

**THE KING'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**ZONGIDAYA NELSON, on his own behalf, on behalf of the Roseau River Anishinabe First Nation, and as representing a group of persons who are entitled to receive an annuity payment from the Crown pursuant to Treaty One**

**Plaintiff,**

**- and -**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant.**

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**STATEMENT OF DEFENCE  
OF THE ATTORNEY GENERAL OF CANADA**

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**ATTORNEY GENERAL OF CANADA**

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**STATEMENT OF DEFENCE**

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**OVERVIEW**

1. The Defendant, the Attorney General of Canada (“Canada”), is committed to reconciliation and to a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. This commitment exists within the context of litigation and beyond. Canada endeavors to embody these principles as it assists the Court in its task of adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. As this matter evolves and the historical record is assembled and analyzed, Canada will consider all appropriate forms of resolution regarding the Fresh as Re-Amended Statement of Claim (the “Claim”). Further, Canada recognizes the key role treaty-making has played in

building Canada, and the contemporary importance of treaties as foundations for continuing progress towards reconciliation.

3. Treaty 1 was signed August 3, 1871 and makes provision for the annual payment of a specified sum of money to each beneficiary under the treaty, commonly referred to as the annuity payment. The prescribed amount of the annuity payment in Treaty 1 began as \$3.00 and was increased to \$5.00 in 1875.
4. Canada recognizes an ongoing legal obligation to pay these annuities in perpetuity. It also recognizes that the right to the annuity payments, as a treaty right, is recognized and affirmed by s. 35 of the *Constitution Act, 1982*. Canada values its ongoing dialogue with First Nations on the interpretation of historical agreements like Treaty 1, and the role of these agreements in the ongoing relationship between historical treaty groups and the Crown.
5. Canada's position is that the annuity obligation is confined to the specific amounts set out in the text of Treaty 1 and the 1875 Order-in-Council, payable in current Canadian dollars. Canada is under no duty to adjust, index to inflation or otherwise "modernize" the amounts paid to beneficiaries of the treaty promise. Canada's practice of paying the specific amounts stated in these documents, historically and today, has reflected this view. Absent evidence indicating that the treaty annuity obligation was meant to, and was understood to, increase over time, Canada says the parties did not intend the treaty annuity to provide anything more than the fixed payment specified in the treaty text.

## **I. SUMMARY RESPONSES TO PARAGRAPHS OF THE CLAIM**

6. In this document Canada periodically uses terminology now recognized as antiquated. Canada only does so when required for legal accuracy or when referring to or quoting from historical sources using such terms.

7. Except as expressly admitted below, Canada denies all assertions contained in the Claim, and denies the Plaintiff is entitled to any of the relief claimed in paragraph 1 of the Claim.
8. Canada admits the assertions contained in paragraphs 2, 3, 4, 6, 8, 11, 12, 14, 18, 26, 30, 33, 36, 39, 40, 42, 45, 51, 52, 54, 55, 57, 68, 69, 70, 71, 74, 75, 76, 79, 80, 81, 82, 86 and 87 of the Claim.
9. Canada denies the assertions contained in paragraphs 1, 5, 7, 9, 10, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 38, 41, 43, 44, 46, 47, 48, 49, 50, 53, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 72, 73, 77, 78, 83, 84, 85, 88, 89(a), 90, 91, 92, 93, 94, 95 and 96 of the Claim.
10. Canada has no knowledge of the assertions contained in subparagraphs 89(b) and 89(c) of the Claim.
11. In further response to subparagraph 1(g) of the Claim, Canada acknowledges that declaratory relief is permissible concerning the rights of future annuity recipients under Treaty 1, but says that the requested declaration orders Canada to perform its treaty obligations and is therefore a remedy in the nature of a mandatory injunction or specific performance, which are not available against the Crown. Canada pleads and relies upon the *Crown Liability and Proceedings Act*, R.S. 1985, c. C-50, s. 22, as amended.
12. In further response to subparagraph 1(l) of the Claim, Canada states that prejudgment interest is not available for any period prior to September 10, 1986. Canada pleads and relies upon the *Crown Liability and Proceedings Act*, R.S. 1985, c. C-50 (“*CLPA*”), ss. 31 and 31.1, as amended, and *The Court of King’s Bench Act*, C.C.S.M., c. C280, sub. 88(2), as amended.

