

**INFORMATION MEETING FOR THE SAMSON  
CREE NATION SETTLEMENT REFERENDUM**

**VOTE BY MEMBERS TO APPROVE THE  
AGREEMENT IN PRINCIPLE TO SETTLE  
THE SAMSON CREE NATION'S  
BREACH OF TRUST LAWSUIT**

**FEDERAL COURT ACTION NO. T-2022-89**

**VOTE TO BE HELD ON NOVEMBER 15, 2022**



**Rae and Company, Barristers and Solicitors**

## **What is Samson Cree Nation's Breach of Trust Lawsuit (Federal Court Action No. T-2022-89) all about?**

- ❑ SCN's reserve lands, both the home reserve and Pigeon Lake, included large pools of oil and natural gas
- ❑ Since the 1940s Canada has leased oil and gas exploration rights to oil companies and Canada collected royalties for the SCN on the oil and gas produced by these companies
- ❑ As SCN's trustee and fiduciary Canada was supposed to manage the oil and gas, including the royalties that were collected, all in SCN's best interests
- ❑ SCN never managed or controlled this resource, it was always managed by Canada
- ❑ In the 1970s and 1980s SCN leadership questioned whether Canada was properly protecting SCN's interests



## What is Samson Cree Nation's Breach of Trust Lawsuit (Federal Court Action No. T-2022-89) all about?

- The result of these questions—Leadership instructed legal counsel, including Mr. Douglas Rae, to file the “Breach of Trust” action in Federal Court in September of 1989
- In this lawsuit SCN argues that Canada breached its obligations to SCN: in the management of the oil and gas resources and royalties; in the management of the trust funds held in Ottawa; and how Canada fund SCN programs and services
- After SCN filed its claim against Canada, many other oil and gas producing First Nations also filed similar breach of trust claims against Canada
- Canada and SCN have entered into an agreement in principle to settle this lawsuit; one of Canada's conditions to finalizing the settlement is for the members of SCN to approve the settlement in a referendum



## Overview of the Key Settlement Terms and Conditions

### Canada's Obligations to SCN

- Canada will compensate SCN for the losses claimed in the Breach of Trust lawsuit by paying \$134 million in cash to SCN
- There are no restrictions on how SCN uses these settlement funds
- Canada will release SCN and the Kisoniyaminaw Heritage Trust from any claims by Canada in the related Chevron v. Samson action, Alberta Court of Appeal No. 1901-0211AC
- Canada will release and indemnify SCN and the Kisoniyaminaw Heritage Trust Fund with respect to any claims Canada may have with respect to the Louis Bull and Montana Federal Court Action Nos. T-2953-93 and T-2954-93



## Overview of the Settlement Terms and Conditions

### SCN's Obligations to Canada

- SCN will terminate the Breach of Trust lawsuit
- SCN will fully or partially terminate other specific lawsuits that were started by SCN and that include claims that overlap with the claims in the Breach of Trust lawsuit
- Terminating the Breach of Trust lawsuit and certain related claims means that SCN will be prevented from bringing the same or similar claims against Canada in the future
- Specifically, SCN will not be able to sue Canada in relation to: oil and gas produced from SCN Reserve Nos. 137, 137A and 138A, how Canada managed SCN royalties and SCN funds when Canada deposited and mingled these funds into Canada's own accounts; or how Canada funded past programs and services
- SCN will not be allowed to file any future court claim against Canada that attempts to challenge the amount of money received by SCN in this settlement
- SCN will not be allowed to file any future court claim against Canada that challenges how SCN uses or spends the settlement funds



## Overview of the Settlement Terms and Conditions

### SCN Claims and Rights not Affected by this Settlement

- This settlement will not diminish, abrogate, derogate from, prejudice, or extinguish or constitute the abandonment of any existing Aboriginal or Treaty rights of SCN
- If Chief and Council wish to do so, SCN may continue to pursue its claims against Canada and Alberta in Court of King's Bench Action No. 9903-03798
- Action No. 9903-03798 is SCN's Aboriginal and Treaty rights and title claim and deals with SCN's rights and title that are outside of SCN's Reserve lands
- If Chief and Council wish to do so, SCN may also continue to pursue any remaining or existing on-reserve oil and gas claims against Alberta and individual oil and gas producers



## Overview of the Settlement Terms and Conditions

### Approval Process

- The settlement must be approved by a simple majority of those eligible voters of the SCN who participate in the voting process; in other words 50% plus 1 of the people who actually vote must vote “yes” for the settlement to be approved
- If the majority approves the settlement, Chief and Council and Canada may then proceed to finalize the settlement agreement
- Chief and Council will then pass a Council Resolution approving the settlement
- A judge of the Federal Court will review the terms and conditions of the settlement to ensure that the interests of SCN members are protected in the settlement agreement
- Canada will then sign the settlement agreement and transfer the settlement funds to SCN
- Canada and SCN want this entire process to be completed by March 31, 2023



