

CANADA / JUDGMENT

Peigan v. Canada (the King)

2025 FC 492

COURT

Federal Court

DECIDED

18 March 2025

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Pasqua First Nation v. Canada (Attorney General)

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T-1437-14

Decision Content

Date: 20250318

Docket: T-1437-14

Citation: 2025 FC 492

Ottawa, Ontario, March 18, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

CHIEF M. TODD PEIGAN on behalf of himself and all other members of The Pasqua First Nation
and THE PASQUA FIRST NATION

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT OF SASKATCHEWAN AS RESPRESENTED BY THE ATTORNEY GENERAL OF SASKATCHEWAN

Defendants

ORDER AND REASONS

[1] This motion is brought on behalf of the Defendant, the Attorney General for Saskatchewan [Saskatchewan or Province], pursuant to Rule 221 of the Federal Court Rules, SOR/98-106 [Rules], seeking an order striking the Fresh as Amended Statement of Claim, dated March 1, 2024, filed by the Plaintiffs, Chief M. Todd Peigan and Pasqua First Nation [collectively, PFN]. The grounds for the motion to strike are that the pleadings fall outside of this Court's jurisdiction, disclose no reasonable cause of action, and constitute an abuse of process. The Attorney General of Canada [Canada], also a named Defendant in this action, takes no position on Saskatchewan's motion.

[2] For the reasons that follow, I am granting Saskatchewan's motion, in part.

Background [3] As has been described in prior jurisprudence, in 1992, Canada, Saskatchewan and a number of Saskatchewan First Nations (referred to as the Entitlement Bands) entered into the Saskatchewan Treaty Land Entitlement Framework Agreement [Framework Agreement], which was designed to redress Canada's past failures to honour the terms of historic treaties as they related to land entitlement (Saskatchewan (Attorney General) v Witchehan Lake First Nation, 2023 FCA 105 at paras 1–2 [Witchekan]). The Framework Agreement "establishes the process by which First Nations can purchase private, provincial and federal Crown lands to fulfil outstanding treaty land entitlement (TLE) obligations owed to Saskatchewan First Nations" (Witchekan, at para 3). The Framework Agreement has been described as a comprehensive agreement that creates a framework for the fulfillment of the Crown's obligations under Treaty Nos. 4, 6 and 10, and also provides for the subsequent conclusion of similar settlement agreements between Canada, Saskatchewan and other First Nations having treaty land entitlement [TLE] claims in Saskatchewan who did not sign the Framework Agreement (Pasqua First Nation v Canada (Attorney General), 2016 FCA 133 at para 3 [Peigan No. 1]).

[4] PFN concluded such an agreement with Canada and Saskatchewan on September 30, 2008, the Pasqua Band Treaty Land Entitlement Settlement Agreement [Settlement Agreement] (Peigan No. 1, at para 3).

[5] In 2014, PFN commenced an action in the Federal Court against Saskatchewan and Canada concerning Saskatchewan's denial of PFN's 2012 request to purchase Crown lands and subsurface minerals under the Settlement Agreement (Peigan No. 1, at para 5). Saskatchewan brought a motion to strike PFN's Statement of Claim, asserting that this Court does not have jurisdiction over Saskatchewan nor over the subject matter of PFN's claim against Saskatchewan. This Court dismissed the motion. Saskatchewan appealed to the Federal Court of Appeal [FCA] which, in Peigan No.1, granted the appeal in part, striking

identified paragraphs of the statement of claim with leave to amend them as described by the FCA in its reasons. Leave to appeal the FCA's decision to the Supreme Court of Canada [Supreme Court] was dismissed (37084 (22 December 2016)).

- [6] PFN filed an Amended Statement of Claim in 2017. Saskatchewan was of the view that the Amended Statement of Claim remained problematic and brought another motion to strike, which this Court granted. In *Saskatchewan (Attorney General) v Pasqua First Nation*, 2018 FCA 141 [Peigan No. 2], the FCA found that the Federal Court had erred in law by not confining the claims in the Amended Statement of Claim to the jurisdictional limit imposed by Peigan No. 1 and, therefore, struck various paragraphs of the claim. However, the FCA agreed with the Federal Court's determination striking other paragraphs of the Amended Statement of Claim. The FCA also struck additional paragraphs that it found to be beyond the Court's jurisdiction.
- [7] PFN filed an Amended Amended Claim in February 2018, prior to the FCA's decision in Peigan No. 2.
- [8] In 2022, the Case Management Judge placed the action in abeyance, on consent, pending the FCA's decision in *Witchehan*, which the parties agreed concerned overlapping issues arising in this action. The FCA issued its judgement in *Witchehan* in February 2023.
- [9] The present motion concerns PFN's Fresh as Amended Statement of Claim, dated March 1, 2024 [Amended Claim]. By its Notice of Motion, Saskatchewan seeks to strike the Amended Claim in whole or in part, without leave to amend.
- [10] By letter dated September 11, 2024, Canada advised that it takes no position on Saskatchewan's motion to strike. Canada also advised that at the hearing of the motion, it intended to rely on its Further Amended Statement of Defence, dated March 9, 2018, and reserved its right to make oral submissions, if necessary. Ultimately, Canada did not provide any oral submissions at the hearing.

Relevant Legislation

Federal Court Rules, SOR/98-106

Motion to strike

221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

- (a) discloses no reasonable cause of action or defence, as the case may be,
- (b) is immaterial or redundant,
- (c) is scandalous, frivolous or vexatious,
- (d) may prejudice or delay the fair trial of the action,

- (e) constitutes a departure from a previous pleading, or
- (f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.

Evidence

- (2) No evidence shall be heard on a motion for an order under paragraph (1)(a).
- [11] While Rule 221(2) precludes the submission of evidence in a motion to strike, as Saskatchewan submits, the Framework Agreement and Settlement Agreement [together, Agreements] are incorporated by reference in the Amended Claim, and are deemed to be part of the pleadings (*Zhao-Jie v TD Waterhouse Canada Inc*, 2024 FC 261 at para 5).

Issues [12] The issue that arises in this motion is whether this Court should strike all or parts of the Amended Claim under Rule 221. In the circumstances of this matter, this requires the Court to consider whether:

the Amended Claim is beyond this Court's jurisdiction, in whole or in part;

the Amended Claim discloses a reasonable cause of action; and

the Amended Claim constitutes an abuse or process.

Preliminary Matter [13] PFN states in its written submissions that it is no longer pursuing claims based on lack of notice and agrees that paragraph 62 of its Amended Claim can be amended to remove references to Saskatchewan's failure to provide notice. When appearing before me, counsel for PFN confirmed that PFN was not pursuing any allegations of an implied requirement for notice. Counsel also advised that PFN was additionally not pursuing its claim that Saskatchewan was under an obligation to provide lands to PFN in priority to others or that Saskatchewan was obliged and had failed to assist or support PFN to find lands that might reasonably be designated as reserve land. Counsel submitted that, as a result, it sought leave to amend paragraphs 23, 28, 32, 54 and 63(a) to reflect this change of position.

- [14] As PFN is no longer pursuing these aspects of its claim, my reasons will not address Saskatchewan's written arguments concerning them.

Is the Amended Claim Beyond this Court's Jurisdiction, in Whole or in Part? Saskatchewan's Position

- [15] Saskatchewan argues that, based on *Peigan No. 1*, *Peigan No. 2* and *Ochapowace v Canada*, 2019 FC 1288 [*Ochapowace*], all references in the Amended Claim to constitutionally-based or "honourable" obligations, including obligations sourced in Treaty No. 4, the Constitutional Act, 1982 or the Natural Resources Transfer Agreement, 1930, Schedule 2 of the Constitution Act, 1930, being item 16 of the Schedule to the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [NRTA], must be struck.

- [16] Saskatchewan submits that in Peigan No. 1, the FCA addressed this Court's limited jurisdiction over this dispute, holding that the Federal Court has jurisdiction over contractual disputes arising from the Settlement Agreement, but striking PFN's constitutional claim for want of jurisdiction (citing Peigan No. 1, at paras 88–89). The FCA granted PFN leave to amend the struck paragraphs to clarify how Saskatchewan's grant of mineral rights to a third party breached the Settlement Agreement.
- [17] Because PFN failed to amend the claim as directed, Saskatchewan brought another motion to strike. It submits that in Peigan No. 2, the FCA again confirmed that claims seeking declarations based on the assertion of constitutional and fiduciary duties related to the NRTA and land treaty entitlements are outside the parameters of this Court's jurisdiction. Saskatchewan further submits that in Peigan No. 2, the FCA admonished PFN against attempting to rewrite the Agreements' terms by seeking declarations of constitutional or honourable obligations. Specifically, the FCA held that the honour of the Crown requires that "the terms of the agreement be implemented in a fair and forthright manner" but this does not mean "that the terms of the agreement are to be ignored or require that important aspects of the agreement be re-written or interpreted in a manner both at odds with the terms of the agreement and as expressly contemplated by the parties to the agreement" (citing Peigan No. 2, at para 12).
- [18] Saskatchewan submits that Peigan No. 2 was followed in *Witchekan*, at paras 129–130; *Waldron v Canada (Attorney General)*, 2024 FCA 2 at para 96; *George Gordon First Nation v Saskatchewan*, 2022 SKCA 41 at paras 105, 172 [George Gordon]; and *Manitoba Metis Federation Inc v Brian Pallister et al*, 2021 MBCA 47 at para 56, leave to appeal to SCC refused, 39799 (3 March 2022).
- [19] Further, that in *Ochapowace*, this Court held that allegations that Saskatchewan breached constitutional, fiduciary and honourable duties in relation to the Framework Agreement and a TLE settlement agreement entered into by Ochapowace First Nation [OFN] should be struck for being beyond the Court's jurisdiction (citing *Ochapowace*, at paras 3, 19-20, 45-48).