## II. THE PARTIES

13. In response to paragraphs 2-4 of the Claim, and in partial response to paragraph 8, Canada admits that Zongidaya Nelson (“the Plaintiff”) is a registered Indian within the meaning of the *Indian Act*, RSC 1985, c I-5 and a member of the Roseau River Anishinabe First Nation (“Roseau River”) located in Manitoba. Canada further admits that Roseau River is a signatory of Treaty 1 and that the Plaintiff is a beneficiary of Treaty 1 who is eligible to receive the yearly annuity payment under Treaty 1. Canada says the Plaintiff’s eligibility continues for as long as he remains a registered Indian and a member of Roseau River or another Treaty 1 First Nation.
14. In response to paragraphs 5 and 95 of the Claim, Canada admits that the Plaintiff is a representative plaintiff within the meaning of Manitoba Court of King’s Bench Rule 10. In particular, the Court has authorized the Plaintiff to bring the claim forward on his own behalf and on behalf of Roseau River to represent a group of persons who are entitled to receive the annuity payment from Canada pursuant to Treaty 1.
15. In response to paragraph 6 of the Claim, Canada admits that the Attorney General of Canada is the proper representative of His Majesty the King in right of Canada under sub. 23(1) of the *CLPA*.

### **III. BACKGROUND**

16. In response to paragraph 7 of the Claim, Canada denies it is required to increase the annuity payment made under Treaty 1 and says it has met and continues to meet its legal obligations under the treaty.
17. In response to paragraph 8 of the Claim, Canada repeats its admission that Roseau River is a signatory of Treaty 1 and admits the treaty was signed between representatives of Her Most Gracious Majesty the Queen of Great Britain and Ireland and the First Nation parties on August 3, 1871.

18. In further response to paragraph 8 of the Claim, Commissioner Wemyss M. Simpson and several other officials signed Treaty 1 on behalf of the Crown, and the Chiefs of the St. Peters, Fort Alexander, Broken Head River, Pembina and Portage la Prairie Bands signed on behalf of the “Chippewa and Swampy Cree Tribes of Indians.” Three men signed for the Pembina Bands which were also known at the time as the Roseau River Bands. Treaty 1 was formally ratified by the Governor General in Council on September 12, 1871.
19. In response to paragraph 9 of the Claim, Canada states that His Majesty the King in right of Canada is the successor to the obligations of Her Most Gracious Majesty the Queen of Great Britain and Ireland pursuant to Treaty 1, and repeats its admission that the Attorney General of Canada represents His Majesty the King in right of Canada in this proceeding.
20. In response to paragraph 10 of the Claim, Canada admits the following seven First Nations comprise Treaty 1 today and are successors of the original First Nations who signed the treaty in 1871: Fort Alexander (Sagkeeng), Brokenhead Ojibway, Peguis, Swan Lake, Long Plain, Sandy Bay and Roseau River Anishinabe. Canada says that treaty annuities are payable to an individual who is a registered Indian as that term is defined in the *Indian Act* and is either a member of a treaty First Nation or would be a member if Canada still maintained the membership list for that First Nation. Brokenhead, Peguis and Sandy Bay have taken control of their own membership lists, and thus Canada is unable to confirm that all their members are registered Indians within the meaning of the *Indian Act*.
21. In response to paragraph 11 of the Claim, Canada admits that the First Nations in Treaty 1 and their members are Aboriginal peoples within the meaning of s. 35 of the *Constitution Act, 1982*.
22. In response to paragraph 12 of the Claim, Canada says the pleadings and the February 11, 2022 Representation Order determine and define the issues within the scope of the Plaintiff’s

representative authority. Canada admits that no other right or obligation owed to a Treaty 1 First Nation or beneficiary stands to be prejudiced by this action.

23. In response to paragraphs 13 and 14 of the Claim, Canada admits that Treaty 1 refers to land being ceded, released and surrendered by the First Nations and admits these lands are accurately described in paragraph 13. Canada generally admits the First Nations were present in the Treaty 1 area at the relevant time, but has no specific knowledge regarding the intensity or duration of their presence up until and after the signing of the treaty, except for those lands set apart as Reserve following the conclusion of Treaty 1. Canada admits Treaty 1 includes a paragraph which provides:

Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families, and shall in every year ensuing the date hereof, at some period during the month of July in each year, to be duly notified to the Indians and at or near their respective reserves, pay to each Indian family of five persons the sum of fifteen dollars Canadian currency, or in like proportion for a larger or smaller family, such payment to be made in such articles as the Indians shall require of blankets, clothing, prints (assorted colours), twine or traps, at the current cost price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash.

