

Review of the Trial and Estimated Forecast for 2016–2017

»» Presentation for the
Williams Treaties First Nations
July 19-20, 2016

HUTCHINS LEGAL INC.

Outline

- Review of the Trial
 - Accomplishments
 - Challenges
 - Motions and appeals
 - Delays
 - Amendments Order
- Forecasted Estimate for 2016–2017
Fiscal Year

Review of the Trial



- Plaintiffs' Evidence
- Canada and Ontario's Evidence
- Motions and Appeals

Accomplishments: Evidence

- The Plaintiffs' evidence was completed (with the exception of Dr. Michael Thoms' testifying on his responding report to Dr. Gwen Reimer on the Pre-Confederation Treaties and Dr. Darrel Manitowabi's cross-examination and re-direct.
- In the 2015-2016 Fiscal Year, the Judge heard evidence from Dr. Carl Beal, Duncan Bell, Profs. Smith and Hosios, Dr. Darrel Manitowabi and 19 community witnesses.
- The Plaintiffs also gave evidence on Canada's ATR policy and Ontario's IEP through the Chiefs.

Accomplishments: Evidence

Plaintiffs' Historical Experts: Completed

- ▶ Prof. Douglas Sanders. Testified: February, 2013.
- ▶ Report: “Historical Thinking and practice in the relationship between Indian tribes and the Crown in Canada”
- ▶ Professor Sanders testified on the colonial take-over of the territories of Indian tribes in Canada to say it proceeded on a recurring premise that certain obligations were assumed by the colonizing powers, and by the settler government which was its successor, (after an initial period characterized by mutual recognition, military conflict, and military and political alliances).

Accomplishments: Evidence

Plaintiffs' Historical Experts: Completed

- ▶ James Morrison, Testified: March–April, 2013.
- ▶ Main Report: “Opinion Report. Re: Williams Treaties First Nations”
- ▶ James Morrison testified on the historical context of the Anishnaabeg of the Williams Treaties. His evidence hones in on early treaties and alliances. He takes the position that the 1923 Williams Treaties are a glaring exception to the normal practice of Treaty-making in Canada and Ontario. Although negotiated in between Treaty No Nine of 1905–06, Treaty Eleven of 1921 and the Treaty Nine Adhesions of 1929–30, the Williams Treaties do not resemble the Numbered Treaties in either form or content. The First Nations received very little in return for their surrender of aboriginal title.
- ▶ Reply Reports: Reply to Canada’s Expert, Patrick Brode
- ▶ Reply to Canada’s Expert, David Smith
- ▶ Reply to Canada’s Expert, Alexander von Gernet

Accomplishments: Evidence

Plaintiffs' Historical Experts: Completed

- ▶ Dr. Michael Thoms. Testified: April–June and October–November, 2014.
- ▶ Report: "We Don't Want the Fish or Game": Crown Treaty Pledges to the Mississauga and Chippewa from 1784 to 1923”
- ▶ Dr. Thoms testified that in spite of the Mississaugas' and Chippewas' demands that their hunting and fishing rights be protected, the Williams Commissioners pre-drafted treaties that purport to extinguish these rights over all of Ontario. The pre-drafted treaties included the surrenders of two additional parcels of land that lay outside of their mandate and he also finds that the Commissioners did not set apart reserves in the Treaty, despite the fact that the First Nations identified lands to be reserved.
- ▶ Reply Reports: Reply to Canada's Expert, Alexander von Gernet
- ▶ Reply to Canada's Expert, Dale Miner
- ▶ Reply to Canada's Expert, Paul McHugh
- ▶ Reply to Ontario's Expert, Guy Winterton

Accomplishments: Evidence

Plaintiffs' Historical Experts: Completed

- ▶ Dr. Janet Armstrong. Testified: September 2013 and January–February, 2015.
- ▶ Reports: “Historical Report: The Making of the Williams Treaty of 1923 (2004)”
- ▶ “Supplemental Report – The 1923 Williams Treaties: They “Trustingly Agreed to the Bargain”
- ▶ Dr. Armstrong traces the progression of the Plaintiffs' claims for compensation for lands encroached upon and for the protection of previously reserved lands and rights, over a 70–year period starting in 1847. Ultimately she finds there was a “disconnect between what was said, what was heard and what was written” into the text of the Williams Treaties. Dr. Armstrong's important finding is that the original signature pages of the Williams Treaties were incongruent with the rest of the Treaties, leading to a supplemental report and further investigations and testimony.
- ▶ Reply Reports: Reply to Ontario's expert Gwen Reimer
Reply to Canada's Expert Alexander von Gernet