PFN's Position [20] PFN submits that the Amended Claim is not beyond this Court's jurisdiction. It is confined to breaches of Saskatchewan's contractual obligations viewed through the lens of the honour of the Crown and the underlying purposes of the Agreements, which is the rectification of broken treaty promises. The Federal Court has exclusive jurisdiction to adjudicate breaches of the Agreements (citing Peigan No. 1, at para 60).

- [21] PFN submits that in *Ontario (Attorney General) v Restoule*, 2024 SCC 27 [Restoule] the Supreme Court affirmed that the Crown bears the duty to diligently implement the obligations it undertakes and that this duty requires that the Crown "seek to perform the obligation in a way that pursues the purpose behind the promise' to avoid leaving Indigenous parties with an empty shell of a promise" (citing Restoule, at paras 258, 261). PFN submits that the duty of diligent implementation, which flows directly from the honour of the Crown, imposes on the Crown an obligation to exercise its discretion "liberally and

justly, consistently with the honour of the Crown and the language of the treaty itself” (citing Restoule, at paras 290, 261). While the Agreements are not treaties, their underlying purpose is remedial and in respect of treaty promises.

- [22] PFN also refers to Peigan No. 1, where the FCA stated that a compelling argument may be made that the honour of the Crown requires the Crown to act in a way that accomplishes the intended purpose of treaty and statutory grants to Aboriginal peoples (citing Peigan No. 1, at para 64, in turn citing Manitoba Metis Federation Inc v Canada (Attorney General), 2013 SCC 14 at para 71 [MMF]). And, despite the finding in Ochapowace that claims sourced to the honour of the Crown were outside of its jurisdiction, the Court nonetheless determined that OFN could still argue that the concept of the honour of the Crown must inform the interpretation of the Agreements, which may be akin to importing a duty of good faith in the interpretation and performance of contracts (citing Ochapowace, at para 21).
- [23] PFN claims that TLE agreements reveal a “bona fide desire, intention and commitment [...] to engage in a process to rectify Canada’s broken treaty promises”, which informs their interpretation and implementation (citing Canada v Long Plain First Nation, 2015 FCA 177 at paras 117–118).
- [24] To that end, PFN submits that, insofar as there are references in the Amended Claim to the honour of the Crown, Treaty No. 4, s. 35 of the Constitution Act, 1982 and the NRTA, they are there to underscore the factual matrix that gave rise to the Agreements, which informs the Agreements’ purposes and implementation. They do not constitute separate causes of action; rather, they are tethered to breaches of the Agreements.
- [25] By letter dated January 15, 2025, PFN informed the Court that they also sought to rely on the Supreme Court’s decision in Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan, 2024 SCC 39 [Takuhikan], which was released after the parties had filed their motion records.

Analysis [26] The starting point here is Peigan No. 1. There, the FCA held that the combined effect of the attornment clause in the Settlement Agreement (art 20.19) and s 17(3)(b) of the Federal Courts Act, RSC, 1985, c F-7 provides the Federal Court with exclusive jurisdiction over the portions of PFN’s claim which ask the Court to interpret and enforce the Settlement Agreement (at para 88). However, that the Court did not have jurisdiction over the portion of the claim, as then pleaded, alleging a breach by Saskatchewan of its duty to consult prior to awarding mineral rights to third parties. That claim was distinct from the claims relating to the Settlement Agreement and the attornment clause had no application. That is, the alleged breach of Saskatchewan’s duty to consult arose outside of and was unrelated to the Settlement Agreement (at para 89).

- [27] In Peigan No. 2, the FCA again confirmed that the Federal Courts have jurisdiction insofar as a claim is grounded in the Settlement Agreement (at para 3; see also para 13). More specifically, with respect to Saskatchewan, that the Federal Court's jurisdiction is founded on and limited to the interpretation and implementation of the terms of the Settlement Agreement (at para 11).
- [28] Subsequently, in Ochapowace with respect to the Framework Agreement and a related settlement agreement, Justice Grammond allowed Saskatchewan's motion to strike, in part. He agreed that this Court does not have jurisdiction with respect to Saskatchewan's alleged breaches of constitutional, fiduciary and honourable duties. However, Saskatchewan had accepted this Court's jurisdiction over purely contractual claims arising out of the settlement agreement in that case. Justice Grammond concluded, based on Peigan No. 1, that the Federal Court does not have jurisdiction, as against a province, based on other causes of action that lie outside of claims based on TLE agreements (at paras 18–19). Further, that claims based on the honour of the Crown should also be struck if they were meant to assert a cause of action independent from the TLE agreements. However, that OFN could still argue that "the concept of the honour of the Crown must inform the interpretation of the Agreements" (at paras 20–21).
- [29] In my view, the prior jurisprudence is crystal clear that in this matter this Court has no jurisdiction over any alleged breaches of constitutional, fiduciary or honorary duties. Its jurisdiction is limited to contractual disputes arising from the Settlement Agreement. That is, the interpretation and implementation of that Agreement.
- [30] Accordingly, the question is whether the impugned portions of PFN's Amended Claim referring to the honour of the Crown (found in paragraphs 1(b)-(f), 1(k)-(l), 12, 23, 54, 59, 61-63) pertain to the interpretation and implementation of the terms of the Settlement Agreements in assessing the claimed breaches of those terms, or whether they go further and engage discrete constitutional issues. In the latter instance, the pleading must be struck for want of jurisdiction.
- [31] When appearing before me, the parties agreed that it was common ground that the honour of the Crown is engaged in the interpretation and performance of the Agreements' terms.
- [32] That view is supported by the jurisprudence described above and recently in Takuhikan. The Supreme Court in Takuhikan noted that, for the first time, it was engaging with the question of whether the honour of the Crown applies to a contractual undertaking given by the Crown to an Indigenous group (at para 143).
- [33] The Supreme Court stated that:
- [12] The principle of the honour of the Crown, which imposes a high standard of conduct on the State, is one such public law rule that may, in some contexts, broaden the scope of state liability. Unlike good faith, the honour of the Crown does not apply to the performance of every contract and is not an implied contractual obligation. As a common law rule

originating in the sui generis relationship between the Crown and Indigenous peoples, the principle of the honour of the Crown is itself anchored to the goal of reconciliation. Indeed, it applies only in the performance of contracts between the State and Indigenous groups that are intended to foster the modern-day reconciliation of pre-existing Indigenous societies with the Crown's historic assertion of sovereignty (see *R. v. Desautel*, 2021 SCC 17, [2021] 1 S.C.R. 533, at para. 22). Once its application is established, the binding nature of the honour of the Crown is, it seems to me, certain: as Binnie J. wrote in the context of a treaty, "the Crown cannot contract out of its duty of honourable dealing with Aboriginal people" (*Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103, at para. 61. [...])

- [34] In that regard, the Supreme Court set out the test for determining whether the honour of the Crown applies to an agreement that is not constitutional in nature.
- [35] It also found that the honour of the Crown "is not a cause of action. It 'speaks to how obligations that attract it must be fulfilled'" (*Takuhikan*, at para 149, citing *MMF*, at para 73 (emphasis in original); see also para 185, citing *Restoule*, at para 220, among others).
- [36] And, significantly, the Supreme Court acknowledged the application of the honour of the Crown to TLE agreements:
- [158] Similarly, the jurisprudence recognizes that the principle of the honour of the Crown applies to treaty land entitlement agreements that are not themselves treaties protected by s. 35(1) of the Constitution Act, 1982 (*Saskatchewan (Attorney General) v. Witchehan Lake First Nation*, 2023 FCA 105, 482 D.L.R. (4th) 352, at paras. 127-30; *Long Plain First Nation v. Canada (Attorney General)*, 2015 FCA 177, 475 N.R. 142, at para. 118; *Pasqua First Nation v. Canada (Attorney General)*, 2016 FCA 133, [2017] 3 F.C.R. 3, at para. 64). Since their purpose is to rectify the Crown's broken treaty promises (*Long Plain*, at para. 117) and thus to promote reconciliation (*Witchehan Lake*, at para. 127), such agreements are interpreted as engaging obligations flowing from the honour of the Crown. As these cases show, contracts are one of the instruments available to governments for undertaking or continuing a process of reconciliation, in addition to treaties (*Restoule*, at paras. 68-70) and legislation [...]
- [37] In explaining the obligations flowing from the honour of the Crown in contractual settings, the Supreme Court stated:
- [186] In the context of treaty making and implementation, this Court has long recognized the Crown's obligation to negotiate, interpret and apply treaties with honour and integrity while avoiding even the appearance of "sharp dealing" (*Haida Nation*, at paras. 19 and 42, quoting *R. v. Badger*, 1996 CanLII 236 (SCC), [1996] 1 S.C.R. 771, at para. 41). This obligation can be transposed to the contractual context when this context also involves reconciliation between the Crown and Indigenous communities.

