Court File No.: CI 22-01-37801

THE KING'S BENCH

Winnipeg Centre

B E T W E E N :

CHIEF HEIDI COOK on behalf of MISIPAWISTIK CREE NATION;

CHIEF SHELDON KENT on behalf of BLACK RIVER FIRST NATION;

CHIEF DAVID MONIAS on behalf of PIMICIKAMAK CREE NATION;

ASSEMBLY OF MANITOBA CHIEFS;

Plaintiffs

- and -

THE GOVERNMENT OF MANITOBA and THE ATTORNEY GENERAL OF CANADA

Defendants

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C. 130

FRESH AS AMENDED STATEMENT OF CLAIM

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FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *King's Bench Rules*, serve it on the plaintiffs' lawyer or where the plaintiffs do not have a lawyer, serve it on the plaintiffs,

and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: October 6, 2022 Issued by _____

Deputy Registrar
100C-408 York Avenue
Winnipeg, MB
R3C 0P9

TO: THE ATTORNEY GENERAL OF CANADA
Department of Justice
601-400 St Mary Avenue
Winnipeg, Manitoba
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AND TO: THE GOVERNMENT OF MANITOBA
Legal Services Branch
Manitoba Justice
730-405 Broadway
Winnipeg, Manitoba
R3C 3L6

CLAIM

1. The Plaintiffs, on behalf of the Class described herein, claim:

   (a) an order certifying this action as a Class Proceeding pursuant to *The Class Proceedings Act*, C.C.S.M., c. C130, and appointing the Plaintiffs as the representative plaintiffs for the Class, as defined below;

   (b) a declaration that His Majesty the King in Right of Manitoba, as represented by the Defendant Government of Manitoba ("**Manitoba**") and His Majesty the King in Right of Canada, as represented by the Defendant the Attorney General of Canada ("**Canada**") jointly and severally breached their fiduciary duties to the Plaintiffs and the Class;

   (c) a declaration that Manitoba and Canada jointly and severally breached the honour of the Crown in their dealings with the Plaintiffs and the Class;

   (d) a declaration that Manitoba and Canada owed a duty of care to the Plaintiffs and the Class, systemically breached that duty of care, and caused damages to the Plaintiffs and the Class, for which the Defendants are jointly and severally liable;

   (e) a declaration that Manitoba and Canada have violated the rights of the Plaintiffs and the Class under sections 2(a) and 15 of the *Charter of Rights and Freedoms* ("***Charter***"), and further, that none of these breaches is saved by section 1 of the *Charter*;

(f) a declaration that Manitoba and Canada have violated the rights of the Plaintiffs and the Class under section 35 of the *Constitution Act, 1982*;

(g) a declaration that Manitoba and Canada have violated the rights of the Plaintiffs and the Class under section 36 of the *Constitution Act, 1982*;

(h) a supervisory order under the *Charter* in the nature of an interim and permanent injunction requiring Manitoba and Canada to immediately end the unnecessary apprehension of First Nations children on the basis of poverty, racial and cultural bias, and systemic racism.

(i) an order pursuant to section 24(1) of the *Charter* condemning Manitoba and Canada to pay damages to Class members in the amount of $1,000,000,000, or such sum as the Court deems appropriate, for the breaches of the Plaintiffs' *Charter* rights;

(j) an order condemning Manitoba and Canada to pay damages to Class members in the amount of $1,000,000,000, or such sum as the Court deems appropriate, for breaches of their fiduciary duties, negligence, and nuisance;

(k) in the alternative, an order condemning Manitoba and Canada to make restitution to Class members for the savings that they realized by breaching their obligations to the Class;

(l) an order condemning Manitoba and Canada to each pay punitive damages in the amount of $100,000,000;

(m) prejudgment and post judgment interest pursuant to the *Court of King's Bench Act,* C.C.S.M. c. C280;

(n) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs, together with all applicable taxes;

(o) costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and

(p) such further and other relief as this Honourable Court deems just.

OVERVIEW

2. The wellbeing of First Nations children is integral to the wellbeing of their families, nations, and cultures. The Plaintiffs and Class members are First Nations in Manitoba, represented by their elected Chiefs, all of which have been profoundly affected by Manitoba and Canada's disastrous management of child welfare in Manitoba, which has perpetuated a longstanding effort to assimilate First Nations children. In the guise of providing care, Manitoba and Canada have employed discriminatory practices to destroy First Nations families, cultures, and First Nations. Sadly, these disastrous practices are ongoing. This action seeks to compel an end to the harm, together with compensation to help Class members heal.

3. For more than 150 years, the laws, policies, and practices of Manitoba and Canada have removed First Nations children from their families, First Nations, cultures, and lands. The impact of these laws, policies, and practices has threatened the existence of First Nations as

distinct societies by breaking up families and punishing First Nations people for speaking their languages and practicing their cultures.

4. The practice of disrupting First Nations families began with the arrival of settlers in Manitoba. The large-scale and strategic government removal of First Nations children from their homes began with the residential schools, day schools and the Sixties Scoop, and continues with the current child welfare system. Since the turn of the 21st century, the number of First Nations children in CFS in Manitoba has doubled. There are far more First Nations children in CFS today than there were during the time of residential schools. In this Statement of Claim, "**in CFS**" means any child who is a ward of an Agency, as defined in the *Child and Family Services Act*, C.C.S.M., c. C80 (the "***CFS Act***"), or under apprehension by an Agency or for whom an Agency undertook to provide care and treatment, either on or off-reserve.

5. During the Class Period beginning on January 1, 1992, Canada and Manitoba have collaborated in designing and funding the child welfare system affecting First Nations on and off reserve.

6. Manitoba has legislative authority for child welfare matters under s. 92(13) of the *Constitution Act, 1867*, including policy direction, the standards followed by agencies in delivering services, and the budget and funding model. Under the *CFS Act* and throughout the Class Period, Manitoba has been responsible for, among other things:

(a) developing standards of services, practices, and procedures;

(b) ensuring agencies are providing the standard of services and are following the procedures and practices established;

(c) fixing and paying rates for services provided under the *CFS Act*; and,

(d) licensing and supervising foster homes, group homes, treatment centres, or other child care facilities under the *CFS Act*.

7. Throughout the Class Period and pursuant to the *CFS Act*, Manitoba has committed to providing services in accordance with the following principles:

(a) families and children have the right to the least interference with their affairs to the extent compatible with the best interests of children and the responsibilities of society;

(b) children have a right to a continuous family environment in which they can flourish;

(c) families and children are entitled to be informed of their rights and to participate in the decisions affecting those rights;

(d) families are entitled to receive preventive and supportive services directed to preserving the family unit;

(e) families are entitled to services which respect their cultural and linguistic heritage;

(f) decisions to remove or place children should be based on the best interests of the child and not the family's financial status; and,

(g) First Nations, the Metis and the Inuit are entitled to the provision of CFS in a manner which respects their unique status as Indigenous peoples.

8. Under section 91(24) of the *Constitution Act, 1867*, Canada is responsible for "Indians and Lands reserved for Indians." Canada assumed jurisdiction over child welfare services for First Nations individuals who were "ordinarily resident on a Reserve". Pursuant to the First Nations Child and Family Services Program and other agreements, Canada provided child welfare services to First Nations on-reserve. However, instead of enacting legislation governing First Nations CFS to ensure fair and adequate services were provided, Canada limited its already inadequate funding to First Nations CFS Agencies that applied its strict interpretation of "ordinarily resident on a Reserve". Canada's funding policies were contrary to its constitutional and legal responsibilities to First Nations and perpetuated the intergenerational trauma and discrimination of the residential school period.

9. In addition to the *Constitution Act, 1867*, Canada has responsibility for the wellbeing of First Nations children both on and off reserve by virtue of the historic treaties with First Nations and the *Indian Act.* Further, in *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24, Canada:

(a) recognized the legacy of residential schools and the harm, including intergenerational trauma, caused to Indigenous peoples by colonial policies and practices;

(b) acknowledged the importance of reuniting Indigenous children with their families and nations from whom they were separated in the context of providing CFS; and,

(c) asserted its authority to establish national standards for the provision of CFS in relation to Indigenous children.

10. At all material times, the Defendants owed Class members fiduciary duties, duties consistent with the honour of the Crown, and a duty of care to provide child welfare services that prioritized the interests of First Nations children.

11. Manitoba and Canada received consistent advice and warnings, including from their own experts, that they were failing First Nations and First Nations people. Again and again, they were told that their funding was inadequate, their operational procedures were ill-conceived, and their servants and agents were failing to properly implement their directions. Although the Defendants were advised of the devastating human consequences of these failures, their response to this catastrophe was – and continues to be – a dangerous combination of prejudice and ineptitude at odds with their responsibilities to First Nations.

12. By ripping children from their families and their First Nations, the Defendants' policies, practices, and actions have failed First Nations and caused immense harm to all Class members. The Defendants prevented

First Nations from passing on their distinct and sacred teachings, receiving essential spiritual guidance, and knowing and taking pride in their true identity and culture. First Nations children continue to be apprehended in grossly disproportionate numbers, separating them from their families, cultures, identities, and First Nations, while failing to meet their most basic needs.

