obligations in question;
- (b) Contribution or indemnity or, alternatively, restitution for any damages recovered by the Plaintiff from Canada in excess of any apportioned joint and/or several liability;
- (c) Generally, to be indemnified by the GN in whole or, alternatively, contribution in respect of any judgment and costs in this action ordered as against Canada respecting the failure to implement the Umbrella IIBA or, alternatively, to be indemnified or receive contribution pursuant to the Funding Agreements;
- (d) Costs of the Third Party Proceeding and in the main action; and
- (e) Such further and other relief as this Honourable Court may deem just and should properly be determined between the Plaintiff, the Defendant and the Third Party, or between any of them.

AND FURTHER TAKE NOTICE that judgment may be entered against you in accordance with this Third Party Notice, or such judgment as may be granted under the *Nunavut Rules of Court*, without further notice to you unless within 25 days after service of this Notice on you, excluding the day of service, you caused to be filed in the office of the Clerk of the Nunavut Court of Justice, either:

- a) a Statement of Defence, or
- b) an Appearance,

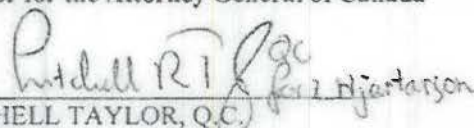
and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff and Defendant or the lawyers for the Plaintiff and Defendant.

AND FURTHER TAKE NOTICE that if you wish to dispute the within claim, you must cause to be filed and served a Statement of Defence;

AND FINALLY TAKE NOTICE that if you do not dispute the liability of the Defendant to the Plaintiff, you will be deemed to admit the validity of any judgment that may be obtained against the Defendant, and if you do not dispute your liability to the Plaintiff, you shall be deemed to admit your liability to the Plaintiff to the extent claimed in this Third Party Notice.

<sup>3<sup>rd</sup></sup> Further Further Amendments DATED at Vancouver, British Columbia on <sup>Q.A.</sup> ~~August~~ September 2013 and delivered by Mitchell Taylor, Q.C., counsel for the Defendant Canada, whose address for service is Department of Justice Canada, Government of Canada Building, P.O. Box 1030, Iqaluit, Nunavut X0A 0H0.

LYNN HJARTARSON  
Regional Director General  
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Per:   
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Whose address for service is in care of:

Department of Justice Canada

Government of Canada Building  
P.O. Box 1030  
Iqaluit, Nunavut X0A 0H0  
File No.: YK 2-78712/2-100435

ISSUED out of the office of the Clerk of the Nunavut Court of Justice at Iqaluit,  
Nunavut, on Sept. 9/13.

*Paula K. [Signature]*  
Clerk of the Nunavut Court of Justice



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BETWEEN:

THE INUIT OF NUNAVUT AS REPRESENTED BY  
NUNAVUT TUNNGAVIK INCORPORATED

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

THE COMMISSIONER OF NUNAVUT AS REPRESENTED BY THE GOVERNMENT  
OF NUNAVUT AND THE GOVERNMENT OF NUNAVUT

Third Party

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**FURTHER FURTHER  
AMENDED THIRD PARTY NOTICE**

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RAC #RMT130531.01.1  
Issued: May 8, 2013  
Expiry: May 7, 2014

Whose address for service is in care of:  
Department of Justice Canada  
Government of Canada Building  
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File No: YK 2-78712