- [187] By this I do not mean to say that the agreement becomes a treaty like the treaties protected by s. 35 of the Constitution Act, 1982. Rather, it is a matter of recognizing that the honour of the Crown requires the Crown, in negotiating and performing an agreement that has reconciliation as its backdrop, to meet a standard of conduct that is higher than in the context of an ordinary contractual relationship (Pallister, at para. 56; Witchehan Lake, at para. 130; see also Motard and Chartrand, at p. 201).
- [188] The higher standard of conduct to which the Crown is subject creates obligations that are superimposed on contractual obligations. [...] Where the principle of the honour of the Crown applies, not only is the content of the contract interpreted generously (Badger, at para. 41), but an additional public law obligation is superimposed on the contractual obligations, namely the Crown's obligation to act with honour and integrity in performing the contract. As this Court has observed in the treaty context, the honour of the Crown "lead[s] to requirements such as honourable negotiation and the avoidance of the appearance of sharp dealing" (MMF, at para. 73). In the contractual context, the honour of the Crown therefore does not change the terms of the agreement, but rather modifies how the obligations found therein are performed by requiring the Crown to act in a manner that fosters reconciliation. The honour of the Crown imposes this additional obligation only on the Crown, not on the Indigenous group that is also a party to the contract.
- [38] Takuhikan makes clear that the honour of the Crown applies to the interpretation and performance of TLE agreements. The Crown must interpret the terms of a TLE agreement generously, must act with honour and integrity in performing the agreements, and must perform its obligations under the agreements in a manner that fosters reconciliation. The obligations that flow from the honour of the Crown inform how the Agreements are to be interpreted and performed (Takuhikan, at para 192). It requires a standard of conduct "that is higher than in the context of an ordinary contractual relationship" (Takuhikan, at para 187).
- [39] Prior jurisprudence has already established that this Court has jurisdiction over the interpretation and implementation of the Settlement Agreement. The honour of the Crown is not a cause of action or a standalone constitutional claim. Rather, in these circumstances, it speaks to how contractual obligations in agreements such as TLE agreements must be fulfilled. Accordingly, in my view, this Court has jurisdiction to assess whether Saskatchewan has interpreted and performed the Settlement Agreement in accordance with its obligations arising from the honour of the Crown.
- [40] I would note, however, that Takuhikan, as well as Peigan No. 2, both hold that the honour of the Crown as it relates to the TLE agreements does not mean that the terms of such agreements are to be ignored, re-written or interpreted in a way that is at odds with the terms of the agreement and as expressly contemplated by the parties to the agreement (Peigan No. 2, at para 12; Takuhikan, at para 188).

Application to the Amended Claim [41] Saskatchewan submits that based on Peigan No. 1, Peigan No. 2 and Ochapowace, all references in the Amended Claim to constitutionally-based or “honourable” obligations, including obligations sourced in Treaty No. 4, the Constitutional Act, 1982 or the NRTA, must be struck (specifically, as found in paragraphs 1(b)-(f), (k), (l), 12, 23, 54, 59, 61, 62, and 63 of the Amended Claim) on the basis of a lack of jurisdiction.

[42] Given my finding that this Court does have jurisdiction with respect to contractual matters that engage the honour of the Crown, and PFN’s position confirmed at the hearing that the honour of the Crown is intended to be engaged in the Amended Claim solely with respect to the interpretation and performance of the Agreements, I find as follows:

Paragraph 1(b) – this paragraph will be struck out with leave to PFN to amend but strictly restricting the relief sought to a declaration that the honour of the Crown is engaged for purposes of the interpretation and performance of the Settlement Agreement and Saskatchewan’s obligations under that Agreement. All other wording and references currently contained in paragraph 1(b) are and will remain struck;

Paragraph 1(c) – this paragraph seeks a declaration but does not identify specific obligations under the Agreements that were allegedly not properly interpreted and applied and, instead, refers to obligations sourced (i.e. “informed and underpinned”) in Treaty No. 4, s. 35 of the Constitution Act, 1982, and the NRTA. This paragraph will be struck with leave to amend to describe the specific obligations under the Agreements, which are alleged to have been improperly interpreted and applied. All references to Treaty No. 4, s. 35 of the Constitution Act, 1982, and the NRTA are and remain struck;

Paragraphs 1(d) and (e) – given my above restriction of paragraph 1(b), these claims do not now exceed the Court’s jurisdiction and will not be struck out;

Paragraph 1(f) – the words “consistent with the spirit and intent of Treaty No. 4” shall be struck;

Paragraphs 1(k) and (l) – These paragraphs allege a failure by Saskatchewan to uphold the honour of the Crown “with respect to lands requested pursuant to” the Agreements but denied by Saskatchewan. This allegation pertains to the performance of the Agreements and therefore is within the Court’s jurisdiction and will not be struck out. Whether the remedies sought are available is a distinct issue.

[43] In addition:

Paragraph 12 – in addition to reciting paragraph 10 of the NRTA, the impugned paragraph includes that PFN states that Saskatchewan had and has an ongoing obligation to provide unoccupied Crown lands to Canada pursuant to the terms of the NRTA to allow it to fulfil its Treaty obligations. In Peigan No. 2, the FCA held that declarations based on the assertion of constitutional and fiduciary duties related to the NRTA are “outside the parameters of jurisdiction set out in Peigan 1” (para 18). However, paragraph 12 is not a declaration. Nor does this allegation contain a breach of a constitutional obligation, which falls outside of this Court’s jurisdiction. Accordingly, because this paragraph provides uncontested background fact, it ought not be

struck;

Paragraph 23 – states that the Settlement Agreement dictates that Saskatchewan must fulfil certain obligations “as properly interpreted and applied in a manner consistent with the honour of the Crown”. This speaks to the interpretation and implementation of the Settlement Agreement, viewed through the lens of honour of the Crown. Accordingly, it will not be struck on jurisdiction grounds. However, the words “and provide these lands in priority to Pasqua First Nation” shall be struck as PFN has advised that it is abandoning the priority aspect of its claim;

Paragraph 28 – as PFN has advised that it is abandoning its implied notice allegations, the words “with no notice to the Pasqua First Nation and without prior consultation with the Pasqua First Nation” shall be struck out;

Paragraph 32 – this paragraph pertains to prior notice and will be struck out in whole;

Paragraph 54 – this pleading states that “the private land [PFN] has purchased is in piece-meal locations” which lack significant development potential. PFN now concedes that the Agreements place no obligation on Saskatchewan to find lands. Accordingly, the last sentence of this paragraph (“There has been no assistance and support to fund [sic, the parties agree that this should have read “find”] lands which may reasonably be designated reserve land in fulfilment of the Treaty obligations”) shall be struck out;

Paragraph 59 – is found under the heading “Saskatchewan’s failure to implement the Settlement Agreement” and states what PFN views as Saskatchewan’s obligation under the Agreements, being “to provide Crown land and minerals to Canada to enable it to fulfil its outstanding Treaty No. 4 obligations to the Nation in a prompt and equitable manner”. In my view, read in context, the asserted obligation arises from the Agreements, while the reference to Treaty No. 4 in this paragraph provides background context. This paragraph need not be struck;

Paragraphs 61– this alleges Saskatchewan’s “delay and failure to proactively implement” the Agreements, which “was not in keeping with the honour of the Crown, its duty of good faith and honest performance...” The reference to the honour of the Crown in paragraph 61 need not be struck out for lack of jurisdiction as it relates to the performance of the Agreements;

Paragraph 62 – this alleges that Saskatchewan failed to provide PFN with proper notice, and failed to act in accordance with the honour of the Crown, and the duty of good faith and honest performance “through its failure to provide an opportunity to clear any third party interests related to the February 8, 2012 Treaty land entitlement request”. In terms of jurisdiction, the reference to the honour of the Crown is tied to the performance of the Agreement – although whether there is such an obligation under the Agreements is at issue. In terms of notice, PFN has conceded that this paragraph is to be amended to remove the notice wording which is “without prior notification to Pasqua First Nation” and “without notice”;

Paragraph 63 – PFN pleads that it has suffered damages and adverse effects as a result of failures to uphold the honour of the Crown, common law, equitable, statutory, and contractual duties, especially the duty of good faith and honest performance. It is not clear from this paragraph that PFN is tying the honour of the Crown to the interpretation and performance of the Agreements. Accordingly, the words “the honour of the Crown” shall be struck with leave to amend to clarify its application;

Paragraph 63(a) – this paragraph asserts a failure to respect PFN’s right to chose land and minerals in priority. As this assertion is no longer being pursued by PFN, paragraph 63(a) shall be struck in whole.

Does the Amended Claim Fail to Disclose a Reasonable Cause of Action? Saskatchewan’s Position [44] Saskatchewan submits that since PFN’s original claim was filed in 2014, other TLE claims making identical allegations have been rejected by the FCA and the Saskatchewan courts. In that regard, it describes *Muskoday First Nation v Saskatchewan*, 2016 SKQB 73 [Bear], *George Gordon*, and *Witchekan*.

[45] Regarding PFN’s 2012 land purchase requests, PFN pleads at paragraph 31 of its Amended Claim that Saskatchewan denied its request for other lands and minerals, in part, because some of the land and minerals were subject to a pre-existing provincial lease held by K+S Potash Canada General Partnership [K+S Potash] for the Legacy Solution Mining Project [Legacy Mine], which was at an advanced stage of exploration and development, and Saskatchewan wished to retain the lands and minerals in the public interest. Saskatchewan notes that this same rationale for refusing to sell requested lands was upheld in *Bear*, and that PFN does not deny that the Legacy Mine project was at an advanced stage of development.