13. During the Class Period, all Class members suffered damages when the Defendants failed to prioritize prevention and wellness services for First Nations children and families and underfunded the amounts available for their maintenance. Additionally, all Class members suffered damages when First Nations children were:

(a) removed from their families, First Nations, lands, culture, and spirituality;

(b) deprived of a connection to their First Nation, land, culture, and spirituality; and

(c) denied culturally and spiritually-appropriate services and care.

14. The living conditions for First Nations children in CFS across Manitoba are unimaginable to most Canadians and they are a source of national shame.

15. The Defendants' policies, actions, and failures constitute inequitable treatment on the intersecting grounds of race, age, family status, and place of residence, contrary to section 15 of the *Charter*. They have also prevented Class members from sharing traditional cultural and spiritual

practices with First Nations children, and jeopardized the survival of these practices, contrary to section 2(a) of the *Charter*.

16. None of these breaches is consistent with a free and democratic society, and none of them represents a reasonable limit on Class members' rights. Therefore, none of the breaches can be justified under section 1 of the *Charter*.

17. Manitoba and Canada's breaches of their duties to the Class and of Class members' *Charter* rights are longstanding and ongoing. These breaches continue despite having been drawn to the Defendants' attention, including in decisions of this Honourable Court and others, and despite the Defendants having acknowledged them and having pledged to remedy them.

18. In addition to enjoining the Defendant to take the necessary steps to end this crisis, this Honourable Court should reprimand Manitoba and Canada for their callousness in the face of Class members' suffering, which perpetuates their historical disadvantage. In these circumstances, it is appropriate to award damages to the Class under section 24(1) of the *Charter* and at common law, and to award punitive damages to condemn the Defendant's high-handed conduct.

THE PARTIES

Black River First Nation

19. Black River First Nation lies on the banks of the O'Hanley and Black Rivers along the shore of Lake Winnipeg. It is signatory to Treaty 5. The combined on-reserve and off-reserve population of Black River First

Nation is approximately 2,000, and approximately 900 members live off reserve.

20. Chief Sheldon Kent is the Chief of Black River First Nation. He was first elected Chief in 1997, and previously served as a band councilor. In the mid-1990s, he was Chairman of the Board of Directors of the Southeast Tribal Council, which administered the Southeast Child and Family Services Agency ("**Southeast CFS**"). Through his roles as both Chief and Chairman, he gained awareness of the child and family services system and its impact on children and families in Black River First Nation.

21. Southeast CFS provides child and family services in Black River First Nation and seven other First Nations in southeastern Manitoba. From 2008-2015, Manitoba assumed control and administration of Southeast CFS. When Manitoba finally returned the agency to First Nations' leadership, much had changed. The number of Black River First Nation's children in CFS had increased from 12 to over 100. By late 2020, 133 children from Black River First Nation were in CFS.

22. Chief Kent has witnessed the serious harms caused by the apprehension of Black River First Nation's children on and off reserve. Chief Kent has seen how children taken into CFS are frequently disconnected from their First Nation and lose their First Nation identity. The children coming out of CFS lack a sense of home or belonging. These children are often assimilated into non-First Nations communities, which perpetuates the destruction of First Nations and the assimilation of First Nations persons in Canada. Members of Black River First Nation may live off reserve for a variety of reasons, including the pursuit of economic and

educational opportunities due to chronic underfunding on-reserve. Because they are separated from the First Nation, children living off reserve are at greatest risk of losing their connection to their First Nation when they are apprehended.

23. Children in CFS are deprived of opportunities available to other children and youth in Manitoba. For instance, the Southeast Tribal Council established Southeast Collegiate to provide culturally-informed high school education to First Nations youth in Winnipeg. However, First Nations youth in care cannot attend Southeast Collegiate because they are required to stay in the provincial school system.

24. Members who age out of CFS and wish to return to Black River First Nation encounter additional barriers. In particular, children who were apprehended at birth may not have been registered with Black River First Nation, and they face difficulties registering later due to Canada's bureaucratic system. Until they reconnect with Black River First Nation, these children are effectively lost to their community.

25. Chief Kent brings suit on behalf of Black River First Nation and on behalf of all the members of Black River First Nation in asserting a communal claim.

Cross Lake Band of Indians, also known as Pimicikamak Cree Nation

26. Pimicikamak Cree Nation is located along the shore of the Nelson River where it enters Cross Lake, approximately 500 km north of Winnipeg. Pimicikamak Cree Nation has an on-reserve population of 6,355

and an off-reserve population of 2,852. Pimicikamak Cree Nation is signatory to Treaty 5.

27. Chief David Monias is the Chief of Pimicikamak Cree Nation. Prior to being elected Chief in May 2019, he spent approximately 30 years in roles within the child welfare system and in First Nations governance. He was first exposed to the operations and challenges of CFS agencies as a front-line CFS worker, and subsequently as a supervisor, program manager, director of programs, and Executive Director, with the Awasis Agency of Northern Manitoba ("**Awasis**") from 1991-2010. Prior to becoming Chief, he held a senior role with another agency. He also served in leadership positions with the Manitoba Keewatinowi Okimakanak and completed a Master of Arts degree from the University of Victoria focusing on children and youth in government care, the child welfare system, and public administration.

28. Chief Monias has significant experience and knowledge related to the history of child welfare services from 1982 to the present, and he has seen the impact of underfunding on the wellbeing of First Nations children in CFS. He is intimately aware of the harms experienced by children who have been apprehended and the effects on the families of children who were taken away.

29. When the restructuring of CFS now known as Devolution took place, as described below, First Nations agencies were to assume responsibility for providing the full range of CFS services for First Nations children. Because the Defendants did not transfer the budget or staff for prevention services, Awasis had to apply for approval whenever a home support

worker was required, and it regularly met resistance. The Defendants continued to prioritize child apprehensions over prevention and wellness services. As a result, Awasis was unable to access necessary resources to support families as a substitute for apprehension. Manitoba also did not transfer intake and investigation services to Awasis, which led to a higher number of unnecessary apprehensions.

30. Chief Monias has also witnessed the loss of connection between children in CFS and their First Nations. When members of Pimicikamak Cree Nation move away and their children are apprehended, or when children are apprehended at birth, CFS often fails to register those children as status Indians. The Defendants can unilaterally decide whether to share information with First Nation agencies. Thus, if a child is not registered to Pimicikamak Cree Nation, there is virtually nothing the First Nation can do to track down the child, and they will likely never be reconnected with their First Nation or registered as a member unless the child reaches out to the First Nation. This places an undue burden on children in CFS to reclaim their identity.

31. When children grow up disconnected from Pimicikamak Cree Nation, they struggle with a lack of identity and a sense of belonging and do not see themselves as protectors of the First Nation's land, water, and people. Children who were apprehended often feel resentment toward their own biological families and, by extension, their First Nation and culture. Many turn to gangs for support and a sense of belonging. Additionally, since children in CFS do not receive proper health care and education, they are not supported to become healthy adults. As a result, even if they can re-establish a connection with Pimicikamak Cree Nation, they are not

equipped to return and become leaders or advocates. All of this harms Pimicikamak First Nation.

32. The disconnection created by apprehension is exacerbated when CFS places First Nations children far from their First Nations. Pimicikamak Cree Nation is approximately eight hours' drive from Winnipeg. It is difficult for children who are in CFS or who age out of CFS to get home without support and resources. This contributes to disconnection and dispossession from northern lands and nations and the hollowing out of First Nations.

33. Every time an agency fails to register the children in their care, that First Nation also loses potential funding to support that child, including for post-secondary education and health benefits. As a result, those children lose their connection with Pimicikamak Cree Nation, and the First Nation loses the opportunity to maintain and develop its community.

34. Chief Monias brings suit on behalf of Pimicikamak Cree Nation, and on behalf of all the members of Pimicikamak Cree Nation in asserting a communal claim.

Misipawistik Cree Nation

35. Misipawistik Cree Nation lies on the shore of Lake Winnipeg at the mouth of the Saskatchewan River, across the river from the town of Grand Rapids. Misipawistik Cree Nation has an on-reserve population of approximately 1,308 and an off-reserve population of 910. It is signatory to Treaty 5.

36. Chief Heidi Cook is the Chief of Misipawistik Cree Nation. She was elected in July 2020 and held the CFS portfolio as band Councillor for six years prior to her election as Chief. She is now responsible for the CFS portfolio through her seat on the Swampy Cree Tribal Council in addition to her related duties as Chief. Chief Cook also sits on the Assembly of Manitoba Chiefs ("**AMC**") Women's Council. The AMC Women's Council is responsible for overseeing issues affecting the wellbeing of children and families. Prior to being elected Chief, she completed a Master's in Development Practice from the University of Winnipeg.

37. In recent years, Misipawistik Cree Nation has had success in seeing that many of its children in CFS are placed with family members or in the community, including with culturally-appropriate services. However, this success is the result of sustained effort, and it is not always possible. Chief Cook has personally witnessed the difficulties of registering children placed off-reserve, the challenge of maintaining connections to the First Nation for children who are placed elsewhere, and the barriers to Band membership and residence on reserve. These issues are exacerbated by the Defendants' failure to support children's registration as members.