Accomplishments: Evidence

Plaintiffs' Historical Experts: Completed

- ▶ Brian Lindblom, Forensic Document Analysis. Testified: January, 2015
- ▶ Report: “Examination of the Historic Williams Treaties – Forensic Report.”
- ▶ Mr. Lindblom testified that the initial engrossed manuscripts contained blank spaces for the monetary compensation, and an error in the subject lands description, which were later filled in and corrected. He also first observed discoloration of the signature sheets of the Williams Treaties, recommending further investigation.

Accomplishments: Evidence

Plaintiffs' Historical Experts: Completed

- ▶ Anne Maheux, Forensic Document Analysis. Testified: January, 2015
- ▶ Ms. Maheux conducted a preliminary assessment of the features of the engrossed document for conservation purposes, at the request of Dr. Armstrong who observed anomalous features on the engrossment. Ms. Maheux conducted a further targeted analysis to determine potential causes for the color difference. Her opinion was that the discoloration of the signature pages could be due to handling. The importance of this finding is the possibility that the Williams Treaties, apart from the signature pages, were not made apparent so that the Chiefs saw only the signature pages of the Williams Treaties and not the entire text.

Accomplishments: Evidence

Plaintiffs' Evidence Completed

- The WTFN' Chiefs testified on Canada's ATR policy and Ontario's IEP:
 - 3 weeks of evidence was tendered in response to Canada's amended Defence in which they claimed that compensation was not owed because the WTFN benefitted from these policies.
 - ATR refers to Additions to Reserve and IEP refers to the Interim Enforcement Policy.
 - The Chiefs testified to the fact that the ATR Policy is not only a separate issue altogether from the reserves requested in the Williams Treaties, but that the process is so cumbersome and expensive that for the most part they saw very little value in ATRs.
 - The Chiefs also emphasized that for the IEP, they were willing to cooperate with Ontario to see that certain harvesting rights are respected during the rest of the trial, but that they did not accept that the IEP represents the full expression of the Williams Treaties First Nations' harvesting rights.

Accomplishments: Evidence

WTFN' Chiefs testified on Canada's ATR policy and Ontario's IEP

- ▶ Kelly LaRocca, August 24, 2015
- ▶ Roland Monague, August 24, 2015
- ▶ Mel Jacobs (incl. IEP), August 25-26, 2015
- ▶ James R. Marsden, August 27, 2015
- ▶ Philip Beaver, August 27, 2015
- ▶ Pat Big Canoe, August 27, 2015
- ▶ Greg Cowie, August 28, 2015
- ▶ Dan Shilling, September 9, 2015
- ▶ Karry Sandy McKenzie, September 9, 2015

Accomplishments: Evidence

Plaintiffs' Historical Experts: Completed

- ▶ Aboriginal Perspective: Dr. Darrel Manitowabi (EIC), Testified: Dec. 2015.
- ▶ Report: “An Anishinaabeg Oral Narrative of the Williams Treaties Based on 174 Interviews with Members of the Williams Treaties First Nations Collected by the Late Dr. Krystyna Sieciechowicz in the Years 2001–2002, And Related Materials”
- ▶ Dr. Darrel Manitowabi analyzes the 174 interviews done with Dr. Krystyna Sieciechowicz and ultimately finds that from the Anishinaabeg perspective, as revealed in the narrative accounts, the written Treaties are incomplete since they do not reflect the oral promises at the time of signing. He further finds that the interviewees are clear that the First Nations signatories agreed to oral promises in the Treaties, such as fair and adequate compensation and additional lands.