[46] Saskatchewan submits that PFN also pleads that a reason for Saskatchewan’s denial is that some of the lands it sought to purchase were designated lands under the Wildlife Habitat Protection Act, SS 1983-84, c W-13.2 [WHPA]. However, that the “favourable consideration” requirement does not apply to WHPA lands pursuant to art. 4.07(a) of the Settlement Agreement, which requires “exceptional circumstances” to sell protected land. Such circumstances were not plead by PFN. And, at paragraph 33 of the Amended Claim, PFN pleads that the footprint of the Legacy Mine would impact some of the WHPA lands that Saskatchewan refused to sell to PFN and alleges that Saskatchewan’s refusal to sell it those lands was thus discriminatory. Yet nothing in the Settlement Agreement fetters Saskatchewan’s discretion to allow provincial lands, including WHPA lands, to be affected in some way by a project. Saskatchewan further submitted that accepting PFN’s interpretation would contradict what is expressly allowed under provincial legislation, namely s 7 of the WHPA and ss 5 and 8 of the Wildlife Habitat Lands Disposition and Alteration Regulations, RRS c W-13.2 Reg 1 [WHPA Regulations]. Accordingly, this pleading discloses no reasonable cause of action.

- [47] Further, at paragraph 37 of the Amended Claim, PFN pleads that Saskatchewan should have sold it the Legacy Mine lands and minerals on the condition that “the First Nation deal with the third-party interests in the project at its own cost and for its own economic benefit”. However, his condition precedent: (i) would not have addressed what PFN pleads were Saskatchewan’s reasons for denying the purchase (i.e., that the project was at an advanced stage and the Province wished to retain the lands and minerals in the public interest); (ii) contradicts paragraphs 24 and 55 of the Amended Claim, where PFN alleges that the Agreement requires Saskatchewan to assist it in addressing third party interests; (iii) is hypothetical, speculative and was added to the claim twelve years after the fact; (iv) is redundant as, had Saskatchewan agreed to sell the lands and minerals to PFN, then PFN would have had to clear third party interests in any event under art. 8 (citing *Bear*, at para 61); and (v) contradicts arts. 4.06 and 5.03(b), which state that nothing in the Agreement can be interpreted as requiring Saskatchewan to sell any specific lands or minerals to PFN.
- [48] As to the 2017 purchase request, Saskatchewan submits that PFN does not challenge Saskatchewan’s reasons for denying that request. In *Witcheakan*, the FCA upheld similar reasons for denial. Additionally, in paragraph 52 of the Amended Claim, PFN alleges that Saskatchewan was required to sell to it on the condition that PFN reimburse Saskatchewan for the auctioneer’s withdrawal fee. However, PFN only added the proposed condition to its claim in 2024 – years after the fact. And while PFN alleges that Saskatchewan was required to say “yes” with a condition dictated by PFN, this is contrary to art. 4.06 of the Settlement Agreement.
- [49] As to other allegations put forward by PFN, Saskatchewan refers to paragraphs 1(d)-(e), 53, 55, 60 and 61 of the Amended Claim, where it claims PFN alleges that Saskatchewan “forced” it to acquire private lands and frustrated the Agreement’s purpose. However, in the 16 years since the Settlement Agreement was signed, PFN has made only four requests for provincial lands, one of which was accepted by Saskatchewan. PFN’s other three requests were for lands it was unlikely to acquire or could not acquire (undergoing advanced mineral exploration; privately owned lands; WHPA lands; and, lands allocated for auction). Further, in *George Gordon*, the Court of Appeal for Saskatchewan [SKCA] rejected an analogous claim. At paragraph 55 of the Amended Claim, PFN states that Saskatchewan has provided no assistance in clearing third party interests on private land, however, the Agreement does not include any such obligation and art. 11.04 contemplates PFN purchasing private lands without any involvement by Saskatchewan. As to paragraph 62, Saskatchewan would only have to assist in clearing third party interests on Crown if Saskatchewan had sold the land to PFN (citing *Bear*, at para 81). Nor is Saskatchewan compelled by the honour of the Crown or otherwise to provide requested land, as demonstrated by arts. 4.06 and 5.03(b), which stipulate that Saskatchewan is not required to sell any specific lands or mineral to PFN. Moreover, PFN’s pleading concerning lost opportunity has no chance of success because a similar denial was upheld in *Bear*, and because an identical claim of “lost opportunity” was rejected in *George Gordon* (at para 132). Saskatchewan specifies that the pleading is also speculative because, even if Saskatchewan had agreed to sell the lands and minerals to PFN,

they could not be transferred to reserve unless PFN satisfied arts. 4.05(b), 4.08(a), 5.03(a) and (c), and 8.

- [50] Saskatchewan submits that good faith does not allow courts to rewrite an agreement with a term that contradicts its express terms and undermines its purpose, nor can the doctrine of good faith be used to rewrite the Agreement to require Saskatchewan to say “yes” to PFN’s purchase request (citing arts. 4.06 and 5.03(b) of the Settlement Agreement; Bear, at para 40). Further, PFN’s pleadings at paragraphs 37 and 52 of the Amended Claim, suggesting that Saskatchewan should have offered PFN certain terms of sale (in part relying on good faith) lacks merit. These suggested sale terms would not have addressed what PFN pleads were Saskatchewan’s reasons for denying the purchases. And, the same pleading was made in *Witchekan*, which case was dismissed in its entirety.
- [51] Lastly, regarding the claim against Canada, Saskatchewan submits that paragraph 1(h), wherein PFN seeks a declaration that Canada has not been released from its Treaty obligations under art. 15 of the Framework Agreement, has no chance of success and should be struck. The FCA dismissed similar relief requested in *Witchekan* (at paras 103–104), notwithstanding that Canada took no position on the application (at para 87) and a similar outcome occurred in *George Gordon* (*George Gordon*, at para 183). Article 15.06 of the Settlement Agreement states that the release may not be relied upon if Canada failed to pay PFN as required. As in *Witchekan* and *George Gordon*, PFN does not plead that Canada failed to do so. Indeed, it does not plead facts that, if proven, would show that Canada failed to comply with any term of the Agreement. All the material facts plead concern PFN’s dealings with Saskatchewan. Further, Canada expressly relies on its release at paragraph 12 of its Further Amended Statement of Defence and, at paragraph 38, pleads that PFN’s claim fails to disclose a reasonable cause of action as against Canada.

PFN’s position [52] PFN submits nine “key facts” in support of its allegation that Saskatchewan breached the Agreements, thus demonstrating a reasonable cause of action. These facts concern Saskatchewan’s sale of land to K+S Potash, which included Crown lands requested by PFN, and Saskatchewan’s denial of same for reasons of public interest, which PFN asserts was done without disclosing how this was balanced against PFN’s interest under the Settlement Agreement or evidence as to what the public interest was. Other lands selected by PFN were designated under the WHPA and the Ministry exercised its discretion and retained the lands. However, parts of those lands were subsequently identified as being impacted by the Legacy Mine Project and were sold to K+ S Potash, which PFN asserts reveals that Saskatchewan’s true intent in retaining the lands was not to protect them under WHPA but to retain the underlying mineral rights and to lease them for financial gain. Additionally, Saskatchewan had written to PFN about certain land subject to potential lease or sale to agricultural producers and asked if that land had been used by PFN for traditional purposes. PFN then selected those lands for purchase but were advised that they were not available due to an intervening provincial purpose under WHPA, which designation could not be lifted. PFN asserts that if Saskatchewan had been concerned about protecting those lands, then it would not have considered leasing or selling them to private

individuals. This reveals that Saskatchewan failed to give PFN's selections favourable consideration. In 2017, Saskatchewan advised PFN of an intent to sell or lease vacant land, and PFN responded that it had previously selected these lands. It reselected the land, which was made available to it subject to PFN satisfying conditions precedent within 18 months. In another instance, PFN was informed that other parcels of agricultural land were to be put up for auction. It then wrote to Saskatchewan selecting those lands for purchase. Saskatchewan informed PFN that the lands would not be available for sale as they had already been allocated for auction, related costs had been incurred and Saskatchewan could not withdraw the selected lands.

- [53] PFN alleges that these facts demonstrate that Saskatchewan failed to deal with PFN's land selections in a forthright manner. The Province's "insistence" on rejecting PFN's selections, and its willingness to give those lands and minerals to third parties while maintaining a "public interest" in protecting those lands amounts to, at the very least, the appearance of sharp dealing. Thus, a reasonable cause of action exists with respect to whether the Agreements were breached on the basis of good faith, honest performance, and favourable consideration.
- [54] And, while Witchehan is factually very similar to this matter, PFN has been met with repeated rejections of its requests to purchase land, which it submits demonstrates a pattern of disregard for the underlying purposes of the TLE agreements.
- [55] PFN submits that it has almost exclusively pursued land acquisition from private landowners, some of which is subject to third party interests that have been difficult for PFN to clear, and it has not received support from Saskatchewan. It submits that Saskatchewan's conduct informs whether Saskatchewan frustrated the underlying purpose of the Agreements and demonstrates that it was inconsistent with the Agreements' terms when viewed through the lens of the honour of the Crown.
- [56] PFN further submits that it appears Saskatchewan is asserting that it has unfettered, or exceedingly wide discretion to determine, at any time, that lands will be unavailable to PFN due to an intervening public interest. This argument fails because (i) Saskatchewan lacks unfettered discretion; and (ii) it assumes that this Court can decide the issue on a bare factual record. According to PFN, the honour of the Crown is always at stake in dealings with Aboriginal peoples (citing *R v Badger*, [1996] 1 SCR 771 at para 41) and not simply in situations where treaty rights are at issue. To that end, Saskatchewan "must give 'favourable consideration' and 'make best efforts,' with respect to PFN's requests".
- [57] While Saskatchewan can invoke an intervening public interest, it must show how it did so in a manner that gave due consideration to PFN and the overriding purpose of the Agreements' interests, and in a manner in line with the honour of the Crown. Given that Saskatchewan did not act honourably towards PFN, it is necessary to examine the evidence to determine how the honour of the Crown has been met with respect to the lands that PFN requested and was refused, as well as whether or not the duty of diligent implementation places reasonable limits on Saskatchewan's discretion, so that the overarching purpose of the Framework

Agreement is not undermined.