38. In her current position, Chief Cook often meets with parents who are struggling to get their children back. They frequently disclose that the apprehension was unfair, they feel voiceless, and they are sometimes barred from communicating with or visiting their children. Chief Cook deals most often with the Cree Nation Child and Family Caring Agency. Calling the Agency's executive director and asking questions is all that Chiefs and band councillors can do. She feels powerless to help her community.

39. Children from Misipawistik Cree Nation apprehended off-reserve are often placed in Grand Rapids or other urban centres. It is difficult for First Nations families to have their children placed with members of their extended family. When children are taken away from Misipawistik Cree Nation, they can no longer go out on the lake, attend ceremonies, or hear the language. As a result, their connections to their First Nation's culture are broken. Healing must happen before these children can be open to receiving teachings and community.

40. Chief Cook has also witnessed the difficulties experienced by children who age out of CFS. They often experience homelessness and lack the social support they need. Even if there are services available, they do not have the basic skills or information they need to access the services or make a living – they are not equipped for independence.

41. Chief Cook brings suit on behalf of Misipawistik Cree Nation and on behalf of all the members of Misipawistik Cree Nation in asserting a communal claim.

Assembly of Manitoba Chiefs

42. The Assembly of Manitoba Chiefs ("**AMC**") is the First Nations organization that advocates on issues affecting First Nations in Manitoba. Representing 62 of Manitoba's 63 First Nations, AMC advocates on behalf of over 151,000 First Nations citizens in the province.

43. Using information gathered during community engagement sessions, AMC published a report titled "Bringing Our Children Home" in 2014. The

report called the contemporaneous child welfare system a “crisis” and provided 10 recommendations:

(a) change funding models to support a model of care focused on prevention, strengthening families, and reunification rather than apprehension;

(b) establish a First Nations family advocate office;

(c) protect cultural identity and respect the First Nations rights of the child;

(d) support families in reclaiming responsibility for children and relearning traditional parenting ways;

(e) consult with young people to identify ways to meet their needs;

(f) promote First Nations solutions to keep children home;

(g) transition to a First Nations system for child and family services;

(h) revitalize original systems of lifelong supports;

(i) focus on First Nations social determinants of health rather than using unilateral standards of living as a justification for removing children; and

(j) revolutionize justice system practices including Legal Aid.

44. As part of implementing those recommendations, AMC created the First Nations Family Advocate Office ("**FNFAO**") on June 1, 2015. FNFAO was given the name "Abinoojiyak Bigiiwewag" – Our Children Are Coming Home – by Elders and Knowledge Keepers. FNFAO works outside the CFS system that has failed First Nations children, families and First Nations. Its mandate comes from Chiefs in Manitoba and it advocates for First Nations-led solutions to the CFS crisis in Manitoba.

45. Since its inception, FNFAO has assisted more than 3,000 First Nations families in navigating CFS, advocated for families to access their children within the system, and provided supports and services to reunite families. FNFAO provides targeted legal services aimed at enhancing access to justice for First Nations families involved in CFS. It also manages a low-barrier shelter for persons experiencing homelessness in Winnipeg, many of whom are former First Nations children in CFS.

46. Despite AMC's efforts to persuade Manitoba to implement the recommendations in the Bringing Our Children Home Report, Manitoba has failed to do so.

47. Between 2016 and 2017, FNFAO consulted with key stakeholders, including First Nations leadership, Knowledge Keepers, Elders, and representatives from 23 First Nations in Manitoba, culminating in a report titled "Keewaywin: Our Way Home, Manitoba First Nations Engagement on First Nations Child and Family Services." The report concluded that First Nations never ceded jurisdiction over their children; rather, it was taken from them by the Defendants' invasive child welfare policies.

48. In December 2017, Canada and AMC signed a Memorandum of Understanding ("**2017 MOU**") with the intention of reasserting First Nations' inherent jurisdiction over their children and families in Manitoba. A primary goal outlined in the 2017 MOU was for Canada and AMC to work together to achieve concrete outcomes that were mutually beneficial and supported the aspirations of First Nations in Manitoba.

49. FNFAO presented Canada with a work plan to achieve the objectives of the 2017 MOU, which Canada agreed to fund. In March 2018, the Minister of Indigenous Services Canada met with FNFAO, the Grand Chiefs of AMC, Manitoba Keewatinowi Okimakanak and Southern Chiefs Organization to discuss Manitoba-specific federal legislation that would reassert First Nations inherent jurisdiction over their children and families. AMC, under the leadership of FNFAO, created draft legislation which became the *Bringing Our Children Home Act* ("***BOCHA***").

50. Meanwhile, FNFAO continued to lead engagement with First Nations across Manitoba in furtherance of First Nations CFS reform. It produced a follow-up report titled "Keewaywin II: Closer to Home Community Visits".

51. While FNFAO was continuing its collaborative work with Canada, Manitoba introduced child welfare legislative reforms that discounted the exercise of First Nations laws, customs, and traditions and did not meaningfully consult with First Nations. In March 2018, responding to Manitoba's unilateral actions, FNFAO and AMC held emergency meetings and signed a declaration entitled "Manitoba First Nations Declaration of Principles on Inherent Sovereignty Over Our Own Children."

52. In July 2018, the AMC Women's Council formed a steering committee comprised of local Knowledge Keepers and Elders, First Nations experts in CFS, and members of the AMC Elders Council to develop *BOCHA*. On October 25, 2018, the AMC Chiefs-in-Assembly endorsed *BOCHA* by way of resolution. The draft was presented to Canada, with the intention that Canada would introduce *BOCHA* as a bill.

53. Shortly after, the Minister of Indigenous Services informed FNFAO that Canada had decided to go in a different direction. Canada unilaterally introduced Bill C-92, "*An Act respecting First Nations, Inuit and Métis children, youth and families*." FNFAO spoke to the Standing Committee on Indigenous and Northern Affairs with respect to Bill C-92, emphasizing the continued importance of a targeted First Nations response to the CFS crisis in Manitoba. Bill C-92 entered into force on January 1, 2020.

54. AMC considers this Action to be an important means of asserting the rights of First Nations in Manitoba and brings a claim on behalf of the Class.

Defendants

55. The Defendant, His Majesty the King in Right of Manitoba ("**Manitoba**") is represented in this action by the Government of Manitoba.

56. The Defendant, His Majesty the King in Right of Canada ("**Canada**") is represented in this action by his designated Minister, the Attorney General of Canada.

Class Members

57. The Plaintiffs bring this action pursuant to the *Class Proceedings Act*, C.C.S.M., c. C130, on their own behalf and on behalf of all other Class members in respect of claims arising within the Class Period, as defined below.

58. The members of the proposed "**Class**" are Black River First Nation, Pimicikamak Cree Nation, Misipawistik Cree Nation and any other First Nation located in Manitoba that elects to join this action within a period of time to be prescribed by this Honourable Court.

59. For the purpose of defining the Class, each "**First Nation**" is composed of one or more "bands" within the meaning of s. 2(1) of the *Indian Act*, R.S.C., 1985, c. I-5 (the "***Indian Act***") or Indigenous people of Canada, other than Inuit or Métis peoples, with a modern treaty, being a land claims agreement within the meaning of s. 35 of the *Constitution Act*, 1982, entered into on or after January 1, 1973.

60. For the purpose of defining the claims asserted on behalf of the Class, the "**Class Period**" runs from January 1, 1992 to the last day of the period to opt out of this action following its certification as a class proceeding.

HISTORY OF THE DEFENDANTS' MISMANAGEMENT OF FIRST NATIONS CHILD WELFARE

First Nations Children are Sacred

61. The child is at the center of the First Nations worldview. The physical, emotional, mental, and spiritual wellbeing of First Nations

children is at the heart of healthy families and communities. The latter cannot exist without the former. First Nations have always had responsibility to care for children and First Nations laws have always taught how to care for children. In making Treaty agreements with the Crown, First Nations did not cede or surrender these sacred responsibilities.

62. For a child to grow into a healthy adult, they must be treated in a way that embraces where they have come from, recognizes the challenges they have faced, and honours their need to connect with their identity. Language is central to this connection. First Nations Elders, grandparents, aunts and uncles, parents, and other helpers have inherent roles and responsibilities to guide and care for children, and teach them about their distinct culture, spirituality, connection to the land, and First Nations identity.

63. Prior to colonization, it would have been unthinkable to remove a child from their family, land, First Nation, and culture, thus depriving them of the essential guidance and sacred teachings of those around them.

64. With the imposition of the colonial system, Canada claimed authority over First Nations as well as their lands, livelihoods, communities, cultures, spirituality, laws, and families. This compromised the ability of First Nations to care for their children, maintain a connection with their culture and spirituality, and protect them from harm. When CFS takes a child, they are removing a gift from the Creator.

65. Decades of deliberate efforts, institutional failures, and neglect have systematically driven First Nations children from their families and their First Nations, to the detriment of all. First Nations children are treated as burdens to be managed in a child welfare system that is designed to remove,

isolate, and deprive them. The need for a return to treating First Nations children as sacred is more urgent now than ever.

1874 to 1991: "Taking the Indian out of the Child"

66. Colonial laws, policies, and practices aimed to eradicate the existence of First Nations persons as distinct from settler society is historically known as "civilizing".