#### **IV. CANADA'S ANNUITY OBLIGATIONS UNDER TREATY 1**

24. Canada and the Treaty 1 First Nations' relationship is guided by the terms of Treaty 1, taken as a whole, and the annuity provision should be considered in the context of the entirety of Treaty 1.
25. In response to paragraphs 15-17 of the Claim, Canada admits that draft clauses of Treaty 1 are found in the Adams George Archibald fonds at the Archives of Manitoba, including the fragmented text concerning annuity payments as specifically quoted in paragraph 16 of the Claim. Canada admits there are distinctions between the draft clause and the final wording of Treaty No 1. **Canada does not accept the Plaintiff's interpretation, characterization, or hypothetical blending of the versions in question as legally relevant.**

26. In response to paragraph 18 of the Claim, Canada admits that on April 30, 1875, the Governor General in Council approved a report of a Committee of the Honourable Privy Council which recommended, among other things, that the annual payment to each “Indian” under Treaty 1 be raised from \$3.00 to \$5.00 per annum. Canada admits the applicable text of this Order-in-Council as reproduced by the Plaintiff.
27. In August and September of 1875, the Chiefs and Headmen of the First Nations who were signatories to Treaty 1 provided their written assent to the increase in annual payments, save for the Portage Band whose consent was not obtained until the following spring.
28. In response to paragraph 19 of the Claim, Canada denies the text of Treaty 1 set out the equivalent cash value of fifteen dollars per family of three. Rather, Canada says the treaty provided for an annual payment of fifteen dollars per family of five, until amended in 1875 by the Order-in-Council referenced in paragraph 26 herein. Canada was therefore required to provide an annual payment of \$3.00 to each person until 1875, and an annual payment of \$5.00 to each person thereafter.
29. In further response to paragraph 19 of the Claim, and in response to paragraphs 31-32 of the Claim, Canada denies that Treaty 1 contains an indexation or augmentation clause and denies any breach of Treaty 1 as it relates thereto. Canada could choose to make the annual payment in articles that the First Nation recipients required of blankets, clothing, prints, twine or traps at the current cost price in Montreal, or alternatively in cash. The reference to “current” Montreal cost price is a recognition of the fact that there was a wide discrepancy between what the Hudson's Bay Company posts could charge for goods in the isolated post areas and the prices in settled districts such as Montreal or Toronto. The reference was not a means of anticipating and incorporating the future cost of such goods, but rather a mechanism for locking in the historical (contemporaneous) cost at a standard of lower, or wholesale, prices.

30. In further response to paragraphs 19, 31 and 32 of the Claim, and in response to paragraphs 20-23 of the Claim, Canada denies that Treaty 1 requires it to make an annual cash payment sufficient to purchase the articles referred to in Treaty 1. Canada pleads and relies on the April 30, 1875 amending Order-in-Council, as accepted by the signatory First Nations, which makes no reference to a basket of goods, or any payment options or amount other than \$5.00.
31. In response to paragraphs 24-28 of the Claim, Canada admits that the rights set out in Treaty 1 are recognized and affirmed under s. 35 of the *Constitution Act, 1982*. Canada admits the treaty relationship is an ongoing one that attracts the honour of the Crown and requires good faith, diligence, integrity and fair dealing by Canada when implementing the treaty. Canada admits that a purposive approach may require that certain treaty rights be interpreted to evolve over time through the provision or recognition of a modern equivalent but says that evolution is not required for annuity payments, considering the common intention of the parties and in the absence of an augmentation clause.
32. In response to paragraph 29 of the Claim, Canada notes that in 1871, the Pembina (Roseau River) Bands declined to accept their annuity payments until farm animals and implements promised during Treaty 1 negotiations were converted into a cash payment instead. Although the Pembina Bands soon reversed this position and accepted their annuities, Canada says, based on this example, that payment in cash rather than payment in-kind was not inconsistent with First Nation wishes.
33. In response to paragraph 30 of the Claim, Canada accepts the Plaintiff's articulation of the gold standard as the prevailing currency policy when Treaty 1 was signed. However, Canada has insufficient information at present to assess the impact of the gold standard on Treaty 1 First Nations' use or understanding of money.