- [58] PFN submits that, while Saskatchewan relies upon Bear, George Gordon and Witchekan to argue that those cases resolved the issues in the Amended Claim, Saskatchewan overlooks distinguishing elements in those decisions.
- [59] Regarding the claim against Canada, PFN submits that neither Witchekan nor George Gordon (both summary judgement applications) addressed Ochapowace (a motion to strike case) in which the Court found that it could not strike the claim against Canada (citing Ochapowace, at paras 41–44). Here, Canada has not brought a motion to strike the Amended Claim, it is party to the Agreements, and since PFN argues that the situation described in the Amended Claim results in a breach of Saskatchewan and Canada’s obligations, PFN is entitled to prove this at trial.

Analysis [60] The Supreme Court outlined the test for striking claims for disclosing no reasonable cause of action in *R v Imperial Tobacco Canada*, 2011 SCC 42 at para 17 [Imperial Tobacco]. That is, a claim “will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action”. The Court explained that “[a]nother way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial [...]” (Imperial Tobacco, at para 17).

Whether TLE Jurisprudence Resolves the Issues in the Amended Claim [61] Saskatchewan submits that Bear, Witchekan and George Gordon serve to fully answer the Amended Claim which, accordingly, discloses no reasonable cause of action. I will address each of these cases below.

Bear [62] Saskatchewan submits that in Bear, the Court of Queen’s Bench for Saskatchewan [SKQB] upheld a denial of a land purchase request because those lands and minerals were undergoing advanced mineral exploration for a mine, and Saskatchewan wished to retain lands and minerals in the public interest. Saskatchewan argues that PFN seeks to litigate essentially the same public interest basis for Saskatchewan’s decision in its Amended Claim.

- [63] In Bear, the Muskoday First Nation [MFN] requested certain crown lands and minerals as part of its entitlement under a TLE agreement (Bear, at para 2). Saskatchewan rejected this request, in part, because those lands were undergoing advanced exploration for diamonds and it was in the public interest to retain administration and control of those Crown lands and resources (Bear, at para 22). MFN asserted that Saskatchewan was under an obligation to give favourable consideration to any TLE claim, and took issue with the Province’s evocation of the public interest in its denial (Bear, at paras 23–24).
- [64] The SKQB held that, notwithstanding its conclusion that the honour of the Crown was the proper lens through which to view Saskatchewan’s obligations and that Saskatchewan misinterpreted the principle of “willing seller/willing buyer”, if Saskatchewan approached MFN’s request “in good faith and thoroughly deliberated the issues in question in an

intellectually honest fashion and did not engage in ‘sharp practice’”, it would, notwithstanding the conceptual deficiencies, discharge its obligations under the TLE Settlement Agreement (at para 50).

- [65] In that regard, the SKQB held that the subject TLE settlement agreement did not preclude Saskatchewan from exempting certain minerals from a potential request from MFN. While the agreement’s focus was the reconciling of outstanding claims, that fact or intent did not displace Saskatchewan’s obligation to the “entire body politic” (para 54). In responding to MFN’s request, Saskatchewan was required to give favourable consideration, make best efforts, and was bound to uphold the honour of the Crown. But, at the same time, the Province was also required to consider the interests of the entire provincial collective – nothing compelled Saskatchewan to place one subgroup’s interests ahead of everyone else’s (at paras 53–55).
- [66] Ultimately, the SKQB considered the process undertaken and the reasons given by Saskatchewan in its letter denying MFN’s request. It held that the public interest should always be front of mind when a government addresses questions of moment for the people of its jurisdiction. In that case, Saskatchewan’s decision to retain administration and control of the subject lands and a possible new diamond industry arising therein evidenced a sensitivity to the public interest (at para 67).
- [67] However, Saskatchewan’s obligation to act honourably did not amount to an obligation to accept the land request. The reasons given by Saskatchewan were relevant considerations and concerns for a government that must answer to and be responsible for the interests of every citizen in the province.
- [68] The SKQB found that a review of Saskatchewan’s conduct throughout reflected the province’s thoroughness and intellectual honesty when approaching the MFN land request. Nor had Saskatchewan engaged in sharp practice. While reasonable people may disagree about the validity of the reasons, they were arrived at through a process consonant with Saskatchewan’s obligations under the TLE settlement agreement and the honour of the Crown. Accordingly, MFN’s claim failed and was struck out (at paras 71–73).
- [69] In my view, Bear does not resolve the PFN’s Amended Claim. First, as PFN submits, Bear was a motion for summary judgment – not a motion to strike. Affidavit evidence was filed, including by Saskatchewan, describing the process undertaken and the factors considered in assessing MFN’s request. The letter, which gave three reasons for the refusal, was also in evidence. Here, PFN is challenging how Saskatchewan arrived at its decision to refuse PFN’s TLE requests. For example, that Saskatchewan failed to favorably consider its requests, it exercised its discretion in a discriminatory fashion, and failed to properly implement the Settlement Agreement including in accordance with its terms, in good faith and in accordance with the honour of the Crown. The Amended Claim also alleges a “persistent pattern of inattention” to PFN’s interests, which led to frustrating the Agreements’ purpose.

[70] I agree with PFN that in the absence of an evidentiary record, and unlike Bear, the Court cannot assess the procedures undertaken by Saskatchewan to establish whether it gave favourable consideration to PFN's request, as balanced against the public interest. Nor can the Court assess and establish whether Saskatchewan acted in good faith and interpreted and performed the obligations under the Agreements in accordance with the honour of the Crown. Bear was decided on the facts and evidence before the SKQB. While the rationale for Saskatchewan's decisions in Bear is very similar to this case, in the absence of evidence as to how Saskatchewan arrived at its decisions in this matter, Bear does not fully resolve these issues. As such, it is not plain and obvious that PFN's pleaded claims in this matter disclose no reasonable cause of action as a result of similar claims addressed in Bear.

Witchehan [71] Saskatchewan also relies on Witchehan, which it argues addresses and resolves PFN's challenge to the Province's reason for refusing the 2017 purchase request based on similar considerations of favourable consideration.

[72] Witchehan, like Bear, was a motion for summary judgment. In that case, Saskatchewan notified Witchehan Lake First Nation [WLFN] that it intended to sell certain vacant Crown lands by auction, but received no response. The day after the auction began, WLFN wrote to Saskatchewan requesting to purchase parcels of that land. Saskatchewan refused the request on the basis that the land had already been placed in the auction, and that costs had been incurred in relation to the auction sale (Witchehan, at para 10). These same events occurred once more. WLFN then commenced an action asserting that the Framework Agreement included an implied term requiring the Province to provide notice of any impending auction, a reasonable opportunity to purchase lands before they were put up for auction, that Saskatchewan's breach of those implied terms amounted to frustrating the purpose of the Framework Agreement, and declarations that Saskatchewan and Canada were in breach of certain express terms of that Agreement. The motions judge dismissed the motion, finding that Saskatchewan had not met its burden of establishing the facts necessary for summary judgment.

[73] Saskatchewan appealed to the FCA, which allowed the appeal and granted the motion for summary judgment. For the reasons it set out, the FCA rejected the proposed implied term. The FCA also discussed the concept of "favourable consideration" in the context of a genuine issue for trial. It referred to art. 4.06 of the Framework Agreement, which confirmed that Saskatchewan is not required to sell any specific parcel of Crown land to an entitlement band, but that the Province must give "favourable consideration" to offers from that band to purchase Crown land (Witchehan, at para 111). The FCA acknowledged the analysis in Bear, finding that terms like "favourable consideration", when read through the lens of the honour of the Crown, required Saskatchewan to consider the requests in good faith and without engaging in sharp practice. It concluded that, in that case, Saskatchewan's reasons were arrived at through a process consistent with its obligations under the TLE settlement agreement and the honour of the Crown (para 113, citing Bear, at paras 50, 72). The FCA found that the evidence established that WLFN's request to remove the lands from

auction and to allow it to formulate an offer to purchase had been reviewed and considered by thirteen different branches of the Saskatchewan government and that the WLFN led no evidence that Saskatchewan's consideration was conducted in anything but good faith and based on relevant public policy considerations. Further, that Saskatchewan considered the public interest "both procedurally and substantively" before denying WLFN's request to purchase Crown lands (at paras 113–115).

[74] In my view, Witchehan establishes that Saskatchewan can reasonably deny a land purchase request on the grounds that the land in question has been put up for auction. Again, however, this does not resolve PFN's Amended Claim in so far as PFN challenges how, or the process by which, Saskatchewan made its decisions and whether this process satisfied its obligations under the Agreements. Nor does Witchehan resolve PFN's allegation that the pleadings demonstrate a pattern of refusal in favour of third-party interests, frustrating the purpose of the Agreements and in a manner inconsistent with the honour of the Crown. Put differently, it is not plain and obvious that PFN's claim in this respect discloses no reasonable cause of action.