67. Canada designed residential schools to "take the Indian out of the child" and rid them of their identity, languages, cultures, and spirituality. For decades, residential schools perpetuated the harmful separation of First Nations children from their teachings and ceremonies, denied children essential familial support, and stripped First Nations families of the ability to fulfill their sacred roles and responsibilities. This tragedy was compounded by inadequate funding and Canada's failure to ensure children's safety and security. First Nations children lived in appalling conditions under Canada's supervision, many died, and many who survived continue to suffer trauma and other harms from their experience. Canada has recognized and apologized for the horrors of the Indian Residential Schools.

68. As the residential school system was ramping down, Canada and Manitoba began introducing laws, policies, and practices to institutionalize First Nations children in the child welfare system. Parents who had children stolen during the residential school era were deemed unfit. Their children went from one government institution into the next. The large-scale removal of First Nations children from their homes and First Nations from the 1960s onwards is commonly referred to as the "Sixties Scoop". These

children were placed in non-First Nation homes in Canada, the United States, and overseas, without regard for the need to nurture any connection to their identity, language, culture, and spirituality.

69. Research from the early 1980s estimated that Indigenous children were 4.5 times more likely than non-Indigenous children to be in CFS. In Manitoba, between 50 and 60% of children in CFS at that time were Indigenous. The impacts of apprehension on Indigenous children were often more traumatic than for non-Indigenous children, because they were removed from their distinct communities and cultures.

70. In 1980, the Indian Child Welfare Sub-Committee, comprised of representatives of Manitoba, Canada, and First Nations called for "urgent and immediate" reforms. It characterized the child welfare system as "fragmented, discriminatory and at the mercy of political and jurisdictional disputes" with "both senior governments attempting to disclaim responsibility for the delivery of social and child welfare services."

71. In 1982, First Nations, Canada, and Manitoba signed a Tripartite Agreement (the "**1982 Tripartite Agreement**") acknowledging the "special responsibility and interest" of First Nations in Manitoba "to ensure the welfare" of First Nations children and their right to deliver child welfare services on reserve. The 1982 Tripartite Agreement recognized that, while Manitoba has jurisdiction over child protection, Canada "retains a special relationship and special interest in the welfare" of First Nation children by virtue of the treaties, the *Indian Act* and the *Constitution Act, 1867*.

72. The 1982 Tripartite Agreement also recognized that child welfare services must be available to First Nations children throughout Manitoba and responsive to their traditions, cultures, and lifestyles.

The Defendants' Awareness of Cultural Genocide Prior to the Class Period

73. Nevertheless, Canada and Manitoba continued to receive consistent advice that their child welfare system was failing to meet the needs of First Nations children. In particular, the Kimelman Inquiry (1985), and later the Manitoba Justice Inquiry (1991) (together, the "**Baseline Reports**"), underscored the imminent risk of further damage and violence to children, their families, and their First Nations.

74. The Kimelman Inquiry recommended changes to the child welfare system in Manitoba that were intended to promote First Nations children's cultural and linguistic heritage. The report concluded that CFS in Manitoba was guilty of "cultural genocide" against Indigenous children.

75. The landmark report by the Aboriginal Justice Inquiry of Manitoba ("**AJI**") found the cumulative impacts of Manitoba and Canada's child welfare policies led to staggering poverty rates, high unemployment rates, high suicide rates, lower education levels, high rates of alcoholism, and high rates of crime among Indigenous Canadians. The AJI found that the child welfare system was underfunded, with prevention and public education as a low priority. Importantly, the AJI identified a significant problem with the provision of services to treaty Indians living off reserve, with little coordination and unclear responsibility for services. The AJI

concluded that First Nation self-determination was an integral element of restoring health to First Nations, their children, and their families.

76. The AJI also found that the cumulative effects of the Defendants' child welfare policies had a profound and negative impact on First Nations themselves. Aboriginal agencies believe it is not possible to choose between the best interests of the child and the best interests of the community; one profoundly affects the other. By tearing apart families and extended families, the Defendants' actions created wounds in First Nations that continue to fester to this day. The AJI emphasized how large-scale removal of First Nations children compromised the ability of First Nations to function properly and retain their languages and cultural traditions, leading to social disorganization and undermining the long-term health of First Nations.

77. Highlighting the need for culturally appropriate services, the Baseline Reports described a system built on "cultural bias", with children improperly apprehended on the basis of harmful stereotypes about "inadequate care", "improper supervision", or "unfit circumstances." Collectively, the Baseline Reports identified the need for drastic changes to the existing child welfare system, including:

(a) revising Manitoba's child welfare legislation to make the determination of a child's "best interests" include consideration of "the child's cultural and linguistic heritage";

(b) greater focus on prevention;

(c) increased resources to allow for placement homes in First Nations and greater use of the extended family; and

(d) improved repatriation of children to their First Nations and reunification with their families.

78. The bulk of issues identified in the Baseline Reports remain unaddressed. In many respects, the problems have only intensified.

The Class Period: From Neglect to Devolution to Single Envelope Funding

79. Following the AJI Report (1991) and the Royal Commission on Aboriginal Peoples (1996), Manitoba and Canada unilaterally imposed changes to the child welfare system that resulted in the increased removal of First Nations children from their families, communities, First Nations, culture, and spirituality; exposure and placement of First Nations children in unsafe conditions; escalating levels of poverty, involvement with the criminal justice system; and low levels of education.

80. In 2000, in a delayed effort to implement the AJI recommendations, Manitoba convened the Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI) and established a province-wide mandate for First Nations agencies providing services to children. Manitoba expressly accepted the right of First Nations "to control the delivery of child and family services and programs for their respective First Nations members" both on and off reserve.

81. In 2005, Manitoba restructured its child welfare system, a process now known as "Devolution". As a result of Devolution, First Nations

agencies in Manitoba, unlike in other jurisdictions, have a province-wide mandate and deliver services to children both on and off-reserve. Through this process, Manitoba continued to have primary responsibility for directing the care of First Nations children apprehended off reserve, including the administration of the *CFS Act* and its associated standards, policies, and funding model, and Canada continued to have primary responsibility for directing the care of children apprehended on reserve, including the adherence to Manitoba's *CFS Act* and its associated standards and policies.

82. In the Devolution era, First Nations agencies notionally received operational and maintenance funding from Canada for First Nation children in CFS who were apprehended on reserve and received funding from Manitoba for children who were apprehended off reserve. In practice, the Defendants accepted that this distinction was sometimes difficult to apply, and the amounts available for children in CFS were determined by both Manitoba and Canada.

83. Since Devolution, Manitoba and Canada have sought to coordinate funding expenditures for First Nations agencies. On March 18, 2011, Manitoba and Canada entered into a Memorandum of Understanding for the Integration of Funding for First Nations CFS Agencies in Manitoba, covering the period from October 1, 2010 to March 31, 2015 (the "**2011 MOU**"). Section 5.1 of the 2011 MOU provided for a common approach to Core Funding, Child Protection, and Prevention Funding. It committed to the provision of service consistent with the *CFS Act* and in a manner comparable both on and off reserve. Finally, it recognized that First Nation

persons have unique needs and that the preservation of cultural identity constitutes an important consideration.

84. During the first 10 years of Devolution, the number of First Nations children in CFS grew from 4,589 in 2005 to more than 8,000 in 2016, and Manitoba's rate of child apprehension was, ignominiously, the highest in the western world.

85. Between 2006 and 2019, a series of reports from First Nations leadership, the Manitoba Ombudsman, Provincial and Federal Auditor Generals, Manitoba Advocate for Children and Youth, the Phoenix Sinclair Inquiry, the Truth and Reconciliation Commission, and the National Inquiry into Missing and Murdered Indigenous Women and Girls described an unstable system in crisis that was failing to respond to independent recommendations for change (together, the "**Post-Devolution Reports**"). The Post-Devolution Reports identified a number of concerns, including the:

(a) continued imposition of colonial laws and the corresponding diminishment of First Nations' world views and practices, including through systems of child rearing and education;

(b) pattern of viewing First Nation poverty as a symptom of neglect deserving of apprehension rather than addressing the root causes of First Nations' grossly disproportionate overrepresentation in the child welfare, income assistance, and social housing systems;

(c) systemic targeting of families with prior experience in the child welfare system for investigation and apprehension, including through practices such as birth alerts and birth apprehensions, compounding First Nations' overrepresentation in CFS;

(d) funding of CFS that incentivized apprehension of Indigenous children and youth, including by prioritizing funding for foster homes over support services for families, denying access to specialized support services unless the child is in CFS, and agency funding models predicated on the number of children in CFS;

(e) inadequate funding to ensure culturally-based services regardless of the child's place of residence;

(f) maintenance rates that were among the lowest in Canada and did not meet the basic needs of children;

(g) gaps in services and infrastructure in northern and remote nations, resulting in a disproportionate number of First Nations children being sent out of their communities to obtain services and care, with a heightened risk of neglect and culturally unsafe services;

(h) failure to help First Nations children in CFS transition to adulthood, which is connected to the magnitude of murders, violence, and disappearances of Indigenous women, girls, and

Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex, Asexual + (2SLGBTQQIA+) people;

(i) profound overrepresentation of First Nation children in foster care and among the sick, disabled, and incarcerated; and

(j) failure to place First Nations children in a culturally-appropriate environment, causing continued damage to familial, cultural, and spiritual connections as well as to the health of First Nations.