Accomplishments: Evidence

Community Interviewee Witnesses

- ▶ Mel Jacobs, October 26, 2015
 - ▶ Gary Edgar, October 26, 2015
 - ▶ Richard Snache, October 27, 2015
 - ▶ Rennie Goose and Robert Stinson, October 28, 2015
 - ▶ Henry Jackson, Velma Smith and Charles Warren, October 29, 2015
 - ▶ Andrew Big Canoe, Louise King and Myrna Watson, November 4, 2015
 - ▶ Murray Whetung and Vincent Marsden, November 17, 2015
 - ▶ Dorothy Coppaway, November 18, 2015
 - ▶ Aileen McCalip, November 19, 2015
 - ▶ Dave Mowat, November 23rd and 24th, 2015
 - ▶ Douglas Williams (Gitiga Migisi), Eleanor Muskrat and Winston Taylor, November 24, 2015
- ▶ The 19 community witnesses testified on the interview process carried out by Dr. Krystyna Sieciechowicz. These interviews formed part of the Expert Report of Dr. Manitowabi. They spoke to the Aboriginal perspective of the WTFN and their understanding of what took place during and after the signing of the Williams Treaties.

Plaintiffs' Witnesses Still to Testify:

- ▶ Dr. Darrel Manitowabi (cross – examination), Scheduled for: September, 2016
- ▶ Dr. Michael Thoms (Cross–examination on Reply Report), Scheduled for: August, 2016

Accomplishments: Evidence

Completed Cross-Examinations of Canada's Historical Witnesses

- ▶ Paul McHugh, Legal Historian. Testified: February and April, 2013
- ▶ Canada's historian Paul McHugh testified that the Commissioner's treatment of the First Nations was justified in several ways; among those, he argues that the Commissioners did not regard themselves as dealing with full original title (as in the Numbered Treaty process) but residual, and disappearing, hunting rights.
- ▶ Patrick Brode, Legal Historian. Testified: April 2016
- ▶ Patrick Brode testified on the biographies of the three Commissioners: A.S. Williams, R.V. Sinclair and Uriah McFadden. His report portrays the Commission as having been overly favourable to the WTFNs

Accomplishments: Evidence

Completed Cross-Examinations of Canada's Historical Witnesses

- ▶ David Smith, Anthropological Archeologist. Testified: May 2016
- ▶ Mr. Smith's original position was that because of the flexible and fluid nature of the traditional Anishinabeg social organization, which he believes the Interior Southern Anishinabeg to maintain, it is unlikely that communities resident in Southern Ontario are the same Anishinabeg as those who were in the area at the time of contact. However, during his cross examination, Mr. Smith withdrew his use of the term southern completely saying that the term "southern Ontario" has no meaning.
- ▶ Dale Miner, Expert on Mapping. Testified: April 2016
- ▶ Mr. Miner's testified on a table and map of family hunting grounds he prepared for his report. But in cross-examination Mr. Miner admitted these refer to only 6 of the 23 affidavits that were in the hands of the Williams Commission in 1923.

Upcoming Testimony : Canada's Historical Expert Witnesses

- ▶ Alexander von Gernet, Ethnohistorian. Scheduled to testify: September, October and November, 2016
- ▶ The main theory of Dr. von Gernet's report is that the government's recognition of some Aboriginal rights in the Williams Treaties was mainly due to confusion around the "syllogism" formulated by the Superintendent General of Indian Affairs. That "syllogism" implied that since there was a large blank in the map of Indian surrenders, then unsurrendered lands were necessarily encumbered by Indian title.
- ▶ There is at least one outstanding report by Dr. von Gernet, a rebuttal report to Dr. Manitowabi.
- ▶ Paul McHugh, Legal Historian. Not yet scheduled to testify.
- ▶ Paul McHugh's new report not yet delivered but it is expected to pertain to the Honour of the Crown.
- ▶ **"Other Liability Witnesses"** (not yet named), Scheduled to testify: November, 2016

Accomplishments: Evidence

Completed Cross-Examinations of Ontario's Historical Experts

- ▶ Guy Winterton, Expert opinion evidence related to fish and wildlife biology. Testified: May 2016
- ▶ Mr. Winterton testified that the game and fish legislation was not intended to limit the ability of First Nations to access the resource, but rather to ensure the preservation of game and fish stocks within the Province.