[75] Both Bear and Witchehan were resolved on the basis of the evidentiary record before the courts in those cases. I am not persuaded that similar determinations can be made here based only on the facts as plead in the Amended Claim. While I agree with Saskatchewan's submission that this Court does not need an evidentiary record to review Saskatchewan's reasons for denying PFN's purchase requests as they have been plead, it is Saskatchewan's conduct in arriving at those reasons that PFN challenges.

George Gordon [76] Saskatchewan submits that George Gordon resolves PFN's allegation that it suffered "lost opportunity" to acquire lands and minerals being developed for a potash mine. It therefore argues that paragraphs 1(d), (j)-(l) and 63, relating to the Legacy Mine lands and minerals that Saskatchewan denied PFN in 2012, have no chance of success. Saskatchewan also relies on George Gordon to submit that courts have rejected claims similar to PFN's, including that Saskatchewan "forced" an entitlement band to acquire private lands it did not desire.

[77] George Gordon concerned a summary judgment application in which George Gordon First Nation [GGFN] argued that the Crown had a duty to consult with GGFN before it made any mineral disposition on lands which could be selected by GGFN to satisfy its treaty land entitlement (*George Gordon First Nation v Saskatchewan*, 2020 SKQB 90 at para 62 [*George Gordon SKQB*]). The SKQB rejected the argument, finding that Saskatchewan was not subject to such a duty to consult or, if it was, that duty was satisfied by the processes followed under negotiation and implementation of the TLE agreement.

[78] The SKQB also held that, in view of Saskatchewan's first-come first-served policy, GGFN had the same opportunity as anyone else to acquire surface rights and to apply for mineral dispositions. What GGFN instead sought was a change in practice that would favour GGFN above others, allowing it to jump a prior claim of a third party (*George Gordon SKQB*, at para 114). (I note that GGFN admitted that the reason it might wish to acquire the subject

minerals was because the original applicant would presumably have already determined there are likely valuable minerals below the surface of those lands. GGFN believed that it could, on the basis of art. 5.05 of the GGFN TLE agreement, then acquire the rights to those minerals at no cost to GGFN (George Gordon SKQB, at para 67)). The SKQB found that GGFN was not “forced” to acquire land elsewhere. It was naturally constrained by the same factors that would affect any buyer, including price and availability in the marketplace. The evidence established that GGFN was in the same position, if not better, than anyone else seeking to acquire real property (George Gordon SKQB, at paras 118–119).

- [79] On appeal, the SKCA held that while GGFN asserted that Saskatchewan’s actions forced it to choose land and minerals up to 600 kilometers from its existing reserve, the evidence did not support an assertion that Saskatchewan’s conduct forced GGFN to make those distant acquisitions. The motions judge had found as a fact that there were other lands and minerals that could have been obtained by GGFN in close proximity to its existing reserve and that it was not forced to obtain other land. The SKCA held that this finding was well supported by the evidence (George Gordon, at para 129). While GGFN had missed the chance to develop its own potash mine on those exact lands or to enter into royalty agreements with a third-party developer, there was no evidence that its ambitions to acquire land and Crown mineral rights in the potash area in close proximity to its existing reserve were thwarted by the manner in which Saskatchewan made mineral dispositions (George Gordon, at para 132).
- [80] I note that the terms of the TLE agreement referred to in George Gordon are identical to the terms of the present Settlement Agreement (George Gordon SKQB, at para 21). Accordingly, in my view, George Gordon does resolve the question of whether the terms of the TLE agreement have the effect of forcing TLE bands to choose any particular lands and whether a “loss of opportunity” argument can arise from same. It does not and cannot. Entitlement bands are to identify and select TLE lands that they wish to purchase – although such selections may be subject to the market and other constraints. However, in this matter, paragraph 60 of PFN’s Amended Claim asserts that Saskatchewan failed to make Crown lands or minerals available to PFN for purchase to fulfil its acreage shortfall and that to date, PFN has been forced to purchase mostly private land to pursue its entitlements. Thus, the concern raised by PFN is not that it has been forced to acquire any particular lands over others, but that Saskatchewan’s conduct in making Crown lands available to it has forced PFN to acquire lands from private owners, which has resulted in lost opportunity. Whether these allegations can withstand scrutiny cannot be determined on the bare pleadings alone.
- [81] In that regard, it is of note that in George Gordon, it was found that there was no evidence that GGFN’s ambitions to acquire land and Crown mineral rights in the potash area in close proximity to its existing reserve were thwarted by the manner in which Saskatchewan made mineral dispositions – that is, by Saskatchewan’s procedure or conduct. Here, there is no evidence beyond the bare pleadings. Accordingly, in my view, Saskatchewan has not established that PFN’s allegations do not give rise to a reasonable cause of action. Accordingly, the paragraphs of the Amended Claim identified by Saskatchewan as pertaining

to loss of opportunity will not be struck out. And, in any event, paragraphs 1(d), (j), (k) and (l) do not speak directly to loss of opportunity and the allegations they contain are tied to, and their success is entirely dependant upon, PFN first establishing that Saskatchewan has not properly interpreted, performed and breached the Agreements.

Whether the Terms of the Settlement Agreement Resolve the Issues in the Amended Claim
Articles 4.06 and 5.03(b) [82] Saskatchewan argues throughout its submissions that arts. 4.06 and/or 5.03(b) of the Settlement Agreement resolve aspects of the Amended Claim. More specifically, that the Amended Claim suggests that the Province was required to say “yes” to PFN’s land purchase requests. However, that this is contrary to art. 4.06, which states that nothing in the Settlement Agreement shall be interpreted as requiring Canada or Saskatchewan to sell or transfer any specific parcel of federal or provincial Crown Land to, or for the benefit of, the entitlement band, with certain exceptions. And, it is also contrary to art. 5.03(b), which states, among other things, that nothing in the Settlement Agreement shall be interpreted as requiring Canada or Saskatchewan to sell any Crown Minerals (with exceptions).

[83] On this point, Saskatchewan refers to paragraphs 37, 52, 59 and 61 of the Amended Claim.

[84] I do not interpret these paragraphs as pleading that Saskatchewan is required to say “yes” to PFN’s purchase requests. Paragraph 37 contains PFN’s position that it would have been “consistent with the Agreement” if it was permitted to purchase land with a specific condition attached and that good faith and favourable considerations lend themselves to that approach. This does not suggest that Saskatchewan was necessarily required to say “yes” to either the purchase or that request – rather that appropriate consideration of the request was required. Similarly, paragraph 52 asserts that good faith and favourable consideration meant that Saskatchewan “should have approved” PFN’s land selections that were to be auctioned subject to PFN reimbursing Saskatchewan for any auction withdrawal fees – but that this approach was not considered by Saskatchewan. What the pleading is aimed at is Saskatchewan’s conduct in arriving at its decision. Paragraph 59 speaks to a general obligation under the Agreements to provide Crown lands and minerals to Canada to enable Canada to fulfil its outstanding Treaty No. 4 obligations. This paragraph is not concerned with land requests made by PFN to Saskatchewan. And, paragraph 61 does not suggest that Saskatchewan must sell requested land to PFN. Therefore, Saskatchewan has not established that it is plain and obvious that these paragraphs fail to disclose a reasonable cause of action in this respect.

Article 4.07 [85] Saskatchewan submits that paragraph 33 of the Amended Claim discloses no reasonable cause of action because it is resolved by the terms of the Settlement Agreement.

[86] In paragraph 31(c) of the Amended Claim, PFN asserts that, in its refusal, Saskatchewan acknowledged that the Framework Agreement enables Saskatchewan to consider making designated lands available for sale conditional upon the removal of WHPA designation. Although Saskatchewan had this discretion, it took the position that the land in question ought to be retained by the Province and not be made available for sale.

[87] Paragraph 33 of the Amended Claim asserts:

33. The Pasqua First Nation states that thereafter Saskatchewan publicly advised that the "footprint" of the contemplated Legacy Solution Mine Project area will impact on parts of the land Saskatchewan refused to provide to the Pasqua First Nation in its June 20, 2012 correspondence because it was "protected". The Pasqua First Nation claims that Saskatchewan has exercised its discretion under The Wildlife Habitat Protection Act in a discriminatory fashion and to the detriment of the Pasqua First Nation, and contrary to its obligations under the Settlement Agreement.

[88] Saskatchewan submits that its obligation of "favourable consideration" does not apply to WHPA lands. Rather, under art. 4.07(a) of the Settlement Agreement, those lands will only be sold to PFN in "exceptional circumstances", which PFN has not pleaded. At the hearing, Saskatchewan further submitted that if the Court were to agree with PFN's interpretation – that if Saskatchewan refuses to sell WHPA lands to a First Nation, they cannot "turn around and sell those lands to third parties" – this would read a restriction into the Settlement Agreement that does not exist. Such an interpretation would contradict what is expressly allowed under provincial legislation (i.e. the WHPA) which permits development on WHPA lands. And, this in turn would run afoul of art. 20.08 of the Settlement Agreement.

[89] The relevant provisions of the Settlement Agreement are as follows:

4.06 SALE OF CROWN LAND:

Subject to applicable law, each of Canada and Saskatchewan agrees to give favourable consideration to offers from the Band to purchase federal or provincial Crown Land, including federal or provincial Crown Improvements thereon, and not to unreasonably withhold the same, provided that nothing in this Agreement (with the exception of subsection 4.05(c)) shall be interpreted as requiring Canada or Saskatchewan to sell or transfer any specific parcel of federal or provincial Crown Land (including Crown Improvements thereon) to, or for the benefit of, the Band.