86. In 2017, Manitoba acknowledged systemic problems with the child welfare system and implemented changes to CFS. As part of funding changes, Manitoba piloted a new funding model with the four CFS authorities in Manitoba ("**Single Envelope Funding**"). Single Envelope Funding provides each authority with child maintenance funding up front in a "single envelope," rather than making payments based on a child or youth in CFS. Each authority creates and oversees one or more CFS agencies.

87. Since April 1, 2019, Manitoba has unilaterally forced CFS authorities and agencies to implement Single Envelope Funding. At all material times, Manitoba was aware of concerns related to the inadequacy of Single Envelope Funding for child maintenance amounts, high needs children, extension of care provisions for those between the age of 18 and 21, and administrative increases for staff, technology, and infrastructure. Single Envelope Funding was introduced without consulting First Nations, and this approach failed to address longstanding systemic issues related to the overrepresentation and poor outcomes of First Nations children in CFS.

The changes also lacked any meaningful recognition and engagement of First Nations' inherent roles and responsibilities in nurturing the wellbeing of children. While implementing Single Envelope Funding, Manitoba also reduced overall funding for CFS in 2019-2020.

88. In 2021, the Manitoba Advocate for Children and Youth concluded that none of the various changes to CFS in Manitoba has resulted in consistent or equitable services for children and families, and that the system remains rooted in structural inequities and systemic racism which place First Nations children at risk of harm and death.

89. Manitoba reported 9,850 children in CFS in 2021, with close to 80% being First Nations children, whereas First Nations children comprise approximately 14% of the population of children in Manitoba. First Nations children remain far more likely to experience adverse outcomes that are manifested through poverty, lower levels of education, and involvement in the criminal justice system.

Discriminatory Clawback of Children's Special Allowance Benefits

90. Between January 1, 2006 and March 31, 2019, Manitoba discriminatorily and unconstitutionally prevented First Nations children in CFS from accessing what is now known as the Children's Special Allowance ("**CSA**"). The CSA is a federal benefit meant to ensure that children in CFS receive the same federal funding that other children receive through the Canada child benefit and child disability benefit.

91. Previously, CSA funds were available to benefit First Nations children in CFS by enhancing basic maintenance support and creating

additional opportunities for development. CSA funds were also used to support children and youth returning to their families or aging out of CFS.

92. Beginning in 2006, and despite the well-documented inadequacy of provincial support for children in CFS, Manitoba forced agencies providing services to provincially-funded First Nations children in CFS to remit their CSA payments to the province or be subject to material clawbacks in funding. During that time, Manitoba's general revenues were enriched by over $335 million, approximately 61% of which was derived from CFS Agencies. While CSA benefits increased in 2016, 2017, 2018, and 2019, Manitoba's basic daily maintenance rates per child in CFS remained flat and Manitoba retained the difference.

93. In 2006, the provincial Ombudsman warned Manitoba that taking CSA funds from First Nation agencies would force agencies to discontinue programs or take money from other programs that were already underfunded. In *Flette v. The Government of Manitoba,* 2022 MBQB 104, this Honourable Court found that forcing agencies to remit CSA funds to Manitoba denied equal benefit of the law to provincially funded Indigenous children in CFS.

94. Sadly, Canada took no meaningful steps to prevent Manitoba from appropriating CSA funds that were meant for First Nations children, contrary to the *CSA Act* and the Defendants' obligations. The continued underfunding of CFS exacerbated the harm to First Nations, as described above and below.

THE DEFENDANTS CONTINUE TO HARM FIRST NATIONS

95. Despite the obvious, foreseeable, and ongoing harms to First Nations children, families, and their First Nations, Manitoba and Canada have refused to comply with their obligations, and have instead reinforced and perpetuated discriminatory policies.

96. CFS Agencies receive maintenance sums that cannot cover children's basic needs and consistently fail to track inflation. Manitoba's basic maintenance rates are among the lowest in the country. As a result of the Defendants' concerted effort to shortchange First Nations children, they often go without essential needs that most Canadians take for granted, such as appropriate food, clothing, and transportation.

97. On its face, funding of per child maintenance amounts appear to be neutral with respect to First Nations persons. However, it is not neutral for at least two reasons.

98. The first reason is that the vast majority of children in CFS in Manitoba were First Nations children throughout the Class Period, such that inadequate funding for children in CFS is *de facto* inadequate funding for First Nations children in CFS. Manitoba's own data show that First Nations children comprise a growing share of the children in CFS, and they currently represent approximately 78.2% of all children in CFS in Manitoba:

1989 - 2000		
Year	**Total Number of Children in Care**	**Number of First Nation and Métis Children in Care of Indigenous Agencies**
1989	3,759	819 (21.8%)
1990	4,167	903 (21.7%)
1991	4,322	1,041 (24.1%)
1992	5,412	1,955 (36.1%)
1993	5,430	1,603 (29.5%)
1994	5,720	1,748 (30.6%)
1995	5,326	1,668 (31.3%)
1996	5,170	1,575 (30.1%)
1997	5,203	1,655 (31.8%)
1998	5,227	1,821 (34.8%)
1999	5,358	1,930 (36%)
2000	5,588	2,093 (37.5%)

2001 - 2016					
Year	**Total Number of Children in Care**	**Number of Indigenous Children in Care**	**Number of First Nation Children in Care**	**Number of Métis Children in Care**	**Number of Inuit Children in Care**

2001	5,440	4,361 (80.2%)	3,996 (73.5%)	361 (6.6%)	4 (0.07%)
2002	5,495	4,449 (81%)	4,083 (74.3%)	362 (6.6%)	4 (0.07%)
2003	5,533	4,466 (80.7%)	4,035 (72.9%)	422 (7.6%)	9 (0.16%)
2004	5,782	4,803 (83.1%)	4,284 (74.1%)	510 (8.8%)	9 (0.2%)
2005	6,118	5,116 (83.6%)	4,589 (75%)	516 (8.4%)	11 (0.2%)
2006	6,629	5,627 (84.9%)	4,998 (75.4%)	615 (9.3%)	14 (0.2%)
2007	7,241	6,185 (85.4%)	5,494 (75.9%)	666 (9.2%)	25 (0.3%)
2008	7,837	6,725 (85.8%)	5,969 (76.2%)	730 (9.3%)	26 (0.3%)
2009	8,629	7,419 (86%)	6,613 (76.6%)	776 (9%)	30 (0.35%)
2010	9,120	7,915 (86.8%)	7,010 (76.9%)	873 (9.6%)	32 (0.4%)
2011	9,432	8,047 (85.3%)	7,138 (75.7%)	877 (9.3%)	32 (0.34%)
2012	9,730	8,371 (86%)	7,420 (76.3%)	924 (9.5%)	27 (0.3%)
2013	9,940	8,633 (86.9%)	7,705 (77.5%)	904 (9.1%)	24 (0.24%)
2014	10,293	8,960 (87%)	7,949 (77.2%)	988 (9.6%)	23 (0.22%)
2015	10,295	8,963 (87%)	7,906 (76.8%)	1,036 (10%)	21 (0.2%)
2016	10,501	9,205 (87.7%)	8,147 (77.6%)	1,032 (9.8%)	26 (0.24%)
2017 - 2021					

Year	Total Children in Care	Number of Indigenous Children in Care	Number of First Nation Children in Care of Northern and Southern Authorities	Estimated Number of Indigenous Children in Care of the General Authority	Number of Children in Care of the Métis Authority
2017	10,714	Approximately 9,535 (89%)	8,014 Northern Authority: 3,011 Southern Network: 5,003 (Approximately 74.8%)	350 (Approximately 3.4% of total children in care)	1,171 (Approximately 10.9%)
2018	10,328	Approximately 8,985 (87%)	7,798 Northern Authority: 2,928 Southern Network: 4,897 (Approximately 75.5%)	43 (Approximately 0.5% of total children in care)	1,144 (Approximately 11%)
2019	10,258	Approximately 9,232 (90%)	7,888 Northern Authority: 2,977 Southern Network: 4,911 (Approximately 76.9%)	210 (Approximately 2.1% of total children in care)	1,134 (Approximately 11%)
2020	9,849	Approximately 8,864 (90%)	7,593 Northern Authority: 2,822 Southern Network: 4,771 (Approximately 77%)	140 (Approximately 1.5% of total children in care)	1,131 (Approximately 11.5%)
2021	9,850	Approximately 8,964	7,700 Northern	133 (Approximately	1,131 (Approxi

		(91%)	Authority: 2,935 Southern Network: 4,765 (Approximately 78.2%)	1.3% of total children in care)	mately 11.5%)

99. The second reason is that standard maintenance amounts do not reflect the higher costs of providing care to First Nations children, because their cases are more complex, and they require additional culturally and spiritually-relevant services. Nor do the standard maintenance amounts reflect the increased costs of providing care to First Nations children in northern regions, particularly fly-in communities where food insecurity is a greater concern.

100. In the result, the Defendants' underfunding of child maintenance amounts has been felt most severely by First Nations children. In turn, it is visited on their First Nations, which are harmed by the Defendants' mistreatment of their members, who are less able to contribute to their nations.