Upcoming Testimony : Ontario's Historical Expert Witnesses

- ▶ John Dewhirst, Aboriginal Perspective, Scheduled to testify: December 2016
- ▶ Report yet to be provided
- ▶ Gwen Reimer, Historian, Scheduled to testify: January 2017
- ▶ In Gwen Reimer's second report she attempts to identify what practices are required for the 'Honour of the Crown' in historic treaty making by reviewing the Pre-Confederation treaties to which the ancestors of the WTFNs were signatories, in which she concedes that treaty-making instructions and principles were not perfectly followed by Crown officials. However, Gwen Reimer's ultimate finding is that with respect to the Williams Treaties in 1923, the Commissioners followed existing treaty-making principles and practices as they understood them at the time.

Accomplishments: Evidence

Plaintiffs' economic experts

- Plaintiffs' expert Dr. Carl Beal testified on:
 - Treaty 9 and Treaty 11 as models for the type of protections and compensation provided for in the numbered Treaties.
 - Reserves, annuities, protection of the right to hunt and fish.
 - This evidence will be used to argue that the Williams Treaties should have included at least the equivalent protections and compensation.

Accomplishments: Evidence

Plaintiffs' economic experts

- Mr. Duncan Bell, real estate appraiser, testified on:
 - The value of a variety of parcels of land, including the Northern and Southern territories and the Western Hunting Grounds. This evidence places a value on these lands, which reflects the magnitude of the benefit the Crown received by taking a surrender of these lands in the Williams Treaties and how much the First Nations lost in the process.
 - The value of reserve land entitlement parcels for each of the Williams Treaties First Nations as well as specific parcels of land requested at the time the Williams Treaties were signed. This evidence places a value on the replacement cost of these lands.

Accomplishments: Evidence

Plaintiffs' economic experts

- Profs. Smith and Hosios testified on:
 - The calculation of the present value as of 2014 of the WTFN' claims and compensation based on the land values determined by Mr. Duncan Bell.
 - A framework to determine equitable compensation using guidelines in *Whitefish Lake* responding to Canada's evidence.
 - A model to estimate the capital and loss of use value from 1923 to the 2014 for the lands that should have been set aside as reserves.

Canada's Economic Evidence

Completed Cross-Examinations of Economic Experts

- Canada began presenting their evidence with their economic witnesses, including Profs. Lazar and Prisman, Kirzner and Booth, Howard Johnson and Matthew Lacompte, a continuity witness.
- Canada called these economic witnesses to give evidence on their view of the appropriate compensation that the First Nations might receive, should the Court find that the Crowns did not pay all that was due to the First Nations under the Treaty.

Canada's Economic Evidence

Completed Cross-Examinations of Economic Experts

- ▶ Professors Lazar and Prisman built a model to value past, present and future harvesting rights and interests of the First Nations as at the time of the making of the Williams Treaties in 1923. They estimate the value of financial losses associated with the lost income streams from two time periods: i) losses sustained between 1870 and 1923 as a result of encroachments on First Nations lands, and ii) losses sustained by the First Nations post-1923.
- ▶ Howard Johnson developed a model that produces a multiplier combining CPI and trust account interest rates to supposedly put the First Nations in the same position that they would have been in, had the Crowns not underpaid the First Nations in 1923.

Canada's Economic Evidence

Completed Cross-Examinations of Economic Experts

- ▶ Professors Kirzner & Booth developed a model based on the Ontario Court of Appeal's decision in the *Whitefish Lake Band of Indians* case that gave a guidance on qualifying equitable compensation based on the bands' spending patterns. They were instructed to determine what would fairly compensate the bands in 2015 for a payment deficiency of \$200,000 in 1923.
- ▶ Matthew LaCompte was Canada's continuity witness who gave evidence on how the Trust Account data for each First Nation was analysed and categorized for use in Professors Kirzner and Booth's *Whitefish* model.

Ontario's Economic Evidence

Completed Cross-Examinations of Economic Experts

- Ontario began presenting their evidence with their economic witnesses, including Messrs. Haigh and Low, Eric Angel and Randal Rennick, a continuity witness.
- Ontario called Messrs. Haigh and Low to criticize Mr. Bell's appraisal values. Mr. Angel was called to provide an accounting of what the First Nations received as compensation in the pre-confederation treaties and surrenders of reserve lands and timber rights.