4.07 RESTRICTION ON THE SALE OF CERTAIN PROVINCIAL CROWN LAND:

Notwithstanding section 4.06, provincial Crown Lands that are designated as the following, at the time the Band indicates in writing to Saskatchewan its interest in Purchasing the said Lands, will only be sold by Saskatchewan under exceptional circumstances:

(a) Critical wildlife habitat lands under The Wildlife Habitat Protection Act, SS 1992, c W-13.2

[...]

20.08 APPLICABLE LAW:

This Agreement shall be governed by and construed in accordance with all applicable legislation including, without limitation, the laws of Saskatchewan and the laws of Canada applicable therein.

[90] Section 7 of the WHPA and ss 5 and 8 of the WHPA Regulations, cited by Saskatchewan, are as follows:

Alterations Prohibited

7(1) No person shall alter wildlife habitat and ecological lands unless the alteration is permitted in the regulations or authorized by the minister.

(2) An alteration that is permitted or authorized pursuant to subsection (1) may be made subject to any terms and conditions that are prescribed in the regulations or by the minister, as the case may be.

Restriction on alterations

5 Subject to section 9, no disposition holder shall make any alteration to wildlife habitat lands other than an alteration that is permitted pursuant to these regulations or authorized by the minister in writing.

Mineral Dispositions

8 Subject to sections 7 and 9, every person who, on or after the day this section comes into force, holds a disposition to Crown lands designated as wildlife habitat lands permitting or relating to the exploration for or the extraction of any mineral may make any alteration to the wildlife habitat land that is necessarily incidental to exercising that person's rights pursuant to that disposition.

[91] Even if I were to agree with Saskatchewan that: it was not required to give favourable consideration to PFN on critical wildlife habitat lands designated under the WHPA; that it was not required to sell those lands; that whether it would do so “under exceptional circumstances” is a discretionary determination and that PFN does not plead in its Amended Claim that it asserted any exceptional circumstances at the time it sought to purchase WHPA designated lands; and, that nothing in the Settlement Agreement fetters Saskatchewan's discretion to subsequently allow provincial lands, including WHPA lands, to be affected in some way by a project, I am not persuaded that this is necessarily is a complete resolution of the issue.

[92] Paragraph 33 of the Amended Claim asserts that Saskatchewan exercised its discretion under the WHPA in a discriminatory fashion and contrary to its obligations under the Settlement Agreement. Those obligations include performing the Settlement Agreement in good faith and in accordance with the honour of the Crown. While I appreciate that the honour of the Crown does not permit clear and unambiguous terms of agreements to be rewritten, I am not prepared to strike paragraph 33 on the basis that arts. 4.06 and 4.07 establish that it is plain and obvious that the allegation does not give rise to a reasonable cause of action. This allegation requires evidence to support or refute it.

Good Faith [93] Saskatchewan submits that PFN has not plead facts that could support a claim that Saskatchewan was dishonest or acted in bad faith. Accordingly, that the allegations referencing “good faith” and “honest performance” in the Amended Claim (at paragraphs 1(a) and (j), 23, 37, 52, 61, 62, 63, and 63(f) and (g)) must be struck as they do not disclose a reasonable cause of action.

[94] The Supreme Court has recognized that good faith is an “organizing principle” that underpins several doctrines of contract law and that may, in certain circumstances, give rise to specific legal duties (Ochapowace, at para 29, citing *Bhasin v Hrynew*, 2014 SCC 71).

[95] In the context of the Civil Code of Quebec, the Supreme Court in *Takuhikan* discussed obligations arising from the duty of good faith in tripartite agreements between the Crown and Indigenous groups. It explained that good faith “entails prohibitions that can be analyzed objectively, such as those against unduly increasing the burden on the other contracting party, behaving in an excessive or unreasonable manner, or jeopardizing the existence or equilibrium of the contractual relationship” (at paras 101). It also explained that good faith “requires more than the absence of bad faith”, but “does not require parties to subordinate their interests to those of the other parties” (at para 110). And, that good faith requires “a duty of conduct that involves making the performance of the contract consistent with what was undertaken” – it cannot require or impose specific outcomes (at para 112).

[96] As PFN submits, in *Ochapowace*, when discussing motions to strike in the contractual context and with respect to good faith, this Court noted that courts have been reluctant to dismiss claims raising issues of contractual interpretation, implication of terms, or good faith on a motion to strike. In refusing to strike claims raising such issues, courts have recognized that an evidentiary background is often necessary to determine how a contract applies to a specific fact situation (*Ochapowace*, at para 31).

[97] I am satisfied that TLE agreements attract good faith obligations. In *Peigan No. 1*, the FCA referenced art. 21.01 of the Framework Agreement, which provides that Canada, Saskatchewan and the signatory Bands “will, in good faith, employ their best efforts to fulfil the terms of [the Framework Agreement] according to its true spirit and intent” (at para 26). Further, the FCA in *Witchehan*, in its discussion of the favourable consideration provision, adopted the analysis in *Bear* and recognized that the term, when read through the lens of the honour of the Crown, required Saskatchewan to consider the requests in good faith and without engaging in sharp practice (at para 113, citing *Bear*, at para 50).

[98] I am also satisfied that it is not plain and obvious, assuming the facts pleaded to be true, that PFN’s claims against Saskatchewan regarding good faith and honest performance do not disclose a reasonable cause of action. The Amended Claim impugns Saskatchewan’s conduct as failing to take the steps necessary to implement the Agreements (see, for example, the Amended Claim at paragraph 1(g)). More specifically, the conduct that PFN impugns as violating the duty of good faith is: Saskatchewan’s failure to make Crown land available for sale to PFN; delay and failure to proactively implement the Agreements; failure to “negotiate

promptly and in good faith, and to not unreasonably withhold, the sale to PFN of provincial Crown lands”; failure to uphold its duties of good faith and honest performance under the Agreements; and the damage suffered from that conduct. Assuming the pleadings to be true, they impugn Saskatchewan’s conduct as being inconsistent with the obligations it undertook by entering into the Agreements, which the jurisprudence has found can amount to a breach of the duty of good faith (Takuhikan, at para 112).

[99] In conclusion on this point, Saskatchewan has not established that it is plain and obvious, assuming the facts plead to be true, that PFN’s pleadings with regard to Saskatchewan’s obligations of good faith and honest performance do not disclose a reasonable cause of action.

Claim Against Canada [100] Saskatchewan moves to strike paragraph 1(h) of the Amended Claim as having no chance at success.

[101] Paragraph 1(h) of the Amended Claim contains PFN’s request for a “declaration that Canada has not been released of its outstanding obligations related to [PFN’s] Treaty land entitlement for failing to comply with its obligations under the Framework Agreement pursuant to article 15 of the Framework Agreement”.

[102] Article 15.01 of the Framework Agreement, entitled “Release of Canada by Entitlement Bands” states that subject to the provisions of sections 15.06 and 15.08, the Entitlement Bands agree [...] that upon ratification, execution and delivery of a Band Specific Agreement, they shall:

- (a) cede, relinquish and abandon unto Canada and forever discharge and release Canada, Her servants, agents and successors from all claims, rights, title and interest of such Entitlement Band under Treaty relating to land entitlement, and all obligations imposed on, and all promises, undertakings or representations made by Canada under or relating to Treaty land entitlement to such Entitlement Band [...] and shall further waive any right, action or cause of action, claim, demand, damage, cost, expense, liability and entitlement of whatever nature and kind, whether known or unknown, which such Entitlement Band or any of its Members, whether past, present or future [...] ever had, now have, or may hereafter have against Canada by reason of, or in any arising out of such Treaty land entitlement [...]

.....

15.04 FULL AND FINAL SATISFACTION

Subject to sections 15.6 and 15.08, the Entitlement Bands agree that this Agreement and their respective Band Specific Agreement, jointly, are intended to and do give effect to the full and final satisfaction on any and all obligation or undertaking of Canada relating to Treaty land entitlement in respect of the Entitlement Band... and that Canada, by carrying out its obligations pursuant thereto, shall be deemed to have completely fulfilled, and thereby concluded, the Treaty land entitlement rights of each Entitlement Band that is a signatory hereto, and the Treaty land entitlement obligations of Canada to such Entitlement Bands.

15.06 NO RELIANCE ON RELEASE, INDEMNITY OR FINALITY IN

CERTAIN CIRCUMSTANCES:

(a) Notwithstanding sections 15.01 to 15.04, inclusive, Canada agrees that it shall not rely on the provisions thereof in respect of an Entitlement Band in the event that Canada has failed, and is continuing to fail, in any material way, to comply with the following covenants in favour of such Entitlement Band, namely:

(i) Canada's obligation to pay such Entitlement Band's Entitlement Monies in accordance with the provisions for payment set forth in Article 3;

(ii) prior to the earliest of:

(A) the Entitlement Band's Shortfall Acres Acquisition Date; or

(B) the twelfth (12th) anniversary of the Execution Date;

.....

(b) Canada further agrees that it will not rely upon the provisions of sections 15.01 to 15.04, or subparagraph 15.06(a)(ii)(B), in respect of any particular Entitlement Band, in the event that such Entitlement Band has otherwise complied with the terms hereof and the cause for the Entitlement Band's failure to reach its Shortfall Acres Acquisition Date has been as a direct result of Canada's failure to create Entitlement Reserves pursuant to this Agreement as opposed to any non-creation of Entitlement Reserves which has been caused by the failure of any other party to honour its obligations hereunder.