## **Related Claims to be Partially or Fully Terminated as Part of this Settlement**

***Buffalo v Canada et al*, Alberta Court of King's Bench, Action No. 9903-03798 (but not with respect to Traditional Lands Claimed off-reserve)**

- Claim filed in 1999
- Claim is against Canada only
- Primary claim is SCN's Aboriginal title, Aboriginal rights and Treaty rights to the natural resources within SCN's traditional lands
- This claim will be amended to remove any claims that may possibly deal with on-reserve oil and gas interests because these issues will have been settled and resolved
- The claim for natural resources in SCN traditional lands, but off-reserve, can still be pursued





## **Related Claims to be Partially or Fully Terminated as Part of this Settlement**

***Buffalo v Canada and Alberta et al*, Alberta Court of King's Bench, Action No. 9603-05665  
(but not with respect to Ma-Me-O Beach surrender itself)**

- Claim filed in 1996
- Filed against both Canada and Alberta
- Claim for damages on the unlawful 1923 surrender of Ma-Me-O beach and Canada's subsequent transfer of the mineral rights to Alberta
- Claim will be amended to remove any overlapping claim for on-reserve oil and gas interests
- The claim for the Ma-Me-O beach surrender of the surface rights can be pursued by SCN if Chief and Council wish to do so



## **Related Claims to be Partially or Fully Terminated as Part of this Settlement**

***Buffalo v Canada and Imperial Oil Resources Limited, Alberta Court of King's Bench, Action No. 9901-03802; Buffalo v Amoco Canada Petroleum Company Ltd. and Canada et al, Action No. 9901-03800; Statement of Defence and Counterclaim in Chevron Canada Resources v Canada, Action No. 9701-07434, and Appeal 1901-0211AC***

- Three related claims filed by SCN in response to Chevron and Canada suing SCN for alleged overpaid royalties
- SCN also named Canada as a defendant in all three claims
- The three SCN claims are for underpaid Pigeon Lake Reserve royalties
- These claims have been stayed until resolution of the Breach of Trust claim
- Claims will be amended to remove Canada as a defendant if settlement is approved
- If Chief and Council chooses, SCN has the option to pursue claims against the three oil and gas producers for any potential shortfall in the settlement



## **Related Claims to be Partially or Fully Terminated as Part of this Settlement**

***Buffalo v Canada and Alberta, Alberta Court of King's Bench, Action No. 9903-03870***  
***and Buffalo v Canada and Alberta, Action No. 9903-03868***

- Both lawsuits are filed by SCN against Canada and Alberta and make similar claims
- The claims seek recognition of SCN's unextinguished Aboriginal title and existing Aboriginal and Treaty rights over all the traditional lands, including the natural resources
- SCN claims that Canada and Alberta are in breach of trust regarding the traditional lands and natural resources
- The actions will be amended to remove any claims regarding the reserve lands (which are within the traditional lands)



## Related Claims to be Partially or Fully Terminated as Part of this Settlement

### *Chief and Council of Samson Cree Nation v Attorney General of Canada and Minister of Indigenous Services, T-1437-19, and September 17, 2019 request for a Ministerial Review of the August 1, 2019 decision*

- This is what is called a judicial review application and a related Ministerial review application
- The Court is being asked to review Indian Oil and Gas Canada's decision that an oil pipeline tariff used by Imperial to reduce the royalties owing to SCN was a proper deduction when calculating royalties payable to SCN
- IOGC incorrectly made the decision to allow these deductions under the new *Indian Oil and Gas Regulations* instead of applying the *Regulations* that were in force at the time the deductions were made
- Each *Regulation* has its own and different appeal process; therefore two different forms of appeals were filed covering both appeal processes
- These two applications have been held in abeyance as SCN and Canada work towards finalizing this settlement agreement



## **Related Claims to be Partially or Fully Terminated as Part of this Settlement**

***Attorney General of Canada v Imperial Oil Resources Ltd., Alberta King's Bench Action No. 0901-08509***

- This is Canada's claim against Imperial and is not a SCN claim
- SCN's release allows Canada to settle and resolve this claim without further liability to SCN



## Referendum Question

*Attorney General of Canada v Imperial Oil Resources Ltd.*, Alberta King's Bench Action No. 0901-08509

**Do you agree to the terms and conditions of the proposed settlement agreement that will settle and release Canada against the claims in Federal Court Action No. T-2022-89 and all related claims for the sum of \$134 million and that Chief and Council is authorized and directed to take all actions and to sign all documents that are necessary to give effect to the settlement agreement between Samson Cree Nation and Canada? Yes or No**



## Why are SCN members voting in a referendum?

- Since 1989, SCN has spent many years pursuing and advancing these claims both inside the courts and through direct negotiations
- Chief and Council and Canada have been able to negotiate an agreement in principle that will settle SCN's claims in the Breach of Trust lawsuit
- Before the agreement in principle can be finalized, Canada requires SCN members to approve the agreement in principle
- This is done through a referendum
- If 50% plus 1 of the members that vote in the referendum vote "yes", then Canada and SCN will finalize the settlement agreement and SCN will collect the settlement money.