34. In further response to paragraphs 31 and 32 of the Claim, regarding the timing issue in particular, Canada says that the \$3.00 annuity payment under Treaty 1 first became payable in 1872, the year following the treaty's signing. Canada further says that the revised payment of \$5.00 first became payable in 1876, the year following the amending Order-in-Council and subsequent acceptance by the affected First Nations.
35. In further response to subparagraphs 31(c) and (d) and subparagraphs 32(c) and (d) of the Claim, Canada denies that the First Nations' ability to choose between goods and cash, as appears in the draft text found in the Archibald fonds at the Archives of Manitoba, became a feature of Treaty 1 as signed.
36. In further response to paragraphs 31 and 32 of the Claim, Canada denies it is required by any fiduciary duty, the honour of the Crown, or the terms of Treaty 1 to discharge its annuity payment obligations in the manner the Plaintiff asserts and denies all related breaches in Part C of the Claim (paragraphs 50-67 inclusive).
37. In response to paragraphs 33-35, 39, 40 and 62 of the Claim, Canada admits the annuity payment in Treaty 1 was only increased in 1875. Canada has, however, pursuant to social policy, funded a wide range of programs and services available to the First Nations in Treaty 1 and their members. These programs and services include, but are not limited to, initiatives in the areas of housing and infrastructure, education, health care, social assistance, child and family services, economic development, employment assistance, transportation, democratic participation, higher education, dental care, cultural development and cultural and linguistic preservation, governance and salaries. These programs and services are not provided in relation to treaty fulfillment, but their value complements and exceeds the annuity payment.

38. In response to paragraphs 36-38 of the Claim, Canada admits the Plaintiff is entitled to receive a yearly annuity payment that flows from the Crown's legal obligations under Treaty 1, but denies those obligations include a requirement to index or augment the yearly payment to offset inflation or for any other purpose.
39. In response to paragraphs 41-43 of the Claim, Canada admits that Treaty 1 was a nation-to-nation negotiation, intended to yield an agreement that was consistent with the honour of the Crown and not exploitative, either economically or socially. However, Canada says each side to the treaty negotiations had their own interests in mind, including in Canada's case, the public interest of fiscal accountability and cost control at a time when sources of federal revenue were minimal by today's standards. Crown negotiators therefore understood, intended and conveyed that annuities were meant to be modest and fixed, notwithstanding that they were to be paid in perpetuity. Canada's interpretation of the treaty promise reflects the common intention of the parties and is consistent with the honour of the Crown. Canada denies any legal duty to provide a particular threshold of compensation under the treaty based on purchasing power, including real and substantial compensation in the form of indexed or augmented annual payments.
40. In response to paragraphs 44, 88-89 and 95 of the Claim, as Canada has no obligation to index or augment annuity payments made under Treaty 1, none of the asserted losses are recoverable at law.
41. In response to paragraphs 45-49 of the Claim, Canada admits the content of s. 141 of the 1927 *Indian Act* reproduced in paragraph 45. Section 141 was repealed by the time of the 1952 *Indian Act*. Canada is unable to respond further to paragraph 48 of the Claim without more information from the Plaintiff regarding the asserted "administrative means" preventing First Nations people from retaining legal counsel prior to s. 141.

42. In further response to paragraphs 50-67 of the Claim, in which the Plaintiff has omitted 1875 as a payment year, Canada says annuity payments were also required and made that year. Canada admits in further response to paragraphs 51 and 52 of the Claim that the honour of the Crown guides Canada's conduct in all its dealings with Indigenous peoples, and that the Crown must always act with honour, integrity, good faith, and fairness. In further response to paragraphs 54 and 55 of the Claim, Canada admits that the honour of the Crown requires the diligent fulfillment of treaty promises, and is engaged in respect of the rights and obligations the Plaintiff asserts in this action. In further response to paragraph 57 of the Claim, Canada admits a fiduciary relationship between the Crown and the First Nation signatories of Treaty 1. However, Canada denies that the honour of the Crown and the fiduciary relationship give rise to the specific obligations asserted by the Plaintiffs in this litigation.