101. Manitoba and Canada have also failed to adequately fund prevention services. Though the Defendants publicly recognized prevention as a priority in the 2011 MOU, the relevant legislation, policies, and funding formulas continue to prioritize apprehension. As such, there are few resources dedicated to preventing crises or preserving families. A lack of preventative supports and services for struggling families puts them in situations that will ultimately reach crisis. When a crisis occurs, the child is apprehended.

102. The acute vulnerability of First Nation families is compounded by CFS practices that continue to systemically target families with prior experience in CFS for investigation and apprehension, which are disproportionately First Nation families.

103. There are also few resources dedicated to ensuring culturally-appropriate placements for First Nations children. Preference is given to foster homes over kinship options. Homes on reserve often do not meet the foster home qualifications, thereby systematically excluding many First Nations people from fostering their own kin. This preferential treatment is particularly problematic for newborn apprehensions. CFS regularly places First Nations children with non-Indigenous foster parents and fails to support those children in connecting with their culture or spirituality.

104. When children are removed from their families and First Nations for poverty-related reasons, it is often poverty that prevents those families from reuniting with their children. Many First Nations families lack access to adequate and safe housing, phones, internet, and transportation, which impedes their ability to complete their case plans and further delays or prevents their ability to have their children returned. Additional barriers are created by the long wait times for addiction treatment and the unavailability of culturally-appropriate treatment facilities in Manitoba.

105. Once in CFS, First Nations children are not provided with the supports they require, including to meet their most basic needs. Additionally, First Nations children transitioning out of CFS in Manitoba are among the poorest of the poor in the province. The Defendants have failed to provide First Nations children with opportunities for housing,

education, and the necessary supports to transition to adulthood. Additionally, they are exposed to preventable emotional harm, mental harm, spiritual harm, and physical and sexual assault. During or after their time in CFS, First Nations children are disproportionately involved in the criminal justice system and experience dismal outcomes in terms of education, poverty, homelessness, unemployment, and acute physical and psychological vulnerability. These outcomes erode the health of First Nations, which depend on the contributions of their members.

106. Canada and Manitoba have failed to accept responsibility for the historic and ongoing harms caused by the child welfare system in Manitoba despite being clearly and repeatedly informed of the breadth of longstanding issues. As a result, Class members have suffered significant harm.

MANITOBA AND CANADA OWED CLASS MEMBERS NON-DELEGABLE FIDUCIARY DUTIES, DUTIES OF CARE, AND DUTIES TO ACT IN ACCORDANCE WITH THE HONOUR OF THE CROWN

107. Canada and Manitoba assumed responsibility for designing, funding, and overseeing CFS on and off reserve during the Class Period. At all material times, the Defendants owed Class members fiduciary duties, duties consistent with the honour of the Crown, and duties of care to provide child welfare services that prioritized the interests of First Nations children.

These duties are owed to First Nations themselves, in addition to First Nations individuals.

108. Canada has supported and ratified many international treaties which contain obligations relating to the rights of First Nations children to maintain a connection to their family and culture, including, without limitation, the *Declaration on the Rights of Indigenous Peoples*, the *Convention on the Rights of the Child*, the *International Covenant on Economic, Social, and Cultural Rights*, the *Convention for the Elimination of All Forms of Racial Discrimination*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, and the *International Covenant on Civil and Political Rights*.

109. These instruments include a guarantee of the rights of children separated from a parent to maintain personal relations and direct contact on a regular basis, the rights of Indigenous families and communities to retain shared responsibility for the upbringing of their children, the right to not be subjected to forced assimilation or destruction of culture, the right to participate in decision-making on matters which affect their rights through representatives of their choosing, and require state parties to respect the right of a child to preserve their identity.

110. Canada's international commitments inform its fiduciary duties, duty of care, the honour of the Crown, and Class members' *Charter* rights.

MANITOBA'S AND CANADA'S DUTIES TO CLASS MEMBERS ARE NOT ABATED BY THEIR EFFORTS TO DOWNLOAD RESPONSIBILITIES

111. Devolution did not relieve the Defendants of their obligations to ensure that First Nations children received appropriate care. Rather, this unilaterally imposed system increased the numbers of First Nations children in CFS and worsened the circumstances of First Nations children and families, thereby directly harming First Nations. By failing to consult with First Nations or seek their insight and guidance throughout the Devolution era, the Defendants' actions have perpetuated the ongoing cycle of dependency and institutionalization.

112. Canada and Manitoba have a continuing fiduciary and constitutional responsibility to protect and ensure the wellbeing of First Nations by promoting culturally and spiritually-relevant child welfare services that respond to the needs of First Nations children.

MANITOBA AND CANADA BREACHED THEIR RESPECTIVE FIDUCIARY DUTIES AND THEIR DUTIES OF CARE TO CLASS MEMBERS, BREACHED CLASS MEMBERS' RIGHTS UNDER THE CHARTER AND THE CONSTITUTION, AND FAILED TO UPHOLD THE HONOUR OF THE CROWN

113. In exercising authority over the welfare of First Nation children and First Nations, and in exercising discretionary control over the development of Manitoba's child welfare system, and overseeing the implementation and funding of CFS, the Defendants have, with foreknowledge, systematically breached their duties to Class members, including by failing to:

(a) prioritize prevention over apprehension for First Nations children and families;

(b) address systemic shortcomings in their policies that disproportionately target, investigate, and apprehend First Nations children;

(c) regularly examine their funding policies to ensure the basic maintenance services were sufficient to meet the needs of First Nations children;

(d) ensure that the basic needs of First Nations children were met at all times;

(e) provide culturally and spiritually-relevant resources and services for First Nations children;

(f) foster a connection between First Nations children and their families, communities, First Nations, culture, and spirituality; and

(g) take reasonable measures to prevent First Nations children from experiencing negative outcomes, including physical, sexual, emotional, spiritual, and mental abuse.

114. Additionally, where Manitoba and Canada have purported to download responsibility for First Nations child welfare, they have, with foreknowledge, systematically failed to adequately fund, support and supervise the provision of appropriate services for First Nations children.

115. This crisis has been systemic and prolonged. It is a shameful cornerstone of Manitoba's identity. Manitoba and Canada were informed by external committees and inquiries that the system was failing First

Nations children and First Nations, including but not limited to the following:

(a) the 2006 Manitoba Ombudsman report entitled Strengthen the Commitment, which found that:

(i) funding tied solely to protection that is based on the numbers of children in CFS contradicts the principles in the *CFS Act*;

(ii) maintenance rates were not reviewed to determine if they covered the costs of providing basic necessities to children;

(iii) taking CSA funds from First Nations agencies compromised already underfunded programs;

(iv) the lack of foster homes contributed to high incidence of placements in costly alternatives such as hotels and shelters, often far from their First Nation; and

(v) the first response of the child welfare system is typically apprehension, particularly in cases of neglect, financial hardship, or disability;

(b) the 2014 Phoenix Sinclair Inquiry, which found that:

(i) Aboriginal children have been taken from their homes in far greater numbers, because they are living in worse circumstances than other children;

(ii) foster home standards were inadequate and outdated, and some foster homes were licensed despite not meeting regulatory and policy requirements;

(iii) safety of children was compromised by a failure to address service gaps and missed opportunities for successful intervention, leading to preventable deaths;

(c) the 2014 Bringing Our Children Home Report, which concluded that CFS resources had been misallocated and critical changes were needed including additional family support, holistic healing opportunities, and a transition to traditional systems of child rearing and education; and

(d) the 2015 Truth and Reconciliation Commission, which found that prejudicial attitudes toward Indigenous parenting skills and a tendency to see poverty among Indigenous peoples as a symptom of neglect has contributed to the grossly disproportionate rates of child apprehension.

116. In 2018, Manitoba and various First Nations leaders in the province, including Manitoba Keewatinowi Okimakanak and the Southern Chiefs' Organization, released a report entitled "Transforming Child Welfare Legislation in Manitoba: Opportunities to Improve Outcomes for Children and Youth." The report was the first holistic review of Manitoba's child welfare legislation in 15 years. Manitoba recognized that "[t]here is almost universal agreement that the current system we have to protect children and youth is not working", noting that "[a]mong Canadian provinces, Manitoba has the highest rate of children in care" with the overwhelming majority

being Indigenous children. Manitoba acknowledged that it was "failing too many of our children and youth, and in spite of multiple reports and calls for action in the last 20 years, the situation in Manitoba has continued to get worse". At that time, Manitoba recognized that children in CFS have "significantly worse life outcomes as adults", "experience loss and trauma by being separated" from their parents and families, and have "difficulty transition[ing] on their own into society".

117. Notably, Manitoba also recognized that mothers of children taken into care experience a "significant deterioration of their health and social situation after apprehension" which materializes through depression, anxiety, and drug use as a means of coping with the immense pain of separation, all of which are harmful to these mothers' communities and their ability to participate in the life of their First Nations. These effects speak to some of the harms that the Defendants have visited directly on Class members.

118. Manitoba further acknowledged that the current CFS funding model "incentivize[s] child apprehensions, which enable CFS agencies to access resources", and that changes to this model are required to "ensure sustainable, equitable, and flexible funding and resources to support communities to maximize their role and incentivize … prevention, early intervention, and family restoration efforts". Manitoba conveyed the need for CFS to "acknowledge the right of families and communities to access culturally-safe resources" and noted the "long-term goal … [of] creat[ing] legislation that enables Indigenous peoples to have their own child welfare system that respects their right to self-determination".