## How much money is SCN going to get in this settlement?

- If the agreement in principle is approved then SCN and Canada will finalize the settlement agreement
- SCN will receive a \$134 million cash payment to compensate SCN for the claims in the Breach of Trust lawsuit





**Out of the \$134 million, how much does SCN keep and what do the lawyers get ?**

- SCN will get 100% of the settlement money
- No lawyers get a share of the settlement



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**Do the members get any money if they vote “yes”?**

- Chief and Council have stated that they intend to distribute 20%, or \$26.8 million, directly to SCN members



## What will happen with the rest of the money SCN collects?

- Chief and Council have stated that they intend to allocate the funds as follows:
- 20% of the settlement will be desposited into SCN trusts for future generations;
- 15% of the settlement will be used to pay SCN debts;
- 35% of the settlement will be invested in SCN infrastructure; and
- 10% of the settlement will fund improved SCN programs and services.



## When do SCN members receive their share of the settlement money?

- The referendum is the first step to finalize the settlement agreement
- SCN will collect the settlement money after all the other steps that Canada insists upon have been completed
- This process will take a few months.



## What else must be done after the members vote “yes” ?

- After a “yes” vote, Chief and Council and Canada will finalize the Settlement Agreement which is still in a draft form
- Only minor changes will be made
- The amount of the negotiated settlement and the negotiated ongoing obligations of Canada to SCN will not change
- Once the Settlement Agreement is finalized, specific SCN lawsuits will be amended, lawyer’s certificates will be prepared and signed, and Chief and Council will pass resolutions and sign the Settlement Agreement
- SCN will ask the Federal Court to review the Settlement Agreement to make sure it is in the interests of SCN members
- After the Court’s review, Canada will sign the Settlement Agreement and transfer the settlement money to SCN
- Chief and Council and Canada are committed to completing this entire process by March 31, 2023, hopefully sooner than that.



**How much money does SCN get if the members vote “no” in the referendum?**

- SCN will get no money because the agreement in principle will not be finalized by Canada



## **If the members vote “no” is the Breach of Trust lawsuit over?**

- A “no” vote means the members do not approve of the agreement in principle so the Breach of Trust lawsuit will then have to move forward
- The options available to SCN include:
  - going to court on some or all the remaining oil and gas claims for unpaid royalties
  - initiate mediation on some or all these issues, or
  - refile these claims using the Specific Claims Process
- Under any of these options there is no guarantee that SCN would get a better result than what has been negotiated.



**Has SCN gone to court on any of the issues raised in this lawsuit?**

- Yes, SCN has been to the Federal Court of Appeal on the issue of whether Canada was allowed to reduce SCN's royalties with an Oil and Gas Export Tax in the 1970s and 1980s
- SCN went to the Supreme Court on SCN's money management claim
- SCN went to the Federal Court on the issue of whether SCN's money, that Canada was holding, should be transferred to SCN's private trust.





## What were the results?

- On the Export Tax issue, the court ruled that SCN was negotiating with Canada about the Export Tax having been used to reduce SCN royalties and that by 1989 SCN had waited too long to file its lawsuit
- The Court applied “limitations” legislation to protect Canada from any liability owed to SCN
- On the mismanagement of SCN’s moneys, the Supreme Court agreed that as a trust-like fiduciary Canada should have paid SCN a better interest rate
- However, the Court then ruled that Canada was protected from any liability to SCN because Canada passed its own law limiting how much interest would be paid to SCN
- This meant that Canada could use its own laws to get around its obligations to SCN
- On the transfer of SCN’s funds from Canada to SCN’s private trust, the Court ordered the transfer on SCN’s behalf
- This shows how difficult it is to successfully sue Canada for money damages even when a court might agree that Canada did not act properly.



