

T-1075-86

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

BETWEEN:

RODERICK FRANCES, KENNETH FRANCES,  
ROBERT FRANCES, and JOHN PROSPER,  
suing on their own behalf of all  
other members of the Pictou Landing  
Indian Band

PLAINTIFFS

- and -

HER MAJESTY THE QUEEN

DEFENDANT

STATEMENT OF DEFENCE

Filed on this 12 day of August, A.D. 1986.

The Deputy Attorney General of Canada, on behalf of Her Majesty The Queen, in answer to the Plaintiffs' Statement of Claim, says as follows:

1. He admits the allegations of fact contained in paragraph 1 of the said Statement of Claim.
2. He has no knowledge of and does not admit the allegations of fact contained in paragraph 2 of the said Statement of Claim.
3. He admits the allegations of fact contained in paragraph 3 of the said Statement of Claim.
4. As to paragraph 4 of the said Statement of Claim, he denies that "Boat Harbour" was or is occupied by members of the Pictou Landing Band but admits the remaining allegations of fact contained therein.

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5. As to paragraph 5 of the said Statement of Claim, he admits the allegations of fact contained therein and says that the Province of Nova Scotia also sought the consent of the Pictou Landing Indian Band to its proposed use of Boat Harbour.

6. As to paragraph 6 of the said Statement of Claim, he admits discussions were commenced in August of 1965 involving the Pictou Landing Band Council, Band members, officials of the Province of Nova Scotia and the Defendant but he denies the remaining allegations of fact contained therein. He says the fact that Boat Harbour would be permanently adversely affected was well known to the Plaintiffs and the Pictou Landing Band and Band Council, as clearly evidenced by the first clause in the Pictou Landing Band Council Resolution of October 21, 1965 (#51/1965-66/2) which reads as follows:

"That in consideration for the permanent loss of fishing and hunting revenue and other benefits heretofore derived from the Indian use of Boat Harbour, we the undersigned Council of Pictou Landing Band agree to accept on behalf of our Band, an immediate lump sum payment of \$60,000.00 to our Band Funds Capital Account in Ottawa, as compensation and that final settlement will be subject to further negotiations between the Nova Scotia Water Authority and our Branch Headquarters."

7. As to paragraph 7 of the said Statement of Claim, he admits that the Band Council Resolution dated October 21, 1965 (as referred to in paragraph 6 herein) accepted a compensation offer from the Province of Nova Scotia in the amount of \$60,000.00, but he denies the remaining allegations of fact as contained therein. He says the assent of a majority of electors of the Band pursuant to Section 38 of the Indian Act, R.S.C. 1970, c. I-6, as amended, was not required as the matter was dealt with under Section 35 of the Indian Act, not Sections 37, 38 and ff., as the Province of Nova Scotia was empowered to

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take or use lands or any interest therein without the consent of the owner aforesaid. In the alternative he says the assent of the electors of the Band was not required as the subject matter of the negotiations and subsequent agreement was not reserve lands nor any right or interest therein. In any event, he says the Band Council had the support of the Band in accepting the Province's settlement offer.

8. He denies the allegations of fact contained in paragraph 8 of the said Statement of Claim and specifically denies that the Band did not participate in negotiations.

9. He admits the allegations of fact contained in paragraph 9 of the said Statement of Claim.

10. He admits the allegations of fact contained in paragraph 10 of the said Statement of Claim.

11. He denies the allegations of fact contained in paragraph 11 of the said Statement of Claim. He says the possibility of Boat Harbour becoming septic was clearly known to all parties including the Pictou Landing Band, which fact is shown by having reference to the Federal Order-in-Council of September 2, 1966 referred to in paragraph 9 of the said Statement of Claim and, in particular, condition (d) of the Schedule thereto which reads as follows: (Province agrees) "to take remedial action should a septic condition detrimental to the Pictou Landing Band develop in Boat Harbour."

12. As to paragraph 12 of the said Statement of Claim, he says the handling of discharge waste from the Scott Paper Company Limited pulp and paper plant at Abercrombie Point is the responsibility of the Province of Nova Scotia and he admits that Boat Harbour is used for effluent disposal from the aforementioned pulp and paper plant. He further says this use

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is consistent with and within the terms and conditions of the Federal Order-in-Council and acceptance thereof referred to in paragraphs 9 and 10 of the said Statement of Claim. He further says the pipeline and open sewage ditch do not run through the reserve, having been diverted and covered in the early 1970s.