119. In 2019, the Manitoba Advocate released the report, "A Place Where it Feels Like Home: The Story of Tina Fontaine." It found that Tina Fontaine, a murdered First Nations child who had been taken into care by CFS on various occasions, "needed an array of services from [CFS]" and other systems, which "[a]t times, particularly in the final months of her life … were unavailable, not easily accessible, or ill-coordinated, which did not provide the supports and interventions she desperately needed". The report confirmed that Manitoba "ought to move towards recognizing and legitimizing customary care providers" to allow all to access public services "efficiently and within the community and care structures that work best for their families". Strikingly, it also found that "Manitoba continues to lack safe and secure placement resources for children who are at risk of imminent harm or death".

120. In 2019, the Auditor General of Manitoba found that basic maintenance rates did not track inflation or reflect the increased costs of living in northern and remote communities. Therefore, children and families in northern Manitoba are at greater risk. The AGM also found that foster home standards were outdated and did not distinguish between kinship homes and regular foster homes.

121. The National Inquiry into Missing and Murdered Indigenous Women and Girls echoed these longstanding concerns and highlighted the failures of CFS, including but not limited to the following findings:

(a) Canada's use of child welfare laws and agencies equates to a "tool to oppress, displace, disrupt, and destroy Indigenous

families, communities, and Nations" and constitutes "genocide of Indigenous Peoples";

(b) state child welfare laws, policies, and services are "based on non-Indigenous laws, values, and world views" rendering them "ineffective" and in violation of the inherent rights of Indigenous peoples over child and family services;

(c) child apprehension from a mother is a "form of violence against the child" and "represents the worst form of violence against the mother" as "familial and cultural connections … in Indigenous communities" are disrupted, and safety and security are denied;

(d) children are "removed from their families due to conditions of poverty or as a result of racial and cultural bias" – circumstances which are characterized by the state as "neglect" – constituting a form of "discrimination and violence";

(e) the use of birth alerts against Indigenous mothers, including mothers who were themselves in CFS, can be the sole basis for the apprehension of newborns, constituting discrimination and a gross violation of the rights of the child, mother, and community;

(f) the child welfare system "fails to meet the needs of Indigenous children and youth" including by "fail[ing] to protect them from abuse and exploitation";

(g) state funding of child welfare services "incentivizes the apprehension of Indigenous children and youth" which is "exemplified by the state's prioritizing [of] funding for foster homes over economic and support services to families"; and

(h) the "[g]aps in child and family services and infrastructure in northern and remote communities result in the disproportionately high rate of … First Nations children being sent out of their communities and regions to obtain services and care in other jurisdictions" amounting to "jurisdictional neglect and culturally unsafe services".

122. Manitoba and Canada have repeatedly recognized the breaches of their duties, including but not limited to the following statements during the Class Period:

(a) in 1999 and 2000, Manitoba's Premier and various cabinet ministers acknowledged the frustration and disappointment caused by a "decade of neglect" and "long-term inequities and injustices" including the "long overdue recognition" of the right of First Nations families to develop and control CFS;

(b) in 2017, the Premier of Manitoba observed that children who grow up in CFS are more likely to be homeless, incarcerated, and experience addictions and mental illness as adults. The Premier recognized that almost 90% of children in CFS were Indigenous, and that they are disconnected from their families and communities;

(c) in 2017, the Finance Minister admitted that too much money was spent on apprehension in the child welfare system and that Manitoba needed to fund other services that would make a difference; and

(d) in January 2018, Canada's Minister of Indigenous Services hosted an emergency meeting on the issue of Indigenous child welfare, which she described as a "humanitarian crisis". At that time, Manitoba was known to be "ground zero" for child apprehensions.

123. Despite the well-known deficiencies set out above, Manitoba and Canada failed to address the underlying systemic problems in a timely manner or at all. The Defendants' inaction caused repeated harms to children and families, and in turn, to their First Nations as well.

Breach of fiduciary duties, duty of care, and honour of the Crown

124. Through their systemic conduct, Manitoba and Canada created, contributed to, and sustained a woefully inadequate child welfare system. As set out above, Manitoba and Canada breached their respective fiduciary duties, duties of care, and duties to uphold the honour of the Crown, all of which caused damages to the Class, as set out below. In particular, given Manitoba and Canada's longstanding efforts to encourage First Nations persons to leave their reserves, the honour of the Crown required the

Defendants to provide an adequate child welfare system for First Nations children living on and off reserve.

125. Insofar as the Class pleads claims in respect of Manitoba and Canada's policies, the Class expressly limits its claim in negligence to Manitoba and Canada's operational negligence in the implementation of protected core policies, and the crafting of non-core policies.

Charter breaches

126. Additionally, Canada and Manitoba breached Class members' rights under sections 15 and 2(a) of the *Charter*, which have both individual and collective aspects.

Canada and Manitoba breached Section 15

127. Canada and Manitoba have breached Class members' equality rights by compounding and exacerbating pre-existing vulnerabilities related to the historic practice of separating First Nations children from their families, First Nations and cultures. Canada and Manitoba's involvement in CFS has had devastating impacts of First Nations children, families and First Nations. These impacts include the over-representation of First Nations children in the child welfare and criminal justice systems, increased poverty and reliance on income assistance, and an overall lack of opportunities.

128. First Nations are uniquely vulnerable to the Defendants' breaches as a result of the intersecting grounds of race, age, family status, and place of residence. Because of their race, First Nations children have been repeatedly subject to ongoing state assaults on their families, cultures and First Nations. Because of their age and family status, First Nations children

in CFS are vulnerable to state intrusion and are reliant on others to meet the essential necessities of their life. Because of their place of residence, First Nations children and families living off reserve are uniquely susceptible to separation from culture and language due to the forces of colonial systems.

129. The child welfare system has had disproportionate and negative impacts on First Nations, based on the intersecting grounds of race, age, family status, and place of residence, including by:

(a) separating First Nations children from their families, First Nations, lands, culture, and spirituality;

(b) failing to fund basic maintenance and prevention services; and

(c) failing to protect, nurture, and support First Nations children, families, communities, and First Nations.

130. The overrepresentation of First Nations children in CFS alone is compelling proof that Manitoba and Canada have widened the gaps between First Nations people and non-First Nations people through their laws, policies, and practices. The corresponding negative impact on First Nations is the product of that discriminatory treatment.

131. In Manitoba, youth with experience in CFS are more likely to be accused of a crime before the age of 21 than they are to complete high school. The consequences for First Nations children in CFS are acute: they are 24 times more likely to be involved in both the child welfare and youth criminal justice systems compared to other children in Manitoba. Youth with experience in CFS are also more likely to be unhoused. Approximately

51.5% of unhoused people had been in CFS at one point in their lives, and 62.4% of them were unhoused within one year of leaving CFS.

132. First Nations children in CFS frequently suffer "triple jeopardy", as the innately damaging effects of apprehension are compounded by removal from a community of extended family members and neighbours, in addition to their distinct culture and spirituality, leading to intergenerational trauma. The majority of provincially-funded children are placed in the homes of strangers and groups, rather than with a First Nations family or in customary care arrangements. Removing children from their land and communities has a profound spiritual impact on the First Nations themselves, given the sacred role of children in First Nations belief systems.

133. This distinction on the basis of race, age, place of residence, and family status has imposed burdens and denied benefits in a manner that has reinforced, exacerbated, and perpetuated the entrenched disadvantage of First Nations. As a direct result of Manitoba and Canada's actions and failures, First Nations have lost their connection to their children and families, which perpetuates the destruction of First Nations language, teachings, spirituality, ways of life, and lands. This outcome is at odds with the *CFS Act*, which requires prevention over apprehensions, encourages family unity and reconnection, and promotes cultural connectivity. Rather than being supported, First Nations families have been targeted, including through the practice of birth alerts and birth apprehensions.

134. Manitoba and Canada's discrimination against Class members has caused them to suffer the harms described below. The Defendants'

mistreatment of Class Members, children and families has left many of them hurt and living in poverty, and without a meaningful connection to their First Nation. This has exacerbated First Nations' pre-existing vulnerabilities and intergenerational trauma flowing from historic colonial policies of assimilation.

135. In accordance with Jordan's Principle, Canada has an obligation under section 15 of the *Charter*, and pursuant to the honour of the Crown, to take the necessary steps to ensure that First Nations children have an equal chance to survive and thrive. Without adequate child welfare services, First Nations children begin life at a distinct disadvantage, which in turn exacerbates the disadvantages experienced by First Nations themselves. Canada's failure to discharge its obligations to the Class constitutes a further breach of section 15 of the *Charter*.

136. In the matter of *Flette et al. v. The Government of Manitoba et al.*, 2022 MBQB 104, this Honourable Court in found that Manitoba breached section 15 of the *Charter* in its management of First Nations child welfare, and particularly with respect to the appropriation of the CSA.

137. Similarly, the Canadian Human Rights Tribunal found that Canada had breached section 5 of the *Canadian Human Rights Act*, RSC, 1985, c H-6 ("***CHRA***"), which states that "it is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination," in the matter of *First Nations Child & Family Caring*

Society of Canada v. Attorney General of Canada, 2019 CHRT 39 [Compensation Decision] and *First Nations Child & Family Caring Society of Canada v. Attorney General of Canada*, 2016 CHRT 2 [Merit Decision]. The Federal Court affirmed that finding in the matter of *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada,* 2021 FC 969.