Ontario's Economic Evidence

Completed Cross-Examinations of Economic Experts

- ▶ Messrs. Haigh and Low testified in May–July 2016. They provided a criticism of Mr. Bell's appraisal methodology, a statistical model to discount the value of Williams Treaties territories and proposed a theory of valuation of Aboriginal title.
- ▶ Mr. Angel testified in June 2016 provided an accounting of the revenue generating “transactions” between the ancestors of the Williams Treaties First Nations and the Crown from 1783–1923 the Crawford Purchase, Collins Treaty, Gunshot Treaty, Treaties 5, 16, 17, 18, 20, 27 to Williams Treaties.

Accomplishments: Pleadings

- Canada and Ontario amended their Statements of Defence and dramatically changed their position on the Pre-Confederation Treaties.
 - They now plead that the Basket Clause did not have the effect of extinguishing at least some of the Pre-Confederation Treaties within the Clause 3 area.
 - This has resulted in a legal recognition that your hunting, fishing and trapping rights that were part of these Treaties still exist today.

Accomplishments: Pleadings

- Canada's position: The parties to the Williams Treaties did not intend for the Williams Treaties to alter the nature of hunting, fishing and trapping rights contained in Treaties No. 16, 18, 20 and 27-27¼.

Accomplishments: Pleadings

- Ontario's position: Clause 3 (the Basket Clause) of the Williams Treaties was not intended to and did not take or effect a surrender of the Plaintiffs' rights under their Pre-Confederation Treaties. Applies to **all** the pre-1867 Treaties.
- Caveat to the position: In 1923, the parties agreed that the exercise of the harvesting rights would be curtailed by settlement and industry.

Accomplishments: Pleadings

- As a result, the Plaintiffs amended the Statement of Claim.
 - A motion was argued and most of the amendments were allowed, most importantly **recognition of pre-confederation harvesting rights.**
 - Justice Mandamin denied the Crown's request for an adjournment of the trial.
 - Canada appealed but later withdrew their appeal. A motion on the contents of the appeal book was the last step.
 - Canada is now bringing a motion to file their amended Statement of Defence in response to this new Statement of Claim.

Challenges: Motions & Appeals

1. OFAH's Application for Leave to Appeal
2. Plaintiffs' Motion to Amend the Statement of Claim re: New position on the Pre-Confederation Treaties
3. Plaintiffs' Motion re Darrel Manitowabi
4. Plaintiffs' Motion to file Dr. Thoms' report responding to Dr. Gwen Reimer

Challenges: Motions & Appeals

1. OFAH's Application for Leave to Appeal (SCC)

- ▶ OFAH asked the Supreme Court of Canada (SCC), for permission to Appeal, regarding their attempted intervention in the Federal Court case.
- ▶ The WTFN contested and were successful. OFAH is not allowed to intervene in the Federal Court case.
- ▶ WTFN won costs and have been paid (\$1,481.41).
- ▶ OFAH has since filed a Judicial Review in provincial court and you are a party to this case. We were successful, with Ontario, on a motion to quash. OFAH is appealing.

Challenges: Motions & Appeals

OFAH's Application for Leave to Appeal (SCC)

- ▶ Total estimated budget: \$55,000
- ▶ Actual cost (under budget): \$54,874.53

Challenges: Motions & Appeals

2. Plaintiffs' Motion to Amend the Statement of Claim re: New position on the Pre-Confederation Treaties

- Amendments plead that the Williams Treaties did not extinguish the Plaintiffs' harvesting rights under the Pre-Confederation Treaties.
- Amendments that correct or add to the factual grounds of the action to bring the pleadings in line with new evidence.
- Amendments to effect small editorial changes.

Challenges: Motions & Appeals

Plaintiffs' Motion to Amend the Statement of Claim re: New position on the Pre-Confederation Treaties

- ▶ Total estimated budget: \$185,000 – \$235,000
- ▶ Actual cost (up to April 15, 2016 and slightly over budget): \$237,967.80

Canada eventually dropped their appeal, however a budget was presented and approved for \$67,000.

- \$33,079.00 was billed + \$30,635.48 for the appeal book = Total billed \$63,714.48

Challenges: Motions & Appeals

3. Plaintiffs' Motion re Dr. Darrel Manitowabi

- Plaintiffs sought leave to file a report prepared by Dr. Manitowabi to put into evidence the results of the interview process done by Prof. Krystyna Sieciechowicz.
- Allowed for the Aboriginal perspective to be put into evidence, on the WTFN' understanding of what took place during and after the signing of the Williams Treaties.
- July 2015 Order allowing the Manitowabi Report required the Plaintiffs to call interviewees to testify to their interviews.