13. He denies the allegations of fact in paragraph 13 and specifically denies all allegations of damage suffered by the Plaintiffs or the Pictou Landing Band.

14. As to paragraph 14 of the said Statement of Claim, he says that in the years following the installation of the aforementioned effluent disposal system, it became evident that Boat Harbour was becoming and in fact did eventually become septic. In late 1971 and early 1972, as a result of meetings involving inter alia the Pictou Landing Band, the Province of Nova Scotia and the Defendant, the Province of Nova Scotia built and installed inter alia a new dam, settling ponds, mechanical aerators and pipeline at a cost of approximately two and one-half million dollars. This action by the Province of Nova Scotia cured the septic condition of Boat Harbour and no pollution or septic condition has existed in Boat Harbour since that time. He further says that when the abovementioned work was announced by the Province of Nova Scotia the Pictou Landing Band Council passed and submitted Band Council Resolution #40, dated February 10, 1972, which reads as follows:

"We the Chief and Council of the Pictou Landing Band are the official representatives of the members of the Pictou Landing Band for all matters dealing with the pollution problem at Boat Harbour. We hereby request the Department of Indian Affairs and Northern Development do not proceed with legal action against the Nova Scotia Water Authority at this time.

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We request the Department of Indian Affairs and Northern Development deal directly with the Band Council in all matters concerning the pollution problem at Boat Harbour. The Pictou Landing Pollution Committee has been dissolved."

Following the completion of the aforementioned new construction by the Province of Nova Scotia, the Pictou Landing Band Council, by letter dated March 7, 1974, advised the Defendant in part as follows: "The Pictou Landing Band Council wish to take this claim on their own to the provincial political level and, if need be, to the courts. The Union and Indian Affairs Branch resources would be used, those resources would not act on behalf of the Pictou Landing Band." Notwithstanding Band Council Resolution #202 dated July 11, 1977, the Defendant was advised by the Band, in August of 1977, not to action the resolution and the Band Council continued to pursue a claim, on its own behalf, against the Province. After the passing of Band Council Resolution #351 dated March 11, 1982, the Defendant had conducted a resource impact study, appointed the legal counsel requested and provided funding, all as requested in the said Band Council Resolution. In November of 1983, the Pictou Landing Band chose to proceed by filing a specific claim with the Specific Claims Branch Office of Native Claims, Department of Indian Affairs and Northern Development. These efforts continued until the filing of the Statement of Claim herein. The Defendant has not commenced any legal action in connection with the matter.

15. He has no knowledge of, and does not admit, the allegations of fact contained in paragraph 15 of the said Statement of Claim.

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16. As to paragraph 15 of the said Statement of Claim, he admits that there was no surrender of Boat Harbour by the Pictou Landing Band, but denies all the remaining allegations in the said paragraph.

17. He denies the allegations contained in paragraphs 17 and 18 of the said Statement of Claim.

18. In further answer to paragraph 18 of the said Statement of Claim, he says the relationship of the Defendant to the Plaintiffs and the Pictou Landing Band vis à vis Boat Harbour was not that of a trustee or fiduciary. In the alternative, if there was a trust relationship, which is denied, it was a political trust not enforceable in a Court of Equity. He specifically denies the six allegations of failure to exercise a required degree of care, stewardship and prudent management and says that the Defendant throughout, has acted reasonably and properly.

19. He denies that the Plaintiffs are entitled to any of the relief claimed in paragraph 19 of the said Statement of Claim.

20. As to the Statement of Claim as a whole, he says that the Pictou Landing Band and all members thereof from time to time, including the Plaintiffs, are barred by laches from maintaining any claim against the Defendant.

21. As to the Statement of Claim as a whole, he says that the Pictou Landing Band and all members thereof from time to time, including the Plaintiffs, are barred by the Limitations of Actions Act, R.S.N.S. 1973, as amended, and in particular Sections 2 and 26 thereof and by the Federal Court Act, R.S.C. 1970 (2nd Supp.), c. 10, as amended, and in particular Section 38 thereof, from maintaining this action.



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The Deputy Attorney General of Canada on behalf of Her Majesty The Queen, therefore prays that it be adjudged that the Plaintiffs are not entitled to any of the relief claimed and that Her Majesty is entitled to costs.

DATED at Halifax, Nova Scotia, this 12<sup>th</sup> day of August, A.D. 1986.

*Frank Iacobucci*  
*per Frank Iacobucci*  
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Frank Iacobucci  
Deputy Attorney General of Canada