138. These determinations give rise to estoppels against the Defendants, and it would be abusive for them to re-litigate the breach of section 15 of the *Charter*.

Canada and Manitoba breached Section 2(a)

139. By perpetuating assimilation of First Nations children and severing them from their First Nations, culture, and spirituality, Manitoba and Canada have breached Class members' right to freedom of religion, which includes ancestral teachings and traditional ceremonies. By apprehending First Nations children and failing to provide them with opportunities for cultural and spiritual connection, the Defendants impaired, and in some cases severed First Nations children's relationship to their identity and to their First Nations.

140. Freedom of religion includes both individual and collective aspects. First Nations' collective claims to freedom of religion are rooted in the sharing of teachings and ceremonies with the next generation, which is a foundational aspect of First Nations' spiritual practices, and a collective right. Without kinship, ceremonies, and medicines, First Nations children lose their connection to the Creator. The loss of family and community members impedes the collective's ability to practice teachings, ceremonies,

and spiritual practices, which results in cultural and spiritual loss and prevents First Nations from sustaining themselves over time.

141. By removing First Nations children from their First Nations, the Defendants deprived them of the land as a teacher. First Nations lost a generation that would otherwise have been protectors of their First Nation's land, water, and people. The physical removal of First Nations children from their land constituted a further deprivation of First Nations' freedom of religion. This disconnection and dispossession was particularly severe for First Nations children who were taken from northern communities to southern regions of Manitoba.

The Defendants' breaches are not saved by Section 1

142. None of the *Charter* breaches set out above can be justified in a free and democratic society. On the contrary, they are a stain on the conscience of this nation, and they cannot be saved by section 1.

Canada and Manitoba breached Section 35

196(a). Manitoba and Canada breached First Nations' rights under section 35 of the *Constitution Act, 1982*, which recognized and affirmed Indigenous cultural and social rights including First Nations' rights associated with land and transmission of culture and language. These are collective rights belonging to the nations as a whole. The Defendants' conduct disregarded First Nations cultures and languages and deprived First Nations of the ability to teach and pass on their cultures, languages and traditions to the next generation. This breach was established by the

Canadian Human Rights Tribunal and affirmed by the Federal Court. These holdings give rise to an estoppel that bars re-litigation.

Canada and Manitoba breached Section 36

143. Furthermore, Manitoba and Canada breached First Nations' rights under section 36 of the *Constitution Act, 1982*, which required them to:

(a) promote equal opportunities for First Nations children, relative to other Canadian children;

(b) further the economic development of First Nations children and reduce the disparity in their opportunities relative to other Canadian children; and

(c) provide essential public services of reasonable quality to First Nations children.

144. The Federal Court affirmed the Canadian Human Rights Tribunal's finding that Canada's discriminatory funding practices with respect to First Nations children and families violated s. 5 of the *CHRA*. This finding creates an estoppel against Canada, and it would be abusive to re-litigate the issue in the context of a claim under s. 36 of the *Constitution Act, 1982*.

RESTITUTIONARY RELIEF

145. In the alternative, Manitoba and Canada realized cost savings from the breaches of their duties described above (the **"Unjust Gains"**). The Defendants were unjustly enriched to the extent of the Unjust Gains. The Unjust Gains resulted from expenditures that Manitoba and Canada were

obligated to make on behalf of the Class, and these cost savings were realized only through the Defendants' unlawful conduct.

146. Class members suffered a corresponding deprivation when First Nations children and families were subjected to a seriously deficient child welfare system, with the harms described above and below. There is no juristic reason that Manitoba or Canada should be entitled to retain the Unjust Gains, and they must be disgorged to the Class. The Class is entitled to a constructive trust over these monies.

147. In the further alternative, the Class is entitled to waive the tort of negligence. The Class suffered the consequences of Manitoba and Canada's breaches of their duties, which produced the Unjust Gains. As an alternative remedy, the Class is entitled to a disgorgement of Manitoba and Canada's gains from their wrongful conduct, namely, the Unjust Gains. The Class is entitled to a constructive trust over these monies.

VICARIOUS LIABILITY

148. Manitoba and Canada's breaches of their duties were perpetrated by their respective servants and agents, for whom Manitoba and Canada are responsible. These individuals made, and continue to make, decisions with respect to the apprehension of First Nations children and the provision of services to Class members. Manitoba and Canada's delicts were the misconduct of their respective servants and agents, each of whom breached duties owed to Class members. The identities of the particular servants and agents who perpetrated Manitoba and Canada's breaches of their duties are known only to the Defendants.

149. Manitoba and Canada are vicariously liable for the impugned acts of their respective servants and agents. There is a sufficiently close relationship between the Defendants and their respective servants and agents that it would be fair and just to hold Manitoba and Canada vicariously liable for the tortious conduct of the former. Further, the wrongs of the Defendants' servants, officers, employees, and agents were perpetrated in the course of their employment by Manitoba and Canada, such that the Defendants introduced the risk of the wrong.

150. To the extent that the Plaintiffs and the Class seek relief in tort, it is expressly limited to relief for the vicarious liability of Manitoba and Canada's servants and agents. The Plaintiffs plead and rely on ss. 3 and 4 of *The Proceedings Against the Crown Act*, C.C.S.M. c. P140, and s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

151. The Defendants and their respective servants and agents knew or ought to have known that their breaches of the Defendants' duties were unlawful and contrary to the *Charter* rights of Class members. In the alternative, the conduct at issue constitutes operational decisions by Manitoba and Canada, rather than core policy decisions, or was irrational, and the Defendants are not immune from suit in this regard.

CLASS MEMBERS SUFFERED DAMAGES

152. As a result of Manitoba and Canada's breaches of their duties to Class members, their breaches of Class members' *Charter* and constitutional rights, and their failure to uphold the honour of the Crown, including unnecessary removal of First Nations children from their families and First Nations, and the Defendants' failure to provide culturally- and

spiritually-appropriate services and placements for those children, First Nations have suffered and continue to suffer severe adverse effects, including:

(a) intergenerational impacts and loss of community from the removal of children from their families, cultures, and First Nations;

(b) intergenerational impacts from the failure to properly fund and provide for the development of First Nations children in CFS, with negative developmental and social outcomes;

(c) destruction of traditional, spiritual, and cultural practices from the loss of connection with First Nations children;

(d) loss of connection between First Nations children and their First Nations culture and identity, including an inability to understand or transfer their First Nation's language and knowledge of stewardship of their land; and

(e) adverse impacts on First Nations' economic and social wellbeing.

153. As a consequence, Class members suffered injury and damages including:

(a) loss of income and loss of advantage;

(b) inability to pass on and ensure the continuity of their traditional teachings, ceremonies, spiritual beliefs, language and knowledge systems, with intergenerational effects;

(c) increased costs to care for members who require healing from the adverse effects of CFS, as described above;

(d) increased costs to reconnect with lost members and rebuild their communities;

(e) loss of opportunity; and

(f) collective pain and suffering.

PUNITIVE AND EXEMPLARY DAMAGES

154. Manitoba and Canada, including their respective ministers, senior officers, directors, and senior staff, had, or should have had, specific and complete knowledge of the widespread damage to the Class that resulted from the breaches set out above. Despite this knowledge, the Defendants continued and continue to breach their respective duties to Class members, who were profoundly vulnerable to their delicts, with devastating consequences.

155. The high-handed and callous conduct of Manitoba and Canada warrants the condemnation of this Honourable Court. At all material times, Manitoba and Canada asserted direct or *de facto* control over First Nations child welfare, and they conducted their affairs with wanton and callous disregard for Class members' interests, safety and wellbeing.

156. Over a lengthy period, the Defendants treated the Plaintiffs and the Class members in a manner that could only result in aggravated and increased mental and physical suffering for a vulnerable population. Manitoba and Canada's violations of Class members' rights have irreparably damaged First Nations in Manitoba.

MISCELLANEOUS

157. Full particulars respecting Manitoba and Canada's breaches of its duties are within Canada and Manitoba's knowledge, control and possession.

158. This action is commenced pursuant to the *Class Proceedings Act*.

159. The Plaintiffs plead and rely upon the:

(a) *Class Proceedings Act*, CCSM. c. C130;

(b) *Court of King's Bench Act*, C.C.S.M. c. C280;

(c) *Court of King's Bench Rules*, Regulation 553/88;

(d) *The Proceedings Against the Crown Act*, C.C.S.M. c. P140;

(e) *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;

(f) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K);

(g) *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11;

(h) *Charter of Rights and Freedoms*;

(i) *Trustee Act*, C.C.S.M. c. T160;

(j) *Indian Act*, R.S.C. 1985, c, I-5;

(k) *The Child and Family Services Act*, C.C.S.M., c. C80;

(l) *The Child and Family Services Authorities Act*, C.C.S.M., c. C90;

(m) *The Path to Reconciliation Act*, C.C.S.M. c. R30.5;

(n) *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14; and

(o) such other legislation or regulations as may apply.

160. The Plaintiffs propose that this Action be tried at Winnipeg.

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