## Has SCN collected any money from the Breach of Trust lawsuit?

- Yes, as part of the mismanagement of SCN's monies claim, SCN and Canada settled one of the accounting issues and in September 2002, SCN collected \$15.5 million for this one error
- This lawsuit forced Canada to conduct extensive audits of the royalties paid to SCN and required Canada to begin to adjust the royalties collected
- The lawsuit allowed SCN the opportunity to directly participate in the production of oil and gas on the reserve lands and to negotiate bonuses and benefits other than just royalties
- The lawsuit allowed SCN to negotiate directly with Imperial Oil to ensure that the maximum amount of oil was produced from SCN's Pigeon Lake reserve lands as oil production began to slow down
- All four Maskwacis Nations benefited from SCN's actions
- In 2005 the Court ordered that SCN was allowed to transfer all the money held by Canada on behalf of SCN into SCN's private trust, the Kisoniyaminaw Heritage Trust Fund
- Control of SCN's own money means that since 2005 SCN has received \$213 million more than SCN would received if the money remained with Canada.



## Has SCN received any other settlement offers from Canada?

- SCN and Canada have tried to negotiate a settlement of this lawsuit over many years
- These negotiations resulted in 6 formal settlement offers from Canada
- 1998 SCN received an offer of \$60 million
- 2003 an offer for \$120 million
- 2004 on offer for \$137 million
- 2005 an offer for \$196 million
- These offers were to settle the oil and gas and the money management claims
- Canada also demanded that SCN give up all existing and future Treaty rights, Aboriginal rights and Aboriginal title claims, both on and off reserve
- These offers would effectively extinguish SCN's ability to pursue any Treaty and Aboriginal rights and title claims, so these offers had to be rejected



## Has SCN received any other settlement offers from Canada?

- In 2021 SCN received an offer to settle the remaining claims in the lawsuit for \$112.1 million
- Following additional negotiations, and after SCN received a positive result from the Alberta Court of Appeal in a related lawsuit against Chevron and Canada, SCN submitted a counter-offer to Canada
- This counter-offer formed the basis for the agreement in principle to settle all remaining claims for \$134 million



## Is SCN giving up any Treaty or Aboriginal rights and title in this settlement?

- No
- Chief and Council are recommending this settlement because Canada has agreed to allow SCN to preserve and pursue its current Treaty and Aboriginal rights and title claims against Canada and Alberta
- SCN is only settling its claims in the Breach of Trust Action, the on-reserve oil and gas claims
- Any off-reserve rights (Treaty or Aboriginal) and the ability to pursue these rights will be preserved
- Canada has agreed that if SCN wishes to, then SCN may continue to pursue any existing or future claims that it may have, on or off reserve, against Alberta or individual oil producers.



**Is SCN giving up any Reserve lands in this vote?**

- No, this referendum does not involve the surrender of any SCN lands



## What was the Chevron lawsuit about and why is it important in this settlement?

- ❑ Chevron, one of the oil and gas producers at Pigeon Lake, and Canada made calculation errors and Chevron paid too much oil and gas royalties
- ❑ Both Chevron and Canada sued SCN for the return of the royalties even though SCN was not responsible and did not even know there was an error
- ❑ Samson, Chevron, and Canada went to the Alberta Court of Appeal on this issue and the Court of Appeal agreed that SCN was not directly liable to Chevron or Canada for the mistakes made by Chevron and Canada
- ❑ After the Court of Appeal decision, Canada wanted to go back to Court and raise a new argument, that Canada should be allowed to pursue the claim against the Kisoniyaminaw Heritage Trust Fund
- ❑ As part of this settlement, Canada has agreed to drop its \$7.9 million claim against Samson, or the Kisoniyaminaw Heritage Trust Fund, regarding the Chevron overpayments



## Why are the Louis Bull and Montana Nation claims against Canada important in this settlement?

- Pigeon Lake royalties have been divided between the Maskwacis Nations based on population
- Louis Bull and Montana have sued Canada and they argue that royalties should be split in four equal shares
- Canada has sued SCN and said that if Canada distributed the royalties incorrectly then SCN is responsible for Canada's error
- As part of this settlement, Canada has agreed to drop its claim against SCN and has agreed that Canada will make whole SCN or the Kisoniyaminaw Heritage Trust Fund if a claim is successfully made by either Louis Bull or Montana Nations





## Is this the best deal SCN can negotiate?

- Negotiated settlements of disputes between two parties is a compromise
- Each side gives up something to eliminate the cost of going to court and to eliminate the risk of a negative judgment if they do go to court
- Chief and Council believe this is the best offer that can be negotiated without SCN spending a lot more money on lawyers' fees and spending many more years pursuing at least some of these claims in mediation, the courts, or the Specific Claims process
- It is possible that with more time and legal fees, more money could be negotiated
- It is also possible that if SCN goes to mediation, the court, or Specific Claims a judge may not agree with SCN's position or may not agree that damages were suffered and SCN may receive less money or perhaps even no money
- Because this agreement in principle does not compromise any of SCN's other Treaty and Aboriginal rights and title claims, Chief and Council is comfortable bringing this agreement in principle to the members of SCN