## **V. PLAINTIFF'S ADDITIONAL CONSIDERATIONS**

### **i) United Nations Declaration and Act**

43. In response to paragraphs 68-73 of the Claim, Canada supports the United Nations Declaration on the Rights of Indigenous Peoples ("UN Declaration") and has committed to its implementation in Canada over time as part of its commitments to reconciliation and the renewal of nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, co-operation, and partnership.

44. The UN Declaration describes a range of both individual and collective rights of Indigenous peoples around the world, including collective rights relating to, among other things: redress, restitution, or compensation relating to lands, territories, and resources (Article 28); observance and enforcement of treaties (Article 37); and the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes and effective remedies for all infringements of their individual and collective rights (Article 40). The UN Declaration also

acknowledges that the rights contained in it are not absolute, and can be subject to limitations (Article 46).

45. In further response to paragraph 69 of the Claim, Canada admits the UN Declaration was adopted by the General Assembly of the United Nations on September 13, 2007. On December 3, 2020, Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* (“*UN Declaration Act*”), was introduced in the House of Commons. It received Royal Assent and came into force on June 21, 2021. The *UN Declaration Act* affirms the UN Declaration as a universal international human rights instrument with application in Canadian law and provides a framework for implementation of the UN Declaration at the federal level. The *UN Declaration Act* requires the Government of Canada to take all measures necessary to ensure that the laws of Canada are consistent with the UN Declaration, and that an action plan be prepared and implemented. Both obligations must be carried out in consultation and cooperation with Indigenous peoples in Canada. Such a collaborative process aligns with the pursuit of reconciliation and with the implementation of the UN Declaration itself, including Article 38, which calls on States to take measures in consultation and cooperation with Indigenous peoples to achieve the ends of the UN Declaration.
46. As part of the implementation of the *UN Declaration Act*, Canada has committed through its Action Plan, released June 2023, to “honourably implement historic and modern treaties, self-government arrangements, agreements and constructive arrangements” (Action Plan, Shared priorities chapter, measure 25) and to “[r]e-affirm pre-1975 treaty relationships based on the principles of mutual respect, self-determination, and the nation-to-nation relationship” (Action Plan, First Nations priorities chapter, measure 2).
47. In further response to paragraphs 70-73 of the Claim, Canada admits the extracts from the UN Declaration are accurately set out in paragraphs 70 and 71, but denies the legal interpretation and

effect ascribed to them in paragraphs 72 and 73, along with the asserted violation of s. 35 of the *Constitution Act, 1982*.

48. Canada recognizes that, as confirmed in the *UN Declaration Act*, the UN Declaration may be used as a contextual aid to interpret domestic law, including the Constitution, but neither the UN Declaration nor the *UN Declaration Act* create a stand-alone cause of action and the UN Declaration is not directly enforceable in Canadian courts. Section 35 of the *Constitution Act, 1982* also protects many of the rights set out in the UN Declaration, including treaty rights, and Canada's constitutional framework provides avenues for the enforcement of treaty rights and for redress of breaches of those rights.

**ii) Royal Commission on Aboriginal Peoples**

49. In response to paragraphs 74-77 of the Claim, Canada admits that the Royal Commission on Aboriginal Peoples ("RCAP") was established in August 1991 and issued its Report in 1996. Canada acknowledges that the work of the RCAP has been accepted as a valuable resource by Canadian courts, particularly for its contribution in documenting the perspectives of Indigenous peoples on a wide variety of issues affecting Indigenous lives and interests. Canada admits the extract from the RCAP Report is accurately set out in paragraph 76 of the Claim, but denies the legal interpretation and effect ascribed to it in paragraph 77 of the Claim.

**iii) Truth and Reconciliation Commission**

50. In response to paragraphs 78-81 of the Claim, Canada admits the Truth and Reconciliation Commission of Canada ("TRC") was established in 2008 with a mandate to fully document the history and lasting impacts of the residential school system on Indigenous students and their families. The TRC was also mandated to guide and inspire a process of truth and healing, leading toward reconciliation within Indigenous families, and between Indigenous peoples and non-

Indigenous communities, churches, governments, and Canadians generally. Canada admits the TRC issued an executive summary of its findings and 94 calls to action in June 2015 and says its final 6-volume report was released in December 2015. Canada admits the extract from the TRC's call to action #45 is accurately set out in paragraph 81 and says that important work towards a reaffirmed and renewed nation-to-nation relationship between Canada and Indigenous peoples is underway in a variety of settings and contexts.