[103] I agree with Saskatchewan that Witchehan is informative here. In that case, where Canada similarly took no position in the motion, the Court stated that “Canada was released from its TLE obligations to WLFN upon ratification, execution, and delivery of a band-specific agreement under Article 15.01” (Witchehan, at para 103; see also para 87). Further, that “Article 15.06 sets out precise and limited circumstances when Canada’s release may not be relied upon”. Those circumstances concern Canada or Saskatchewan’s failure to make financial contributions as required or that either party failed “in any material way” to comply with its obligations as required (Witchehan, at para 104).

[104] The SKCA also addressed art. 15 of the Framework Agreement in *George Gordon*, finding that art. 15.01(a) “clearly releases Canada from all of GGFN’s claims: past, present or future, arising out of unfulfilled TLE under Treaty No. 4” and that the article’s language “clearly and unambiguously captures any future claims that might have been made in relation to a TLE after the Settlement Agreement was signed” (at para 183). The Court of Appeal ultimately found no error in the Chamber judge’s determination that art. 15 was sufficient to fully release Canada from the liability asserted in GGFN’s claim.

- [105] In my view, these cases clearly establish that art. 15.01 of the Framework Agreement releases Canada from its TLE obligations to PFN. PFN does not plead facts that, if true, would show that Canada failed and continues to fail in any material way with the covenants set out in art. 15.06, which would disentitle Canada from reliance on the art. 15.01 release provision, and equivalent articles found in the Settlement Agreement.
- [106] PFN relies on Ochapowace to argue that the claim against Canada should not be struck. In Ochapowace, this Court held:
- [41] Saskatchewan also seeks to have the statement of claim struck as against Canada. Canada, however, is not seeking such a summary dismissal of the action, even though it filed a defence denying any liability towards Ochapowace.
- [42] There are three reasons why I cannot strike the statement of claim as against Canada. First, Canada has chosen not to seek such an order and Saskatchewan cannot override Canada's choice. Parties to a lawsuit are entitled to make their own decisions as to the conduct of the case, in particular with respect to which motions to bring: *Corporation des pilotes du Saint-Laurent Central inc v Laurentian Pilotage Authority*, 2018 FC 333 at paragraph 32, *aff'd* 2019 FCA 83. Save in exceptional circumstances, a defendant cannot bring a motion to strike the statement of claim as against another defendant. [...] Moreover, Ochapowace and Canada have adverse interests, because Ochapowace argues that a breach of the Agreements by Saskatchewan results in a breach of Canada's obligations under Treaty 4. The fact that Canada, in its defence, appears to agree with Ochapowace's interpretation of the Agreements does not negate the fact that, according to the statement of claim, it would be liable to Ochapowace if that interpretation prevails and Saskatchewan did not comply with it.
- [43] Second, while Rule 104 makes it possible to remove a party who has been improperly joined, it is not possible for me to say that this is the case. Canada is a party to the Agreements, and Ochapowace argues that the situation described in the statement of claims results in a breach of Canada's obligations. Saskatchewan may well disagree with that assertion, but Ochapowace is entitled to try to prove it at trial.
- [44] Third, different causes of action are pleaded against Canada and Saskatchewan. Ochapowace asserts that Canada has breached its obligations under Treaty 4 as a result of Saskatchewan's conduct and asks for a declaration to that effect. As against Canada, such a claim is squarely within our Court's jurisdiction, under section 17(1) of the Federal Courts Act. Other than bald statements to the effect that Canada has no knowledge of Saskatchewan's conduct and that the dispute is really between Ochapowace and Saskatchewan, I have not been told why Ochapowace's causes of action against Canada would have no chance of success. I note that in *Bear v Government of Saskatchewan*, 2010 SKQB 342, a case relied upon by Saskatchewan, no relief was claimed against Canada. Thus, that case does not support Saskatchewan's argument.

[107] Significantly, in my view, Ochapowace makes no mention of the release provision found in the Framework Agreement and addressed in both Witchekan and George Gordon. While I generally agree with Justice Grammond's analysis regarding the importance of party autonomy, the clear language of art. 15.01 presents a crucial distinction between that case and this one. Further, Witchekan was decided by the FCA four years after Ochapowace.

[108] For these reasons, I agree with Saskatchewan that art. 15.01 asks and answers the claim against Canada. Paragraph 1(h) of the Amended Claim shall be struck.

Is the Amended Claim an Abuse of Process? [109] Saskatchewan submits that, even in light of Peigan No. 1, Peigan No. 2 and Ochapowace, PFN "insists on pursuing allegations of constitutionally-based and honourable TLE obligations in this Court". Saskatchewan submits that these issues are *res judicata* and therefore, PFN's attempt to relitigate them is an abuse of process. Further, PFN continues to challenge Saskatchewan's reasons for denying its purchase requests even though those same reasons were definitively answered and upheld in prior jurisprudence. Saskatchewan should not have to defend its reasons for denying TLE purchase requests from repeated challenges. Allowing the claim to proceed would put the administration of justice in disrepute.

[110] PFN submits that the Amended Claim is not an abuse of process. Any allegations of constitutional and fiduciary breaches have been removed following the outcomes in Peigan Nos. 1 and 2 and therefore PFN is not attempting to re-litigate those issues. Additionally, Bear, George Gordon and Witchekan factual differ from this matter and subsequent developments in the law have emerged pertaining to the honour of the Crown and the duty of diligent implementation flowing therefrom. Further, PFN is asserting in its pleadings that Saskatchewan has failed to properly implement the terms of the Settlement Agreement and only with the assistance of a full evidentiary record can the matter be determined.

[111] In my view, the pleadings as they relate to the honour of the Crown in the interpretation and performance of the Agreements, which have not been struck in my analyses above, do not constitute an abuse of process. PFN's allegations that Saskatchewan failed to interpret and perform the Settlement Agreement in accordance with the honour of the Crown is not an attempt to re-litigate the constitutional issues previously struck for lack of jurisdiction.

[112] And, as also discussed above, while Saskatchewan in this matter may have provided the same reasons for refusing TLE land purchase requests as it did in Bear and Witchekan, what PFN is pleading in the Amended Claim (which has evolved over the 10 years since it was initially filed) pertains to the process by which the decisions were made. That is, whether principles such as favourable consideration, good faith and the honour of the Crown were applied in the interpretation and performance of the Settlement Agreement, which lead to those decisions. The Amended Claim does not amount to an abuse of process in these circumstances.

Conclusion [113] For the reasons above, the Amended Claim will not be struck in its entirety based on any of the grounds asserted by Saskatchewan.

[114] Further, the pleadings relate to Saskatchewan's conduct and whether the principles such as favourable consideration, the honour of the Crown and good faith and honest performance were applied by Saskatchewan or informed Saskatchewan's interpretation and performance of the Agreements. It is not plain and obvious, assuming the facts pleaded to be true, that the pleadings disclose no reasonable cause of action. Nor does the Amended Claim constitute an abuse of process.

[115] However, while the Amended Claim as a whole will not be struck, for the reasons set out above, the identified paragraphs or portions thereof will be struck with leave to amend only as specified below.

[116] Finally, I would observe that while many of Saskatchewan's arguments may well be valid, they cannot be assessed in the absence of an evidentiary record. In that way, in the context of the motion to strike, they were premature and better suited to a motion seeking summary judgment, as was the case in *Bear, Witchehan and George Gordon*.

Costs [117] Given that the motion as been granted only in part, there will be no order as to costs.

ORDER IN T-1437-14

THIS COURT'S ORDER is that

Saskatchewan's motion to strike is granted in part.

The following paragraphs, or portions thereof, are struck with leave to amend as stipulated:

Paragraph 1(b) – is struck out with leave to amend, strictly restricting the relief sought to a declaration that the honour of the Crown is engaged for purposes of the interpretation and performance of the Settlement Agreement and Saskatchewan's obligations under that Agreement. All other wording and references currently contained in paragraph 1(b) are and will remain struck;

Paragraph 1(c) – is struck with leave to amend to describe the specific obligations under the Agreements which are alleged to have been improperly interpreted and applied. All references to Treaty No. 4, s. 35 of the Constitution Act, 1982, and the NRTA are and remain struck;

Paragraph 1(f) – the words "consistent with the spirit and intent of Treaty No. 4" are struck;

Paragraph 1(h) – is struck in its entirety;

Paragraph 23 – the words "and provide these lands in priority to Pasqua First Nation" are struck;

Paragraph 28 – the words "with no notice to the Pasqua First Nation and without prior consultation with the Pasqua First Nation" are struck;

Paragraph 32 –is struck in its entirety;

Paragraph 54 – the words "There has been no assistance and support to fund [sic] lands which may reasonably be designated reserve land in fulfilment of the Treaty obligations" are struck;

Paragraph 62 – the words "without prior notifications to Pasqua First Nation" and "without notice" are struck;

Paragraph 63 – the words "the honour of the Crown" are struck with leave to amend to clarify its application to the interpretation and performance of the Settlement Agreement; and

Paragraph 63(a) – is struck in its entirety.

There is no award of costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1437-14

STYLE OF CAUSE:

CHIEF M. TODD PEIGAN, ON BEHALF OF HIMSELF AND ALL OTHER MEMBERS OF THE PASQUA FIRST NATION, AND THE PASQUA FIRST NATION v HIS MAJESTY THE KING IN RIGHT OF CANADA, AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA AND, HIS MAJESTY THE KING IN RIGHT OF SASKATCHEWAN, AS REPRESENTED BY THE ATTORNEY GENERAL OF SASKATCHEWAN

PLACE OF HEARING:

By videoconference using Zoom

DATE OF HEARING:

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ORDER AND REASONS:

STRICKLAND J.

DATED:

march 18, 2025

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