Challenges: Motions & Appeals

Plaintiffs' Motion re Dr. Darrel Manitowabi

Not billed to the clients during 2015–2016 fiscal year:

- ▶ Cost covered by Hutchins Legal Inc.:
 - \$141,194.00 – legal fees
 - \$35,866.61 – disbursements
 - \$20,756.79 – expert fees
 - **Total: \$197,817.40**

Challenges: Motions & Appeals

4. Plaintiffs' Motion to file Dr. Thoms' report responding to Dr. Gwen Reimer

- ▶ Plaintiffs sought leave to file a report prepared by Dr. Michael Thoms in response to Dr. Gwen Reimer on the issue of the honor of the Crown.
- ▶ Leave was granted on June 29, 2016.
- ▶ Dr. Thoms will not have an examination in chief in this particular situation because we believe the report speaks for itself, as well as in the interest of saving court time and costs and keeping the trial moving along steadily. He will only be cross-examined.
- ▶ Ontario was granted leave to file a reply report by Dr. Reimer (to Dr. Thoms).

Challenges: Delays

Delays caused by the Crowns

- Crowns use Motions and Appeals to cause delay – especially related to the Pleadings.
- Excessive Cross–Examinations – inefficiency and redundancy.
- Canada refusing to schedule witnesses in advance for a variety of reasons.
- Justice Mandamin is also frustrated and has opened up his schedule to allow for more testimony to proceed. He has reminded all parties that he will not sit past June 30, 2017.
- Ontario has accommodated the Court by calling some of their witnesses out of order, to testify in May–July, 2016.

Justice Mandamin's Order on Amendments

- ▶ In Justice Mandamin's Order dated January 22, 2016 granting the amendments he focused on harvesting rights:
- ▶ “It seems to me that the constitutional dichotomy of Aboriginal and treaty rights is sufficient to address the issues arising in this trial. Harvesting rights have been recognized as Aboriginal rights (*R v Sparrow*, [1990] 1 SCR 1075 [*Sparrow*], *R v Côté*, [1996] 3 SCR 139) as well as pre-Confederation treaty rights (*Simon v The Queen*, [1985] 2 SCR 387, *R v Sioui*, [1990] 1 SCR 1025). The evolving controversy in this trial concerns the First Nations' harvesting rights whether derived from Aboriginal occupation or subsequent treaty.”

Justice Mandamin's Order on Amendments

- ▶ Justice Mandamin also raised settlement discussions in his conclusion:

“Finally, we are at a crucial stage in the proceeding. In my view, the trial has now sharpened its focus on the important questions at issue. The First Nations’ evidence is largely in and the Parties know the case the Defendant is to meet. The Third Party defending the main action also knows the parameters of the Plaintiffs’ case. All three Parties – the First Nations, Canada and Ontario are now in a position to better inform their clients of the status of the litigation and to advise the clients on the prospects arising therefrom.”

Justice Mandamin's Order on Amendments

- ▶ Justice Mandamin also raised settlement discussions in his conclusion (cont.):

“I consider this an opportune time for the Parties to consider where there are prospects to agree on settling either part or the entirety of the claim. If part were to be resolved, it would be without prejudice to the balance of the issues at controversy proceeding in this trial. I do not see that any prejudice arises where any party agrees with respect to some issues but maintains the right to have other issues adjudicated. Accordingly, I am of the view the Parties now have an opportunity to advise their clients as to the status of the litigation and consider if there are any prospects for settling part or all of the claim in keeping with the guidance provided by the Supreme court on reconciliation and agreement.”