**iv) Principles and Litigation Directive**

51. In response to paragraph 82 of the Claim, Canada admits it published the Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples ("Directive") in 2018, which refers to the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples ("Principles"). Canada admits these documents reflect its position on, in part, reconciliation, and a commitment to its achievement over time.
52. In response to paragraph 83 of the Claim, Canada denies that the Principles and Directive are themselves sources of substantive law aiding in the interpretation of specific treaty rights. Canada says the Principles reflect its commitment to a relationship founded on mutual recognition and respect, where Indigenous nations are empowered to be self-determining, self-governing and self-sufficient. Canada says the Directive builds on the Principles, and in particular, reflects Canada's commitment to respectful, fair and efficient adjudicative and other resolution processes where disagreements over the interpretation and legal effect of Indigenous rights, including treaty rights, are determined.
53. In response to paragraph 84 of the Claim, Canada denies the Principles contain concessions or admissions by the Crown, but admits the contents of the ten principles as quoted. Canada says the Principles are intended to be read holistically and with their supporting commentary.

54. In response to paragraphs 85-87 of the Claim, Canada denies the Directive contains concessions or admissions by the Crown. Canada admits the contents of the Directive as quoted in these paragraphs, except for the omission of a third paragraph in the former Attorney General of Canada's Foreword, as quoted in paragraph 85. The omitted paragraph reads:

We recognize, however, that Indigenous peoples are entitled to choose their preferred forum to resolve legal issues, that some matters will require legal clarification, and that at times litigation will be unavoidable. When matters do result in litigation, this Directive instructs that the Government of Canada's approach to litigation should be to assist the court constructively, expeditiously, and effectively so that it may provide direction on the matters in issue.

## **VI. EXCEPTIONAL DAMAGES, TIME BARS AND GENERAL**

55. In response to paragraphs 90-93 of the Claim, under the heading "Aggravated, Punitive and Exemplary Damages", Canada denies it acted cavalierly, arbitrarily or in bad faith on the facts of this Claim and denies any basis for this class of exceptional damages.

56. In further response to paragraph 92 of the Claim, Canada denies it acted negligently or recklessly when determining and distributing annuity payments under Treaty 1. In the alternative, Canada says that any claims respecting tortious conduct that occurred or existed before May 14, 1953 are statute barred by the *Crown Liability Act*, R.S.C. 1970, c. C-38, s. 24.

57. In response to paragraph 94 of the Claim, Canada takes no issue with the past service of documents in this matter. In order to be legally and procedurally effective, Canada says the mode and manner of any future service on Canada in this matter should continue to follow the applicable provisions of the *CLPA*, the *Crown Liability and Proceedings (Provincial Court) Regulations*, SOR/91-604, and *The Court of King's Bench Act and Rules*.

58. In further response to paragraph 1 of the Claim, and the Claim as a whole, if there was a breach of the terms of Treaty 1, a breach of fiduciary duty, or a failure by Canada to uphold the honour of the Crown, Canada pleads and relies on:

- a. *The Limitation of Actions Act*, C.C.S.M. c. L150, para. 2(1)(l), (k) and (n); and
- b. the doctrine of laches and acquiescence, given the Plaintiff's excessive delay in bringing this claim, coupled with Treaty 1 recipients' acceptance of the \$5.00 annuity payment since 1875. Alternatively, the unreasonable delay in bringing this action renders the granting of consequential relief unreasonable or unjust.

59. The defences in paragraph 58 above are pleaded in relation to coercive relief only, including claims for orders, compensation and accounting, and not in relation to declaratory relief concerning the proper interpretation of the annuity clause in Treaty 1, related legal duties and breaches. Nor, given the annual recurring nature of the annuity obligation, are these defences pleaded in relation to compensatory relief falling within the applicable limitation period.

### **Disposition Requested**

60. Canada therefore asks that the Claim be dismissed and reserves the right to seek costs.

October 30, 2023

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