Accounting for 2015-2016 Budget



Summary – Motions and Appeals

Up to July 2016

| | | |
|---|---|--|
| 1. OFAH's Application for Leave to Appeal | \$54,874.53 (under budget) | Won with costs |
| 2. Plaintiffs' Motion to Amend the Statement of Claim | \$237,967.80 (over budget by \$2,967.80) +\$63,714.48 (appeal) | Won most of the amendments, no adjournment, appeal withdrawn |
| 3. Plaintiffs' Motion re Dr. Darrel Manitowabi | \$197,817.40 (Cost covered by Hutchins Legal) | Won leave to file the report and have Dr. Manitowabi as Expert Witness |
| 4. Plaintiffs' Motion re Dr. Thoms | \$54,397.50 | Won leave to file the report |
| TOTAL paid by WTFN | \$410,954.31 | |

Summary of the Trial Budget for the 2015–2016 Fiscal Year

| | |
|--|-------------|
| Trial Budget for the 2015–2016 fiscal year: | \$3,392,802 |
| Legal Fees billed (over by \$68,990) | \$2,927,871 |
| HLI Disbursements billed (over by \$70,387) | \$248,115 |
| Expert Fees and Disbursements billed (under by \$38,696) | \$317,498 |

Estimate for 2016–2017



Trial Estimate – Legal Fees

1. Completion of Plaintiffs' Evidence and General Trial Work

- Cross-examination and re-direct of Dr. Darrel Manitowabi (estimated cost of \$152,110 covered by Hutchins Legal Inc.)
- Dr. Michael Thoms responding to Dr. Gwen Reimer on the Pre-Confederation Treaties
- On-going refinement of legal strategy and argument
- On-going assessment of evidence
- Addressing procedural and trial management matters
- Document management, including the database and support for E-trial

Total Estimate: \$245,600

Trial Estimate – Legal Fees

2. Crowns' Witnesses (Cross-examinations and Re-Direct)

- Preparation for cross-examination of both Canada and Ontario's witnesses, including assessment of their historical and economic materials and the Crowns' defence
- Preparation of questions, attendance in Court for examinations, cross-examinations and re-direct of both Canada and Ontario's witnesses

Total Estimate: \$2,650,165

Trial Estimate – Legal Fees

3. Reply evidence, Third Party Claim and Memorandum of Fact and Law

- Preparation for and leading Plaintiffs' Reply evidence, after hearing Canada and Ontario's witnesses and evidence
- Reviewing pleadings and attendance in Court for Ontario's Third Party Claim
- Preparing the closing memorandum of fact and law and reviewing those of Canada and Ontario

Total Estimate: \$1,272,360

Trial Estimate – General Disbursements

| Item | Rate/Cost | Total |
|---|---|------------------|
| To be covered by Hutchins Legal | | |
| Office – <i>to be paid by Hutchins Legal</i> | (Approximate cost: \$46, 000 – \$70,000/year) | \$0 |
| Travel, meals, taxis etc. – <i>to be paid by Hutchins Legal</i> | (Approximate cost: \$288,000/year) | \$0 |
| Subtotal | \$334,000 – \$358,000 | |
| Part of Estimated Forecast | | |
| Accommodations | \$10,000/month | \$120,000 |
| Court Fees | \$140/Court day | \$21,280 |
| Transcripts – Printing | \$11,000/month | \$132,000 |
| | Total | \$273,280 |

Trial Estimate – Expert Fees & Disb.

Expert fees and Expert disbursements

See Forecasted Estimate for details

- ▶ Economic Evidence

Carl Beal, Duncan Bell

- ▶ Historical Evidence

Janet Armstrong, James Morrison, Michael Thoms

- ▶ Proposed experts on Aboriginal Perspective

Darrel Manitowabi

Total Estimate: \$95,818

Summary – Trial Estimate for 2016–2017

| Item | Approximate Amount |
|-------------------------------|--------------------|
| Legal Fees | \$4,162,525 |
| General Disbursements | \$273,280 |
| Expert Fees and Disbursements | \$95,818 |
| Amount for contingencies | \$200,000 |
| TOTAL | \$4,731,623 |

Trial Estimate does not include Motions or Appeals.

Trial Estimate – Summary of Discounts

| Discount | Value of Discount |
|--|------------------------------|
| 10% discount applied on legal fees | \$462,502 |
| Covering legal fees related to Dr. Manitowabi's involvement in the trial | \$143,710 |
| HLI to cover expert fees for Dr. Manitowabi | \$8,400 |
| General Disbursements: Hutchins Legal to cover costs of travel, a temporary office in Toronto and travel related disbursements | \$334,000 – \$358,000 |
| Approximate TOTAL | \$948,612 – \$972,612 |



HUTCHINS LEGAL INC.

424 Saint François-Xavier
Montréal, Québec
H2Y 1S9

1-877-849-2403

phutchins@hutchinslegal.ca

